

Rules Committee
~~Statement of Robert C. "Bobby" Scott~~
Ranking Member
Subcommittee on Crime, Terrorism and Homeland Security
**In Support of an Amendment to
the "FISA Amendments Act Reauthorization Act of 2012"**
September 10, 2012

Thank you, Mr. Chairman for this opportunity to present amendments for Floor consideration of the FISA Amendments Act of 2012. Operations of government must be held accountable to the people of this great and free nation and the problem with holding operations under this Act accountable is that most of the activities under it are conducted in secrecy. The fact that I and other members of Congress have access to classified information regarding those secret activities is not sufficient for public accountability. Even if I were satisfied by my access to classified information that only reasonable and Constitutionally justified actions are being taken by officials in secrecy, I would still feel the need to give the public better assurance than simply saying, "trust me – I know what's best for you".

The Foreign Intelligence Surveillance Act was passed in 1978 to curb abuses in the collection and use of intelligence information, foreign and domestic. Under the original provisions of FISA, collection of foreign intelligence required the government to show not only that there is probable cause to believe the target of intelligence surveillance is an agent of a foreign power, but also that foreign intelligence gathering is the "primary" purpose of the collection. Under the USA PATRIOT Act of 2002 and beyond, the government need only show such probable cause and that foreign intelligence gathering is merely "a significant" purpose of the collection. When foreign intelligence collection is not the "primary" purpose for collecting the information, we are left to wonder what the "primary" purpose of the action might be.

The FISA Amendments Act (FAA) of 2008 went a step further, authorizing the government to collect massive amounts of information about foreign persons "reasonably believed" to be outside of the United States—without a warrant. With such massive amounts of information being collected, invariably information involving U.S. persons in the U.S., whose information is not subject to targeting, is collected. The FAA requires the executive branch to design "targeting procedures," which limit the scope of collection before the government acts, and "minimization procedures," which limit the use of information about U.S. persons after the government accidentally collects it. The Foreign Intelligence Surveillance Court reviews these procedures for legal sufficiency. The Intelligence Community reports that it adheres to both the letter and the spirit of the law. But with nearly all of this oversight conducted in secret, the public has no choice but to take the government at its word. We can do better.

The amendment I offer today is a modest step towards meaningful, public oversight of these authorities.

Under the FAA, the executive branch is subject to three reporting requirements: (1) semi-annual reports on the use and effectiveness of targeting and minimization procedures; (2) periodic assessments of the use of these authorities; and (3) an annual accounting of the intelligence gathered and reports disseminated by the intelligence community. My amendment would simply require that these reports come to us in unclassified form.

Americans have the right to feel free and secure in their persons, belongings, and activities from unwarranted government intrusion. Under present law, the government provides virtually no information about its use of the FAA to the public. My amendment would change that, and require the executive branch to provide the public at least *some* assurances that it uses these authorities narrowly, responsibly, and exclusively for foreign intelligence gathering purposes.

We can make this change without any risk to national security or our intelligence gathering capabilities. My amendment specifically allows the government to include a classified annex to each report, if necessary.

We may hear complaints that public reporting requirements are too burdensome for the government, and that we are required to give up basic assurances of privacy for greater safety. I am reminded of the wisdom of Benjamin Franklin who said: "Those who would give up Essential Liberty to purchase a little Temporary Safety, deserve neither Liberty nor Safety." I find nothing objectionable about additional oversight that makes it marginally more difficult for the executive branch to do its job in this regard. It *should* be hard to spy on Americans.

Thank you, Mr. Chairman. I hope the Committee will support this amendment that adds to the public defense of our civil liberties.