

109TH CONGRESS
2^D SESSION

S. RES. 350

Expressing the sense of the Senate that Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force does not authorize warrantless domestic surveillance of United States citizens.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2006

Mr. LEAHY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Expressing the sense of the Senate that Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force does not authorize warrantless domestic surveillance of United States citizens.

Whereas the Bill of Rights to the United States Constitution was ratified 214 years ago;

Whereas the Fourth Amendment to the United States Constitution guarantees to the American people the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”;

Whereas the Fourth Amendment provides that courts shall issue “warrants” to authorize searches and seizures, based upon probable cause;

Whereas the United States Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a “search and seizure” within the meaning of the Fourth Amendment;

Whereas Congress was concerned about the United States Government unconstitutionally spying on Americans in the 1960s and 1970s;

Whereas Congress enacted the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), commonly referred to as “FISA”, to provide a legal mechanism for the United States Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence;

Whereas Congress expressly enacted the Foreign Intelligence Surveillance Act of 1978, and specified provisions of the Federal criminal code (including those governing wiretaps for criminal investigations), as the “exclusive means by which domestic electronic surveillance ... may be conducted” pursuant to law (18 U.S.C. 2511(2)(f));

Whereas the Foreign Intelligence Surveillance Act of 1978 establishes the Foreign Intelligence Surveillance Court (commonly referred to as the “FISA court”), and the procedures by which the United States Government may obtain a court order authorizing electronic surveillance (commonly referred to as a “FISA warrant”) for foreign intelligence collection in the United States;

Whereas Congress created the FISA court to review wire-tapping applications for domestic electronic surveillance to be conducted by any Federal agency;

Whereas the Foreign Intelligence Surveillance Act of 1978 provides specific exceptions that allow the President to authorize warrantless electronic surveillance for foreign intelligence purposes (1) in emergency situations, provided an application for judicial approval from a FISA court is made within 72 hours; and (2) within 15 calendar days following a declaration of war by Congress;

Whereas the Foreign Intelligence Surveillance Act of 1978 makes criminal any electronic surveillance not authorized by statute;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended over time by Congress since the September 11, 2001, attacks on the United States;

Whereas President George W. Bush has confirmed that his administration engages in warrantless electronic surveillance of Americans inside the United States and that he has authorized such warrantless surveillance more than 30 times since September 11, 2001; and

Whereas Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and House Joint Resolution 64 (107th Congress), as adopted by the House of Representatives on September 14, 2001, together enacted as the Authorization for Use of Military Force (Public Law 107–40), to authorize military action against those responsible for the attacks on September 11, 2001, do not contain legal authorization nor approve of domestic electronic surveillance, including domestic

electronic surveillance of United States citizens, without a judicially approved warrant: Now, therefore, be it

1 *Resolved*, That Senate Joint Resolution 23 (107th
2 Congress), as adopted by the Senate on September 14,
3 2001, and subsequently enacted as the Authorization for
4 Use of Military Force (Public Law 107–40) does not au-
5 thorize warrantless domestic surveillance of United States
6 citizens.

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