

# House Democrats pass new spy bill without telecom immunity

Joe Kay  
15 March 2008

The US House of Representatives on Friday passed another version of a bill to expand government spying powers while excluding a provision demanded by the Bush administration granting retroactive immunity to telecommunications companies that have collaborated in the government's illegal surveillance operations.

A parallel bill has passed in the Senate that does include immunity, and President George W. Bush has already promised to veto the House version if it were to reach his desk. The conflict means that the debate within the political establishment over a new bill modifying the Foreign Intelligence Surveillance Act (FISA) of 1978 will likely continue for several more weeks or months. Congress begins a two-week recess on Saturday.

A revision of FISA has been the subject of intense debate within the political establishment since the expiration of the so-called Protect America Act last month. That act gave the president far greater powers to spy on the American population without a warrant and formalized a close cooperation between the government and the giant corporations that control all the communications passing through the country—including phone calls, Internet traffic, and emails.

However, the Protect America Act did not provide the telecommunications companies—which have been cooperating with the Bush administration since at least 2001—retroactive immunity for past illegal actions. All factions of the political establishment are largely agreed on the need to expand spying powers, while they were split on the question of immunity.

The vote in the House on Friday was mostly along party lines: 221-188, with Democrats supporting the bill and Republicans opposing it. In remarks on Thursday, Bush demanded that the House pass the Senate version, which received substantial bipartisan support in that body.

The House bill does have an additional amendment designed as a partial concession to those demanding

immunity for the telecoms. It would allow the US federal judge who is hearing about 40 civil cases against the companies in San Francisco to review secret documents behind closed doors. The documents include the Bush administration's legal rationale for the spying program.

If the judge determined that the documents were sufficient to absolve the companies of responsibility, he could dismiss the cases. The Bush administration has refused to allow the telecoms to present this evidence, arguing that this action would violate "state secrets."

This accommodation is not sufficient for the supporters of immunity, however. Aside from the financial interests of the telecommunications companies, the Bush administration is concerned that any trial could reveal the real extent of the National Security Agency's (NSA) operations, which have never been fully disclosed to the public. This is the main reason why it will accept nothing short of complete immunity and the outright dismissal of the cases.

There are divisions within the Democratic Party over how to proceed on the question of immunity, as reflected in the different House and Senate versions and in the behind-the-scenes debate within the House caucus. If the House leadership brought the Senate version for a vote, as demanded by Bush, it would almost certainly pass with the support of the so-called Blue Dog Democrats.

The refusal of the House leadership to back down on this question evidently surprised sections of the media and the Bush administration. In an article published on Friday, before the final House vote, the *Wall Street Journal* commented, "The plan [passed on Friday] represents a shift for Democrats, who until now have mostly backed down in the face of White House claims that their efforts would endanger national security."

The *Journal* went on to note, "Some Bush administration officials said privately that the pushback caught them off guard. In August, Republicans were able

to outmaneuver Democrats and force passage of a White House-sponsored measure to temporarily broaden warrantless domestic spy authority.” This was the Protect America Act.

There were indications over the past two weeks that the Democrats would find a way of accepting the immunity provision as well. On February 29, House Intelligence Committee Chairman Silvestre Reyes told CNN that his committee had been holding discussions with telecom companies “because if we’re going to give them blanket immunity, we want to know and understand what it is we’re giving them immunity for.” Reyes said that he had an “open mind” about immunity and that negotiators were “very close” to finding some agreement.

Last week, several media reports, including one in the *Washington Post*, indicated that the House leadership had crafted a procedure designed to allow Democrats to continue to posture as opponents of Bush’s proposal while nevertheless allowing the Senate version to go through. Under this plan, the House would pass a bill without immunity and with a few additional restrictions, which would then go to the Senate where the immunity provision would be added. Then the final bill would be allowed to come for a vote on the floor of the House, where it would pass with support from some Democrats.

At some point over the past week, however, this agreement fell through, generating a storm of protest among House Republicans. On Thursday night, the House held an extremely rare closed session at the behest of House Republican Whip Roy Blunt. Only six such sessions have been held since 1825.

There are a number of factors behind the Democratic Party’s decision not to give in on the question of immunity at this point. First, under the provisions of the Protect America Act, the Bush administration can continue to spy without a warrant for one year after an initial authorization. This includes new individuals that the administration claims are associated with “terrorist” groups already subject to monitoring. In effect, the provision means that the government can continue to use the anti-democratic powers approved by the Democratic-controlled Congress at least through August 2008.

The Bush administration has evidently refused to show any but a few leading Democrats and Republicans the legal memoranda written to justify the initial warrantless spying program, which was the main condition that Reyes cited for accepting immunity. Commenting on the House floor Friday, House Judiciary Committee Chairman John Conyers complained, “You can’t give retroactive

immunity when you don’t know what you are immunizing.”

Under these conditions, it became very difficult for the Democrats to justify a complete capitulation, especially in an election year and given the massive public opposition to the Bush administration.

At the same time, the Bush administration, while counting on the eventual capitulation of the Democrats, is not averse to having the issue drag out. The Republicans are planning on running on a “national security” fear campaign in the November elections.

Whatever the temporary divisions over telecom immunity, none of the leading Democrats have any interest in challenging the fundamental fraud of the “war on terror”—used as a pretext for a bipartisan attack on democratic rights and two wars—or to expose the true extent of the Bush administration’s spying program. Indeed, Democrats continue to work actively to cover up the massive breadth of these programs.

The latest example of this was the revelation in a *Wall Street Journal* article earlier this week that the NSA is currently monitoring “huge volumes of records of domestic emails and Internet searches as well as bank transfers, credit-card transactions, travel and telephone records.” The NSA has accumulated a massive database of communications of Americans in violation of fundamental constitutional rights.

Since the initial revelation, the *Wall Street Journal* article has received almost no media coverage, and the Democrats have remained almost entirely silent on the issue. Since gaining control of Congress over a year ago, the Democrats have held no hearings aimed at exposing the extent of the government’s illegal actions.

A Justice Department audit released this week found that in 2006 the FBI had misused so-called national security letters, which are used to seize documents without a warrant. A previous report last year found similar abuse in 2003-2005.



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