

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
September 25, 2007

Statement for the Record of
Russell D. Feingold, United State Senator
Senate Judiciary Committee Hearing on
"Strengthening FISA: Does the Protect America Act Protect
Americans' Civil Liberties and Enhance Security?"
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Mr. Chairman, this hearing is critically important. Before leaving town for the August recess, Congress rushed through legislation that grants too much unchecked authority to the executive branch and does not adequately protect the privacy of ordinary Americans. The administration successfully pushed the so-called "Protect America Act" through both houses in a matter of days without the deliberative process that this legislation needed. The result, predictably, was a bad bill that was quickly signed into law.

But that legislation expires early next year. I am pleased that the Senate Judiciary Committee is now taking a close look at this legislation as Congress considers whether and how to renew it. This committee's expertise in privacy and civil liberties, and in the Foreign Intelligence Surveillance Act (FISA), is very important to this debate.

This new law was billed as an effort to address a problem every member of Congress agreed should be fixed: making clear that when suspected terrorists are communicating, and both ends of the communication are on foreign soil, the U.S. government does not need a warrant to listen in.

Instead, the Protect America Act went much further. It dramatically broadens the government's authority to listen in on the conversations of anyone outside the United States without a warrant, even if that person is a U.S. citizen overseas, and even if he or she is talking to someone in the United States. As a result, the government has more power to monitor the conversations of American college students spending a semester abroad, servicemembers in Iraq and elsewhere, and journalists reporting from overseas, without their knowledge and without judicial oversight. The new law also contains ambiguous language that could allow domestic spying without a warrant, permitting the government to conduct searches and obtain sensitive business records in certain circumstances without court review. Members of the administration have said that they do not intend to interpret the new law this broadly, even though they rejected a more reasonable alternative Democratic bill that would have fixed the foreign-to-foreign problem without including such broad language. But this is the same administration that claimed, in one of the more absurd legal arguments I have ever heard, that the authorization Congress passed to use military force in Afghanistan after 9/11 somehow allowed it to wiretap Americans in the United States without a warrant. And for years they did so in secret. So when members of the administration say, as they have in recent days, that we should trust them because they won't abuse this new law, members of Congress and the public have every right to be skeptical.

Now, instead of working with Congress to address the problems with this law, which expires in early 2008, the administration has launched an offensive to make the law permanent. Once again, it is attempting to turn what should be a serious, substantive debate into a political contest, using the tired tactics of exaggeration, intimidation, and fear-mongering.

This time, Congress needs to act responsibly and not be intimidated into giving the administration powers it does not need and could too easily abuse. We need to clarify the ambiguities in the law, and we need to fix several fundamental flaws: the lack of meaningful court involvement in overseeing the government's determination whether a target is overseas; the lack of privacy protections for Americans; and the lack of adequate congressional or administrative oversight.

We must improve the process for determining whether the target of a wiretap is overseas by requiring the government to submit the methods by which it determines a target is overseas to the FISA Court in advance, and giving the Court a full opportunity to consider those methods.

Congress should also strengthen the privacy protections for Americans by requiring that the government obtain an

individualized FISA Court warrant to wiretap a U.S. citizen overseas, and by involving the Court when the government conducts surveillance of communications between foreign targets and individuals in the United States. Technological advancement has led Americans to engage in more international communications than ever before, and we need to ensure that their privacy rights in these communications are protected.

Finally, Congress should toughen oversight of the process by creating regular, meaningful congressional reporting requirements on these new authorities, as well as provisions for oversight by the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, and the National Security Agency.

Congress should never have passed the Protect America Act, even for six months. Instead of blindly approving this expansive authority yet again, Congress should fix this law to make sure we protect Americans' privacy as we wiretap terrorists and other foreign intelligence targets. Let's get it right this time.

Thank you, Mr. Chairman.