

CONGRESSWOMAN

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**OP-ED: THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA)**

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Last week, the House passed an updated version of the Foreign Intelligence Surveillance Act (FISA). It contained many important provisions that will help US intelligence agencies fight terrorism. But it also included a clause that could undermine a key tenet of American democracy.

As a Member of the Armed Services Committee, I am routinely briefed on terrorist threats, and I am acutely aware of the dangers we face. I believe we need tough legislation so the intelligence community has the necessary tools to properly monitor those who wish to do us harm. We must do everything we can to ensure the safety and security of the American people.

Since 1978, FISA has enabled our intelligence agencies to wiretap communications between foreign individuals and US citizens suspected of possible criminal activity. The government can track these communications as long as it seeks a warrant. Because agencies are sometimes required to move quickly in emergency situations, they have seven days to apply for a warrant after wiretapping has begun. The agencies do not need a warrant to do surveillance on foreign subjects.

The recent compromise legislation—which the House passed—is a strong bill in many ways. The bill allows the intelligence community to use new technologies to conduct surveillance. It also states that the government cannot circumvent FISA, and it contains additional legal protections for US citizens. I strongly agree with these provisions.

However, the legislation also contains a fatal flaw. This has to do with a shocking revelation that came to light in 2005, when it was revealed that several telecommunications companies had cooperated with the Bush administration in secretly wiretapping the private conversations of American citizens without the use of warrants or a court review. Many constitutional scholars, both conservative and liberal, believe this is a flagrant violation of the Fourth Amendment of the Constitution.

The bill allows these corporations to seek “retroactive immunity” for their actions. To avoid lawsuits for past and future cooperation, companies would simply have to provide certification from the Attorney General that they acted at the behest of the federal government. But the Office of the Attorney General itself has thus far failed to protect American citizens from the abuses of the law it would now oversee.

Granting “retroactive immunity” could prevent us from ever knowing to what degree the rights of American citizens have been violated. And it would prevent us from ever knowing what was done, under what orders, and by whom. It is as if a lawyer asks a judge to pardon his client—but the judge does not even know the charge. Is the charge serious? Is anyone else implicated in the crime? “Never mind,” says the defense lawyer. “Just let him off the hook.”

I believe that no individual or corporation should be above the law. As John Adams said, we are a "government of laws, not of men."

The legislation that was considered last week takes important steps toward our collective goal of fighting terrorism. However, it does not adequately protect the US Constitution. If possible, I would have voted to provide intelligence agencies with the tools they need, while rejecting the concept of "retroactive immunity." I was not given that option so I voted against the bill.

Some have used the honest debate over FISA to bludgeon their political opponents, calling them allies of Osama Bin Laden, or questioning their patriotism. This debases a very serious discussion about how best to fight terrorism while at the same time protecting our sacred US Constitution.

The foundation of democracy is individual freedom from government interference. I am willing to compromise on many issues — but not on the Constitution. Being forced to choose between protecting our national security or protecting our Constitution is a false choice; we do not have to sacrifice one for the other. It is our responsibility as Americans to protect both.