

Congressional Democrats to unveil new domestic spying bill

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The Democratic leadership in Congress is preparing to introduce new legislation this week that would permanently legalize the Bush administration's warrantless domestic surveillance, while possibly providing a blanket amnesty for private telecommunications firms that helped the Bush administration illegally spy on their own customers.

House Majority Leader Steny Hoyer (Democrat, Maryland) hastily called off a press conference called last Friday to introduce the bill, but indicated that a draft would be available by next week. The postponement apparently involved continuing differences within the Democratic caucus over the contents of the legislation.

The new bill is meant to replace the "Protect America Act" rammed through Congress with little debate last summer. This temporary law, which "sunssets" in February, handed the administration sweeping new powers to conduct warrantless wiretapping on US citizens, without any serious court or congressional oversight.

The Protect America Act, passed by a two-to-one margin in the Senate and signed into law by Bush on August 5, gives the government the power to eavesdrop on the phone calls and emails of US citizens, so long as they are in communication with individuals "reasonably believed to be located outside the United States."

Under the bill's provisions, such wiretapping can be initiated and continued for up to a year on the sole say-so of the US attorney general and the director of national security.

The legislation, which was largely dictated by the White House, was crafted to rescue the administration's domestic surveillance program in the wake of revelations at the end of 2005 concerning the

massive and secret wiretapping program conducted through the National Security Agency, without any legal authorization. The NSA program was found by a federal court to constitute a violation of the Constitution's Fourth Amendment protection against "unreasonable searches and seizures."

The Protect America Act essentially enshrined this shredding of the Fourth Amendment into law, albeit on a temporary basis. Now the congressional Democratic leadership is preparing to make it permanent, by means of amending the 1978 Foreign Intelligence Surveillance Act (FISA), which already granted the government sweeping powers to spy on Americans.

According to the *Washington Post*, the new legislation would allow for a secret FISA court to issue "umbrella" warrants permitting the government to monitor telephone conversations and emails to the US from targeted foreign nationals, without seeking individual warrants in each individual case. The sole condition imposed would be a requirement that the Justice Department's inspector general issue quarterly reports on the use of the umbrella warrants, providing them to both Congress and a special FISA court.

The *Post* reports that the House legislation does not include a provision demanded by the Bush administration that would make telecommunications firms that collaborated in the wiretapping operation retroactively immune from prosecution for violating the rights of their customers. The legislation passed last summer already immunized the companies from prosecution for similar collaboration in the future.

The newspaper added, however, that the Senate is expected to include some form of protection for the telecom giants—which include some of the largest corporate campaign contributors in Washington—either in the form of a blanket amnesty or an agreement by the

government to cover any financial settlements that could result from scores of pending lawsuits.

“Democrats are wary of being called weak on national security,” the *Post* reported. “That concern is exacerbated by the government’s withholding of details on its surveillance activities that would enable Congress to gauge whether expanded powers are needed.”

Stoking such fears, the administration sent Director of National Intelligence Michael McConnell to Capitol Hill last month to argue that even debating limits on government surveillance powers constituted a threat to “American lives.” McConnell made the inflammatory claim that FISA requirements—supposedly still operative before the bill passed in August formally waived them—had caused a critical 12-hour delay in conducting wiretapping of Iraqi insurgents who had captured three US soldiers last May. One soldier’s body was later found, while the other two are still listed as missing.

It later emerged, however, that the wiretap was not sought until nearly four days after the capture and was then held up, not by any onerous FISA restrictions, but by bureaucratic fumbling between the Justice Department and US intelligence agencies.

In any case, the old FISA procedures allowed the government to conduct surveillance for three days before showing probable cause needed for a warrant from a FISA secret court—which granted such requests almost without exception. In surveillance involving only foreign nationals, no such warrants are required.

The claims by the government that opposition to the permanent expansion of its surveillance powers is tantamount to granting “Fourth Amendment rights to terrorists” is meant to cover up the far-reaching implications of the legal changes now being implemented.

What is involved is opening up the entire US communications system to ceaseless surveillance, with the government sifting through every email and telephone call for content that it deems related to “terrorism” or “extremism,” and with the telecommunications companies and Internet Service Providers acting as full partners—protected by law from those paying for their services.

The Bush administration has repeatedly defied congressional subpoenas demanding information on the

NSA spying program. It remains the administration’s position that the president, as commander-in-chief of the armed forces, is empowered to carry out any form of surveillance he sees fit, regardless of the constitution or laws passed by Congress.

Under conditions in which the Democratic leadership in Congress refuses to hold the White House accountable for its criminal domestic spying operation, the new legislation, combined with some form of amnesty for the telecoms, will only serve as a legal cover for the continuation of massive and patently unconstitutional data-mining and electronic surveillance against large numbers of American citizens.



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