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CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

**STATEMENT IN SUPPORT OF
JACKSON LEE AMENDMENT
TO H.R. 3773**

**“RESPONSIBLE ELECTRONIC SURVEILLANCE THAT IS
OVERSEEN, REVIEWED, AND EFFECTIVE ACT OF 2007”**

OCTOBER 10, 2007

Mr. Chairman, I have an amendment at the desk. It is designated the Jackson Lee Amendment. I thank the Chairman for the opportunity to explain the amendment to H.R. 3773, on which I proudly join you as an original co-sponsor.

The Jackson Lee Amendment makes a constructive contribution to this important legislation that already is superior to the misnamed “Protect America Act” by orders of magnitude. It does

this simply by laying down a clear, objective criterion for the Administration to follow and the FISA court to enforce in preventing reverse targeting. “Reverse targeting,” a concept well known to members of this Committee but not so well understood by those less steeped in the arcana of electronic surveillance, is the practice where the government targets foreigners without a warrant while its actual purpose is to collect information on certain U.S. persons. As you know, Mr. Chairman, one of the major concerns that libertarians and classical conservatives, as well as progressives and civil liberties organizations, have with the PAA is that the understandable temptation of national security agencies to engage in reverse targeting may be difficult to resist in the absence of strong safeguards in the PAA to prevent it.

My amendment reduces even further any such temptation to resort to reverse targeting by requiring the Administration to obtain a regular, individualized FISA warrant whenever the “real” target of the surveillance is a person in the United States.

The amendment achieves this objective by requiring the Administration to obtain a regular FISA warrant whenever a *“significant purpose of an acquisition is to acquire the*

communications of a specific person reasonably believed to be located in the United States.” The current language in the bill provides that a warrant be obtained only when the Government “*seeks to conduct electronic surveillance*” of a person reasonably believed to be located in the United States.

It is far from clear how the operative language “seeks to” is to be interpreted. In contrast, the language used in our amendment, “significant purpose,” is a term of art that has long been a staple of FISA jurisprudence and thus is well known and readily applied by the agencies, legal practitioners, and the FISA Court. Thus, the Jackson Lee Amendment provides a clearer, more objective, criterion for the Administration to follow and the FISA court to enforce to prevent the practice of reverse targeting without a warrant, which all of us can agree should not be permitted.

I hasten to add, Mr. Chairman, that neither the bill nor our amendment requires the Government to obtain a FISA order for every overseas target on the off chance that they might pick up a call into or from the United States. Rather, the bill requires, as our amendment makes clear, a FISA order only where there is a particular, known person in the United States at the other end of the foreign target's

calls in whom the Government has a significant interest such that a significant purpose of the surveillance has become to acquire that person's communications.

This will usually happen over time and the Government will have the time to get an order while continuing its surveillance. And it is the national security interest to require it to obtain an order at that point, so that it can lawfully acquire all of the target person's communications rather than continuing to listen to only some of them.

In short, my amendment gives the Government precisely what Director of National Intelligence McConnell asked for when he testified before the Senate Judiciary Committee:

It is very important to me; it is very important to members of this Committee. We should be required -- we should be required in all cases to have a warrant anytime there is surveillance of a US [sic] person located in the United States."

For these reasons, I urge the adoption of this amendment.

Thank you, Mr. Chairman. I yield back the remainder of my time.