

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Foreign Intelligence Surveillance Law Threatens Americans' Privacy Rights, TCP Warns

Watchdog Group Says FISA Amendments Act 'Raises Serious Constitutional Concerns,' Must Be Changed

WASHINGTON, D.C. -- A law that allows the federal government to gather foreign intelligence by monitoring international phone calls and emails without first getting a court's approval is threatening the rights of Americans and must be changed before Congress renews it, a bipartisan constitutional watchdog group warns.

While very little is publicly known about how the 2008 FISA Amendments Act has been implemented, or about the scope of the information that the National Security Agency has collected under it, what is known "raises serious questions about the Act's impact on privacy rights," The Constitution Project (TCP) says in a [report released today](#).

"The FISA Amendments Act raises serious constitutional concerns," said Sharon Bradford Franklin, TCP's senior counsel. "Congress should continue to press the intelligence community for more information about how the law is being used and should make changes in the law necessary to safeguard individual rights before reauthorizing it," she said.

In contrast to the original Foreign Intelligence Surveillance Act of 1978, the 2008 law allows the government to conduct broad programmatic surveillance, enabling officials to intercept Americans' conversations without a warrant whenever they communicate with a foreign surveillance target. Once these potentially numerous communications have been collected, the intelligence agencies are then free to comb through them at will to find information on specific Americans, even when there is no suspicion that they have engaged in an illegal act.

According to TCP, the current law does not contain sufficient limits on this expanded

power, which threatens constitutionally-guaranteed rights. The law is set to expire at the end of the year, and Congress is currently considering whether to extend it and for how long.

The report recommends Congress amend the law to include: more robust judicial review of surveillance authorizations by the Foreign Intelligence Surveillance Court to ensure they are focused on foreign intelligence gathering; a requirement that the intelligence agencies obtain a warrant before searching the collected data for information on a specific U.S. citizen or anyone otherwise legally in the United States; and increased oversight and reporting of the intelligence community's use of the law.

The report and its recommendations are endorsed by 22 policy experts, former government officials and legal practitioners from across the ideological spectrum, including former Foreign Intelligence Surveillance Court Judge James Robertson, former GOP Congressmen Asa Hutchinson and Bob Barr, and former high-ranking CIA officials Mary McCarthy and Paul Pillar.

All 22 experts are members of TCP's Liberty and Security Committee, co-chaired by Georgetown University law professor David Cole and David Keene, the former chair of the American Conservative Union.

The report, including a full list of signatories, is available on [TCP's website](#).

[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.



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