

Representative Heather Wilson, Chair of the House Permanent Select Committee
on Intelligence Technical and Tactical Intelligence Subcommittee
Testimony before the House Permanent Select Committee on Intelligence on
Legislative Proposals to Modernize the Foreign Intelligence Surveillance Act
July 27, 2006

Mr. Chairman, thank you for this opportunity to testify about H.R. 5825, the Electronic Modernization Surveillance Act of 2006, which I have introduced with you and House Judiciary Committee Chairman James Sensenbrenner.

Intelligence is the first line of defense in the war on terror. These are very powerful tools that we use to keep our country safe. Excesses are best prevented by when intelligence activities are operated within a framework that controls government power by using checks and balances among the three branches of government.

The Electronic Modernization Surveillance Act of 2006 will modernize our electronic surveillance laws for the twenty-first century. It will set a standard to allow electronic surveillance of people in the United States when there is a reasonable belief that they are communicating with terrorist organizations, and it will clarify the roles of the three branches of government in overseeing electronic surveillance.

The bill will:

- Strengthen oversight of the executive branch and enhance accountability by requiring that more information be provided to the Foreign Intelligence Surveillance Act court and each member of the House and Senate Intelligence committees receive information concerning electronic surveillance,
- Modernize and simplify the process of getting a FISA warrant so that we focus resources on protecting civil liberties of Americans,
- Update the FISA law to take into account changes in twenty-first century communications so that our intelligence agencies can use their powerful tools to spy on terrorists while protecting the privacy of Americans,
- Provide clear authority to our intelligence agencies in the event of a terrorist attack or an armed attack on the United States, along with more stringent accountability to ensure American privacy is protected, and
- Remove several outdated limitations in current law that have hampered the ability of our intelligence agencies to keep Americans safe and have provided unintentional protection for terrorists and their affiliates.

The following is a section-by-section summary of H.R. 5825:

Section 1 Title

Section 2 of the Act would update the definition of electronic surveillance. This change would update the law to take into account significant changes in technology since the 1978 passage of FISA. This section would remove the current distinction between treatment of “wire” and “radio” communications, and use a technology-neutral definition of electronic surveillance. This section also provides protection for persons with a reasonable expectation of privacy if both the sender and all intended recipients are located within the United States.

Section 3 of the Act would modernize the law by including providers of any electronic communication service, landlord, custodian, or other person who has access to electronic communications. This section updates the current “common carrier” definition.

Sections 4 and 5 of the Act would simplify the process of developing information to get approval of a FISA warrant. This section would reduce the volume of material required for a FISA application, including minimizing the detailed description of the nature of foreign intelligence information sought and the detailed descriptions of the intended method of collection. The FISA application should focus on probable cause for a warrant rather than technical details about the means of collection. Current protections and minimization procedures will remain in place to protect unintended targets. In the event of an emergency employment of electronic surveillance, the Attorney General would have up to five days to file for an emergency application.

Section 6 clarifies and makes conforming changes with respect to previous sections and FISA.

Section 7 updates the current FISA provisions for electronic surveillance to provide clear authority for our intelligence agencies in the event of an armed attack on the United States. The President, through the Attorney General, is authorized to collect electronic surveillance without a court order to acquire foreign intelligence information for a period not to exceed 60 days following an armed attack against the territory of the U.S. The current statute allows for 15 days after a declaration of war by the Congress. Notification to each member of the HPSCI and SSCI is required.

Section 8 of this Act governs electronic surveillance after a terrorist attack. The President, acting through the Attorney General, would have the authority to authorize electronic surveillance to acquire foreign intelligence information without an order when the terrorist organizations and their affiliates responsible for the attack have been identified and notified to the Congress and the FISA court, when there is a reasonable belief that the target is communicating with a terrorist organization, for a period not to exceed 45 days following a terrorist attack against the U.S. Notification to each Member of the HPSCI and SSCI and to the FISA court is required. The President may submit a subsequent certification to Congress which would allow for an additional 45 days of electronic surveillance.

Section 9 of the Act would strengthen congressional oversight by amending current law to mandate that each Member of the HPSCI and SSCI be informed of electronic surveillance activities conducted under this Act.

Mr. Chairman, thank you for this opportunity to testify in support of H.R. 5825. At this time, I would be happy to answer any questions you have.