

Mr. SCOTT of Virginia: Thank you, Mr. Chairman. I appreciate your leadership on efforts to address warrantless surveillance under the Foreign Intelligence Surveillance Act, or “FISA” and for introducing a bill that corrects many of the shortcomings of the bill that passed the House last August.

The RESTORE Act establishes a strong framework, much stronger than the Administration’s PROTECT Act, to fight terrorism effectively, while providing reasonable safeguards to protect personal privacy.

One important change in the Restore Act is that it draws the appropriate distinctions based on the physical location and types of targets. There has never been any controversy over the fact that surveillance directed at people all of whom are overseas does not need any warrant at all. This bill rightly makes it clear that no court orders are required for the government to conduct surveillance on foreign targets outside the United States, even if the technical surveillance is conducted on U.S. soil.

But if any surveillance is intentionally conducted on a U.S. person, this bill makes it clear that the government needs to apply for an individual warrant to conduct that surveillance.

And if information on U.S. persons is incidentally collected, the Manager’s Amendment to the bill rightly limits dissemination of that information among government agencies.

Second, the bill removes vague and overbroad language from the bill passed in August that would allow the wiretapping of conversations without a warrant if the communication was “concerning” a foreign target. That, by its own wording, suggests that if two citizens are in the United States talking about somebody overseas, that you could wiretap their communications without a warrant.

The bill before us makes it clear that the persons involved in the

communications must be overseas, not just that the subject of their conversation must be overseas.

Third, the RESTORE Act goes a step further than the Administration's bill and allows for the expanded wiretapping authority only in cases involving "national security," as opposed to the over-expansive "foreign intelligence." "Foreign intelligence" could include trade deals or anything involving general foreign affairs activities.

Finally, the RESTORE Act was made even stronger in Committee by requiring the Department of Justice, in its application to the Court, to identify the "primary purpose" of its wiretapping. Under the original FISA, when an agent wanted to obtain the authority to conduct electronic surveillance or secret searches, a certificate was necessary detailing what the purpose of the surveillance was in order to obtain the warrant.

The standard was altered by the Patriot Act, which provided that obtaining foreign intelligence only has to be "a significant purpose."

We have to put this change in context because the Department of Justice has not credibly refuted the allegations that some U.S. Attorneys were fired, because they failed to indict Democrats in time to affect an upcoming election. So if the Department of Justice wiretapped someone when foreign intelligence was not the primary purpose, you have to wonder what the primary purpose was. This bill would allow the surveillance to be conducted but the administration would be required to reveal the true purpose of the wiretap to the secret FISA court.

Madam Speaker, I want to emphasize that we do not have to balance security and privacy. It is therefore important to note that everything that the administration can do in its own bill, it can do under

this bill. We just require them to get a warrant before they do it, or if they are in a hurry, get a warrant after they do it, but they can wiretap and get the information. We just provide a modicum of oversight to ensure that our laws are being obeyed. I urge my colleagues to support the bill."