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Statement by the Press Secretary on FISA

There is an old rhetorical tactic in Washington: you repeat something often enough, regardless of whether it's true, and hope people will start to believe it. [White House News](#) This has been the preferred tactic of many Democrats involved in the FISA debate, and the Democratic chairmen of the House and Senate Intelligence and Judiciary committees employ it again in an op-ed published today in the Washington Post.

They claim that the Administration is using "scare tactics" and they claim that there is no cost to Congress' failure to pass long-term FISA modernization that will preserve the vital powers provided by the Protect America Act (PAA). Notably, the most critical point of dispute in the debate - the need for retroactive liability protection for private partners alleged to have assisted the Nation after September 11 -- barely even registers in their op-ed.

The President has called on Congress to pass the bipartisan Senate bill, which would improve on the PAA by giving our intelligence professionals the tools they need to protect the Nation for the long term and by providing liability protection for companies alleged to have assisted in defending the Nation after 9/11. The House ignored this call and allowed the PAA to expire without replacing it with the bipartisan Senate bill. The President has listened to the judgment of these same professionals that the absence of long-term legislation creates uncertainty that poses a risk to those tools and could lead to the loss of intelligence information and that further short-term extensions of the PAA do not solve the problem. Stating that fact is not a scare tactic - it reflects the considered judgment of the intelligence community, whose principal concern is not politics, but doing their jobs.

That the failure to enact long-term FISA modernization legislation is costly and dangerous is beyond any serious dispute. The Intelligence Community lost intelligence information last week because of the uncertainty caused by Congress' failure to act. It is unlikely that this information can ever be recovered. Our private sector partners have serious concerns about the multibillion-dollar lawsuits some companies are currently facing only because they are believed to have helped defend the country after 9/11. These lawsuits are abusive and, if they are allowed to proceed, would serve only to line the pockets of class-action trial lawyers. The private sector has similar concerns that, without statutory protection provided by long-term FISA modernization legislation, they may be exposing themselves to additional abusive lawsuits by cooperating in current efforts. Very late last week the Department of Justice and the Office of the Director of National Intelligence were able to secure the continued cooperation of private partners - but only reluctantly, and with the possibility that they may discontinue their cooperation if the uncertainty persists.

The authors of the op-ed reject the judgment of the Intelligence Community and say that we can and should revert back to the old FISA process - a process that everyone agrees led to delays and at times the inability to collect certain intelligence - even from foreign targets on foreign soil. In other words, the authors would have us revert back to the very same conditions that created dangerous intelligence gaps in the past and that gave rise to the need for the PAA reforms in the first place. The PAA authorities - which are preserved and improved on in important ways in the bipartisan Senate bill - were designed to give the intelligence community the speed and agility needed for today's threats. FISA requires the intelligence community to make a finding of probable cause, even if the target of surveillance is not in the United States. Probable cause, a standard for protecting the civil liberties of American citizens, was never intended to be expanded to protect the rights of foreign terrorists overseas. Showing probable cause often takes time, is sometimes impossible, and makes intelligence officers spend valuable time convincing lawyers that this standard is met, rather than doing their most important task - hunting down terrorists and other foreign threats.

Furthermore, the cooperation of private entities in our intelligence operations is not ancillary - it is integral to our operations and critically essential. As Director McConnell has explained, there would be no effective surveillance without the cooperation of private partners. The grave concerns raised by our private partners, combined with the House Democratic leadership's determination to block liability protection, seriously jeopardizes cooperation in the

future. This is not a risk we should be taking.

To assert that the Administration has not worked cooperatively with Congress on legislation is disingenuous at best. Officials from DoJ and ODNI have spent countless hours working with the Senate over the past two years, consulting and providing technical assistance; officials have repeatedly testified both in public and classified hearings; the Administration has provided unprecedented access to classified documents in order to accommodate the requests of congressional committees; and the Administration agreed to a six-month limit on the PAA and an additional 15-day extension to allow time to perfect and pass a new bill. The fruit of this extensive level of cooperation is a thoughtful, bipartisan Senate bill that earned a super-majority in the Senate, passing by a 68-29 vote.

By contrast, Democratic leaders in the House went their own way and barely consulted with the Intelligence Community. As a result of their commitment to pursuing their political goals rather than listening to the advice of intelligence professionals, they have produced a dangerously flawed and unacceptable bill containing provisions that failed when debated as amendments in the Senate, and no retroactive liability protection for companies alleged to have assisted in defending the Nation after 9/11.

Attempting to "reconcile" the starkly different views of the strong, bipartisan majority of the Senate with the irresponsible, minority position House Democratic leaders have taken to appease trial lawyers and MoveOn.org is probably impossible and certainly unnecessary. Given the stated views of both Republicans and Democrats, if House leaders would bring the Senate bill up for a vote, it would pass with a bipartisan majority.

Pointing out the cost of Congress' failure to act is not a "scare tactic" and it is not a "wedge issue". Instead it is a sober, transparent assessment of the terrorist threat our nation faces, and the critical importance of the needs of our intelligence community to combat that threat. Unless this threat is taken more seriously in Congress, the ability to obtain the intelligence we need will be at risk, and with it our national security.

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