



Written by [Joe Wolverton, II, J.D.](#) on December 28, 2012

FISA Renewal Vote Coming This Week; Rand Paul Defends 4th Amendment

“Madam President, I rise today in support of the Fourth Amendment Protection Act,” [declared Senator Rand Paul \(R-Ky.\) from the Senate floor](#) on Thursday, as his colleagues prepare to vote on renewal of amendments to FISA, the Foreign Intelligence Surveillance Act.



The current iteration of FISA, the 2008 FISA Amendment Act, is set to expire on December 31 and is among the priorities on the holiday-shortened slate of congressional business to be considered over the few remaining hours of 2012.

In his speech, Paul went on to quote the text of the Fourth Amendment, one of the rare moments when a federal lawmaker not only refers to the Constitution, but quotes it and rises to its defense, in fidelity to his oath of office.

“Our independence and the Fourth Amendment go hand in hand. They emerged together,” Paul said. “To discount or to dilute the Fourth Amendment would be to deny really what constitutes our very republic,” he added.

Paul’s remarks served as the introduction to legislation co-sponsored by Senator Mike Lee (R-Utah) that intends to amend the 2008 FISA Amendments.

In describing the purpose of his proposal, Paul said, “This amendment would restore the Fourth Amendment protection to third party records. This amendment would simply apply the Fourth Amendment to modern means of communications. E-mailing and text messaging would be given the same protections we currently give to telephone conversations.”

An advance copy of the Fourth Amendment Protection Act was obtained recently by *The New American*. The measure reads:

Section 2

a. Congress finds the following:

1. The Fourth Amendment right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is violated when the government acquires information voluntarily relinquished by a person to another party for a limited business purpose without the express informed consent of the person to the specific request by the government or a Warrant, upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 3



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a. Except as provided for in subsection (b), the government is prohibited from obtaining or seeking to obtain information related to a person or group of persons held by a third-party in a system of records, and no such information or evidence shall be deemed admissible in a criminal prosecution in a court of law.

1. "Systems of records" shall be defined as any group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular associated with the individual.

b. The government may obtain, and a court may deem admissible, information or evidence related to a person held by a third-party in a system of records provided that:

1. The individual whose name or identification information the government is using to access the information provides express and informed consent to that search; or

2. The government obtains a Warrant, upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The FISA Amendments Act was signed into law by President George W. Bush on July 10, 2008 after being overwhelmingly passed 293 to 129 in the House and 69-28 in the Senate. Just a couple of days prior to FISA being enacted, Senator Paul's iconic father, Representative Ron Paul, led a coalition of Internet activists united to create a political action committee, Accountability Now. The sole purpose of the PAC was to conduct a money bomb in order to raise money to purchase ad buys to alert voters to the names of those congressmen (Republican and Democratic) who voted in favor of the act.

George W. Bush's signature was but the public pronouncement of the ersatz legality of the wiretapping that was otherwise revealed to the public in a *New York Times* article published on December 16, 2005. That article, entitled "[Bush Lets U.S. Spy on Callers Without Courts](#)," described the brief history of the "anti-terrorist" program:

Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials.

Under a presidential order signed in 2002, the intelligence agency has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible "dirty numbers" linked to Al Qaeda, the officials said.

The agency, they said, still seeks warrants to monitor entirely domestic communications.

It's not the eavesdropping that's the most egregious violation of the Constitution and the Bill of Rights (such activities are conducted by law enforcement all the time for legitimate purposes), but it's the indefensible fact that the federally empowered snoops conduct this surveillance without a probable cause warrant so long as one of the parties being monitored is located outside the territory of the United States. The justification being that if an American is talking, texting, or emailing a foreigner, then something might be said that would aid in the acquisition of "foreign intelligence information."

This policy is such a shameful disregard for our long history of individual-based human and civil rights (including the freedom from unwarranted searches and seizures) that it shocks the conscience even



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when the source is considered.

If the 2008 FISA Amendments Act is renewed, the federal government's unconstitutional authority to monitor the electronic communications of Americans without a warrant will be extended for five more years. During those five years, agents of the federal government will be allowed to ignore the protections of the Fourth Amendment against such surveillance.

Another senator is trying to tie down the federal government's domestic spying apparatus with the cords of the Constitution. As [reported by RT](#):

Sen. Ron Wyden (D-Ore.), a long-time opponent of FISA, is expected to have the chance to introduce an amendment on Friday that, if approved, will force the National Security Agency (NSA) to finally open up about their use of the FAA's warrantless wiretapping provisions.

Earlier this year, Sen. Wyden told Wired's Danger Room, "If no one will even estimate how many Americans have had their communications collected under this law then it is all the more important that Congress act to close the 'back door searches' loophole, to keep the government from searching for Americans' phone calls and emails without a warrant."

Wyden — who sits on the Senate Foreign Intelligence Committees — has unsuccessfully asked time and time against for the NSA to explain how they use the FAA. Even if the FAA is renewed this week, the approval of Sen. Wyden's proposed amendment would mean the NSA would have to at least give a general estimate of how many Americans it has targeted since 2008.

[In July of 2011 and again in May 2012](#), Wyden and Senator Mark Udall (D-Colo.) wrote a letter to James R. Clapper, Jr., the Director of National Intelligence, asking him a series of four questions regarding the activities of the NSA and other intelligence agencies regarding domestic surveillance.

In one of the questions, Udall and Wyden asked Clapper if "any apparently law-abiding Americans had their communications collected by the government pursuant to the FISA Amendments Act" and if so, how many Americans were affected by this surveillance.

In a letter dated June 15, 2012, [I. Charles McCullough III informed the senators](#) that calculating the number of Americans who've had their electronic communications "collected or reviewed" by the NSA was "beyond the capacity of his office and dedicating sufficient additional resources would likely impede the NSA's mission.

In other words, the NSA is too busy illegally recording our private emails, texts, Facebook posts, and phone calls to figure out how many of us are already caught in their net. And, furthermore, there is nothing Congress can do about it.

Even though such electronic communications could not have been foreseen, the principles protecting them are "timeless," Senator Paul said Thursday.

This week, the tale will be told. As Congress considers the FISA renewal and the restrictions on the NSA's snooping authority, Americans will witness whether those men and women elected to represent them and who have sworn to "preserve, protect, and defend the Constitution from all enemies, foreign and domestic," will stand with Senators Paul, Lee, Wyden, and others and uphold that oath or will once again prove unfaithful.

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