

# FISA FIGHT RECONVENES AT 2

The Senate will take up the FISA fight again today at 2:00, now missing not just the three presidential candidates, but possibly others campaigning for their colleagues. Among the many ways last week's compromise on FISA really hurt our cause, scheduling the vote for the day before Super Tuesday is at the top of the list. [Update: there will not be a FISA related vote today, we'll have debate. But I still doubt we're going to hold off the votes until Wednesday, when everyone will be back from Super Tuesday.]

cboldt has a slightly updated post on what the Senate will be voting on here. By far his most important update is this:

The Senate has formally signaled that it will not request a conference with the House, to resolve differences. At this point of the process on the FISA bill, a conference request is premature because the House has yet to weigh in on the Senate's proposed legislation. While the two bills are different, the formality of disagreement is presently absent. See Riddicks – Conferences and Conference Reports, in particular pp 467-8, which describe the interaction between both chambers.

For those of you hoping we'll restore some of the protections from the House Bill (sorry, no pun intended) during conference, I take this to mean that we may well never get to conference, and therefore may never get to improve on the Senate bill once the Senate passes it.

So it behooves us to call our Senators and lobby for them to improve this bill now, in the Senate. When you call, I suggest you tell them to:

- Oppose telecom immunity. While it's unlikely that we'll get the 51 majority vote to pass Dodd and Feingold's amendment, pushing hard against immunity may convince them to support one or both of the compromise immunity amendments (I just learned this one requires majority vote of those voting, not 51).
- Support court review of minimization procedures. Right now, the Administration is obligated to tell the FISA Court how they intend to make sure your data and mine isn't rounded up in un-related searches and then used. But they don't have to prove to the Court that they're doing what they say they'll be doing. Encourage your Senators to support Whitehouse's amendment giving the FISA Court review of whether the Administration is doing what they say they're doing. As we know, more often than not, they're NOT doing what they say. Minimization is one of the things that Republicans consistently say

they support, so if your Senator(s) is a Republican, remind him or her that this is really about protecting Americans' civil liberties and privacy.

- Make FISA the exclusive means for electronic surveillance. The original FISA law made it clear that, if you want to do wiretapping, you've got to make sure it complies with FISA. The language to that effect in the bill currently is quite weak; the Republicans don't want that language because they're afraid it'll hurt Mr. Article II's feelings. We really need to ensure the law states clearly that FISA is the law and George Bush has to follow the law. So support DiFi's amendment stating that clearly. This amendment needs 60 votes, but it already has three Republican co-sponsors (Hagel, Snowe, and Specter), so it should be doable.

Update: Russ Feingold explains to Newsweek how he thinks this FISA bill will turn out:

What's the status of your amendments?  
It's been suggested that in the consent agreement to allow debate, Republicans are allowing straight majority votes

only on amendments they know will fail—including yours.

We're trying to make a record here, and to show who voted for what. My prediction is this thing will go through; it will be challenged and go through the courts. And eventually a Supreme Court with something like seven Republican-appointed judges will strike down the worst parts of it. This is a long-term battle to protect the rights of the American people.

Sadly, I agree that for many of these votes, we're just creating a record so, once the law has been overturned in substantial part (as the PATRIOT Act has been, which Feingold also led the fight against), we can see who really fought for our Constitution.

But I disagree with Feingold on one key point. This will almost certainly take more than a year to wind through the Courts. So I hope Feingold is wrong that there will then be seven Republican appointed judges.

Anyway, here are some reminder phone numbers:

- Bayh (202) 224-5623 phone, (202) 228-1377 fax
- Byrd (202) 224-3954 phone, (202) 228-0002 fax
- Carper (202) 224-2441 phone, (202) 228-2190 fax
- Feinstein (202) 224-3841 phone, (202) 228-3954 fax
- Inouye (202) 224-3934 phone, (202) 224-6747 fax
- Johnson (202) 224-5842 phone, (605) 341-2207 fax
- Kohl (202) 224-5653 (202) 224-9787

- Landrieu (202) 224-5824  
phone, (202) 224-9735 fax
- Lincoln (202) 224-4843  
phone, (202) 228-1371 fax
- McCaskill (202) 224-6154  
phone, (202) 228-6326 fax
- Mikulski (202) 224-4654  
phone, (202) 224-8858 fax
- Nelson (FL) (202) 224-5274  
phone, (202) 228-2183 fax
- Nelson (NE) (202) 224-6551  
phone, (202) 228-0012 fax
- Pryor (202) 224-2353 phone,  
(202) 228-0908 fax
- Rockefeller, (202) 224-6472  
phone, (202) 224-7665 fax
- Salazar (202) 224-5852  
phone, (202) 228-5036 fax
- Stabenow (202) 224-4822  
phone, (202) 228-0325 fax
- Chambliss (202) 224-3521  
phone, (202) 224-0103 fax
- Coleman (202) 224-5641  
phone, (202) 224-1152 fax
- Collins (202) 224-2523  
phone, (202) 224-2693 fax
- Dole (202) 224-6342 phone,  
(202) 224-1100 fax
- Graham (202) 224-5972 phone,  
(202) 224-3808 fax
- Lieberman (202) 224-4041  
phone, (202) 224-9750 fax
- McCain (202) 224-2235 phone,  
(202) 228-2862 fax
- Smith (202) 224-3753 phone,  
(202) 228-3997 fax
- Snowe (202) 224-5344 phone,

(202) 224-1946 fax

- Sununu (202) 224-2841 phone,  
(202) 228-4131 fax
- Warner (202) 224-2023 phone,  
(202) 224-6295 fax