



Written by [Steven J. DuBord](#) on June 5, 2009

Suits Charging Illegal Surveillance Dismissed

The cases sought to hold telecommunications companies accountable for taking part in President Bush's program for eavesdropping on millions of American citizens without cause and without warrants. Judge Walker ruled that the companies had immunity under the 2008 FISA Amendments Act voted for by then-Senator Barack Obama and signed by President George W. Bush. The act allows suits to be dismissed if the government secretly certifies to the court that either there was no surveillance, the surveillance was legal, or that the president authorized the surveillance. The government is thus able to protect its partners in crime and ensure that other companies will be more likely to participate.



EFF Legal Director Cindy Cohn expressed extreme disappointment with the ruling: "The retroactive immunity law unconstitutionally takes away Americans' claims arising out of the First and Fourth Amendments, violates the federal government's separation of powers as established in the Constitution, and robs innocent telecom customers of their rights without due process of law." Ann Brick, an ACLU staff attorney, said: "The immunity legislation that the court upheld today gives the telephone companies a free pass for flouting the law and violating the privacy rights of millions of their customers."

Article I, Section 9 of the U.S. Constitution explicitly prohibits retroactive (ex post facto) laws, stating: "No bill of attainder or ex post facto law shall be passed." The Fourth Amendment prohibits "unreasonable searches and seizures."

Judge Walker did leave open the possibility of holding the government accountable: "Plaintiffs retain a means of redressing the harms alleged in their complaints by proceeding against governmental actors and entities who are, after all, the primary actors in the alleged wiretapping activities." Small comfort, being told to finance a legal battle against the might of the federal government.

The right of Americans to be secure from search and seizure unless warranted through due legal processes is rapidly disappearing. The mere whim of the president is a sufficient excuse for the courts to stand aside and let our rights be trampled. It is not enough that we are virtually strip-searched at airports, we must now suffer intrusion upon our most private conversations.

President Obama quoted Thomas Jefferson in [his recent Cairo speech](#): "I hope that our wisdom will grow with our power, and teach us that the less we use our power the greater it will be." It is a pity the president does not see this as applying to a government's power over its own citizens. Congress may be more responsive. Americans *must* contact their representative and senators as these issues arise and vote into office those who will protect our rights.



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