



September 20, 2006

The Honorable Peter Hoekstra, Chairman
The Honorable Jane Harman, Ranking Member
House Permanent Select Committee on Intelligence
United States House of Representatives
Washington, DC 20530

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**Re. Opposition to the Amendment in the Nature of a Substitute to
H.R. 5825, Further Reducing the Protection for US
Persons under the Foreign Intelligence Surveillance Act
and Reducing Congressional Oversight**

Dear Congressman Hoekstra and Congresswoman Harman:

On behalf of the American Civil Liberties Union, and its hundreds of thousands of activists, members and fifty-three affiliates nationwide, we write to share our views about the Amendment in the Nature of a Substitute to H.R. 5825, a bill intended to “update” the Foreign Intelligence Surveillance Act (FISA). We wrote you on July 27, 2006 to express our strong opposition to H.R. 5825 because it authorizes an unchecked expansion of electronic surveillance power for the National Security Agency (NSA) to the detriment of the rights of the American people. The Amendment in the Nature of a Substitute to H.R. 5825 would only expand that authorization, and weaken the congressional oversight provisions that were present in the original bill. We therefore restate our original objections to H.R. 5825 and offer our views on the expanded warrantless surveillance the substitute would provide. We ask that this letter be submitted for the record in the consideration of this bill.

A new section 9 in H.R. 5825 would authorize the NSA to engage in warrantless surveillance and physical searches for a 90-day period (60 days for U.S. persons) whenever the President certifies that “there exists an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States.” This is a completely unnecessary provision because FISA already allows warrantless wiretapping in emergency situations, subject to later judicial review.

That the substitute would authorize a 90-day period of warrantless surveillance in the event of an “imminent attack” calls into question just how loosely successive Presidents might define the word “imminent,” particularly because the substitute authorizes repeated 90-day periods of warrantless surveillance under the same “imminent” attack provision.

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