



Written by [Joe Wolverton, II, J.D.](#) on September 15, 2012

## House Passes Extension of NSA's Electronic Surveillance of Americans

In a move that should surprise no one aware of the increasing size, scope, and sophistication of the U.S. surveillance state, the House of Representatives voted on September 12 to approve a [five-year extension of the snooping scheme](#) created by George W. Bush in the wake of the attacks of September 11, 2001.



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 (the Foreign Intelligence Surveillance Act) being enacted, Representative Ron Paul and a coalition of Internet activists united to create a political action committee, Accountability Now, 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



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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 when the source is considered.

[The vote on this effrontery to the Constitution wasn't even close: 301-118.](#) Among those opposing the FISA extension were seven Republicans and 111 Democrats.

Several congressmen attempted to offer amendments to the bill sponsored by Representative Lamar Smith (R-Texas), but that effort was successfully torpedoed by procedural shenanigans. Debate on this perpetuation of the de facto repeal of the Fourth Amendment lasted just one hour.

Thankfully, there was one representative who stood up for the Constitution's protection of civil liberties.

A [story published at techdirt.com](#) reports:

Rep. Zoe Lofgren fought the good fight, pointing out that “I think the government needs to comply with the Fourth Amendment to the Constitution all the time... We can be safe while still complying with the Constitution of the United States.” However, Rep. Dan Lungren — who previously had insisted that there was no evidence that the NSA was abusing its powers, while refusing to even ask the NSA for basic info on how it was using the powers — insisted based on absolutely nothing that “this is critical to the protection of the American people.”

Even worse, Rep. Terry Gowdy made a ridiculously ignorant statement in response to Lofgren's highlighting of the 4th Amendment:

“Intelligence is the lifeblood of our ability to defend ourselves,” he said. Moments later, he added: “Are we to believe that the Fourth Amendment applies to the entire world?”

Representative Gowdy apparently doesn't understand the concept of individual liberty and freedom from tyranny. The Fourth Amendment is merely the American codification of a deeper, timeless principle of a person's right to be free from oppression by those in power. “Life, liberty, and the pursuit of happiness” are not American ideals; they are the endowment given to every man by the Creator. The Fourth Amendment was simply our forefathers' way of safeguarding those divine gifts from the grabbing hands of government.

The Senate's version of the bill passed by the House is stalled in committee thanks largely to the efforts of Senators Ron Wyden (D-Ore.) and Mark Udall (D-Colo.).

[In July of 2011 and again in May 2012](#), Senators Udall and Wyden sent letters 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, the senators 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, Inspector General of the Intelligence Community 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 [the NSA Inspector



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General's] office and dedicating sufficient additional resources would likely impede the NSA's mission." In other words, the NSA is too busy illegally recording Americans' private emails, texts, Facebook posts, and phone calls to figure out how many citizens 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 not only for the Constitution but for congressional oversight, it is unlikely that the information requested by Senators Udall and Wyden will ever be forthcoming.

The Smith bill passed by the House extends the domestic surveillance powers until December 31, 2017. If passed, the Senate bill would grant the government a three-year "Get Out of the Fourth Amendment Free" card.

Such a time frame could conceivably coincide with the completion of the sprawling surveillance compound being [constructed by the National Security Agency \(NSA\) in Utah](#).



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