

Orwellian Legislation: Stop the Unconstitutional “Protect America” Act

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In August, Congress quickly passed legislation that gave yet more power to the Executive Branch. The Protect America Act is a warrantless eavesdropping bill that expands the power of the Foreign Intelligence Surveillance Act (FISA). It was passed just before summer recess: by the Senate on August 3 ([Roll Call 309](#)), and by the House on August 4 ([Roll Call 836](#)). George Bush then [signed](#) the bill into law on Sunday, August 5.

The Protect America Act gives the federal government the authority to monitor American citizens' phone conversations and e-mails, providing they are corresponding with persons "reasonably believed to be located outside the [United States](#)." This bill, which was drafted mostly by the White House, was created in response to the 2005 scandal where President Bush was ridiculed for authorizing the National Security Agency to conduct a secret wiretapping program targeted at persons within the United States. A federal court ruling found that program to be what most people already believed it to be: unconstitutional.

[The Fourth Amendment](#) to the Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Unconstitutional laws, such as the Protect America Act, are a direct attack on the Constitution and your liberty.

The Protect American Act is set to expire in 6 months due to a sunset provision that was attached to the final version of S. 1927. Congress will then have the opportunity to renew or reject the law.

In a [statement](#) made on September 19, President Bush called on Congress to make Protect America Act permanent.

The single largest anti-Constitutional contribution to the Bush Regime by the Protect America Act (PAA) is its effective cancellation of legislative and judicial oversight on warrantless wiretapping. It authorizes open-ended surveillance of Americans' overseas phone calls and e-mails without a warrant.

When this bill was signed into law on 08-05-07, legislative and judicial power in the executive branch instantly grew by several orders of magnitude. The Constitution's separation-of-powers principle had its arms ripped off. [1]

The law is set to expire after 6 months. But, unsurprisingly, Bush just announced that he wants those powers to be *permanent*.

Send a letter opposing this to your members of Congress now! It takes just a couple minutes with our online system.

On Wednesday, September 19th, Bush said:

"So I call on Congress to make the Protect America Act permanent. The need for action is clear. Director McConnell has warned that unless the FISA reforms in the Act are made permanent, our national security professionals will lose critical tools they need to protect our country. Without these tools, it'll be harder to figure out what our enemies are doing to train, recruit and infiltrate operatives in our country. Without these tools our country will be much more vulnerable to attack."[2]

Once again, using fear, Bush and his cohorts are calling on you to willingly give up your liberty – permanently. By allowing spying without warrant, the PAA – along with FISA itself – directly contradicts the plain English of the 4th Amendment.

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No Warrants Shall Issue. Period.

Tell your senators and representatives to do something unusual – tell them to stand up for your liberty and the US Constitution – by letting this awful legislation expire.

Former federal prosecutor Edward Lazarus says that warrantless wiretapping is a major threat to the Constitution's separation of powers. It is a sapping of legislative and judicial power into the executive.[1]

Lazarus writes — "... the Constitution's separation of powers was the nation's primary defense against tyranny. And tyranny, [Yale law professor Stephen] Carter concluded in an oft quoted line, does not overwhelm a nation in an instant. No, he wrote, 'tyranny creeps'".

Lazarus continues — "Lately, though, tyranny runs like a cheetah." [1][3]

Sources:

[1] "Protect America Act: Cheetah for Tyranny" Stephen Neitzke, PopulistAmerica.com, August 13, 2007

http://www.populistamerica.com/protect_america_act_cheetah_for_tyranny

[2] "White Press Release" September 19, 2007

<http://www.whitehouse.gov/news/releases/2007/09/20070919.html>

[3] "Warrantless Wiretapping: Why it Seriously Imperils the Separation of Powers" Edward Lazarus, FindLaw, December, 2005.

<http://writ.news.findlaw.com/lazarus/20051222.html>

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ANNEX

White House Fact Sheet: FISA 101: Why FISA Modernization Amendments Must Be Made Permanent

FISA Amendments In The Protect America Act Of 2007 Remain Necessary To Keep Our Nation Safe

 [President Bush Discusses the Protect America Act of 2007](#)

 [In Focus: National Security](#)

The Protect America Act modernized the Foreign Intelligence Surveillance Act (FISA) to provide our intelligence community essential tools to acquire important information about terrorists who want to harm America. The Act, which passed with bipartisan support in the House and Senate and was signed into law by President Bush on August 5, 2007, restores FISA to its original focus of protecting the rights of persons in the United States, while not acting as an obstacle to gathering foreign intelligence on targets located in foreign countries. By enabling our intelligence community to close a critical intelligence gap that existed before the Act became law, the Protect America Act has already made our Nation safer.

- The tools provided by the Protect America Act are scheduled to expire in early February 2008 – it is essential that Congress act to make the legislation permanent. Congress must also pass legislation to provide meaningful liability protection to those alleged to have assisted our Nation following the 9/11 attacks.

The Protect America Act Of 2007 Modernizes FISA In Four Important Ways

1. The Protect America Act permits our intelligence professionals to more effectively collect foreign intelligence information on targets in foreign lands without first receiving court approval. The new law accomplishes this by clarifying that FISA's definition of "electronic surveillance" does not apply to activities directed at persons reasonably believed to be outside the United States, thereby restoring the statute to its original focus on appropriate protections for the rights of persons in the United States.
 - Electronic surveillance targeting a person in the U.S. continues to require a court order under the Protect America Act. The statute does not change FISA's definition of "electronic surveillance" as it applies to domestic-to-domestic communications and surveillance targeting persons in the United States.
2. The Protect America Act provides a role for the FISA Court in reviewing the procedures the intelligence community uses to ensure that collection remains directed at persons located overseas. The Attorney General is required to submit to the FISA court the procedures by which the Federal government

determines that the authorized acquisitions of foreign intelligence do not constitute electronic surveillance and thus do not trigger FISA's court approval requirements.

3. The Protect America Act provides a mechanism for the FISA Court to direct third parties to assist the intelligence community in its collection efforts. The Act permits the Director of National Intelligence and the Attorney General to direct communications service providers to provide the information, facilities, and assistance necessary to conduct authorized foreign intelligence activities. In the event such a person fails to comply with a directive, the Attorney General may invoke the aid of the FISA Court to compel compliance with the directive. By the same token, the Act allows third parties to challenge a directive in the FISA Court.
4. The Protect America Act protects third parties from private lawsuits arising from assistance they provide the Government in authorized foreign intelligence activities targeting individuals located outside the United States. But the Act does not provide retrospective liability protection for those alleged to have assisted our Nation following the 9/11 attacks. Congress needs to act to provide such protection.

The Basics Of FISA: Why The Protect America Act Of 2007 Is Necessary To Bring The Law Up-To-Date

Congress enacted the Foreign Intelligence Surveillance Act (FISA) in 1978 to regulate the Government's efforts to conduct certain foreign intelligence surveillance activities directed at persons *in the United States*. Congress recognized that the Government must be able to effectively collect foreign intelligence about those who wish to harm our country. To allow this collection to proceed while protecting the rights of Americans in the United States, Congress established a process for judicial approval that generally applied when the government targeted persons *located inside the United States* for foreign intelligence surveillance – but which generally did not apply to activities directed at persons *overseas*.

Revolutionary advances in telecommunications technology since 1978 have upset the careful balance established by Congress to distinguish between surveillance governed by FISA and surveillance directed at targets outside the U.S. The mechanism Congress used to identify which activities fell within FISA's scope – and to strike the balance between surveillance directed at persons overseas and persons in the United States – was a careful and complex definition of the term "electronic surveillance." This definition was framed in terms of the specific communications technologies used in 1978.

As a result, prior to the Protect America Act, the Government often needed to obtain a court order before vital intelligence collection could begin against a terrorist or other foreign intelligence target located in a foreign country. These targets *often were communicating with other foreign persons overseas*, but FISA's court order requirement still applied. It made no sense to require the Government to obtain a court order to collect *foreign* intelligence on targets located in *foreign* countries, nor was such a requirement intended when Congress passed FISA nearly 30 years ago.

This requirement resulted in a critical intelligence gap that was making our Nation less safe.

Requiring the Government to go to court before the collection of foreign intelligence could begin resulted, as the Director of National Intelligence put it, in our intelligence professionals “missing a significant amount of foreign intelligence that we should be collecting to protect our country.”

By changing FISA’s definition of electronic surveillance to clarify that the statute does not apply to surveillance directed at overseas targets, the Protect America Act has enabled the intelligence community to close this critical intelligence gap. The Protect America Act makes clear – consistent with the intent of the Congress that enacted FISA in 1978 – that our intelligence community should not have to get bogged down in a court approval process to gather foreign intelligence on targets located in foreign countries. It does not change the strong protections FISA provides to people in the United States. FISA’s definition of electronic surveillance remains unchanged for surveillance directed at people in the United States, and continues to require court approval as it did before.

Source: [White House website](#)

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