

The FISA Amendments Act of 2009

Section by Section

The FISA Amendments Act of 2009 would amend FISA to protect the constitutional rights of Americans while ensuring that the government has the powers it needs to fight terrorism and collect intelligence.

Section 1 - Short Title

This Act may be cited as the FISA Amendments Act of 2009.

Section 2 – Telecommunications Immunity

The bill would repeal the retroactive immunity provision in the FISA Amendments Act, leaving it to the courts to determine whether any telephone companies that complied with the illegal warrantless wiretapping program acted properly under the laws in effect at the time and therefore deserve immunity. It would retain limitations on liability for acting in compliance with FISA, the criminal surveillance laws, the Protect America Act and the FISA Amendments Act.

Section 3 – Bulk Collection

The bill retains the new authorities provided in the FISA Amendments Act but builds in additional safeguards to protect the rights of innocent Americans. The bill would prevent the government from using the warrantless collection authorities of the FISA Amendments Act to conduct “bulk collection,” which could include the collection of the contents of all communications between the United States and the rest of the world. It would do so by requiring that the government have some foreign intelligence interest in the overseas party to the communications it is collecting. Bulk collection raises serious constitutional questions, and it could permit data mining of massive quantities of communications of Americans.

Section 4 – Reverse Targeting

The bill would place additional limits on the warrantless collection authorities of the FISA Amendments Act to ensure that they are not used as a pretext when the government’s real goal is to target the Americans with whom the ostensible foreign target is communicating. It would require a FISA Court order if the government is wiretapping a person overseas but “a significant purpose” of the surveillance is to collect the communications of the person in the United States with whom the person overseas is communicating.

Section 5 – Use of Unlawfully Obtained Information

The bill would limit the government’s use of information about U.S. persons that is obtained under FISA Amendments Act procedures that the FISA Court later determines to be unlawful, while still giving the FISA Court flexibility to allow such information to be used in appropriate cases. This provides a basic incentive for the government to target foreign agents overseas rather than innocent Americans here in the United States. It is similar to the existing law that limits the use of information collected pursuant to FISA’s emergency authority if the FISA Court determines after the fact that the FISA standard was not met.

Section 6 – Protections for International Communications of Americans

The bill would permit unfettered acquisition of foreign-to-foreign communications and of communications of suspected terrorists into or out of the United States, while creating safeguards for communications not related to terrorism that the government knows have one end in the United States. Specifically:

- When the government knows in advance that a foreign target is communicating with someone in the United States, it can acquire that communication if it involves terrorism, if someone's safety is at stake, or with a court order.
- When the government does not know in advance with whom a foreign target is communicating, it can acquire all of that target's communications, without individualized court review. If the government later realizes that it has acquired a communication with one end in the U.S., it must segregate that communication in a separate database. It can then access, analyze and disseminate that communication if the communication involves terrorism, if someone's safety is at stake, or if the government has obtained a court order.