

Eshoo Opposes FISA Amendments Act

Washington, D.C. – Representative Anna G. Eshoo (D-Palo Alto) issued the following statement regarding her vote against the FISA Amendments Act of 2008, which passed the House of Representatives today by a vote of 293 - 129

Statement of Representative Anna G. Eshoo

H.R. 6304, the FISA Amendments Act of 2008

U.S. House of Representatives

June 20, 2008

Madam Speaker, first I want to commend the Chairman and the Majority leader for the work they've done to bring this legislation to the floor of the House. It has been a challenge for all of us on the Intelligence Committee and in the Congress.

This legislation is a vast improvement over the previous law, and indeed over the Protect America Act passed by the House last August which I opposed.

The bill very importantly establishes a process for electronic surveillance that includes prior approval by the independent courts, and in some respects, this legislation goes even further than the existing FISA statute or the House-passed RESTORE Act in protecting the civil liberties of U.S. persons. Under this bill the Administration would have to seek a court order before conducting surveillance on U.S. persons abroad. Until now and under the Protect America Act, the executive branch could conduct electronic surveillance of U.S. persons without prior judicial approval. This legislation also allows the lawsuits against the telecommunications companies to go forward in a limited fashion, which would not have occurred at all under current law.

Having said this I must oppose this bill.

Under the original structure of FISA, telecommunications carriers served an important gate-keeping function. They were not permitted to provide access to private communications in the United States unless the government made a lawful request to conduct surveillance, pursuant to a FISA order. For decades, the government has sought and obtained thousands of FISA warrants prior to beginning surveillance, or in urgent cases shortly thereafter. We all remember the shocking news when the President had to acknowledge that his Administration created an illegal, warrantless electronic surveillance program outside of the FISA legal framework.

This legislation would essentially grant retroactive immunity to telecommunications carriers who relied on statements made by this Administration that the program was lawful. However, as we've seen in numerous instances, this Administration pushed new and aggressive interpretations of the law, including in this area. We all recall vividly the days

following 9/11, and the urgency that prevailed, but suspending our laws and allowing the Attorney General to unilaterally issue a "get out of jail free card" is not appropriate under any circumstances. There should be at least some minimal inquiry into whether the telecommunications carriers reliance on the statements made by this Administration was reasonable. If so, then they would be able to assert their existing statutory immunity defenses.

Throughout our nation's history, the judiciary has been the most important check on an overzealous executive, and it is often through the judicial process that we uncover and remedy some of the most egregious executive misconduct. This legislation undermines and effectively nullifies the courts' ability to hold the Administration accountable for its actions, which likely violated the Constitution.

Our nation was founded on the principle of separation of powers. The executive branch should be subject to independent oversight by the judicial branch. This legislation does not go far enough to allow the judicial branch to conduct an independent, reasoned inquiry into this critical issue. Therefore, I must oppose this legislation.

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