

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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Statement of U.S. Senator Russell D. Feingold
Senate Judiciary Committee Hearing on
"FISA Amendments: How to Protect Americans' Security and Privacy and Preserve the Rule of Law and Government Accountability"

October 31, 2007

As Submitted for the Record

Mr. Chairman, I am very pleased that the Judiciary Committee is holding this public hearing on the critically important issue of amending the Foreign Intelligence Surveillance Act (FISA). We considered possible amendments to FISA at a hearing in September where we discussed them with Director McConnell, but now that specific legislation has been reported from the Senate Select Committee on Intelligence, I applaud you for taking the opportunity to evaluate it carefully in this Committee.

I sit on the Intelligence Committee, and I agree that some of its work must be conducted behind closed doors due to the sensitive nature of the information that committee handles on a regular basis. But the Intelligence Committee should have considered the FISA legislation in a more open process. The Committee would have benefited from the input not just of the Administration, but also of outside experts who may have brought a different point of view to consideration of the legislation.

So I am particularly glad that the Judiciary Committee is holding this open hearing, and that its upcoming markup will also be in an open setting. The public should have the ability to see what we are doing on this very important issue. In addition, this committee's expertise in privacy and civil liberties, and FISA, is crucial to this debate.

This committee's consideration is also important because the bill reported by the Intelligence Committee, which I voted against, is badly flawed. Senator Wyden and I summarized our opposition in our "Minority Views" on the bill: We support the underlying purpose of FISA reform: to permit the government to conduct surveillance of foreign targets, particularly terrorist suspects, as they communicate with other persons overseas, without having to obtain a FISA court order. We believe that this purpose can be achieved while protecting the rights and privacy of law-abiding Americans conducting international communications. We believe that the bill that passed the Senate Intelligence Committee unfortunately falls short of that goal in some respects, and we are also concerned that it also provides sweeping retroactive immunity to those alleged to have cooperated with the President's warrantless wiretapping program. We were therefore disappointed with the bill and voted against it.

It is my hope that the Judiciary Committee will pass a better bill. Congress should never have passed the so-called Protect America Act, even for six months. We should fix this law to make sure we protect Americans' privacy as we wiretap terrorists and other foreign intelligence targets. We also should not be granting unjustified retroactive immunity for those alleged to have cooperated with the Administration's illegal warrantless wiretapping program. Let's get it right this time.

Thank you, Mr. Chairman.