

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

WASHINGTON OFFICE:
2435 Rayburn House Office Building
Washington, DC 20515
(202) 225-3816

DISTRICT OFFICE:
1919 SMITH STREET, SUITE 1180
THE GEORGE "MICKEY" LELAND FEDERAL BUILDING
HOUSTON, TX 77002
(713) 655-0050

ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

HEIGHTS OFFICE:
420 WEST 19TH STREET
HOUSTON, TX 77008
(713) 961-4070

FIFTH WARD OFFICE:
3300 LYONS AVENUE, SUITE 301
HOUSTON, TX 77020

Congress of the United States
House of Representatives
Washington, DC 20515

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CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

STATEMENT BEFORE THE

COMMITTEE ON THE JUDICIARY

MARKUP: H.R. 3773

**“RESPONSIBLE ELECTRONIC SURVEILLANCE THAT IS
OVERSEEN, REVIEWED, AND EFFECTIVE ACT OF 2007”**

OCTOBER 10, 2007

Mr. Chairman, I move to strike the last word and speak in strong support of H.R. 3773, “Responsible Electronic Surveillance That Is Overseen, Reviewed, and Effective Act of 2007.”

In August of this year, strongly opposed S. 1927, the so-called “Protect America Act” when it came to a vote on the House floor. I was a very reluctant supporter of H.R. 3356, the House alternative that

attracted a majority of votes, but not a two-thirds super-majority, on the House floor. Had the Bush Administration and the Republican-dominated 109th Congress acted more responsibly in the two preceding years, we would not have been in the position of debating legislation that had such a profoundly negative impact on the national security and on American values and civil liberties in the crush of exigent circumstances. As that regrettable episode clearly showed, it is true as the saying goes that haste makes waste.

The PAA was stamped through the Congress in the midnight hour of the last day before the long August recess on the dubious claim that it was necessary to fill a gap in the nation's intelligence gathering capabilities identified by Director of National Intelligence Mike McConnell. But in reality it would have eviscerated the Fourth Amendment to the Constitution and represented an unwarranted transfer of power from the courts to the Executive Branch and a Justice Department led at that time by an Attorney General whose reputation for candor and integrity was, to put it charitably, subject to considerable doubt.

The legislation before us, H.R. 3773 is superior to the PAA by orders of magnitude. This is due in no small measure, Mr. Chairman,

to your willingness to reach out to all members of this Committee, our Caucus, and the Congress. The result shows. The RESTORE Act does not weaken our nation's commitment to its democratic traditions. Rather, it represents a sound policy proposal for achieving the only legitimate goals of a terrorist surveillance program, which is to ensure that American citizens and persons in America are secure in their persons, papers, and effects, but terrorists throughout the world are made insecure. I will have much more to say about this when the bill is debated on the House floor, but for now I want to draw the attention of all members to several of the more important aspects of this salutary legislation.

First, H.R. 3773 explicitly affirms that that the exclusive law to follow with respect to authorizing foreign surveillance gathering on U.S. soil is the Foreign Intelligence Surveillance Act (FISA). As initially enacted by Congress in 1978, the exclusivity of FISA was undisputed and unambiguous. I hasten to add, however, that while FISA remains the exclusive source of law, the bill recognizes that the law as enacted in 1978 can and should be adapted to modern circumstances and to accommodate new technologies. And it does so by making clear that foreign to foreign communications are not subject to the FISA, even

though modern technology enables that communication to be routed through the United States.

Second, under H.R. 3773, the Foreign Intelligence Surveillance Court (FISC) is indispensable and is accorded a meaningful role in ensuring compliance with the law. The bill ensures that the FISC is empowered to act as an Article III court should act, which means the court shall operate neither as a rubber-stamp nor a bottleneck. Rather, the function of the court is to validate the lawful exercise of executive power on the one hand, and to act as the guardian of individual rights and liberties on the other.

Third, the bill does not grant amnesty to any telecommunications company or to any other entity or individual that helped federal intelligence agencies spy illegally on innocent Americans. This is important because granting such amnesty for past misconduct will have the unintended future consequence of encouraging telecommunications companies to comply with, rather than contest, illegal requests to spy on Americans. The only permissible path to legalization of conduct in this area is full compliance with the requirements of the Foreign Intelligence Surveillance Act.

Finally, the authorization to conduct foreign surveillance

gathering on U.S. soil provided by H.R. 3773 is temporary and will expire in two years if not renewed by the Congress. This is perhaps the single most important limitation on the authority conferred on the Executive Branch by this legislation. The good and sufficient reason for imposing this limitation is because the threats to America's security and the liberties of its people will change over time and thus require constant vigilance by the people's representatives in Congress.

Nearly two centuries ago, Alexis DeTocqueville, who remains the most astute student of American democracy, observed that the reason democracies invariably prevail in any martial conflict is because democracy is the governmental form that best rewards and encourages those traits that are indispensable to martial success: initiative, innovation, resourcefulness, and courage.

Thus, the way forward to victory in the War on Terror is for this country to redouble its commitment to the Bill of Rights and the democratic values which every American will risk his or her life to defend. It is only by preserving our attachment to these cherished values that America will remain forever the home of the free, the land of the brave, and the country we love.

Thank you, Mr. Chairman. I yield back the balance of my time.