



Written by [Joe Wolverton, II, J.D.](#) on December 30, 2012

Senate Ignores Constitution, Passes Warrantless Wiretap Renewal

On Friday, [73 U.S. senators voted to extend](#) the federal government's authority to ignore the Fourth Amendment and wiretap American citizens without a warrant, without probable cause.

The renewal extends until 2017 the warrantless wiretap powers granted by provisions of the Foreign Intelligence Surveillance Act Amendments (FISA) passed by Congress in 2008. That lease was set to expire on December 31.



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, 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 Fourth Amendment's protection against "unreasonable searches and seizures") that it shocks the conscience even when the source is considered.



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As soon as President Obama signs the 2008 FISA Amendments Act renewal passed Friday by the Senate (the House of Representatives [passed the bill](#) in September by a vote of 301-118), 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.

There were attempts by a handful of constitutionally minded lawmakers to curtail Washington's warrantless wiretapping program.

Senator Rand Paul (R-Ky.), for example, offered the [Fourth Amendment Protection Act](#), an amendment to FISA that specifically would have applied the Fourth Amendment to email, text messages, and other modern means of communication.

"Our independence and the Fourth Amendment go hand in hand. They emerged together," Paul said during a speech delivered last Thursday in support of his measure. "To discount or to dilute the Fourth Amendment would be to deny really what constitutes our very republic," he added.

Paul's legislation was co-sponsored by Senator Mike Lee (R-Utah) among others.

Senator Paul's amendment was [rejected by his colleagues by a vote of 12-79](#). In other words, only 12 members of the U.S. Senate voted in support of guaranteeing the protections of the Fourth Amendment to the electronic communications of citizens of this Republic. Put another way, 79 senators overtly violated their oaths of office, oaths requiring senators to "preserve, protect, and defend the Constitution of the United States from all enemies, foreign and domestic."

Senator Jeff Merkley (D-Ore.) [proposed an amendment](#) to FISA that would have required the federal government to disclose the procedures and rulings of the secret court created to sign off on requests by the National Security Agency and others to monitor communications within the United States.

"If you have a phrase in the law, and it's been interpreted by a secret court and the interpretation is secret, then you really don't know what the law means," Merkley said. "We are certainly constrained from having the type of debate that our nation was founded upon — an open discussion of issues."

The Merkley Amendment was likewise [rejected by the Senate by a vote of 37 for and 54 against](#). Again, a majority of senators chose fidelity to federal overreach and the expansion of the Stalinist surveillance state over fidelity to their oaths of office.

[As reported by Huffington Post](#), an amendment sponsored by Senator Patrick Leahy (D-Vt.), "designed to shorten the period that the reauthorized version of the surveillance bill is in effect and to strengthen inspector general oversight," was also unsuccessful, managing to garner only 38 votes in favor of passage.

The Huffington Post went on to quote Senator Dick Durbin (D-Ill.), the majority whip, who reminded his colleagues of the need for notice in the laws of a republic.

"The concept of secret law is anathema to a democracy," Durbin said as quoted by Huffington Post. Summing up the truth behind the anti-terrorism rhetoric spewed by those in promoting the extension of FISA, Durbin added, "the reality is this legislation permits targeting an innocent American in the United States."

Speaking against the FISA renewal bill, Senator Ron Wyden (D-Ore.) drew analogies between the warrantless wiretapping practiced by the federal government under FISA to the orders issued by



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American agents of King George III authorizing British soldiers to search the homes of colonists and seize papers and effects found inside.

It was, after all, the Founders' experience with those invasions by the crown that prompted the inclusion in the Bill of Rights of the Fourth Amendment and its protections against unreasonable and unwarranted searches and seizures.

The Wyden Amendment, which would have required a report on the impact of the FISA Amendments Act of 2008 on the privacy of the people of the United States, was [tossed out by the Senate by a vote of 43-52](#).

"It is never okay, never okay for government officials to use a general warrant to deliberately invade the privacy of a law-abiding American," Wyden said from the Senate floor. "It wasn't okay for constables and customs officials to do it in colonial days, and it's not okay for the National Security Agency to do it today."

Only now, it is. The federal government — the Congress, the courts, and the president — have colluded for over a decade now to dismantle the Constitution, rob the people of their most fundamental God-given rights, and use the Trojan Horse of national security to roll the infrastructure of the surveillance state inside the walls of our Republic.

[Word from the White House](#) is that President Obama will sign the act by the December 31 expiration date.

Update: *On Sunday, December 30, the day this article was published, President Obama signed the FISA Amendments Act, extending warrantless wiretapping.*

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