



Department of Justice
&
**THE OFFICE OF THE
DIRECTOR OF NATIONAL INTELLIGENCE**



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**STATEMENT BY THE DEPARTMENT OF JUSTICE AND THE
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE REGARDING
HOUSE FISA PROPOSAL**

“We understand that the leadership of the House of Representatives intends to introduce a new bill related to the Foreign Intelligence Surveillance Act of 1978 (FISA). Based on initial summaries of what the proposal contains, we are concerned that the proposal would not provide the Intelligence Community the critical tools needed to protect the country. The Senate already has passed a bipartisan bill that would give our intelligence professionals the tools they need to keep America safe. The bipartisan bill was carefully crafted to ensure important intelligence operations were not harmed by new legislation.

“We are concerned with several reported features of the new proposed legislation. First, we understand that the House leadership may introduce a bill that would require prior court approval before allowing surveillance targeting certain foreign terrorists and other national security threats located outside the United States. As we explained before, imposing this requirement in the context of surveillance of foreign targets located overseas results in the loss of potentially vital intelligence by, for example, delaying intelligence collection and thereby losing some intelligence forever. The Senate bill would allow the Government to continue collecting foreign intelligence information against foreign terrorists and other foreign intelligence targets located outside the United States without obtaining prior court approval. Initiating surveillance of foreign individuals in foreign countries without awaiting a court order will ensure that we will keep closed the intelligence gaps that existed before the passage of the Protect America Act. Provisions that prevent our ability to gather vital intelligence are unacceptable.

“Second, we understand that the new House bill may not address the issue of providing liability protection for those private-sector firms that helped defend the Nation after the September 11 attacks. Any FISA modernization bill must include such liability protection. Through briefings and documents, we have provided Congress with access to the information that shows that liability protection is the fair and just result. In addition, private party assistance is necessary and critical to ensuring that the Intelligence Community can collect the information needed to protect our country from attack. The Senate Intelligence Committee has stated that “the intelligence community cannot obtain

the intelligence it needs without assistance” from electronic communication service providers. The Committee also concluded that “without retroactive immunity, the private sector might be unwilling to cooperate with lawful Government requests in the future without unnecessary court involvement and protracted litigation. The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our Nation.” Senior intelligence officials also have testified regarding the importance of providing liability protection to such companies for this very reason. Exposing the private sector to continued litigation for assisting in efforts to defend the country understandably makes the private sector much more reluctant to cooperate. Without their cooperation, our efforts to protect the country cannot succeed.

“Finally, we understand that there are a number of other provisions in the proposal that indicate it does not provide the needed tools to ensure our national security. We understand there is a short sunset period. The uncertainty created by a short sunset does not provide the stability needed for intelligence operations. We also understand there is creation of a congressional commission on certain surveillance activities to redo the extensive oversight done by the intelligence committees in Congress over the past two years. This oversight has included many hearings, extensive visits to review operations, the availability of all documents related to the activities, and answering over 500 questions for the record. The Intelligence Community and the Department of Justice have spent thousands of hours responding to congressional requests in this matter. Pulling operational personnel from their ongoing mission of protecting the country to cover the same ground is a poor use of limited resources.

“We remain prepared to continue to work with Congress towards the passage of a long-term FISA modernization bill that would strengthen the Nation's intelligence capabilities while protecting the constitutional rights of Americans, so that the President can sign such a bill into law.”

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