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Hoekstra Evaluates Democrat's FISA Proposal

WASHINGTON, D.C. – U.S. Rep. Pete Hoekstra, R-Mich., the top Republican on the House Intelligence Committee, issued the following critique of the Democrat's latest proposal to not fix the Foreign Intelligence Surveillance Act:

WHY THE DEMOCRAT FISA PROPOSAL ISN'T SERIOUS AND WON'T FIX THE TERRORIST LOOPHOLE

We Should Be Finding Foreign Terrorists, Not Giving Them New Legal Rights

Permanent Select Committee on Intelligence Republicans
Pete Hoekstra, Ranking Republican

- **A STEP BACKWARD**: The new FISA proposal released by Democrats today is not a serious counterproposal to the significant concessions offered by Republicans yesterday. It significantly calls into question whether Democrats are trying to walk away from urgently needed legislation to close the intelligence gap and are putting the satisfaction of partisan party extremists ahead of national security.
- **A LEGAL LOOPHOLE FOR RADICAL JIHADISTS**: The Foreign Intelligence Surveillance Act (FISA) was designed three decades ago to protect Americans from improper government surveillance within the United States. But now, the FISA process is requiring a choking volume of legal paperwork to obtain **foreign** intelligence on **foreign** persons in **foreign** countries, restraining the intelligence community from properly defending us against attack.

This loophole was never intended under the law and only exists because FISA has failed to keep pace with modern technology.

- **THE PROPOSAL EXPANDS THE LOOPHOLE**: Instead of **closing** the FISA loophole to find foreign terrorists, the Democrat proposal would **expand** it to intentionally give new legal protections to radical jihadists overseas. It would require

the FISA court to conduct a new programmatic approval process for the Intelligence Community to conduct **foreign** intelligence collection.

This would further hamstring America's intelligence professionals. Indeed, the Intelligence Committee has received indications that FISA Court judges may not believe that ongoing judicial review of **foreign** communications of **foreign** terrorists is desirable.

- **THE PROPOSAL DOESN'T SOLVE THE PROBLEM:** The Director of National Intelligence has said that we face an intelligence gap in which “we are missing a significant portion of what we should be getting” to protect the American people. The Democrat proposal to require a single blanket, “programmatic” approval by the FISA court of foreign surveillance activities does nothing to solve the fundamental problem, and could further delay vital intelligence collection.

It is possible that judges of the FISA court may not consider a blanket, “programmatic” approval of surveillance constitutional. If so, this method of closing the intelligence gap would not be approved at all, continuing the current unacceptable situation during the August congressional recess.

Finally, the bill would require the Department of Justice to conduct an audit of the intelligence community every 90 days. This potentially endangers intelligence sources and methods and continues requirements on intelligence analysts to produce voluminous paperwork instead of analyze threats from radical jihadists.

- **THE PROPOSAL DOESN'T ADDRESS THREATS FROM FOREIGN POWERS:** The Democrat proposal would only apply to collection of foreign intelligence relating to international terrorism—it wouldn't address intelligence collection on more traditional threats from foreign adversaries such as Iran and North Korea. This provision could significantly hamper our ability to collect intelligence to protect American troops in Iraq and in other countries abroad.
- **THE PROPOSAL DOES NOTHING TO ENHANCE CIVIL LIBERTIES PROTECTION:** The intelligence gap at issue deals entirely with the collection of **foreign** intelligence targeting **foreign** persons in **foreign** countries that was never intended to come under FISA in the first place. An order and probable cause determination from the FISA Court is, and still would be, required to conduct any surveillance that would target an American. Director McConnell has stated on many occasions that he is committed to this principle for any legislation addressing FISA. Any incidental collection involving Americans would still be subject to the extensive minimization procedures that safeguard civil liberties.

Those extensive existing protections aside, the Democrat proposal does nothing to further enhance civil liberties. The programmatic approval it would require from the FISA court would provide no protection or court review for any individual surveillance.

The proposal also attempts to address this issue by requiring surveillance to be stopped and a court order obtained if a targeted foreign terrorist has a number of communicates with persons (including other foreign terrorists) in the United States. But this collection is clearly necessary and appropriate. In the criminal context, warrants targeting Mafia kingpins obviously do and should include communications with their associates without separate court orders. And a FISA order is still required to target a U.S. person.

This provision is also poorly drafted and could be construed in a way to recreate the exact problems that have caused the surveillance gap in the first place, or even worse add significant new barriers to the work of intelligence professionals.

- **AL QAEDA ISN'T TAKING AN AUGUST RECESS:** The “fig-leaf” Democrat proposal must be rejected and meaningful action must be taken to close the intelligence gap immediately.