To reiterate that chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2006

Mr. SCHIFF (for himself and Mr. FLAKE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To reiterate that chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “NSA Oversight Act”.

4
SEC. 2. FINDINGS.

Congress finds the following:

(1) On September 11, 2001, acts of treacherous violence were committed against the United States and its citizens.

(2) Such acts render it both necessary and appropriate that the United States exercise its right to self-defense by protecting United States citizens both at home and abroad.

(3) The Federal Government has a duty to pursue al Qaeda and other enemies of the United States with all available tools, including the use of electronic surveillance, to thwart future attacks on the United States and to destroy the enemy.

(4) The President of the United States possesses the inherent authority to engage in electronic surveillance of the enemy outside of the United States consistent with his authority as Commander-in-Chief under Article II of the Constitution.

(5) Congress possesses the authority to regulate electronic surveillance within the United States.

(6) The Fourth Amendment to the Constitution guarantees to the American people the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and provides that courts shall issue “warrants” to au-
authorize searches and seizures, based upon probable cause.

(7) The Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a “search and seizure” within the meaning of the Fourth Amendment.

(8) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) and chapters 119 and 121 of title 18, United States Code, were enacted to provide the legal authority for the Federal Government to engage in searches of Americans in connection with criminal investigations, intelligence gathering, and counterintelligence.

(9) The Foreign Intelligence Surveillance Act of 1978 and specified provisions of the Federal criminal code, were expressly enacted as the “exclusive means by which electronic surveillance . . . may be conducted” domestically pursuant to law (18 U.S.C. 2511(2)(f)).

(10) Warrantless electronic surveillance of Americans inside the United States conducted without congressional authorization may have a serious impact on the civil liberties of citizens of the United States.
(11) United States citizens, such as journalists, academics, and researchers studying global terrorism, who have made international phone calls subsequent to the terrorist attacks of September 11, 2001, and are law-abiding citizens, may have the reasonable fear of being the subject of such surveillance.

(12) Since the nature and criteria of the National Security Agency (NSA) program is highly classified and unknown to the public, many other Americans who make frequent international calls, such as Americans engaged in international business, Americans with family overseas, and others, have a legitimate concern they may be the inadvertent targets of eavesdropping.

(13) The President has sought and signed legislation including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56), and the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108–458), that have expanded authorities under the Foreign Intelligence Surveillance Act of 1978.
(14) It may be necessary and desirable to amend the Foreign Intelligence Surveillance Act of 1978 to address new challenges in the Global War on Terrorism. The President should submit a request for legislation to Congress to amend the Foreign Intelligence Surveillance Act of 1978 if the President desires that the electronic surveillance authority provided by such Act be further modified.

(15) The Authorization for Use of Military Force (Public Law 107–40), passed by Congress on September 14, 2001, authorized military action against those responsible for the attacks on September 11, 2001, but did not contain legal authorization nor approve of domestic electronic surveillance not authorized by chapters 119 or 121 of title 18, United States Code, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 3. REITERATION OF CHAPTERS 119 AND 121 OF TITLE 18, UNITED STATES CODE, AND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AS THE EXCLUSIVE MEANS BY WHICH DOMESTIC ELECTRONIC SURVEILLANCE MAY BE CONDUCTED.

(a) Exclusive Means.—Notwithstanding any other provision of law, chapters 119 and 121 of title 18, United
States Code, and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted.

(b) Future Congressional Action.—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to chapters 119 or 121 of title 18, United States Code, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 4. DISCLOSURE REQUIREMENTS.

Not later than 14 days after the date of the enactment of this Act, the President shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report in classified form identifying the United States persons who have been the subject of electronic surveillance not authorized to be conducted under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or chapters 119 or 121 of title 18, United States Code, and the basis for the selection of such persons for such electronic surveillance.
SEC. 5. ELECTRONIC SURVEILLANCE DEFINED.

In this Act, the term "electronic surveillance" has the meaning given the term in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).