

## Protect America Alert:

# Senate Bill Must Give Intelligence Agencies The Tools They Need To Protect Our Nation

*As Senate Begins Final Debate On Foreign Intelligence Surveillance Act Modernization Bill, The Administration Urges Members To Reject Proposed Flawed Amendments To The Bipartisan Measure Passed By The Senate Intelligence Committee*

In the face of continued threats to our Nation from terrorists and other foreign intelligence targets, it is vital that Congress not allow the core authorities of the Protect America Act to expire. Last August, Congress passed the Protect America Act (PAA), which provided our Intelligence Community with critical tools it needs to acquire important information about terrorists who want to harm America. The PAA was scheduled to expire on February 1, 2008. Because Congress determined that it could not address this issue before February 1st, Congress passed, and the President signed, a fifteen day extension of the PAA. The new expiration date is February 16, 2008.

- **Congress must act to ensure that our Intelligence Community can count on the critical tools provided by the PAA for years to come and provide responsible liability protection to companies facing billion-dollar lawsuits only because they are believed to have assisted in efforts to protect our Nation after the attacks of September 11.** We should give our intelligence professionals assurance that they will have the tools they need to do their jobs and our private partners certainty that they will not be subject to billion-dollar lawsuits by plaintiffs' lawyers only for doing the right thing and helping us defend the country.
- **While not perfect, the bill reported by the Senate Select Committee on Intelligence (SSCI) represents a bipartisan solution that would protect Americans and their liberties.** This bill will make America safer by extending the authorities under the PAA to keep critical intelligence gaps closed and providing protection from private lawsuits against companies believed to have assisted the Government in the aftermath of the September 11 attacks. With the inclusion of the proposed Manager's amendment, which would make necessary technical changes to the bill, the Administration strongly supports passage of this bipartisan legislation.
- **Unfortunately, certain amendments have been offered that would undermine significantly the core intelligence collection authorities and liability protection provisions of the SSCI bill.** The Administration has determined that these amendments would result in a final bill that would not provide the Intelligence Community with the tools it needs to collect effectively foreign intelligence information vital for the security of the Nation.

**If The President Is Sent A Bill That Does Not Provide Our Intelligence Agencies The Tools They Need To Protect The Nation, The President Will Veto The Bill**

Among the proposed amendments that the Attorney General and Director of National Intelligence have advised would not provide the tools our intelligence community needs are the following:

1. **Bulk Collection Amendment (No. 3912)**

**By imposing a "specific individual target" test, this amendment would harm important intelligence operations while doing little to enhance the privacy interests of Americans.** It would require the Attorney General and the Director of National Intelligence to certify for any acquisition that it "is limited to communications to which any party is a specific individual target (which shall not be limited to known or named individuals) who is reasonably believed to be located outside the United States."

- **This amendment could hamper U.S. intelligence operations that are now authorized to be conducted overseas and that could be conducted more effectively from the United States.** For example, the Intelligence Community may wish to target all communications in a particular neighborhood abroad before our armed forces conduct an offensive. This amendment could prevent the Intelligence Community from targeting a particular group of buildings or a geographic area abroad to collect foreign intelligence prior to such military operations.

## **2. Reverse Targeting Amendment - (No. 3913)**

**This amendment would place an unnecessary and debilitating burden on our Intelligence Community's ability to conduct surveillance without enhancing the protection of the privacy of Americans.** It would require a FISA Court order if a "significant purpose" of an acquisition targeting a person abroad is to acquire the communications of a specific person reasonably believed to be in the United States; however, the SSCI bill already provides that the authorities under the bill cannot be used to target a person in the United States.

- **Under current law, if a person in the United States is the target of surveillance, an order from the FISA court is required.** The SSCI bill codifies this longstanding Executive Branch interpretation of FISA.
- **The unnecessary introduction of this ambiguous "significant purpose" standard would raise operational uncertainties and problems.** This would make it more difficult to collect intelligence when a foreign terrorist overseas is calling into the United States – which is, of course, precisely the communication the Government generally cares most about.

## **3. Use Limitation Amendment - (No. 3915)**

**This amendment would place a difficult, and perhaps insurmountable, operational burden on the Intelligence Community in implementing authorities that target foreign intelligence targets located overseas.** It would impose significant new restrictions on the use of foreign intelligence information, including information not concerning United States persons, obtained or derived from acquisitions using targeting procedures that the FISA Court later found to be unsatisfactory for any reason.

- **This amendment would require analysts to go back to the databases and pull out certain information, as well as to determine what other information is derived from that information.** The effect of this operational burden would be to divert analysts and other resources from their core mission – protecting the Nation – to search for information, including information that does not even concern United States persons.

- **The burdensome mandate would actually degrade – rather than enhance – privacy protections for people in the United States.** Enacting this amendment would require analysts to locate and examine United States person information that would otherwise not be reviewed.

#### 4. Sequestration Amendment - (No Number Available)

**This amendment would eviscerate critical core intelligence collection authorities of the SSCI bill by mandating the segregation and designation of any communications that were acquired to or from a person reasonably believed to be located in the United States.** This amendment would have a devastating impact on foreign intelligence surveillance operations and, in addition to being unsound as a matter of policy, would be inordinately difficult to implement.

- **The incidental collection of United States person communications is not a new issue for the Intelligence Community.** For decades, the Intelligence Community has utilized minimization procedures to ensure that United States person information is properly handled and "minimized."
- **The mere fact that a targeted person overseas happens to communicate with an American has never triggered and should not trigger a need for court approval.** If that were required, there would be grave operational consequences for the Intelligence Community's efforts to collect foreign intelligence.