

## Protect America Alert:

# Congress Must Keep Our Nation Safe By Passing The Bipartisan Senate Foreign Surveillance Bill

*House Leaders' Decision To Block Vote On Senate Bill Has Put The Country In "Increased Danger," Legislation Would Give Our Intelligence Professionals Tools They Need To Monitor Terrorists Quickly And Effectively*

"The American people understand we need to be listening to the enemy. ... I would just tell you there's no compromise on whether these phone companies get liability protection."

– President George W. Bush

*(The Associated Press, 2/21/08)*

The Senate passed legislation by a wide, bipartisan majority to ensure our intelligence professionals have the tools they need to protect the country, but House leaders last week irresponsibly blocked the Senate bill from coming to a vote. It is clear that, if it had been allowed to come to the floor, this important measure – which passed the Senate by a supermajority vote of 68-29 – would have passed the House with a bipartisan majority.

- **Because the House left for a 10-day holiday recess without passing the bipartisan Senate bill, the Protect America Act has expired.** This temporary measure was passed last August to provide our Intelligence Community with vital tools as Congress considered longer-term legislation.
- **House leaders have left our intelligence community with fewer tools to protect the Nation from grave, ongoing terrorist risks.** According to the Director of National Intelligence, the House has allowed the Protect America Act (PAA) to expire means the country is in "increased danger," which will "increase more and more as time goes on." (FOX's "FOX News Sunday," 2/17/08)

### When The House Returns From Its Holiday Recess On Monday, It Must Act To Keep Our Nation Safe By Immediately Passing The Bipartisan Senate Bill

- **By failing to pass the bipartisan Senate bill, the House has caused private-sector companies to become less willing to provide essential help to our Intelligence Community.**
  - **The assistance of private-sector telecommunications companies is vital to protecting the Nation from attack.** Most of the communications infrastructure the Intelligence Community relies on is owned and operated by the private sector, meaning private-sector assistance is essential to gaining intelligence on the plans of those who wish to attack us.
  - **Without the retroactive liability protection provided in the bipartisan Senate bill, it is much less likely that our Intelligence Community will be able to secure the private sector's cooperation with current and future intelligence efforts critical to our national security.** According to the Director of National Intelligence, "we are experiencing

significant difficulties in working with the private sector today because of the continued failure to address this issue." (Mike McConnell, Op-Ed, "A Key Gap In Fighting Terrorism," *The Washington Post*, 2/15/08)

- **The House's failure to act has created a question about whether private-sector companies could be sued for assisting the Government's efforts to defend against terrorists.** The PAA provided liability protection for private sector partners assisting in current activities, but questions could arise about whether this liability protection expired with the law.
- **Now, companies will be increasingly reluctant to provide vital cooperation because of their uncertainty about the law and fear of being sued by class-action trial lawyers.** As the *Wall Street Journal* reported, when a phone company executive was asked what he would do in response to a government request after the PAA's expiration, "His answer was blunt: 'I'm not doing it. If I don't have compulsion, I can't get out of court [and those lawsuits]. ... I'm not going to do something voluntarily.'" (Editorial, "Pelosi's Wiretap Offensive," *The Wall Street Journal*, 2/19/08)
- **The House's failure to act has weakened the ability of the Intelligence Community to obtain vital information, including the location, intentions, and capabilities of terrorists and other foreign intelligence targets abroad.**
  - **As terrorists change their tactics to avoid our surveillance, the Intelligence Community may not have the tools needed to continue tracking them – and the Intelligence Community may lose a vital lead that could prevent an attack on America.** The Attorney General and the Director of National Intelligence have been stripped of their power to authorize new surveillance against terrorist threats abroad.
  - **Passing the bipartisan Senate bill would make our Nation safer by restoring this essential power.**
- **Further temporary extensions of the PAA are not an option – the House must pass the bipartisan Senate bill so our intelligence professionals have critical and lasting tools to protect the Nation.**
  - **Further temporary extensions of the PAA would create uncertainty and unacceptable risks to our national security.** Short-term extensions would not give our Intelligence Community the assurance it needs that critical tools to monitor foreign terrorists quickly and effectively will be available for years to come. Strings of temporary extensions would also leave our private partners uncertain about whether they would be subject to billion-dollar lawsuits by plaintiffs' lawyers only for doing the right thing and helping us defend the country.

### The Senate Bill Contains Important Protections For The Liberties Of Americans

**The Senate bill leaves unchanged the strong protections FISA provides to Americans in the United States, requiring a court order to target people located in the United States for surveillance.**

**The Senate bill provides a new role for the FISA Court in approving surveillance targeted at Americans abroad.** In order to provide additional protections to Americans, the bill requires for the first time that a court order be obtained to conduct intelligence surveillance of a United States person abroad. This is a significant increase in the involvement of the FISA Court in these surveillance activities.

**The Senate bill substantially increases the role of the FISA Court in overseeing acquisitions of foreign intelligence under the bill – even though the acquisitions are targeted at foreign targets overseas.** The Court will review: certifications authorizing intelligence collection that are submitted by the Attorney General and the Director of National Intelligence, the targeting procedures used by the Government to conduct acquisitions under the Act, and the minimization procedures used by the Government for information concerning U.S. persons. The Government must also submit to the FISA Court semiannual assessments by the Attorney General and the Director of National Intelligence and annual reviews by the head of any agency conducting operations under the authorities in the bill.

**The Senate bill substantially increases Congressional oversight.** This oversight includes the provision of written reports to the Congressional intelligence committees, including semiannual assessments by the Attorney General and the Director of National Intelligence, assessments by each relevant agency's Inspector General, and annual reviews by the head of any agency conducting operations under the authorities in the bill. The bill increases the FISA-related court documents that must be submitted by the Government to the Congressional intelligence and judiciary committees and requires the Government to submit any such documents from the last five years.