



TELECOMMUNICATIONS SNAP UPdateSM

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ACLU VOWS TO CHALLENGE FISA IMMUNITY PROVISIONS

Washington, DC: *The ACLU plans to challenge the FISA bill passed on July 9, 2008, by the Senate.* The Foreign Intelligence Surveillance Act (“FISA”) grants telecommunications companies, which helped the National Security Agency spy on Americans, retroactive civil immunity from lawsuits. According to the New York Times, “the new FISA bill clarifies the scope of government intelligence activities, depending on the type and origin of the communication, and provides greater latitude to use technology to track foreign terrorism suspects overseas.” The new version of the bill still requires a warrant to track Americans in the U.S., but does not require permission to track foreign citizens who are overseas, regardless of whether the surveillance passes through domestic-based communication networks. “If the overseas target is a U.S. citizen, a warrant would be required --

regardless of where and how the spying takes place.”

There have been multiple attempts over the past three years to revise the FISA bill. Sens. Russ Feingold (D-WI) and Chris Dodd (D-CT) co-sponsored an amendment to FISA that would have eliminated the retroactive immunity provision from the bill. However, this, and two other modified bills were defeated on Wednesday. Instead, the Senate approved the FISA update by a 69-28 vote.

Senator Barack Obama has come under scrutiny over the past few weeks for his position on FISA. Originally, he stated that he opposed any measure that would grant immunity to telecom companies, but two weeks ago said that he would vote for the compromise bill stating that it is “not all that I would want [but] given the legitimate threats we face, providing effective

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intelligence collection tools with appropriate safeguards too important to delay.”

However, all proposed amendments, including the “compromise” bill were defeated. Senator Obama voted for the “improved but imperfect bill” after a failed attempt earlier on Wednesday to strip the immunity provision from the bill. Senator Obama’s campaign stated: “Given the choice between voting for an improved yet imperfect bill, and losing important surveillance tools, Senator Obama chose to support the FISA compromise.” Senator John McCain missed the vote while campaigning in Ohio, but has continuously stated that he supported full immunity granted to telecom companies in the FISA bill.

After the FISA bill passed the Senate, critics of the bill vowed to fight the legislation. Jameel Jaffer, Director of the ACLU National Security Project said: “The bill allows the warrantless and dragnet surveillance of Americans’ international telephone and email communications. It plainly violates the Fourth Amendment. This fight is not over. We intend to challenge this bill as soon as President Bush signs it into law.”

The Electronic Frontier Foundation, an organization representing plaintiffs in pending lawsuits against phone companies, also stated they would fight FISA. Senior

Staff Attorney Kurt Opsahl said: “We thank those senators who courageously opposed telecom immunity and vow to them, and to the American people, that the fight for accountability over the President’s illegal surveillance is not over. Even though Congress has failed to protect the privacy of Americans and uphold the rule of law, we will not abandon our defense of liberty. We will fight this unconstitutional grant of immunity in the courtroom and in the Congress, requesting repeal of the immunity in the next session, while seeking justice from the judiciary. Nor can the lawless officials who approved this massive violation of Americans’ rights rest easy, for we will file a new suit against the government and challenge warrantless wiretapping, past, present and future.”

However, advocates of the bill, like President Bush, called the Senate vote “long overdue.” President Bush said he would sign the bill into law quickly for the sake of national security. He stated that “even in an election year, we can come together and get important pieces of legislation passed.”

What do you think: Should FISA grant retroactive immunity to telecom companies? Is FISA important for national security? Let us know what you think at our interactive [blog!](#)

If you have questions about this issue, or if we may be of assistance to you, please feel free to contact us.

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