

## Joint Statement on Foreign Intelligence Surveillance Act (FISA)

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Reps. Hastings, Mahoney, Wasserman Schultz and Wexler

"Each one of us understands that our greatest duty as members of Congress is to protect America and defend the Constitution. For months we have been working on legislation that would replace the Protect America Act, and three months ago we passed legislation that would modernize the Foreign Intelligence Surveillance Act (FISA) process, protecting America and defending our constitutional rights.

"We want to make it very clear that the ability of our intelligence agencies to continue on-going surveillance operations and to initiate new surveillance operations on suspected terrorists will not be affected by the expiration of the Protect America Act.

"Wednesday, the House voted on a 21-day extension of the current FISA law that was written by the Bush Administration. This extension failed to pass, because the President threatened to veto any extension that did not protect the telephone companies. Republicans in Congress voted unanimously to kill an extension of the current law while House and Senate conferees worked out a compromise to a bill the Senate passed only Tuesday.

"We can not state it any more clearly than Former Chief NSC Counterterrorism Advisor Richard Clarke when he said earlier this month: "Let me be clear: Our ability to track and monitor terrorists overseas would not cease should the Protect America Act expire. If this were true, the President would not threaten to terminate any temporary extension with his veto pen. All surveillance currently occurring would continue even after legislative provisions lapsed because authorizations issued under the act are in effect up to a full year."

"Indeed, Mike McConnell, the Director of National Intelligence, stated one week ago that the FISA Courts had no backlog. ("We're caught up to all of it now.") The existing FISA Court process that will remain in effect allows our intelligence agencies to begin surveillance immediately, without a court order, should the intelligence agencies feel that it constitutes an emergency. The agency then has three days to obtain a warrant from the FISA Court to continue the surveillance.

"Additionally, the Intelligence Community, including the NSA and the FBI, can use its authority under Executive Order 12333 to conduct surveillance abroad of any known or suspected terrorist. This surveillance can begin immediately. There is no requirement for a warrant. There is no requirement for probable cause. Most of NSA's collection occurs under this authority.

"The rhetoric that we are hearing from the White House and from the Republicans is irresponsible. They cannot have it both ways. If expiration of the Protect America Act truly put our nation's security in jeopardy, then why did House Republicans oppose a temporary extension of the legislation yesterday, and why did the President threaten to veto an extension? Do they not support protecting America? We doubt it, and it is beyond disingenuous to suggest that of either

party.

"It is very clear that we need to protect our country and its citizens from those that would do us harm. However, we need not choose between our security and our liberty. We can have both."

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