

November 13, 2006

Honorable Bill Frist
Senate Majority Leader
United States Senate
S-230 Capitol Building
Washington, DC 20510

Honorable Harry Reid
Senate Minority Leader
United States Senate
S-221 Capitol Building
Washington, DC 20510

Honorable Dennis Hastert
Speaker of the House of Representatives
United States House of Representatives
H-232 Capitol Building
Washington, DC 20515

Honorable Nancy Pelosi
House Minority Leader
United States House of Representatives
H-204 Capitol Building
Washington, DC 20515

To the House and Senate Leadership:

The undersigned organizations are dedicated to the proposition that protecting our national security does not require sacrificing the privacy and civil liberties of innocent Americans. We write to oppose legislation purporting to immunize telephone and Internet service providers that may have provided the government with call detail information about, or assisted in monitoring, the private communications and e-mails of innocent Americans in violation of state and federal laws. The two drafts of immunization language we have seen would seek to end independent state investigations into whether either states' laws or constitutions were violated, and would also attempt to end suits based on violations of federal law.

According to media reports, several telecommunication companies have assisted the National Security Agency ("NSA") in its warrantless wiretapping of innocent Americans, in part by providing detailed records about their customers' private communications to the government in violation of state and federal laws. A federal judge in San Francisco denied attempts to dismiss a class action suit against AT&T regarding this facilitation. Nine states Attorneys General and/or Public Utilities Commissions have initiated investigations into whether these companies violated state laws by providing

their citizens' private information to the NSA. These ongoing actions could all be terminated if these provisions are enacted.

Two similar immunization provisions are being considered and both should be opposed. A bill that would authorize the NSA's warrantless eavesdropping program passed the House of Representatives on September 28, 2006 (H.R. 5825). It includes language that seeks to terminate all pending and future legal action against any provider of communication services (or any other person) for furnishing information, facilities or assistance to the government in connection with secret communication intelligence programs. Thus, it could eliminate investigations based on both alleged federal and state law violations. A similar immunity provision attempting to eliminate state law claims was made part of the Senate version of the Protecting Consumer Phone Records Act (S. 2389). A back-door effort also was made to attach immunity provisions to the Port Security bill.

Granting blanket immunity to these service providers would be a grave violation of the privacy rights of many Americans who have never been suspected of communicating with terrorists, and who may have been harmed by these surveillance programs. The Fourth Amendment to the United States Constitution has always been interpreted to prohibit such warrantless eavesdropping on innocent Americans. Accordingly, independent investigations into the actions of telecommunications companies who facilitated this unconstitutional eavesdropping should be allowed to proceed to determine whether laws were broken.

These immunity provisions also seek to impinge on states' rights by nullifying their ability to enforce state privacy laws and regulate businesses operating within their jurisdictions. States' privacy laws and states' constitutions are often more protective of individuals' privacy than are federal laws. Congress should not foreclose the independent investigations by states' officials who are charged with enforcing states' laws. That Congress would consider these immunity provisions without even knowing the scope of the NSA domestic spying programs, what information these telecommunication companies may have provided to the government, or how they may be profiting from these arrangements, is unconscionable.

The security of the private communications of all Americans will be in jeopardy if telecommunications companies face no risk for violating the law, and immunity should not be granted in the dark. At a minimum Congress needs to know how these programs work before considering blanket immunity. We urge the congressional leadership to reject any attempt to include telecommunication company immunity provisions in any bill before the Congress, and to vote against any bill that contains such provisions.

Sincerely,

American Civil Liberties Union

American-Arab Anti-Discrimination
Committee

American Library Association

Bill of Rights Defense Committee

Bob Barr
Member of Congress, 1995-2003
Chairman, Patriots to Restore Checks
and Balances

Jim Dempsey
Policy Director
Center for Democracy and Technology

Doug Bandow
Vice President for Policy
Citizen Outreach Project

Concerned Foreign Service Officers

Consumer Action

Consumers Union

Jim Babka
President
DownsizeDC.org, Inc.

Electronic Frontier Foundation

Government Accountability Project

HALT, Inc.

Liberty Coalition

The Multiracial Activist

National Association of Criminal
Defense Lawyers

National Lawyers Guild – National
Office

National Whistleblower Center

Open Society Policy Center
People For the American Way

PrivacyActivism

Robert Ellis Smith
Publisher
Privacy Journal

Beth Givens
Director
Privacy Rights Clearinghouse

Bill Moyer
Executive Director
Backbone Campaign
ProgressiveGovernment.org

Republican Liberty Caucus

The Rutherford Institute

Unitarian Universalist Association of
Congregations

U.S. Bill of Rights Foundation

Michael Shames
Executive Director
Utility Consumers' Action Network

Velvet Revolution

Regional, State & Local Groups

American Civil Liberties Union of
Massachusetts, MA

American Civil Liberties Union of New
Jersey, NJ

American Civil Liberties Union of
Virginia, VA

Bandon Bill of Rights Defense
Committee, OR

Bangor Area Bill of Rights Defense
Committee, ME

Bill of Rights Defense Committee of
Greater Dallas, TX

Bill of Rights Defense Committee –
Tacoma, WA

The Bill of Rights Supporters of Fort
Collins, CO

The Board of County Commissioners of
San Miguel County, CO

Brookline PAX, MA

Cape Cod Bill of Rights Defense
Committee, MA

Carolina Peace Resource Center,
Columbia, SC

Carolyn K. Peterson
Mayor - City of Ithaca, NY

Central Jersey Coalition Against Endless
War, Middlesex County, NJ

Clatsop County Bill of Rights Defense
Committee, OR

Chicagoland Coalition for Civil Liberties
and Rights, IL

The Coalition to Prevent the Erosion of
Human Rights, Las Vegas, NV

Columbia Action/CT, CT

Committee For Peace & Human Rights,
Boston, MA

Connecticut River Valley Council on
Public Policy, VT

Coupeville Peace & Reconciliation, WA

The Diogenes Society,
Northern/Adirondack region, NY

Durham Bill of Rights Defense
Committee, NC

East Bay Citizens for Peace, RI

Fairfax County Privacy Council, VA

Genesee Valley Citizens for Peace, NY

Glendale Bill of Rights Defense
Committee, CA

Steve Leeper
Executive Director
Global Peacemakers Association
Atlanta, GA

Hate Free Zone of Washington, WA

Idaho Patriots, ID

Idriss Stelly Foundation of San
Francisco, CA

Justice Not War, Eugene, OR

Lane County Bill of Rights Defense
Committee, OR

Mendocino County Bill of Rights
Defense Committee, CA

Mercer County Coalition for Civil
Liberties, NJ

Nevada Campaign to Defeat the
Patriot Act, NV

Newton Dialogues on Peace and War,
MA

Scott A. Pullins, Esq.
Chairman/CEO & General Counsel
Ohio Taxpayers Association & OTA
Foundation, OH

Oregon PeaceWorks, OR

Oregon Women's Action for New
Directions, OR

David Boje
PeaceAware, NM

Janice Jordan
Peace & Freedom Party Gubernatorial
Candidate-November 2006, CA

Pioneer Valley Coalition Against
Secrecy and Torture, MA

Pittsburgh Bill of Rights Defense
Campaign, PA

Prince George's Bill of Rights Defense
Coalition, MD

Progressives In Action, Rochester, NY

Reno AntiWar Coalition, NV

Rochester Civil Liberties Coalition, NY

Rocky Mountain Peace and Justice
Center, Boulder, CO

Rural Organizing Project, OR

Sacramento Group 283, Amnesty
International, CA

SAGE, Amherst, MA

Sanctuary for Freedom/Civil Liberties
Campaign, Kansas City, MO

Social Justice Committee of the
Unitarian Universalist Society of
Amherst, MA

Social Justice Council of the First
Unitarian Church of Ithaca, NY

Social Workers for Peace and Justice,
Pioneer Valley, MA

Sonoma County Central Committee of
the Peace and Freedom Party, CA

Southeastern Chapter American Civil
Liberties Union, WV

Southwest Colorado Peace & Justice
Coalition, Durango, CO

Strategic Counsel on Corporate
Accountability, Amherst, MA

Tompkins County Bill of Rights Defense
Committee, Ithaca, NY

Virginia Bill of Rights Coalition, VA

Watertown Citizens for Environmental
Safety, MA

Women For: Orange County, CA

CC: Members of the United States Senate
Members of the United States House of Representatives