

Senate moves to give Bush more power to wiretap

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Filed by Brian Beutler

A bill that expands President Bush's ability to wiretap American phones and conduct other forms of domestic surveillance will likely appear before the Senate Judiciary Committee next Thursday, RAW STORY has learned.

The bill, which was written by judiciary chairman Senator Arlen Specter (R-PA), and which has been widely and publicly excoriated by Democratic members of the committee, contains provisions—such as the institution of program-wide warrants, and warrants that do not expire for a year—that would weaken the strict limits that currently govern the FISA courts.

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The Foreign Intelligence Surveillance Act (FISA) was written nearly 20 years ago and offers guidelines about the legal use of wiretaps on phones inside the United States. It includes provisions for the use of courts to issue warrants if the government's case against a suspect meets legal scrutiny.

The judiciary committee originally sought to bring the NSA wiretapping program into compliance with FISA, but in practice, critics claim, Specter's FISA amendments actually give the president freedom to expand his wiretapping activities.

A statement released by the office of Senator Russ Feingold (D-WI) states that Specter's bill "gives him even more power than he has asserted under his illegal NSA wiretapping program."

A different bill, written by Senator Dianne Feinstein (D-CA) and cosponsored by Specter will also appear before the committee Thursday. Its provisions would do more to limit the NSA program than Specter's, and would even mandate that the program face judicial review.

But a Senate aide who works closely with Specter tells RAW STORY that, "The White House said they would veto any bill that includes a provision for judicial review."

"I can't say that the bills work hand in hand," an aide told RAW STORY adding that, though Specter's bill does not make judicial review mandatory, "it makes it optional."

Specter's bill, written as a result of that threat, makes concessions to the White House that go beyond Feinstein's legislation, which itself represents a diminution of the 1978 FISA statutes. FISA, for instance, allows 15 days of warrantless surveillance in the event of a declaration of war.

Senator Feinstein's bill extends that allowance to include the 15 days after a Congressional authorization of the use of force. Senator Specter's bill deletes the exception altogether.

"Basically," one aide told RAW STORY, "the White House said, 'you can trust us, you have our word that we will submit the program for judicial review. Just don't make it mandatory for us.'"

Senator Feinstein has come out against the new legislation, intimating that it would legalize the NSA program that was recently declared unconstitutional by a federal judge in Michigan. If passed by Congress, Specter's bill could potentially influence the outcome of White House appeals that may ultimately put the program before the Supreme Court.

In an op-ed cowritten with Senator Feingold in the San Francisco Chronicle, Senator Feinstein said, "every time the Supreme Court has confronted a statute limiting the commander-in-chief's authority, it has upheld the statute."

Feinstein continued:

"Congress explicitly banned wiretapping individuals in the United States without a court order, except in limited circumstances such as emergencies, when it passed FISA in 1978. That means the president's power to wiretap Americans without a warrant would be viewed very skeptically by the Supreme Court. If Congress were to pass Specter's bill, however, the legal analysis would be much more deferential to the president. By repealing the ban on wiretapping without a warrant... Congress would help the president make his case."

Senator Specter, who unlike Senators Feingold and Feinstein does not sit on the Intelligence committee, and who therefore is privy to less information about the NSA program, had been critical of its apparent violation of FISA in the past.

When asked at a press conference recently if it was frustrating to now be in a position to write legislation for the courts without knowing the details of the wiretapping program, he responded, "Is it frustrating? Yes, but I'm used to that... From the very start, I said, I don't have to know what the program is, but the court has to know what the program is. There has to be judicial review before you can wiretap. That's been the tradition."