

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide a complete substitute.

**IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.**

**S. 2453**

To establish procedures for the review of electronic  
surveillance programs.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by \_\_\_\_\_ to the amend-  
ment (No. \_\_\_\_\_) proposed by Mr. SPECTER (for himself,  
\_\_\_\_\_)

Viz:

1       In lieu of the matter proposed to be inserted, insert  
2 the following:

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “National Security Sur-  
5 veillance Act of 2006”.

6 **SEC. 2. FINDINGS.**

7       Congress finds the following:

8           (1) After the terrorist attacks of September 11,  
9       2001, President Bush authorized the National Secu-

1        rity Agency to intercept communications between  
2        people inside the United States, including American  
3        citizens, and terrorism suspects overseas.

4            (2) One of the lessons learned from September  
5        11, 2001, is that the enemies who seek to greatly  
6        harm and terrorize our Nation utilize technologies  
7        and techniques that defy conventional law enforce-  
8        ment practices.

9            (3) For days before September 11, 2001, the  
10        Federal Bureau of Investigation suspected that con-  
11        fessed terrorist Zacarias Moussaoui was planning to  
12        hijack a commercial plane. The Federal Bureau of  
13        Investigation, however, could not meet the require-  
14        ments to obtain a traditional criminal warrant or an  
15        order under the Foreign Intelligence Surveillance  
16        Act of 1978 to search his laptop computer. Report  
17        of the 9/11 Commission 273–76.

18            (4) The President, as the constitutional officer  
19        most directly responsible for protecting the United  
20        States from attack, requires the ability and means  
21        to detect and track an enemy that can master and  
22        exploit modern technology.

23            (5) It is equally essential, however, that in pro-  
24        tecting us against our enemies, the President does  
25        not compromise the very civil liberties that he seeks

1 to safeguard. As Justice Hugo Black observed, “The  
2 President’s power, if any, to issue [an] order must  
3 stem either from an Act of Congress or from the  
4 Constitution itself.” *Youngstown Sheet & Tube Co.*  
5 *v. Sawyer*, 343 U.S. 579, 585 (1952) (opinion by  
6 Black, J.). Similarly, in 2004, Justice Sandra Day  
7 O’Connor explained in her plurality opinion for the  
8 Supreme Court in *Hamdi v. Rumsfeld*: “We have  
9 long since made clear that a state of war is not a  
10 blank check for the President when it comes to the  
11 rights of the Nation’s citizens.” *Hamdi v. Rumsfeld*,  
12 542 U.S. 507, 536 (2004) (citations omitted).

13 (6) When deciding issues of national security, it  
14 is in our Nation’s best interest that, to the extent  
15 feasible, all 3 branches of the Federal Government  
16 should be involved. This helps guarantee that elec-  
17 tronic surveillance programs do not infringe on the  
18 constitutional rights of Americans, while at the same  
19 time ensuring that the President has all the powers  
20 and means necessary to detect and track our en-  
21 emies and protect our Nation from attack.

22 (7) As Justice Sandra Day O’Connor explained  
23 in her plurality opinion for the Supreme Court in  
24 *Hamdi v. Rumsfeld*, “Whatever power the United  
25 States Constitution envisions for the Executive in its

1 exchanges with other nations or with enemy organi-  
2 zations in times of conflict, it most assuredly envi-  
3 sions a role for all 3 branches when individual lib-  
4 erties are at stake.” Hamdi v. Rumsfeld, 542 U.S.  
5 507, 536 (2004) (citations omitted).

6 (8) Similarly, Justice Jackson famously ex-  
7 plained in his Youngstown concurrence: “When the  
8 President acts pursuant to an express or implied au-  
9 thorization of Congress, his authority is at its max-  
10 imum, for it includes all that he possesses in his own  
11 right plus all that Congress can delegate... When  
12 the President acts in absence of either a congres-  
13 sional grant or denial of authority, he can only rely  
14 upon his own independent powers, but there is a  
15 zone of twilight in which he and Congress may have  
16 concurrent authority, or in which its distribution is  
17 uncertain. Therefore, congressional inertia, indiffer-  
18 ence or quiescence may sometimes, at least as a  
19 practical matter, enable, if not invite, measures on  
20 independent presidential responsibility... When the  
21 President takes measures incompatible with the ex-  
22 pressed or implied will of Congress, his power is at  
23 its lowest ebb, for then he can rely only upon his  
24 own constitutional powers minus any constitutional  
25 powers of Congress over the matter. Courts can sus-

1       tain exclusive Presidential control in such a case  
2       only by disabling the Congress from acting upon the  
3       subject.” *Youngstown Sheet & Tube Co. v. Sawyer*,  
4       343 U.S. 579, 635–38 (1952) (Jackson, J., concur-  
5       ring).

6           (9) Congress clearly has the authority to enact  
7       legislation with respect to electronic surveillance pro-  
8       grams. The Constitution provides Congress with  
9       broad powers of oversight over national security and  
10      foreign policy, under article I, section 8 of the Con-  
11      stitution of the United States, which confers on Con-  
12      gress numerous powers, including the powers—

13           (A) “To declare War, grant Letters of  
14      Marque and Reprisal, and make Rules con-  
15      cerning Captures on Land and Water”;

16           (B) “To raise and support Armies”;

17           (C) “To provide and maintain a Navy”;

18           (D) “To make Rules for the Government  
19      and Regulation of the land and naval Forces”;

20           (E) “To provide for calling forth the Mili-  
21      tia to execute the Laws of the Union, suppress  
22      Insurrections and repel Invasions”; and

23           (F) “To provide for organizing, arming,  
24      and disciplining the Militia, and for governing

1           such Part of them as may be employed in the  
2           Service of the United States”.

3           (10) While Attorney General Alberto Gonzales  
4           explained that the executive branch reviews the elec-  
5           tronic surveillance program of the National Security  
6           Agency every 45 days to ensure that the program is  
7           not overly broad, it is the belief of Congress that ap-  
8           proval and supervision of electronic surveillance pro-  
9           grams should be conducted outside of the executive  
10          branch, by the article III court established under  
11          section 103 of the Foreign Intelligence Surveillance  
12          Act of 1978 (50 U.S.C. 1803). It is also the belief  
13          of Congress that it is appropriate for an article III  
14          court to pass upon the constitutionality of electronic  
15          surveillance programs that may implicate the rights  
16          of Americans.

17          (11) The Foreign Intelligence Surveillance  
18          Court is the proper court to approve and supervise  
19          classified electronic surveillance programs because it  
20          is adept at maintaining the secrecy with which it  
21          was charged and it possesses the requisite expertise  
22          and discretion for adjudicating sensitive issues of  
23          national security.

24          (12) In 1975, then-Attorney General Edward  
25          Levi, a strong defender of executive authority, testi-

1       fied that in times of conflict, the President needs the  
2       power to conduct long-range electronic surveillance  
3       and that a foreign intelligence surveillance court  
4       should be empowered to issue special approval orders  
5       in these circumstances.

6           (13) This Act clarifies and definitively estab-  
7       lishes that the Foreign Intelligence Surveillance  
8       Court has the authority to review electronic surveil-  
9       lance programs and pass upon their constitu-  
10      tionality. Such authority is consistent with well-es-  
11      tablished, longstanding practices.

12          (14) The Foreign Intelligence Surveillance  
13      Court already has broad authority to approve sur-  
14      veillance of members of international conspiracies, in  
15      addition to granting warrants for surveillance of a  
16      particular individual under sections 104, 105, and  
17      402 of the Foreign Intelligence Surveillance Act of  
18      1978 (50 U.S.C. 1804, 1805, and 1842).

19          (15) Prosecutors have significant flexibility in  
20      investigating domestic conspiracy cases. Courts have  
21      held that flexible warrants comply with the fourth  
22      amendment to the Constitution of the United States  
23      when they relate to complex, far-reaching, and  
24      multifaceted criminal enterprises like drug conspir-  
25      acies and money laundering rings. The courts recog-

1       nize that applications for search warrants must be  
2       judged in a common sense and realistic fashion, and  
3       the courts permit broad warrant language where,  
4       due to the nature and circumstances of the inves-  
5       tigation and the criminal organization, more precise  
6       descriptions are not feasible.

7           (16) Federal agents investigating international  
8       terrorism by foreign enemies are entitled to tools at  
9       least as broad as those used by law enforcement offi-  
10      cers investigating domestic crimes by United States  
11      citizens. The Supreme Court, in the “Keith Case”,  
12      United States v. United States District Court for  
13      the Eastern District of Michigan, 407 U.S. 297  
14      (1972), recognized that the standards and proce-  
15      dures used to fight ordinary crime may not be appli-  
16      cable to cases involving national security. The Court  
17      recognized that national “security surveillance may  
18      involve different policy and practical considerations  
19      from the surveillance of ordinary crime” and that  
20      courts should be more flexible in issuing warrants in  
21      national security cases. United States v. United  
22      States District Court for the Eastern District of  
23      Michigan, 407 U.S. 297, 322 (1972).

24           (17) By authorizing the Foreign Intelligence  
25      Surveillance Court to review electronic surveillance



1 programs, Congress preserves the ability of the  
2 President to use the necessary means to guard our  
3 national security, while also protecting the civil lib-  
4 erties and constitutional rights that we cherish.

5 **SEC. 3. DEFINITIONS.**

6 The Foreign Intelligence Surveillance Act of 1978  
7 (50 U.S.C. 1801 et seq.) is amended—

8 (1) by redesignating title VII as title IX;

9 (2) by redesignating section 701 as section 901;

10 and

11 (3) by inserting after title VI the following:

12 **“TITLE VII—ELECTRONIC**  
13 **SURVEILLANCE**

14 **“SEC. 701. DEFINITIONS.**

15 “As used in this title—

16 “(1) the terms ‘agent of a foreign power’, ‘At-  
17 torney General’, ‘foreign power’, ‘international ter-  
18 rorism’, ‘minimization procedures’, ‘person’, ‘United  
19 States’, and ‘United States person’ have the same  
20 meaning as in section 101;

21 “(2) the term ‘congressional intelligence com-  
22 mittees’ means the Select Committee on Intelligence  
23 of the Senate and the Permanent Select Committee  
24 on Intelligence of the House of Representatives;

1           “(3) the term ‘electronic communication’ means  
2           any transfer of signs, signals, writing, images,  
3           sounds, data, or intelligence of any nature trans-  
4           mitted in whole or in part by a wire, radio, electro-  
5           magnetic, photoelectronic or photooptical system,  
6           cable, or other like connection furnished or operated  
7           by any person engaged as a common carrier in pro-  
8           viding or operating such facilities for the trans-  
9           mission of communications;

10           “(4) the term ‘electronic surveillance’ means the  
11           acquisition by an electronic, mechanical, or other  
12           surveillance device of the substance of any electronic  
13           communication sent by, received by, or intended to  
14           be received by a United States person who is in the  
15           United States, where there is probable cause to be-  
16           lieve that the surveillance will intercept a commu-  
17           nication in which a United States person in the  
18           United States participating in the communication  
19           has a reasonable expectation of privacy;

20           “(5) the term ‘electronic surveillance program’  
21           means a program to engage in electronic surveil-  
22           lance—

23                   “(A) that has as a significant purpose the  
24                   gathering of foreign intelligence information or  
25                   protecting against international terrorism;

1           “(B) where it is not technically feasible to  
2           name every person or address every location to  
3           be subjected to electronic surveillance;

4           “(C) where effective gathering of foreign  
5           intelligence information requires the flexibility  
6           to begin electronic surveillance immediately  
7           after learning of suspect activity; and

8           “(D) where effective gathering of foreign  
9           intelligence information requires an extended  
10          period of electronic surveillance;

11          “(6) the term ‘foreign intelligence information’  
12          has the same meaning as in section 101 and in-  
13          cludes information necessary to protect against  
14          international terrorism;

15          “(7) the term ‘Foreign Intelligence Surveillance  
16          Court’ means the court established under section  
17          103(a);

18          “(8) the term ‘Foreign Intelligence Surveillance  
19          Court of review’ means the court established under  
20          section 103(b);

21          “(9) the term ‘intercept’ means the acquisition  
22          of the substance of any electronic communication by  
23          a person through the use of any electronic, mechan-  
24          ical, or other device; and

1           “(10) the term ‘substance’ means any informa-  
2           tion concerning the symbols, sounds, words, purport,  
3           or meaning of a communication, and does not in-  
4           clude information identifying the sender, origin, or  
5           recipient of the communication or the date or time  
6           of its transmission.”.

7   **SEC. 4. FOREIGN INTELLIGENCE SURVEILLANCE COURT OF**  
8                   **REVIEW JURISDICTION TO REVIEW ELEC-**  
9                   **TRONIC SURVEILLANCE PROGRAMS.**

10       (a) IN GENERAL.—Title VII of the Foreign Intel-  
11       ligence Surveillance Act of 1978, as amended by section  
12       3, is amended by adding at the end the following:

13   **“SEC. 702. FOREIGN INTELLIGENCE SURVEILLANCE COURT**  
14                   **OF REVIEW JURISDICTION TO REVIEW ELEC-**  
15                   **TRONIC SURVEILLANCE PROGRAMS.**

16       “(a) AUTHORIZATION OF REVIEW.—

17           “(1) INITIAL AUTHORIZATION.—The Foreign  
18       Intelligence Surveillance Court of Review shall have  
19       jurisdiction to issue an order under this title, lasting  
20       not longer than 90 days, that authorizes an elec-  
21       tronic surveillance program to obtain foreign intel-  
22       ligence information or to protect against inter-  
23       national terrorism.

24           “(2) REAUTHORIZATION.—The Foreign Intel-  
25       ligence Surveillance Court of Review shall have juris-

1 diction to reauthorize an electronic surveillance pro-  
2 gram for a period of time not longer than such court  
3 determines to be reasonable.

4 “(b) MANDATORY TRANSFER FOR REVIEW.—

5 “(1) IN GENERAL.—In any case challenging the  
6 legality of an electronic surveillance program in  
7 which the court determines that at least a substan-  
8 tial question has been raised as to whether the com-  
9 munications of the party challenging the legality of  
10 such a program were intercepted pursuant to such  
11 a program and except as provided in paragraph (5),  
12 the court shall transfer the case to the Foreign In-  
13 telligence Surveillance Court of Review.

14 “(2) REVIEW.—Subject to the procedures of  
15 section 106(f), the Foreign Intelligence Surveillance  
16 Court of Review shall have jurisdiction to review the  
17 legality of the electronic surveillance program de-  
18 scribed in paragraph (1). Upon completion of review  
19 pursuant to this paragraph, the Foreign Intelligence  
20 Surveillance Court of Review shall remand the case  
21 to the originating court for further proceedings.

22 “(3) TRANSFER.—The Foreign Intelligence  
23 Surveillance Court of Review may transfer a case  
24 that is subject to its review pursuant to paragraph  
25 (2) to a judge of the Foreign Intelligence Surveil-

1 lance Court for purposes of conducting discovery  
2 into whether the communications of the party chal-  
3 lenging the legality of an electronic surveillance pro-  
4 gram were intercepted pursuant to such a program.

5 “(4) CERTIORARI.—The decision the Foreign  
6 Intelligence Surveillance Court of Review made pur-  
7 suant to paragraph (2) shall be subject to certiorari  
8 review in the United States Supreme Court, and  
9 shall otherwise be binding in all other courts.

10 “(5) DISMISSAL.—A court that is an origi-  
11 nating court subject to paragraph (1) may dismiss  
12 a challenge to the legality of an electronic surveil-  
13 lance program on the merits or based on jurisdic-  
14 tional or procedural reasons.

15 “(c) COMMUNICATIONS SUBJECT TO THIS TITLE.—

16 “(1) IN GENERAL.—The provisions of this title  
17 apply only to interception of the substance of elec-  
18 tronic communications sent by, received by, or in-  
19 tended to be received by a United States person who  
20 is in the United States, where the United States per-  
21 son who is in the United States has a reasonable ex-  
22 pectation of privacy.

23 “(2) EXCLUSION.—The provisions of this title  
24 do not apply to information identifying the sender,  
25 origin, or recipient of the electronic communication

1 or the date or time of its transmission that is cap-  
2 tured without review of the substance of the elec-  
3 tronic communication.

4 “(d) MODIFICATIONS AND APPEAL IN EVENT APPLI-  
5 CATION IS DENIED.—In the event that the Foreign Intel-  
6 ligence Surveillance Court of Review declines to approve  
7 an application under subsection (a)—

8 “(1) the court shall state its reasons in a writ-  
9 ten opinion, which it shall submit to the Attorney  
10 General and to each member of the congressional in-  
11 telligence committees; and

12 “(2) the Attorney General may submit a new  
13 application under section 703 for the electronic sur-  
14 veillance program.

15 “(e) PROCEDURES.—All judicial review conducted  
16 under this title shall be subject to the procedures of sec-  
17 tion 106(f).”.

18 (b) MANDATORY TRANSFER FOR REVIEW OF TER-  
19 RORIST SURVEILLANCE PROGRAM.—

20 (1) TRANSFER.—Unless the Attorney General  
21 has submitted for review pursuant to section 703 of  
22 the Foreign Intelligence Surveillance Act of 1978, as  
23 amended by this Act, the surveillance program that  
24 was described by the Attorney General in his testi-  
25 mony before the Senate Judiciary Committee on

1 February 6, 2006 (also known as the “Terrorist  
2 Surveillance Program”), not later than 45 days after  
3 the date of enactment of this Act, all courts shall  
4 transfer to the Foreign Intelligence Surveillance  
5 Court of Review any case challenging the legality of  
6 the Terrorist Surveillance Program in which the  
7 court determines that at least a substantial question  
8 has been raised as to whether the communications of  
9 the party challenging the legality of that program  
10 were intercepted pursuant to that program.

11 (2) REMAND.—Upon completion of review pur-  
12 suant to this subsection, the Foreign Intelligence  
13 Surveillance Court of Review shall remand the case  
14 to the originating court for further proceedings.

15 (3) TRANSFER.—The Foreign Intelligence Sur-  
16 veillance Court of Review may transfer a case that  
17 is subject to this subsection to a judge of the For-  
18 eign Intelligence Surveillance Court for purposes of  
19 conducting discovery into whether the communica-  
20 tions of the party challenging the legality of the Ter-  
21 rorist Surveillance Program were intercepted pursu-  
22 ant to that program.

23 (4) CERTIORARI.—The decision the Foreign In-  
24 telligence Surveillance Court of Review made pursu-  
25 ant to this subsection shall be subject to certiorari



1 review in the United States Supreme Court, and  
2 shall otherwise be binding in all other courts.

3 (5) DISMISSAL.—A court that is an originating  
4 court subject to this subsection may dismiss a chal-  
5 lenge to the legality of an electronic surveillance pro-  
6 gram on the merits or based on jurisdictional or pro-  
7 cedural reasons.

8 **SEC. 5. APPLICATIONS FOR APPROVAL OF ELECTRONIC**  
9 **SURVEILLANCE PROGRAMS.**

10 Title VII of the Foreign Intelligence Surveillance Act  
11 of 1978, as amended by section 4, is amended by adding  
12 at the end the following:

13 **“SEC. 703. APPLICATIONS FOR APPROVAL OF ELECTRONIC**  
14 **SURVEILLANCE PROGRAMS.**

15 “(a) IN GENERAL.—Each application for approval of  
16 an electronic surveillance program under this title (includ-  
17 ing for reauthorization) shall—

18 “(1) be made by the Attorney General;

19 “(2) include a statement of the authority con-  
20 ferred on the Attorney General by the President of  
21 the United States;

22 “(3) include a statement setting forth the legal  
23 basis for the conclusion by the Attorney General  
24 that the electronic surveillance program is consistent  
25 with the Constitution of the United States;

1           “(4) certify that a significant purpose of the  
2           electronic surveillance program is to gather foreign  
3           intelligence information or to protect against inter-  
4           national terrorism;

5           “(5) certify that the information sought cannot  
6           reasonably be obtained by conventional investigative  
7           techniques or through an application under section  
8           104;

9           “(6) include a statement of the means and  
10          operational procedures by which the electronic sur-  
11          veillance will be executed and effected;

12          “(7) include an explanation of how the elec-  
13          tronic surveillance program is reasonably designed to  
14          ensure that the communications that are intercepted  
15          are communications with—

16               “(A) a foreign power that is engaged in  
17               international terrorism activities or in prepara-  
18               tion thereof;

19               “(B) an agent of a foreign power that is  
20               engaged in international terrorism activities or  
21               in preparation thereof; or

22               “(C) a person reasonably believed to have  
23               communication with or be associated with a for-  
24               eign power that is engaged in international ter-  
25               rorism activities or in preparation thereof or an

1 agent of a foreign power that is engaged in  
2 international terrorism activities or in prepara-  
3 tion thereof ;

4 “(8) include a statement of the proposed mini-  
5 mization procedures;

6 “(9) specify the date that the electronic surveil-  
7 lance program that is the subject of the application  
8 was initiated;

9 “(10) include a description of all previous appli-  
10 cations that have been made under this title involv-  
11 ing the electronic surveillance program in the appli-  
12 cation (including the minimization procedures and  
13 the means and operational procedures proposed) and  
14 the decision on each previous application; and

15 “(11) include a statement of facts concerning  
16 the implementation of the electronic surveillance pro-  
17 gram described in the application, including, for any  
18 period of operation of the program authorized not  
19 less than 90 days prior to the date of submission of  
20 the application—

21 “(A) the minimization procedures imple-  
22 mented;

23 “(B) the means and operational procedures  
24 by which the surveillance was executed and ef-  
25 fected;

1                   “(C) the number of communications inter-  
2                   cepted by the electronic surveillance program;

3                   “(D) the identity, if known, of any United  
4                   States person whose communications sent or re-  
5                   ceived in the United States were intercepted by  
6                   the electronic surveillance program; and

7                   “(E) a description of the foreign intel-  
8                   ligence information obtained through the elec-  
9                   tronic surveillance program.

10           “(b) ADDITIONAL INFORMATION.—The Foreign In-  
11           telligence Surveillance Court of Review may require the  
12           Attorney General to furnish such other information as  
13           may be necessary to make a determination under section  
14           704.”.

15   **SEC. 6. APPROVAL OF ELECTRONIC SURVEILLANCE PRO-**  
16                   **GRAMS.**

17           Title VII of the Foreign Intelligence Surveillance Act  
18           of 1978, as amended by section 5, is amended by adding  
19           at the end the following:

20   **“SEC. 704. APPROVAL OF ELECTRONIC SURVEILLANCE**  
21                   **PROGRAMS.**

22           “(a) NECESSARY FINDINGS.—Upon receipt of an ap-  
23           plication under section 703, the Foreign Intelligence Sur-  
24           veillance Court of Review shall enter an ex parte order

1 as requested, or as modified, approving the electronic sur-  
2 veillance program if it finds that—

3 “(1) the President has authorized the Attorney  
4 General to make the application for electronic sur-  
5 veillance for foreign intelligence information;

6 “(2) approval of the electronic surveillance pro-  
7 gram in the application is consistent with the Con-  
8 stitution of the United States;

9 “(3) the electronic surveillance program is rea-  
10 sonably designed to ensure that the communications  
11 that are intercepted are communications with—

12 “(A) a foreign power that is engaged in  
13 international terrorism activities or in prepara-  
14 tion thereof;

15 “(B) an agent of a foreign power that is  
16 engaged in international terrorism activities or  
17 in preparation thereof; or

18 “(C) a person reasonably believed to have  
19 communication with or be associated with a for-  
20 eign power that is engaged in international ter-  
21 rorism activities or in preparation thereof or an  
22 agent of a foreign power that is engaged in  
23 international terrorism activities or in prepara-  
24 tion thereof;

1           “(4) the proposed minimization procedures  
2       meet the definition of minimization procedures  
3       under section 101(h); and

4           “(5) the application contains all statements and  
5       certifications required by section 703.

6       “(b) CONSIDERATIONS.—In considering the constitu-  
7       tionality of the electronic surveillance program under sub-  
8       section (a), the Foreign Intelligence Surveillance Court of  
9       Review may consider—

10           “(1) whether the electronic surveillance pro-  
11       gram has been implemented in accordance with the  
12       proposal by the Attorney General by comparing—

13           “(A) the minimization procedures proposed  
14       with the minimization procedures actually im-  
15       plemented;

16           “(B) the nature of the information sought  
17       with the nature of the information actually ob-  
18       tained; and

19           “(C) the means and operational procedures  
20       proposed with the means and operational proce-  
21       dures actually implemented;

22           “(2) the number of communications intercepted  
23       by the electronic surveillance program and the  
24       length of time the electronic surveillance program  
25       has been in existence; and

1           “(3) whether foreign intelligence information  
2           has been obtained through the electronic surveillance  
3           program.”.

4   **SEC. 7. CONGRESSIONAL OVERSIGHT.**

5           Title VII of the Foreign Intelligence Surveillance Act  
6   of 1978, as amended by section 6, is amended by adding  
7   at the end the following:

8   **“SEC. 705. CONGRESSIONAL OVERSIGHT.**

9           “(a) IN GENERAL.—Not less often than every 180  
10   days, the Attorney General shall submit to every member  
11   of the congressional intelligence committees a written re-  
12   port in classified form on the activities during the previous  
13   180-day period under any electronic surveillance program  
14   authorized under this title.

15          “(b) CONTENTS.—Each report submitted under sub-  
16   section (a) shall provide, with respect to the previous 180-  
17   day period, a description of—

18                  “(1) the minimization procedures implemented;

19                  “(2) the means and operational procedures by  
20   which the surveillance was executed and effected;

21                  “(3) the number of communications subjected  
22   to the electronic surveillance program;

23                  “(4) the identity, if known, of any United  
24   States person whose communications sent or re-

1       ceived in the United States were intercepted by the  
2       electronic surveillance program; and

3               “(5) a description of the foreign intelligence in-  
4       formation obtained through the electronic surveil-  
5       lance program.

6       “(c) RULE OF CONSTRUCTION.—Nothing in this title  
7       shall be construed to limit the authority or responsibility  
8       of any committee of either House of Congress to obtain  
9       such information as such committee may need to carry  
10      out its respective functions and duties.”.

11   **SEC. 8. EMERGENCY AUTHORIZATION.**

12       Section 105(f) of the Foreign Intelligence Surveil-  
13      lance Act of 1978 (50 U.S.C. 1805(f)) is amended by  
14      striking “72 hours” each place such term appears and in-  
15      serting “7 days”.

16   **SEC. 9. CLARIFICATION OF THE FOREIGN INTELLIGENCE**  
17               **SURVEILLANCE ACT OF 1978.**

18       (a) IN GENERAL.—The Foreign Intelligence Surveil-  
19      lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended  
20      by inserting after title VII, as amended by this Act, the  
21      following:



**“TITLE VIII—EXECUTIVE  
AUTHORITY**

**“SEC. 801. EXECUTIVE AUTHORITY.**

“Nothing in this Act shall be construed to limit the constitutional authority of the President to gather foreign intelligence information or monitor the activities and communications of any person reasonably believed to be associated with a foreign enemy of the United States.”.

(b) REPEAL.—Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are repealed.

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—

(A) TITLE 18.—Section 2511(2) of title 18, United States Code, is amended—

(i) in paragraph (e), by striking “, as defined in section 101” and all that follows through the end of the paragraph and inserting the following: “under the constitutional authority of the executive or the Foreign Intelligence Surveillance Act of 1978.”; and

(ii) in paragraph (f), by striking “from international or foreign communications,” and all that follows through the end

1 of the paragraph and inserting “that is  
2 permitted under a Federal statute or the  
3 Constitution of the United States.”.

4 (B) FISA.—Section 109(a) of the Foreign  
5 Intelligence Surveillance Act of 1978 (50  
6 U.S.C. 1809(a)) is amended—

7 (i) in paragraph (1), by inserting “or  
8 under the constitutional authority of the  
9 executive” after “authorized by statute”;  
10 and

11 (ii) in paragraph (2), by inserting “or  
12 executed under the constitutional authority  
13 of the executive” after “authorized by stat-  
14 ute”.

15 (2) RETROACTIVE EFFECT.—The amendments  
16 made by paragraph (1) shall be construed to have  
17 the same effective date as the Foreign Intelligence  
18 Surveillance Act of 1978.

19 **SEC. 10. CONFORMING AMENDMENT.**

20 The table of contents for the Foreign Intelligence  
21 Surveillance Act of 1978 is amended by striking the items  
22 related to title VII and section 701 and inserting the fol-  
23 lowing:

“TITLE VII—ELECTRONIC SURVEILLANCE

“Sec. 701. Definitions.

“Sec. 702. Foreign Intelligence Surveillance Court of Review jurisdiction to re-  
view electronic surveillance programs.

“Sec. 703. Applications for approval of electronic surveillance programs.

“Sec. 704. Approval of electronic surveillance programs.

“Sec. 705. Congressional oversight.

“TITLE VIII—EXECUTIVE AUTHORITY

“Sec. 801. Executive authority.

“TITLE IX—EFFECTIVE DATE

“Sec. 901. Effective date.”.