

# **The FISA Amendments Act: Protecting Our Country and Civil Liberties**

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**On Friday, the House of Representatives adopted H.R. 3733, the FISA Amendments Act. This carefully crafted legislation gives our intelligence agencies all the tools they need to protect our country and also protects our fundamental civil liberties.**

**But, even before we were to consider the bill, we held a rare closed session to discuss surveillance legislation in a classified setting in light of Republican claims that they had important secret information. But those claims turned out to be false. Even behind closed doors, the Republicans were unable to provide any information that would support the overreaching changes sought by the White House.**

**The House passed legislation that gives our intelligence agencies all the tools they need to defend our country consistent with the Constitution. It helps make changes to the Foreign Intelligence Surveillance Act so that security and liberty are both protected.**

Let me be clear about what our bill does not do. It does not require individual warrants for the targeting of foreign terrorists located outside the United States. For three decades, that has been the law, and it will still be the law under this bill. There is no dispute about this.

The bill maintains the traditional requirement of a warrant when our intelligence agencies seek to conduct surveillance on Americans. It also creates new authorities for the government to conduct electronic surveillance of foreign targets. But because some foreign surveillance may record conversations with Americans, the bill requires that when the Government proposes to undertake surveillance of a foreign group or entity, it must first apply to the FISA court. However, the bill states that in an emergency, the surveillance can begin immediately, and the court can consider the surveillance procedures later.

There is another thing that our bill did not do -- provide blanket, retroactive immunity to the telecommunication companies that assisted in the president's warrantless wiretapping program. Such a move would fly in the face of our notions of justice.

Over the last few weeks, we have heard countless assertions from the White House and Republicans in Congress that are false and misleading. They claim that we allowed the Protect America Act to expire -- when it was the Republicans who blocked attempts to extend that legislation temporarily. And they continue to claim that retroactive immunity for the telecom companies is necessary for the security of the country. But they have failed to provide any evidence for that claim -- even behind closed doors.

The telecom companies aided the administration's surveillance program. Some people -- American citizens -- believe their constitutional rights were violated, and brought suit against the government and the telecom companies. There are two narratives here. One is that the telecom companies patriotically aided the administration in protecting Americans from terrorists. The other is that the telecom companies conspired with a lawless administration to violate the Constitutional rights of Americans. Which of these narratives is correct is for a court to decide.

It is not the role of Congress to decide legal cases between private parties. That is why we have courts. If the claims are not meritorious, the courts will throw them out. But if the claims do have merit, we have no right to dismiss them without even reviewing the evidence.

We are told that the telecom companies should not be subject to lawsuits for doing their duty. But whether they were doing their duty, or abusing the rights of Americans, is precisely the issue. And that is a legal issue for the courts to decide.

In any event, the existing law, in a wise balance of national security and constitutional rights that this bill does not change, already provides absolute immunity to the telecom companies if their help was requested, and if they were given a statement by the Attorney General, or various other government officials, stating that the requested help did not require a warrant or court order and would not break the law. They have immunity whether those statements were true or not. They can rely absolutely on the government's assertions.

Indeed, Title II of this bill will allow the telecoms to show the courts, in a secure setting, if they were obeying the law or if they weren't. It will allow the telecom companies to assert their immunity in court, and to present the relevant documents and evidence to the court in a secret session that protects any "state secrets." The courts can then judge whether the telecom company obeyed the law -- in which case it has complete immunity - - or whether it did not.

If you put aside the rhetoric of the White House and the minority, it is clear that our bill properly balances security and liberty. It also demands that these extraordinary powers are used properly, and that they follow our laws and our Constitution. If the President is serious about protecting America, he should drop his objections to this bill.

*Congressman Nadler is the Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties.*