

109TH CONGRESS
2^D SESSION

H. R. 5223

To establish the National Commission on Surveillance Activities and the Rights of Americans.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Mr. CONYERS (for himself, Mr. WEXLER, Mr. GRIJALVA, Mr. SANDERS, Mr. McDERMOTT, Ms. SCHAKOWSKY, Mr. STARK, Mr. CAPUANO, Ms. MCCOLLUM of Minnesota, Ms. BALDWIN, Mr. HONDA, Mrs. MALONEY, Mr. VAN HOLLEN, Mr. FARR, and Ms. LEE) introduced the following bill; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the National Commission on Surveillance Activities and the Rights of Americans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Surveillance Activities
5 Commission Act of 2006”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “Commission” means the National
2 Commission on Surveillance Activities and the
3 Rights of Americans established under section 3;

4 (2) the term “electronic surveillance” has the
5 same meaning as in section 101 of the Foreign In-
6 telligence Surveillance Act of 1978 (50 U.S.C.
7 1801);

8 (3) the term “Foreign Intelligence Surveillance
9 Court” means the court established under section
10 103(a) of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1803(a));

12 (4) the terms “pen register” and “trap and
13 trace device” have the same meaning as in section
14 3127 of title 18, United States Code;

15 (5) The term “physical search” has the same
16 meaning as in section 301 of the Foreign Intel-
17 ligence Surveillance Act of 1978 (50 U.S.C. 1821);

18 (6) the term “surveillance” means any elec-
19 tronic surveillance, physical search, use of a pen reg-
20 ister or trap and trace device, order for the produc-
21 tion of any tangible item, or surveillance activity for
22 which a Federal or State government agent is re-
23 quired to obtain a warrant, before or after engaging
24 in the activity; and

1 (7) the term “warrantless surveillance pro-
2 gram” means a program of warrantless surveillance
3 conducted inside the United States by any Federal
4 or State agency.

5 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

6 There is established in the legislative branch the Na-
7 tional Commission on Surveillance Activities and the
8 Rights of Americans to conduct an investigation and to
9 study governmental operations with respect to warrantless
10 surveillance conducted inside the United States and intel-
11 ligence activities, and the extent, if any, to which illegal,
12 improper, or unethical activities were engaged in by any
13 Federal, State, or local government agency or any person
14 employed by a Federal, State, or local government.

15 **SEC. 4. PURPOSES.**

16 The purposes of the Commission are to—

17 (1) examine and report upon the facts, causes,
18 and use of executive authority relating to any
19 warrantless surveillance conducted inside the United
20 States that occurred after September 11, 2001, by
21 the National Security Agency or any other Federal
22 or State agency, and the extent to which any illegal,
23 improper, or unethical activities were engaged in by
24 any agency or by any person, acting either individ-

1 ually or in combination with others, in carrying out
2 any surveillance activities;

3 (2) examine the origin and operation of any
4 warrantless surveillance conducted inside the United
5 States, including the collection, processing, analysis,
6 dissemination, and retention of intelligence informa-
7 tion;

8 (3) report on any constitutional, statutory, and
9 regulatory basis for any warrantless surveillance pro-
10 gram, including all presidential orders and author-
11 izations, and all opinions, instructions, or guidance
12 concerning any warrantless surveillance program
13 provided by the Department of Justice, the Director
14 of Central Intelligence, the Director of National In-
15 telligence, the Director of the National Security
16 Agency, the Department of Defense, or any depart-
17 ment, office, or agency of the Federal Government,
18 and any of their subordinate offices or officials, ei-
19 ther in writing or verbally;

20 (4) examine any periodic reviews of any
21 warrantless surveillance program, including all re-
22 views conducted by the National Security Agency In-
23 spector General, the Department of Justice, or any
24 other Federal agency;

1 (5) gather any information regarding questions
2 raised by any judge of the Foreign Intelligence Sur-
3 veillance Court regarding any warrantless surveil-
4 lance program or the utilization of intelligence col-
5 lected under such program, and any response by the
6 Department of Justice to any such inquiries, includ-
7 ing any temporary cessation of such surveillance ac-
8 tivities;

9 (6) investigate any participation by, or use of
10 the facilities or personnel of, United States elec-
11 tronic communications providers in warrantless sur-
12 veillance conducted inside the United States, includ-
13 ing the origin of certifications or representations
14 provided to such providers concerning the legal au-
15 thority for their cooperation;

16 (7) ascertain, evaluate, and report on the evi-
17 dence developed by all relevant governmental agen-
18 cies regarding any facts or circumstances that may
19 have violated the separation of powers enumerated
20 in the Constitution of the United States, including—

21 (A) article I, sections 1 and 8 of the Con-
22 stitution of the United States; and

23 (B) article III, sections 1 and 2 of the
24 Constitution of the United States;

1 (8) ascertain and evaluate any potential viola-
2 tions, including violations of the first, fourth, and
3 fourteenth amendments to the Constitution of the
4 United States;

5 (9) investigate and report on any violation of
6 the Foreign Intelligence Surveillance Act (50 U.S.C.
7 1801 et seq.), or any other applicable law;

8 (10) examine the duty of the President to brief
9 all Members of Congress regarding warrantless sur-
10 veillance of United States citizens conducted inside
11 the United States;

12 (11) build upon the investigations of other enti-
13 ties, and avoid unnecessary duplication, by reviewing
14 the findings, conclusions, and recommendations of—

15 (A) any investigation by a Committee of
16 the Senate or the House of Representatives;
17 and

18 (B) other executive branch, congressional,
19 or independent commission investigations into
20 the warrantless surveillance conducted inside
21 the United States;

22 (12) make a full and complete accounting of the
23 circumstances surrounding warrantless surveillance
24 conducted inside the United States, including an as-

1 assessment of its effectiveness in protecting the United
2 States from terrorism;

3 (13) make a full and complete accounting of the
4 use of any appropriated funds by any Federal, State,
5 or local government agency or any person employed
6 by a Federal, State, or local government in carrying
7 out warrantless surveillance; and

8 (14) investigate and report to the President and
9 Congress on its findings, conclusions, and rec-
10 ommendations for corrective measures that should
11 be taken regarding any violations of any law dealing
12 with intelligence gathering, and to prevent future
13 violations.

14 **SEC. 5. COMPOSITION OF COMMISSION.**

15 (a) MEMBERS.—The Commission shall be composed
16 of 14 members, of whom—

17 (1) 1 member, who shall serve as Chairman of
18 the Commission, shall be appointed by the Majority
19 Leader of the Senate, in consultation with the Ma-
20 jority Leader of the House of Representatives;

21 (2) 1 member, who shall serve as Vice Chair-
22 man of the Commission, shall be appointed by the
23 Minority Leader of the Senate, in consultation with
24 the Minority Leader of the House of Representa-
25 tives;

1 (3) 1 member shall be appointed by the Chair-
2 man of the Committee on the Judiciary of the Sen-
3 ate;

4 (4) 1 member shall be appointed by the Rank-
5 ing Member of the Committee on the Judiciary of
6 the Senate;

7 (5) 1 member shall be appointed by the Chair-
8 man of the Select Committee on Intelligence of the
9 Senate;

10 (6) 1 member shall be appointed by the Vice
11 Chairman of the Select Committee on Intelligence of
12 the Senate;

13 (7) 1 member shall be appointed by the Chair-
14 man of the Committee on the Judiciary of the
15 House of Representatives;

16 (8) 1 member shall be appointed by the Rank-
17 ing Member of the Committee on the Judiciary of
18 the House of Representatives;

19 (9) 1 member shall be appointed by the Chair-
20 man of the Permanent Select Committee on Intel-
21 ligence of the House of Representatives;

22 (10) 1 member shall be appointed by the Rank-
23 ing Member of the Permanent Select Committee on
24 Intelligence of the House of Representatives;

1 (11) 1 member shall be appointed by the Chair-
2 man of the Committee on Appropriations of the Sen-
3 ate;

4 (12) 1 member shall be appointed by the Rank-
5 ing Member of the Committee on Appropriations of
6 the Senate;

7 (13) 1 member shall be appointed by the Chair-
8 man of the Committee on Appropriations of the
9 House of Representatives; and

10 (14) 1 member shall be appointed by the Rank-
11 ing Member of the Committee on Appropriations of
12 the House of Representatives.

13 (b) DATE OF APPOINTMENT.—All members of the
14 Commission shall be appointed not later than the date
15 that is 3 months after the date of enactment of this Act.

16 (c) QUALIFICATIONS; INITIAL MEETING.—

17 (1) NONGOVERNMENTAL APPOINTEES.—An in-
18 dividual appointed to the Commission may not be an
19 officer or employee of the Federal Government or
20 any State or local government.

21 (2) OTHER QUALIFICATIONS.—It is the sense of
22 Congress that individuals appointed to the Commis-
23 sion should be prominent United States citizens,
24 with national recognition and significant depth of ex-

1 perience in such professions as law, intelligence
2 gathering, and foreign affairs.

3 (3) INITIAL MEETING.—The Commission shall
4 meet and begin the operations of the Commission as
5 soon as practicable.

6 (d) QUORUM; VACANCIES.—After its initial meeting,
7 the Commission shall meet upon the call of the Chairman
8 or a majority of its members. Six members of the Commis-
9 sion shall constitute a quorum. Any vacancy in the Com-
10 mission shall not affect its powers, but shall be filled in
11 the same manner in which the original appointment was
12 made.

13 **SEC. 6. FUNCTIONS OF COMMISSION.**

14 The functions of the Commission are to—

15 (1) conduct an investigation that—

16 (A) investigates relevant facts and cir-
17 cumstances relating to all incidents of
18 warrantless surveillance conducted inside the
19 United States, including any relevant legisla-
20 tion, Executive order, regulation, plan, policy,
21 practice, or procedure; and

22 (B) may include relevant facts and cir-
23 cumstances relating to—

24 (i) intelligence agencies and intel-
25 ligence gathering;

1 (ii) the Authorization for Use of Mili-
2 tary Force, (Public Law 107–40; 50
3 U.S.C. 1541 note), as a justification for
4 warrantless surveillance conducted inside
5 the United States;

6 (iii) any use of appropriated funds in
7 carrying out warrantless surveillance con-
8 ducted inside the United States in con-
9 tradiction of Federal law;

10 (iv) the jurisdiction of the Foreign In-
11 telligence Surveillance Court, in issuing
12 warrants for the purpose of surveillance
13 conducted inside the United States;

14 (v) the role of congressional oversight
15 and resource allocation;

16 (vi) possible legislative initiatives that
17 could strengthen the use of lawful surveil-
18 lance conducted inside the United States in
19 effectively protecting national security,
20 while preserving constitutional checks and
21 balances and liberties; and

22 (vii) other areas of the public and pri-
23 vate sectors determined relevant by the
24 Commission for its inquiry; and

1 (2) submit to the President and Congress such
2 reports as are required by this Act containing such
3 findings, conclusions, and recommendations as the
4 Commission shall determine, including proposing or-
5 ganization, coordination, planning, management ar-
6 rangements, procedures, rules, and regulations.

7 **SEC. 7. POWERS OF COMMISSION.**

8 (a) IN GENERAL.—

9 (1) HEARINGS AND EVIDENCE.—The Commis-
10 sion or, on the authority of the Commission, any
11 subcommittee or member thereof, may, for the pur-
12 pose of carrying out this Act—

13 (A) hold such hearings and sit and act at
14 such times and places, take such testimony, re-
15 ceive such evidence, administer such oaths; and

16 (B) subject to paragraph (2)(A), require,
17 by subpoena or otherwise, the attendance and
18 testimony of such witnesses and the production
19 of such books, records, correspondence, memo-
20 randa, papers, and documents, as the Commis-
21 sion or such designated subcommittee or des-
22 ignated member may determine advisable.

23 (2) SUBPOENAS.—

24 (A) ISSUANCE.—

1 (i) IN GENERAL.—A subpoena may be
2 issued under this subsection only—

3 (I) by the agreement of the
4 Chairman and the Vice Chairman; or

5 (II) by the affirmative vote of 8
6 members of the Commission.

7 (ii) SIGNATURE.—Subject to clause
8 (i), subpoenas issued under this subsection
9 may be issued under the signature of the
10 Chairman or any member designated by a
11 majority of the Commission, and may be
12 served by any person designated by the
13 Chairman or by a member designated by a
14 majority of the Commission.

15 (B) ENFORCEMENT.—In the case of contu-
16 macy or failure to obey a subpoena issued the
17 United States district court for the judicial dis-
18 trict in which the subpoenaed person resides, is
19 served, or may be found, or where the subpoena
20 is returnable, may issue an order requiring such
21 person to appear at any designated place to tes-
22 tify or to produce documentary or other evi-
23 dence. Any failure to obey the order of the
24 court may be punished by the court as a con-
25 tempt of that court.

1 (b) CONTRACTING.—The Commission may, to such
2 extent and in such amounts as are provided in appropria-
3 tion Acts, enter into contracts to enable the Commission
4 to discharge its duties under this Act.

5 (c) INFORMATION FROM FEDERAL AGENCIES.—

6 (1) IN GENERAL.—The Commission is author-
7 ized to secure directly from any executive depart-
8 ment, bureau, agency, board, commission, office,
9 independent establishment, or instrumentality of the
10 Federal Government, information, suggestions, esti-
11 mates, and statistics for the purposes of this Act.
12 Each department, bureau, agency, board, commis-
13 sion, office, independent establishment, or instru-
14 mentality shall, to the extent authorized by law, fur-
15 nish such information, suggestions, estimates, and
16 statistics directly to the Commission, upon request
17 made by the Chairman, the Chairman of any sub-
18 committee created by a majority of the Commission,
19 or any member designated by a majority of the
20 Commission.

21 (2) RECEIPT, HANDLING, STORAGE, AND DIS-
22 SEMINATION.—Information shall only be received,
23 handled, stored, and disseminated by members of
24 the Commission and its staff consistent with all ap-
25 plicable statutes, regulations, and Executive orders.

1 (d) ASSISTANCE FROM FEDERAL AGENCIES.—

2 (1) GENERAL SERVICES ADMINISTRATION.—

3 The Administrator of General Services shall provide
4 to the Commission on a reimbursable basis adminis-
5 trative support and other services for the perform-
6 ance of the Commission's functions.

7 (2) OTHER DEPARTMENTS AND AGENCIES.—In

8 addition to the assistance prescribed in paragraph
9 (1), departments and agencies of the United States
10 may provide to the Commission such services, funds,
11 facilities, staff, and other support services as they
12 may determine advisable and as may be authorized
13 by law.

14 (e) POSTAL SERVICES.—The Commission may use
15 the United States mails in the same manner and under
16 the same conditions as departments and agencies of the
17 United States.

18 **SEC. 8. NONAPPLICABILITY OF FEDERAL ADVISORY COM-**

19 **MITTEE ACT.**

20 (a) IN GENERAL.—The Federal Advisory Committee
21 Act (5 U.S.C. App.) shall not apply to the Commission.

22 (b) PUBLIC MEETINGS AND RELEASE OF PUBLIC
23 VERSIONS OF REPORTS.—The Commission shall—

24 (1) hold public hearings and meetings to the ex-
25 tent appropriate; and

1 (2) release public versions of the reports re-
2 quired under subsections (a) and (b) of section 12.

3 (c) PUBLIC HEARINGS.—Any public hearings of the
4 Commission shall be conducted in a manner consistent
5 with the protection of information provided to or developed
6 for or by the Commission as required by any applicable
7 statute, regulation, or Executive order.

8 **SEC. 9. STAFF OF COMMISSION.**

9 (a) IN GENERAL.—

10 (1) APPOINTMENT AND COMPENSATION.—The
11 Chairman, in consultation with the Vice Chairman
12 and in accordance with rules agreed upon by the
13 Commission, may appoint and fix the compensation
14 of a staff director and such other personnel as may
15 be necessary to enable the Commission to carry out
16 its functions, without regard to the provisions of
17 title 5, United States Code, governing appointments
18 in the competitive service, and without regard to the
19 provisions of chapter 51 and subchapter III of chap-
20 ter 53 of such title relating to classification and
21 General Schedule pay rates, except that no rate of
22 pay fixed under this subsection may exceed the
23 equivalent of that payable for a position at level V
24 of the Executive Schedule under section 5316 of title
25 5, United States Code.

1 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

2 (A) IN GENERAL.—The executive director
3 and any personnel of the Commission who are
4 employees shall be employees under section
5 2105 of title 5, United States Code, for pur-
6 poses of chapters 63, 81, 83, 84, 85, 87, 89,
7 89A, 89B, and 90 of that title.

8 (B) MEMBERS OF COMMISSION.—Subpara-
9 graph (A) shall not be construed to apply to
10 members of the Commission.

11 (b) DETAILEES.—Any Federal Government employee
12 may be detailed to the Commission without reimbursement
13 from the Commission, and such detailee shall retain the
14 rights, status, and privileges of his or her regular employ-
15 ment without interruption.

16 (c) CONSULTANT SERVICES.—The Commission is au-
17 thorized to procure the services of experts and consultants
18 in accordance with section 3109 of title 5, United States
19 Code, but at rates not to exceed the daily rate paid a per-
20 son occupying a position at level IV of the Executive
21 Schedule under section 5315 of title 5, United States
22 Code.

23 **SEC. 10. COMPENSATION AND TRAVEL EXPENSES.**

24 (a) COMPENSATION.—Each member of the Commis-
25 sion may be compensated at not to exceed the daily equiva-

1 lent of the annual rate of basic pay in effect for a position
2 at level IV of the Executive Schedule under section 5315
3 of title 5, United States Code, for each day during which
4 that member is engaged in the actual performance of the
5 duties of the Commission.

6 (b) TRAVEL EXPENSES.—While away from their
7 homes or regular places of business in the performance
8 of services for the Commission, members of the Commis-
9 sion shall be allowed travel expenses, including per diem
10 in lieu of subsistence, in the same manner as persons em-
11 ployed intermittently in the Government service are al-
12 lowed expenses under section 5703(b) of title 5, United
13 States Code.

14 **SEC. 11. SECURITY CLEARANCES FOR COMMISSION MEM-**
15 **BERS AND STAFF.**

16 The appropriate Federal departments or agencies
17 shall cooperate with the Commission in expeditiously pro-
18 viding to the Commission members and staff appropriate
19 security clearances to the extent possible under the rel-
20 evant procedures and requirements, except that no person
21 shall be provided with access to classified information
22 under this Act without the appropriate security clearances.

23 **SEC. 12. REPORTS OF COMMISSION; TERMINATION.**

24 (a) INTERIM REPORTS.—The Commission shall sub-
25 mit to the President and Congress interim reports con-

1 taining such findings, conclusions, and recommendations
2 for corrective measures as have been agreed to by a major-
3 ity of Commission members.

4 (b) FINAL REPORT.—Not later than 18 months after
5 the date of enactment of this Act, the Commission shall
6 submit to the President and Congress a final report con-
7 taining such findings, conclusions, and recommendations
8 for corrective measures as have been agreed to by a major-
9 ity of Commission members.

10 (c) CLASSIFIED INFORMATION.—Each report sub-
11 mitted under subsection (a) or (b) shall be in unclassified
12 form, but may include a classified annex.

13 (d) TERMINATION.—

14 (1) IN GENERAL.—The Commission, and all the
15 authorities of this Act, shall terminate 60 days after
16 the date on which the final report is submitted
17 under subsection (b).

18 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
19 MINATION.—The Commission may use the 60-day
20 period referred to in paragraph (1) for the purpose
21 of concluding its activities, including providing testi-
22 mony to committees of Congress concerning its re-
23 ports and disseminating the final report.

1 **SEC. 13. FUNDING.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—There
3 are authorized to be appropriated such sums as are nec-
4 essary to carry out this Act.

5 (b) DURATION OF AVAILABILITY.—Amounts made
6 available to the Commission under subsection (a) shall re-
7 main available until the termination of the Commission.

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