

**FEINGOLD TO INTRODUCE RESOLUTION
CENSURING THE PRESIDENT**
**Feingold Says Congress Must Condemn the President's Violation of
the Public's Trust Through Illegal Wiretapping Program**

March 12, 2006

Washington, D.C. – U.S. Senator Russ Feingold has announced that he will introduce a resolution in the U.S. Senate on Monday to censure the President of the United States. Feingold's resolution condemns the President's actions in authorizing the illegal wiretapping program and then misleading the country about the existence and legality of the program. Feingold calls the resolution an appropriate and responsible step for Congress to take in response to the President's undermining of the separation of powers and ignoring the rule of law.

“The President must be held accountable for authorizing a program that clearly violates the law and then misleading the country about its existence and its legality,” Feingold said. “The President's actions, as well as his misleading statements to both Congress and the public about the program, demand a serious response. If Congress does not censure the President, we will be tacitly condoning his actions, and undermining both the separation of powers and the rule of law.”

The President's illegal wiretapping program is in direct violation of the Foreign Intelligence Surveillance Act (FISA). The FISA law makes it a crime to wiretap Americans in the United States without a warrant or a court order. The Bush Administration has obtained thousands of FISA warrants since September 11th and has almost never been rejected by the FISA court. FISA even allows wiretaps to be executed immediately in an emergency as long as the government obtains a warrant within 72 hours.

“This issue is not about whether the government should be wiretapping terrorists – of course it should, and it can under current law” Feingold said. “But this President and this Administration decided to break the law and they have yet to give a convincing explanation of why their actions were necessary, appropriate, or legal. Passing more laws will not change the fact that the President broke the ones already in place and for that, Congress must hold him accountable.”

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**FACT SHEET FROM U.S. SENATOR RUSS FEINGOLD
ON HIS RESOLUTION TO CENSURE THE PRESIDENT**

Senator Feingold's resolution of censure condemns the President for breaking the

law by authorizing an illegal wiretapping program, and for misleading Congress and the American people about the existence and legality of that program.

The President Broke the Law by Wiretapping Outside of FISA

It Is Illegal to Wiretap Without the Requisite Warrant or Court Order: The law is clear that the criminal wiretap statute and Foreign Intelligence Surveillance Act (FISA) “shall be the exclusive means by which electronic surveillance . . . and the interception of domestic wire, oral, and electronic communications may be conducted.”

FISA Has an Emergency Exception: The Administration has indicated that it ignored FISA because the application process takes too long. In fact, in an emergency where the Attorney General believes that surveillance must begin before a court order can be obtained, FISA permits him to immediately authorize the surveillance as long as the government goes to the court within 72 hours. Prior to 2001, the emergency wiretap period was only 24 hours. The Administration requested and received the increase to 72 hours in intelligence authorization legislation that passed in late 2001.

FISA Provides for Wartime Situations: FISA also permits the Attorney General to authorize warrantless electronic surveillance in the United States during the 15 days following a declaration of war, to allow time to consider any amendments to FISA necessitated by a wartime emergency.

The Administration Has Used FISA Thousands of Times Since 9/11: Administration officials have criticized FISA, but they have obtained thousands of warrants approved by the FISA court since 9/11, and have almost never had a warrant request rejected by that court.

The President Made Misleading Arguments Defending his Wiretapping Program

Military Force Resolution Did Not Authorize Wiretapping: The President has argued that Congress gave him authority to wiretap Americans on U.S. soil without a warrant when it passed the Authorization for Use of Military Force after September 11, 2001. There is no language in the resolution and no evidence to suggest that it was intended to give the President authority to order these warrantless wiretaps. Warrantless domestic surveillance is not an “incident of war” akin to detaining an enemy soldier on the battlefield as the Administration has argued.

In fact, Congress passed the Patriot Act just six weeks after September 11 to expand the government’s powers to conduct surveillance of suspected terrorists and spies. Yet the Administration did not ask for, nor did the Patriot Act include, any change to FISA’s requirement of judicial approval for wiretaps of Americans in the United States.

Prohibition on Wiretapping Limits Executive Power: The President's assertion of inherent executive power is also wrong. The President has extensive authority when it comes to national security and foreign affairs, but given the clear prohibition in FISA, that authority does not include the power to wiretap American citizens on American soil without a warrant.

Executive Branch Review of Wiretapping Is Not Enough: The President has argued that periodic executive branch review provides an adequate check on the program. But Congress when it passed FISA explicitly rejected the idea that the executive branch should be fully entrusted to conduct national security wiretaps on its own – a power that the executive had abused in the past. In addition, the Administration has said that NSA employees decide whose communications to tap. Executive branch employees are no substitute for FISA Court judges.

Congress Did Not Approve This Program: The extremely limited briefings of the President's warrantless surveillance programs to a handful of Congressional leaders did not constitute Congressional oversight, much less approval. In fact, the failure of the President to keep the Congressional Intelligence Committees "fully and currently informed of all intelligence activities" was a violation of the National Security Act.

The President Made Misleading Public Statements about Administration Wiretapping

"Finally, we need to renew the critical provisions of the Patriot Act that protect our civil liberties. The Patriot Act was written with clear safeguards to ensure the law is applied fairly. The judicial branch has a strong oversight role. Law enforcement officers need a federal judge's permission to wiretap a foreign terrorist's phone, a federal judge's permission to track his calls, or a federal judge's permission to search his property. Officers must meet strict standards to use any of these tools. And these standards are fully consistent with the Constitution of the U.S."

--President George Bush, June 9, 2005, in Columbus, Ohio

"A couple of things that are very important for you to understand about the Patriot Act. First of all, any action that takes place by law enforcement requires a court order. In other words, the government can't move on wiretaps or roving wiretaps without getting a court order. Now, we've used things like roving wiretaps on drug dealers before. Roving wiretaps mean you change your cell phone. And yet, we weren't able to use roving wiretaps on terrorists. And so what the Patriot Act said is let's give our law enforcement the tools necessary, without abridging the Constitution of the United States, the tools necessary to defend America."

--President George Bush, July 14, 2004, in Fond du Lac, Wisconsin

“Secondly, there are such things as roving wiretaps. Now, by the way, any time you hear the United States government talking about wiretap, it requires -- a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so. It's important for our fellow citizens to understand, when you think Patriot Act, constitutional guarantees are in place when it comes to doing what is necessary to protect our homeland, because we value the Constitution.”

--President George Bush, April 20, 2004, in Buffalo, New York

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