

Protect America Alert:

Congress Must Act Now To Keep A Critical Intelligence Gap Closed

10 Days And Counting – Congress Should Act Now To Ensure Our Intelligence Community Has The Tools It Needs To Protect Us From Foreign Terrorists

"The Protect America Act expires in just 10 days, yet after nearly six months of delay,, Congress has still not taken the necessary action to keep our Nation safe. The terrorist threat we face does not expire on February 1. For the sake of our national security, Congress must act now to send the President a bill that keeps a critical intelligence gap permanently closed and provides meaningful liability protection for companies that may have assisted in efforts to defend America following the 9/11 attacks."

— White House Press Secretary Dana Perino, 1/22/08

Congress has just 10 days to permanently close a critical intelligence gap that was making our Nation less safe. Last August, Congress passed the Protect America Act (PAA), which provided our Intelligence Community a critical tool it needs to acquire important information about terrorists who want to harm America. The PAA will expire in just 10 days. Congress must act now to keep our Nation safe by making the critical authority to collect intelligence under the PAA permanent and by providing meaningful liability protection to companies alleged in lawsuits to have assisted in the efforts to defend our Nation following the 9/11 attacks.

- **The terrorist threat does not expire February 1, and neither should legislation critical to keeping our Nation safe.** The Senate Intelligence Committee has approved a bipartisan bill that, while not perfect, is a significant step in the right direction. Congress should continue its work on this bill and send the President legislation as soon as possible that he can sign.

The Senate Intelligence Committee Bill Represents A Bipartisan Solution That Would Protect Americans And Their Liberties

The Senate Intelligence Committee bill was crafted in a careful, bipartisan manner to protect our country against terrorists and other foreign threats while preserving the privacy of Americans. This bill would:

1. **Put in place extensive privacy safeguards.** For example, it appropriately retains a requirement to seek court orders to conduct surveillance of persons in the U.S. It also requires court review of the procedures used to protect information about Americans.
2. **Make America safer by extending the authority we need to keep critical intelligence gaps closed.** Outdated provisions in Foreign Intelligence Surveillance Act (FISA) often required us to obtain court orders before intercepting the communications of terrorists overseas. This bill would correct that problem.
3. **Provide liability protection to companies alleged to have assisted the Nation with intelligence activities after the September 11 attacks.** This protection would only be extended if the companies were told the activity was authorized by the President and determined to be lawful.

The Administration has some concerns with the Senate Intelligence Committee bill, but it represents the best chance for a timely and bipartisan solution to help keep our Nation safe. For example, the Administration opposes particular technical aspects of the so-called "Wyden Amendment," which would impose undue operational burdens on the Intelligence Community's collection of foreign intelligence information on U.S. persons. We look forward to working with Congress to address these concerns.

Liability Protection Is Critical To The Ongoing Effort To Protect The Nation From Another Catastrophic Attack

The Senate Intelligence Committee carefully studied this issue and found that without the limited retroactive liability protection discussed above, **"the private sector might be unwilling to cooperate with lawful government requests."** The Committee rightly determined that this lack of protection could result in a "possible reduction in intelligence" that is "unacceptable for the safety of our Nation."

The proposed liability protection is based on the Intelligence Committee's conclusion that **companies acted in good faith with written assurances from the government and in the aftermath of the worst foreign attack on U.S. soil in history.** It would not prevent lawsuits against the government and would not provide immunity from criminal prosecution.

Companies should not be held responsible for verifying the government's determination that requested assistance was necessary and lawful – and such an impossible requirement would hurt our ability to keep the Nation safe. Requiring companies to second-guess the government's determinations would slow or eliminate critical intelligence collection and would place private parties in the impossible position of making legal determinations without access to the classified facts necessary to make such determinations.

Companies alleged to have assisted the government in the aftermath of September 11th should not face massive and costly litigation for helping protect our country. Such litigation also risks the disclosure of highly classified information.

Failing to provide such protection sends an unfortunate message to every private party that may in the future consider whether to help the Nation.