

Concessions in Republican Offer of 21 May 2008

<i>SENATE BILL</i>	<i>CONCESSIONS</i>
<i>Title I</i>	
Post-court review of targeting/minimization procedures with acquisition able to begin immediately	Prior-court review of targeting/minimization procedures; acquisition cannot begin until court approves procedures unless “exigent circumstances” exist
No “exigent circumstances” provision	Exigent circumstances provision allowing immediate implementation of directive only if intelligence important to national security may be lost or not timely acquired and time does not permit issuance of an order
No schedule for filing reauthorizations with FISC	Statutory schedule for reauthorizations; ensures that court has time for prior review before acquisition may continue; must be submitted at least 30 days in advance
No effective date for authorizations	Requires effective date that is at least 30 days from submission of certification; ensures prior court review except when exigent circumstances exist
No need to amend certification to change effective date of acquisition	Requires amended certification in order to advance or delay effective date
No time period for FISC review of certification and procedures	Requires FISC to approve/disapprove certification and procedures within 30 days of submission; ensures court review before Executive branch may act
Release from liability: “notwithstanding any other law, no cause of action shall lie” against any provider for assistance under directive	Deletes “notwithstanding any other law” even though it is consistent with other provisions in FISA
All judicial proceedings under foreign targeting provision must be conducted expeditiously	All time limits for judicial decisions apply, unless court extends time period for due process reasons; ensures court review before Executive branch may act
Exclusive Means: simple restatement of provision in 1978 FISA	Accepts enhanced exclusive means provision
	Accepts numerous stylistic changes from Counterproposal

<i>Title II</i>	
Review by court under “abuse of discretion” standard	Review by FISC under broader “preponderance of the evidence” standard
No provision for court to review letters to providers or supplemental materials	Allows FISC to review letters to providers or supplemental materials
No provision for parties to appear or participate in briefing	Allows parties to appear, provide directives, or participate in legal briefings before the Court

<i>Title III</i>	
No review of TSP	Accepts enhanced IG audit of TSP provision with slight modifications