



Written by [Joe Wolverton, II, J.D.](#) on January 12, 2013

Senator Wyden: The Fight to Defend the Fourth Amendment is Not Over

While most Americans were busy tearing ripping wrapping paper off Christmas presents, the Congress and the president were busy ripping the Fourth Amendment out of the Constitution.

As [The New American reported](#), on December 28, 2012, [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.

President Obama signed the act into law on December 30, just hours before it was set to expire.

The FISA Amendments Act was originally signed into law by President George W. Bush on July 10, 2008 after being overwhelmingly passed 293-129 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,



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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.

Thankfully, there are [a few senators](#) that are not willing to stand by and watch their colleagues eviscerate one of the Constitution’s most fundamental liberties.

Ron Wyden (D-Ore.; pictured above) is one of those senators.

Wyden, a consistent advocate for the preservation of civil liberties, [told reporters at the Consumer Electronics Show \(CES\)](#) in Las Vegas on Wednesday that he has not surrendered in the fight to protect the Fourth Amendment.

“We will win this,” Wyden told the audience gathered at the convention. “It’s not a question of ‘are we,’ but when,” he added.

[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, Senators 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 response to the Wyden-Udall 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.

Naturally, Senators Udall and Wyden didn’t take kindly to Inspector General McCullough’s brush off. In a response to the response, the senators told McCullough that they just wanted a “ballpark estimate” of the number of American citizens who have been monitored under the authority of the FISA. In [an additional statement](#) released by Senator Wyden he expressed concern that the figure is likely very high:

I am concerned, of course, that if no one has even estimated how many Americans have had their communications collected under the FISA Amendments Act, then it is possible that this number could be quite large. Since all of the communications collected by the government under section 702 are collected without individual warrants, I believe that there should be clear rules prohibiting the government from searching through these communications in an effort to find the phone calls or emails of a particular American, unless the government has obtained a warrant or emergency authorization permitting surveillance of that American.

Given the intelligence community’s disdain for not only the Constitution but for congressional oversight, it is unlikely that the information requested by Senators Udall and Wyden will ever be forthcoming.

Wyden is relying on letters to recalcitrant, self-aggrandizing bureaucrats, however.



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Speaking against the FISA renewal bill during debate, Wyden drew analogies between the warrantless wiretapping practiced by the federal government under FISA to the orders issued by 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.

Photo of Sen. Ron Wyden: AP Images

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com.



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