

June 26, 2008

**Re: Bingaman Immunity Amendment to FISA Amendments Act, H.R. 6304**

Dear Senator:

We are writing to urge you to support the amendment to be offered by Senator Bingaman to delay the effective date of the immunity provisions in Title II of the FISA Amendments Act, H.R. 6304, until ninety days after an Inspectors' General report on the President's warrantless surveillance program and related surveillance activities is submitted to Congress.

The underlying bill grants retroactive immunity from civil liability to telecommunications carriers that assisted with the President's warrantless wiretapping program from September, 2001 to January, 2007. Lawsuits against the carriers would be dismissed if the Attorney General provides a certification to the court, supported by substantial evidence, indicating that the surveillance was intended to detect or prevent terrorist attacks and that the carriers had been provided with written assurances that the surveillance was authorized by the President and had been determined to be legal.

The bill also requires the Inspectors General of the appropriate agencies in the intelligence community to prepare a comprehensive audit of the warrantless wiretapping program and similar intelligence activities that occurred in the same time frame and to report the results to Congress within a year of the enactment of the legislation.

The Bingaman amendment would put these two provisions of the bill in the proper sequence by simply adding a few lines to the end of Title II in the bill. This language would delay the effective date of the retroactive immunity provisions until 90 days after Congress receives the IGs' report on the audit. The litigation brought against the telecoms would be stayed for the same period, thus protecting them from liability in the interim. If Congress took no action within 90 days of receiving the results of the audit, the immunity provisions of H.R. 6304 would take effect without change and the Attorney General could file the immunity-triggering certification and supporting evidence. If, on the other hand, the audit revealed conduct that Congress felt should not be immunized, Congress would have time to adjust the immunity provisions within 90 days of obtaining that information.

Currently, the bill puts the cart before the horse. It grants immunity before Congress knows what conduct it is immunizing. The Bingaman amendment

would set things right by ensuring that Congress has the information it needs before such a momentous legislative decision is allowed to go into effect. We urge you to support it.

Sincerely,

American Civil Liberties Union

American Arab Anti-Discrimination Committee

Center for American Progress Action Fund

Center for Democracy & Technology

Constitution Project

Defending Dissent Foundation

Electronic Frontier Foundation

Federation of American Scientists

OMB Watch

Open Society Policy Center

OpenTheGovernment.org

People For the American Way

Privacy Activism