

November 20, 2006

Chairman Arlen Specter  
United States Senate  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

RE: The Foreign Intelligence Surveillance Oversight and Resource Enhancement Act

Dear Chairman Specter:

The undersigned are committed to ensuring the protection of our nation's security in a manner consistent with the Bill of Rights and the rule of law. Although some of us supported the bill you co-sponsored earlier this year with Senator Feinstein (S. 3001), we cannot support passage of your most recent bill, the Foreign Intelligence Surveillance Oversight and Resource Enhancement Act of 2006 (S. 4051). This issue is too complicated and too important to be part of the horse-trading and lack of regular order that often characterize a lame duck session.

Although we have had only a brief opportunity to review the bill, we note that it appears to cut back severely the existing intelligence oversight provisions in the National Security Act. The administration has failed to comply with that Act by keeping the intelligence committees fully and currently informed of all intelligence activities. Congress should insist on compliance, not weaken the Act. Moreover, if the Senate passes the bill you have just introduced, House and Senate conferees would have to reconcile it with the Electronic Surveillance Modernization Act (H.R. 5835), which passed the House last month. Conferees would be faced with your bill, which streamlines the procedures for obtaining a FISA warrant, and the House bill, which not only fails to address the problems the administration has identified publicly, but also eviscerates FISA's warrant requirements and authorizes a warrantless domestic wiretapping program far broader and more intrusive on the privacy of American citizens than the one the Administration has described. The bills would be impossible to reconcile.

Instead of pushing for passage of your bill during the lame duck, we hope you will work with Senator Leahy to take up this issue when the 110th Congress convenes. Congress still needs to hold hearings to get facts about the scope and effectiveness of the President's program and why the administration believes it needs to operate outside of FISA, before attempting to craft an appropriate, tailored legislative response.

As the President has made clear he will continue the wiretapping program even absent legislation, the administration can hardly argue that suspending further action on this issue until the next Congress will harm national security. Meanwhile, the lawsuits challenging the constitutionality of the President's program are proceeding and the judicial review provisions in your bill do not address the roadblocks to substantive judicial review of the program that the government has erected.

In sum, we believe that hasty legislative action could result in grave damage to the civil liberties of Americans, foreclose judicial review, and have other unintended effects. We hope we will have the opportunity to work with you during the next Congress to produce legislation that ensures that the President has the ability to carry out necessary surveillance and that he does so in compliance with the law.

Thank you for your consideration.

Sincerely,

American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
Bill of Rights Defense Committee  
Center for American Progress Action Fund  
Center for Democracy & Technology  
Center for National Security Studies  
Council on American-Islamic Relations  
Electronic Frontier Foundation  
First Amendment Foundation  
Friends Committee on National Legislation  
League of Women Voters  
Liberty Coalition  
National Association of Criminal Defense Lawyers  
National Committee Against Repressive Legislation  
Open Society Policy Center  
People For the American Way  
Privacy Activism  
Unitarian Universalist Service Committee  
U.S. Bill of Rights Foundation