

THE WHITE HOUSE

Office of the Press Secretary

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FACT SHEET: Retroactive Liability Protection: Providing Our  
Intelligence Officials The Tools They Need To Keep Our Nation Safe

Senate Should Not Pass Any Amendment That Would Deny Retroactive  
Liability Protection Or Unnecessarily Delay Dismissal Of Costly  
Lawsuits For Companies That Are Believed To Have Assisted The  
Government Following 9/11

Today, the Senate could consider amendments that would strip or weaken the retroactive liability protection provided by the bipartisan FISA modernization bill that passed the House by an overwhelming vote of 293 to 129. Failure to pass the liability protection contained in the House bill for companies that assisted our intelligence professionals after the 9/11 attacks will undermine our partnership with the private sector. Such cooperation is essential to protecting the country from another terrorist attack. The Senate should pass the bipartisan House legislation so our intelligence professionals can better protect Americans from foreign threats.

Without This Protection, Private Sector Companies Will Become Less  
Willing To Cooperate With Our Intelligence Community's Efforts To  
Protect The Country

Failure to provide retroactive liability protection would undermine the private sector's willingness to cooperate with the Intelligence Community - cooperation that is essential to protecting America. Companies may also be less willing to assist the government in the future if they face a threat of private lawsuits each time they are alleged to have provided assistance.

Ø Providing retroactive liability protection is critical to providing our intelligence officials the tools they need to carry out their mission of protecting our homeland. The Attorney General and Director of National Intelligence have reported that "even prior to the expiration of the Protect America Act, we experienced significant difficulties in working with the private sector because of the continued failure to provide liability protection for such companies."

Ø The Senate should not pass any amendment that would unnecessarily complicate and prolong lawsuits against companies. A major purpose of the retroactive liability protections in the bipartisan House bill is to provide for the expeditious dismissal of lawsuits once the Attorney General certifies, and the district court confirms, that companies provided assistance in response to a request from the Government. The Senate Intelligence Committee, in a bipartisan report, concluded that any companies that provided assistance acted in good faith and that permitting the lawsuits to

continue could deter the private sector from providing lawful assistance to the intelligence community in the future.

It is unfair and unjust to threaten companies with financial ruin because they are believed to have helped their country. Allowing these lawsuits to continue would be unfair because any companies that assisted us after 9/11 were assured by our government that their cooperation was legal and necessary. More than 40 such lawsuits have been filed, seeking hundreds of billions of dollars in damages from these companies. These lawsuits are good for class action trial lawyers, but they are terrible for the United States.

Ø Companies that assisted with the clear intention of helping to protect their fellow citizens should be thanked for their patriotic service, not subjected to multibillion-dollar lawsuits that will make them less willing to help in the future.

Allowing These Lawsuits To Proceed Risks Disclosure Of Highly Classified Information Regarding The Methods Used By Our Intelligence Community To Protect The Country From Terrorist Attack

This litigation could lead to the disclosure of state secrets and possibly the public release of highly classified information that our enemies could use against us. It makes no sense to give the enemy critical knowledge about what the United States is doing to protect the American people. But this is what could happen if the Senate allows massive and costly class-action lawsuits to proceed, which would increase the risk of revealing the methods used by our Intelligence Community to monitor foreign terrorist communications.

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