



Written by [Thomas R. Eddlem](#) on August 21, 2009

U.S. Court Throws Out Warrantless Wiretapping Case

U.S. District Court Judge John G. Koeltl of the Southern District of New York dismissed an ACLU challenge to the U.S. government's warrantless wiretapping program under the FISA Amendments Act of 2008 (FAA) on August 20. Koeltl threw out the case for technical reasons, however, not the merits of the clearly unconstitutional program.

"The plaintiffs' failure to show that they are subject to the FAA in any concrete way is sufficient to conclude that the plaintiffs lack standing to challenge the FAA," Koeltl wrote.



The ACLU had argued that such surveillance would chill speech made internationally. Last year, NBC's *Nightline* reported that the National Security Agency had eavesdropped on intimate conversations between U.S. soldiers serving abroad and their sweethearts abroad. According to two of the intercept operators interviewed by *Nightline*, particularly salacious "pillow talk" was circulated around the NSA office. Here's a [series of clips from NBC-TV on the issue](#), along with [an MSNBC print story on the issue](#).

The ACLU [stressed](#) that the [FAA](#) gave the presidency the power to conduct unconstitutional wiretaps by merely requiring the Bush-era program to report details to Congress. "The FISA Amendments Act of 2008 effectively legalized the secret warrantless surveillance program approved by President Bush in late 2001. It also gave the government sweeping new spying powers, including the power to conduct dragnet surveillance of Americans' international communications," the ACLU said in a press release.

The Fourth Amendment to the U.S. Constitution puts four restrictions on government searches:

- 1. Warrants:** All searches have to have to involve a court (judicial branch) warrant;
- 2. Probable Cause:** Warrants can only be issued based upon "probable cause" (i.e., there must be more than a 50-percent chance a crime has been committed);
- 3. Specificity:** The warrants have to be specific about what is being searched and what is being looked for; warrants can't be along the lines of a "general warrant" like those issued by the British prior to the War for Independence wherein a search could cover everything a person owns for any crime, or to search everyone's house for a particular piece of contraband;
- 4. Oaths:** Warrants have to be based upon an "oath" from someone in responsibility involved in the probable cause claim; it can't be based upon an anonymous source unknown to the court.

The [Fourth Amendment](#) begins with a preamble that outlines the fact that the amendment is designed to prohibit "unreasonable searches and seizures." The preamble is followed by the four restrictions on searches that make them reasonable:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



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The ACLU noted that because judge dismissed the case on technical grounds having to do with a lack of standing means that Americans will not be able to challenge the policy in court if Judge Koeltl's decision is allowed to stand on appeal. "We are disappointed by today's ruling, which will allow the mass acquisition of Americans' international e-mails and telephone calls to continue unchecked. To say, as the court says, that plaintiffs can't challenge this statute unless they can show that their own communications have been collected under it is to say that this statute may not be subject to judicial review at all." The ACLU [noted](#) that, like the U.S. soldiers who had their intimate talks with wives and girlfriends listened into, most Americans won't know that their right to privacy has been violated. "The vast majority of people whose communications are intercepted under this statute will never know about it — in fact it's possible that no one will ever be able to make the showing that the court says is required."



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