



Written by [Joe Wolverton, II, J.D.](#) on December 20, 2012

Senate to Consider FISA Renewal; Rand Paul to Offer 4th Amendment Guard

“Christmas is not more important than this legislation.” Senate Majority Leader Harry Reid (D-Nev.) actually [said that](#) with regard to his effort to begin debate on the Senate’s renewal of the Foreign Intelligence Surveillance Act (FISA).

“FISA, this is an important piece of legislation as imperfect as it is, it is necessary to protect us from the evil in this world,” Reid announced Tuesday from the Senate floor. “We need to finish this by the end of the week.”



However, although lawmakers will get Christmas off, word from Capitol Hill is that they’ll need to report back later that week to consider the FISA renewal bill.

According to [a story in The Hill](#), Reid wants the legislation considered with a limited number of amendments. On the other hand, Senator Saxby Chambliss (R-Ga.) wants to pass the version of the bill that was passed by the House in September. In support of his position, Chambliss reportedly “referred to a letter stating that the Obama administration supports the House-version.”

If Chambliss were to get his way, the Senate would sign off on the House version of the FISA reauthorization without considering amendments from his colleagues.

Some senators don’t share Chambliss’ urgency, however, and recognize the danger to liberty posed by a rubber stamp of the surveillance statutes of FISA.

Senator Jeff Merkley (D-Ore.) is quoted in [a story in U.S. News & World Report saying](#), “Citizens generally assume our government is not spying on them,” but, “If they had any inkling of how this system really works, the details of which I cannot discuss, they would be profoundly appalled.”

Merkley’s words echo the observations on FISA made by Representative Dennis Kucinich (D-Ohio) during the debate on the renewal in the House in September. Said Kucinich, “Everyone becomes suspect when big brother is listening.”

Regardless of Chambliss’ haste to fast track FISA, one Republican senator is determined to offer an amendment clarifying and constricting the latitude of domestic surveillance power given to the National Security Agency (NSA) and other domestic spies in the current version of FISA scheduled to expire on December 31.

When FISA is finally brought to the Senate floor, Senator Rand Paul (R-Ky.) will introduce the “Fourth Amendment Protection Act.” As its name suggests, Paul’s amendment will reportedly explicitly spell out that the Fourth Amendment’s protections against unwarranted searches and seizures extends to third party searches conducted by NSA and other intelligence agencies. Such searches usually target records of electronic communication stored by telecommunications and Internet companies such as AT&T and Google.



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A federal court in San Francisco [heard a case on December 14](#), for example, in which the Obama administration fought to extend “state secret” protection to personal customer data allegedly transmitted by AT&T to a secret NSA facility located in San Francisco. The lead plaintiff in the case, Carolyn Jewel, [argued that FISA should apply](#) to the case and that the NSA should be prevented from such wholesale monitoring and collection of electronic communications of private citizens not suspected of any criminal activity. Section 1881(b) of the current FISA Amendments places some restrictions — albeit very loose ones — on the surveillance of domestic communications.

An advance copy of Senator Paul’s proposed FISA amendment was obtained by *The New American*. It reads in part:

Section 2

(a) Congress finds the following:

(1) The Fourth Amendment right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is violated when the government acquires information voluntarily relinquished by a person to another party for a limited business purpose without the express informed consent of the person to the specific request by the government or a Warrant, upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 3

(a) Except as provided for in subsection (b), the government is prohibited from obtaining or seeking to obtain information related to a person or group of persons held by a third-party in a system of records, and no such information or evidence shall be deemed admissible in a criminal prosecution in a court of law.

(1) “System of records” shall be defined as any group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular associated with the individual.

(b) The government may obtain, and a court may deem admissible, information or evidence related to a person held by a third-party in a system of records provided that:

(1) The individual whose name or identification information the government is using to access the information provides express and informed consent to that search; or

(2) The government obtains a Warrant, upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The FISA Amendments Act was signed into law by President George W. Bush on July 10, 2008 after being overwhelmingly passed 293 to 129 in the House and 69-28 in the Senate. Just a couple of days prior to FISA being enacted, Senator Paul’s iconic father, Representative Ron Paul, led a coalition of Internet activists united to create a political action committee, Accountability Now. The sole purpose of the PAC was to conduct a money bomb in order to raise money to purchase ad buys to alert voters to the names of those congressmen (Republican and Democratic) who voted in favor of the act.

George W. Bush’s signature was but the public pronouncement of the ersatz legality of the wiretapping that was otherwise revealed to the public in a *New York Times* article published on December 16, 2005.



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That article, entitled "[Bush Lets U.S. Spy on Callers Without Courts](#)," described the brief history of the "anti-terrorist" program:

Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials.

Under a presidential order signed in 2002, the intelligence agency has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible "dirty numbers" linked to Al Qaeda, the officials said.

The agency, they said, still seeks warrants to monitor entirely domestic communications.

It's not the eavesdropping that's the most egregious violation of the Constitution and the Bill of Rights (such activities are conducted by law enforcement all the time for legitimate purposes), but it's the indefensible fact that the federally empowered snoops conduct this surveillance without a probable cause warrant so long as one of the parties being monitored is located outside the territory of the United States. The justification being that if an American is talking, texting, or emailing a foreigner, then something might be said that would aid in the acquisition of "foreign intelligence information."

This policy is such a shameful disregard for our long history of individual-based human and civil rights (including the freedom from unwarranted searches and seizures) that it shocks the conscience even when the source is considered.

Senator Paul reportedly plans to work with Senators Lee (R-Utah), Ron Wyden (D-Ore.), Mark Udall (D-Colo.), and other lawmakers likewise opposed to the growth of the surveillance state and the associated diminution of the liberties protected by the Bill of Rights.

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