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09.02.08

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The Evolution of the FISA Reauthorization through Senator Hagel's Office

The Foreign Intelligence Surveillance Act (FISA) was originally passed in 1978, and is reauthorized every five years. This bill stipulates procedures for surveillance, both physical and electronic, and collection of “foreign intelligence information” between “foreign powers” and “agents of foreign powers.” In 2008, the FISA Amendments Act of 2008 (also known as the FISA of 1978 Amendments Act of 2008) was proposed. The Amendments Act, while adding and changing to the original FISA bill, had two primary issues that raised an outcry. The first point of contention was retroactive immunity to privacy lawsuits that was granted to telecom companies, and the second point of contention was the enhanced spying authority granted President George Bush.

The controversy regarding those provisions can be best described in the words of the Congressional Research Service (CRS) report “The Foreign Intelligence Surveillance Act: A Sketch of Selected Issues.” There was an “inherent and often dynamic tension between national security and civil liberties, particularly rights of privacy and free speech; the need for the intelligence community to be able to efficiently and effectively collect foreign intelligence information from the communications of foreign persons located outside the United States persons abroad, and the differing approaches suggested to meet this need...”

In regards to the first issue, under the current law, there are some statutory sections that provide some limitation on liability for telecommunication providers who

furnish aid to the government in connection with surveillance. However, retroactive immunity doesn't fall under the jurisdiction of those laws, and there are a number of lawsuits pending against telecommunication providers "who are alleged to have furnished aid to the government in connection with its warrantless surveillance programs since September 11, 2001, and other programs." As can be inferred, consumers believe that their privacy was violated and are thus suing the telecommunication providers; this bill would provide immunity to those pending lawsuits. The second issue is much more broad, but the enhanced spying powers granted to Bush were a cause for alarm among many, so some controversy stemmed from that.

For Senator Hagel's constituents, this was clearly a major concern. As an intern, my duties consisted mainly of sorting the mail, answering phones, and giving tours of the Capitol building. However, we were allowed to attend as many hearings and speakers as we wished, and we often spoke with the Senator. About once a week, he would meet with just the interns for about an hour and answer any questions about, well, anything. Questions ranged from asking him to tell stories from the congressional delegation (CODEL) he went on with Obama to information about specific bills and legislation.

Since the interns handled the bulk of the incoming mail, we were able to see that many constituents opposed the immunity granted retroactively to telecommunication providers. Senator Hagel sits on the US Senate Select Committee on Intelligence, so he was involved with this bill; however, it was not a major issue in the office. Around the time that this issue was being debated, Senator Hagel was working on the Hagel-Webb G.I. Bill, which was a priority. The Hagel-Webb G.I. Bill increases benefits for troops with respect to paying for their education, as well as making benefits transferable (for

example, education benefits can be passed along to a spouse or child if unused). Hence, the focus of the senator was to push the GI Bill through Congress.

In addition, Hagel did not take the floor in regards to the FISA bill. Despite a very rough estimate of about 90% of constituents who contacted Hagel's office being against the bill (primarily against the retroactive telecom immunity), Hagel still voted for the bill (as did every Republican; the only dissenters were Democrats). In the end, the FISA Amendments Act of 2008 passed the Senate with a vote of 69 – 28, with 21 Democrats voting for.

Any of the constituents who contacted Hagel in regards to the bill received a standard form letter in reply, handled by the Legislative Assistant who deals with telecommunications issues. The general policy for responding to constituent concerns is to contact them in reply, depending on the number of constituents. For small amounts of mail, like a few people writing in about an issue, then either a phone call back or letter back is sent. For major issues, especially ones that receive a lot of mail, a mass letter is sent out.

In the letter replying to constituent concerns about FISA, Hagel's position is essentially defended, explaining that "the Attorney General assured the companies their cooperation would be legal," and that "it would be unfair for punish companies that relied upon assurance of the US government." The letter goes on to say that the bill "does not provide immunity for criminal activity," concluding with "... the FISA reform legislation, the Intelligence Authorization bill, and the Patriot Act Reauthorization are examples of important bi-partisan legislation that do a good job of balancing the goals of allowing the US government to defend the United States while upholding the rights of Americans." In that way, constituent concerns were addressed.

In one of the meetings with the Senator, I asked him about the FISA bill and the issues surrounding it. He explained the issues, as well as why he believes (as summed up above) in voting for the FISA bill. While I originally started out very against this bill because of the retroactive immunity granted to telecom companies, after speaking with Hagel I was more clearly able to understand both sides of the issue, and how this is a debate that could rage on forever. Though Senators Dodd and Feingold led a filibuster against the passage of this bill in the Senate (which, incidentally, passed in the House previously, with Nancy Pelosi voting for it as well as the House minority leader), it was not enough to stop the passage; prominent Democrats such as Senator Obama voted for this bill.

I would classify myself as a moderate politically, with a tendency to be socially liberal and fiscally conservative. Hence, I was apprehensive about interning for a Republican in the beginning, but I left Washington D.C. with nothing but respect for Senator Hagel. Though we differed on many issues, I was more than impressed with the fact he took time to speak with his interns (and know our faces and names), and more than that, is a man one can respect in every manner. In addition, his staff was great, and the experience was wonderful just because I interned for a man I could admire.

Clashing with the values of Senator Hagel didn't pose a problem in the least. The workload and duties as an intern were light, and since Hagel is a liberal Republican, the staff tended to be that way as well. In addition, since the interns had no duties that were legislative, the value clash didn't matter at all. If it were possible for others to intern with Hagel, I would recommend that to anyone and everyone, because the opportunity to speak with the senator and see how the office works was priceless.