

# Obama joins Senate vote to legitimize Bush's domestic spying operation

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The Democratic Party's presumptive presidential nominee voted Wednesday afternoon with a majority of the US Senate to pass legislation vastly expanding the government's power to carry out warrantless wiretapping and electronic surveillance, while handing blanket retroactive immunity to telecommunications companies that facilitated the illegal domestic spying operation in the US in the six years following the September 11, 2001 terrorist attacks.

The Senate passed the legislation by a vote of 69 to 28 after voting down three amendments aimed at eliminating or limiting the provision that shields the telecoms by overturning some 40 civil lawsuits challenging their actions.

The House approved the legislation last month by a vote of 293 to 129.

The action comes more than two-and-a-half years after the revelation about the massive and secret spying program launched by the National Security Agency on orders of the White House. It marks the most naked capitulation by the Democratic leadership to the Bush administration, ceding the president expanded police state powers while shutting down the one avenue for uncovering his crimes and potentially bringing Bush and other top officials to account for violating US law and the Constitution by secretly spying on American citizens.

The legislation, the FISA Amendments Act of 2008, includes the most sweeping changes to US surveillance law since the enactment of the Foreign Intelligence Surveillance Act 30 years ago. It further erodes the limited legal protections against indiscriminate and politically motivated government spying and constitutes a frontal assault on basic democratic rights.

The legislation allows the government to carry out the monitoring of every phone call, email and other form of electronic communications—millions upon millions of messages—sent between the US and overseas without the need to present any evidence that this spying is based on probable cause that targeted individuals are engaged in illegal activity. Instead, the FISA (Foreign Intelligence

Surveillance Act) court will merely review the procedures used in selecting surveillance targets.

Language proposed in the course of drafting the legislation that would have required the government to obtain individual warrants from the FISA court in any case where a major aim of the surveillance is to monitor the communications of an American living in the US was dropped in the face of opposition from the Bush administration.

The law includes no penalties whatsoever for the government using its vast surveillance powers illegally. Even if the FISA court were to determine that a specific spying operation ostensibly targeting foreigners was really aimed at Americans, the government would suffer no sanctions and would be allowed to retain the information gathered illegally.

Finally, it expands the right of the government—specifically the Director of National Intelligence and the Attorney General—to claim an emergency deemed necessary for national security that does not allow a delay in gathering intelligence and thereby avoid prior court approval altogether.

The importance of the retroactive immunity language was underscored by the White House vow to veto the legislation if any one of the three amendments stripping or limiting this provision were passed. While claiming that the country would face the threat of an imminent terrorist attack if the expanded government surveillance powers in the legislation were not enacted, the administration clearly saw allowing the lawsuits to go through as a more serious danger.

While, no doubt, the interests of corporate giants like Verizon and AT&T are important to the White House as well as to both congressional Democrats and Republicans, the importance of the retroactive immunity is bound up with the ability of the administration itself to continue its lawless actions with impunity.

With the government having blocked any official disclosures about the scope and nature of the NSA spying operation by invoking national security, the civil suits

charging the telecoms with illegal invasion of privacy threatened to bring information to light. It is known that the telecoms turned over their entire databases of email traffic for government monitoring, even setting up facilities for the NSA in their main communications hubs.

The amendments included one that would have stripped this immunity language from the bill entirely, another that would have required a federal judge to rule on the constitutionality of the NSA secret spying program and grant immunity to the telecoms only on that basis, and a third requiring only that the Senate postpone its immunizing of the telecoms until after a coming report by inspectors general on the program establishes what they are being immunized for.

Under the legislation, the telecommunications firms now must only prove that they had received written advice from the Bush administration that the domestic spying operation was legal to have a federal judge dismiss the suits against them. All the companies can produce such evidence.

“This bill makes our federal courts the handmaidens to a cover-up, and that is wrong,” said Senator Patrick Leahy, a Democrat from Vermont and one of the leading Senate opponents of the legislation.

Nonetheless, 19 Democrats joined every Senate Republican present in assuring the legislation a wide margin and sending Bush a state surveillance package that included everything his administration had asked for.

The vote cast by Obama provoked widespread outrage among those who had supported his campaign. His action on the floor of the Senate represented a direct repudiation of a position repeatedly stated last year that he would vote against and even filibuster any legislation granting immunity to the telecoms.

Just last October, an Obama campaign spokesman issued a statement declaring, “To be clear: Barack will support a filibuster of any bill that includes retroactive immunity for telecommunications companies.”

After voting in favor of the doomed amendments abrogating or limiting the immunity provision, Obama raised his hand for cloture, effectively killing any chance for a filibuster, and then for the legislation itself, protection for the telecoms and all.

Obama’s Republican rival Senator John McCain was not present for any of the votes, but had voiced his support for the legislation.

The Democratic candidate issued a statement as over 23,000 people signed an online petition posted on his web site calling on the candidate to reverse his position and oppose the legislation.

“Given the grave threats that we face, our national security agencies must have the capability to gather intelligence and

track down terrorists before they strike, while respecting the rule of law and the privacy and civil liberties of the American people,” he wrote. “There is also little doubt that the Bush Administration, with the cooperation of major telecommunications companies, has abused that authority and undermined the Constitution by intercepting the communications of innocent Americans without their knowledge or the required court orders.”

The truth is that the old FISA legislation already gave the government sweeping surveillance powers, allowing secret police agencies to initiate wiretaps for three days (now to be extended to a full week) before obtaining a court-issued warrant. Moreover, the records of the FISA secret court indicate that virtually every request for a warrant has been approved.

As for the abuse of authority and undermining of the Constitution through secret domestic spying, the legislation that Obama voted for essentially exonerates those responsible by quashing civil cases that could have brought their illegal actions before the courts.

Obama pointed to the bill’s so-called exclusivity provision as the principal reason for his deciding to back it. This is an affirmation that the secret FISA court represents the sole final authority on government spying.

In reality, the original legislation passed in 1978 already made that clear, as have subsequent court decisions. The Bush administration overrode the law on the theory that, as commander-in-chief, the US president is empowered to ignore all legal and constitutional restraints in order to prosecute the “global war on terrorism.” There is no reason to believe that it will not continue to operate on this assumption, having been abetted by the Democratic leadership’s agreement to grant retroactive immunity to the corporate accomplices in its crimes.

Whatever the excuses and justifications, the real content of Obama’s vote is unmistakable. He has turned his back on the position he took while running in the Democratic primaries and supported both expanded police-state powers and a cover-up of the Bush administration’s criminal acts.

He is more than prepared to alienate those counted among his base in order to prove himself “presidential.” This means, above all, demonstrating that he is prepared to do whatever is required to defend the interests of America’s ruling elite and protect the powers of the state and the corporations.



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