

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
United States Senate  
July 19, 2012

We should be able to complete our agenda this morning. We have a number of significant matters, from nominees to Senator Levin 's private relief bill to the Foreign Intelligence

Surveillance Act (FISA) extension legislation that was sequentially referred here after being considered by the Intelligence Committee, chaired by Senator Feinstein.

I want to commend Senator Feinstein for her strong leadership on this issue and her willingness to work with me to reach our shared goal of keeping Americans safe and our privacy protections strong. There is no question that the surveillance powers codified in the FISA Amendments Act have proven extraordinarily important, but it is equally clear that those powers must come with rigorous oversight and clear privacy protections. The FISA Amendments Act was originally passed in 2008 to clean up what one Bush administration lawyer called the "legal mess " of the warrantless wiretapping program, which undermined the privacy rights and civil liberties of countless Americans.

Fortunately, since that time we have made significant strides to protect these fundamental constitutional rights. During the debate on the FISA Amendments Act in 2007 and 2008, I worked with others on the Judiciary Committee to ensure that important oversight, accountability, and privacy protections were put into place, including express prohibitions on the warrantless wiretapping of U.S. persons or any individual located here in the United States, as well as a prohibition against the practice of so-called "reverse targeting. "

Although I ultimately opposed final passage of the FISA Amendments Act in 2008, I did so primarily because it granted retroactive immunity for telecommunications companies that may have assisted the Bush administration 's illegal warrantless wiretapping program. The legislation otherwise moved toward a more balanced approach to future surveillance with important safeguards for privacy and civil liberties. It is these provisions that we consider again today, and which we must ensure are being implemented as we intended.

Unlike the warrantless wiretapping program of the Bush administration, the Government 's use of the surveillance authorities under the FISA Amendments Act has been subjected to close scrutiny and oversight by Congress and the FISA Court. Congress has been provided with information related to the implementation of the FISA Amendments Act, along with related documents from the FISA Court. Based on my review of this information, and after a series of classified briefings, I do not believe that there is any evidence that the law has been abused, or that the communications of U.S. persons are being intentionally targeted. But let 's be clear, current compliance does not guarantee future compliance and we must not relax our oversight efforts. I am convinced that our oversight measures have helped prevent abuse of these surveillance tools.

My views about the implementation of these surveillance authorities are based on the information we have available now - but there is more that we need to know. For example, important compliance reviews have not yet been completed by the Inspectors General of the Department of Justice or the NSA. And there has never been a comprehensive, independent inspector general review of FISA Amendments Act implementation that cuts across the intelligence community, and that is not confined to one particular element or agency. Without the benefit of such independent reviews, I am concerned that a five-year extension is too long. As an alternative, I am proposing an amendment that would provide a shorter sunset in June 2015. This three-year extension will allow the existing programs to continue but would ensure that we revisit them in a timely fashion when more information is available. It would also align with the June 2015 sunset of certain provisions of the USA PATRIOT Act, thereby enabling Congress to evaluate all of the expiring surveillance provisions of FISA together, instead of dealing with them in piecemeal fashion. This is an approach that Chairman Feinstein and I both supported during the PATRIOT Act reauthorization debate, along with many members of this Committee.

In addition to the shorter sunset, I am also proposing some improvements to the oversight provisions in the FISA Amendments Act, including an additional independent review by the newly-created Inspector General of the Intelligence Community. This Inspector General was established in 2010 and has the unique ability to provide a comprehensive assessment of the surveillance activities across the intelligence community, rather than a limited view of a single agency. An independent review by the Inspector General for the Intelligence Community could answer some remaining questions about the implementation of the FISA Amendments Act, particularly with respect to the protection of the privacy rights of U.S. persons. I also believe that an unclassified summary of such an audit should be made public in order to provide increased accountability directly to the American people.

While these amendments will enhance our oversight capacity and help us fulfill our duty to protect the privacy and civil liberty interests of the American public, they do so without undermining the basic operational tools that are so critical to the intelligence and law enforcement professionals who work to keep America safe. The surveillance powers in this legislation have proven to be effective and important tools to combat terrorism and other threats to our national security, and so I agree with Chairman Feinstein that they should not be disrupted. But we must remain vigilant in ensuring that these powerful tools are used appropriately. It is this carefully crafted balance that Chairman Feinstein and I worked hard to achieve and I hope will receive the support of this Committee.

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