

109TH CONGRESS
2^D SESSION

S. RES. 398

Relating to the censure of George W. Bush.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2006

Mr. FEINGOLD submitted the following resolution; which was referred to the
Committee on the Judiciary

RESOLUTION

Relating to the censure of George W. Bush.

Whereas Congress passed the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and in so doing provided the executive branch with clear authority to wiretap suspected terrorists inside the United States;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended multiple times since 1978, to expand the surveillance authority of the executive branch and address new technological developments;

Whereas the Foreign Intelligence Surveillance Act of 1978 states that it and the criminal wiretap law are the “exclusive means by which electronic surveillance” may be conducted by the United States Government and makes it a crime to wiretap individuals without complying with this statutory authority;

Whereas the Foreign Intelligence Surveillance Act of 1978 permits the Government to initiate wiretapping immediately in emergencies as long as the Government obtains approval from the court established under section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) within 72 hours of initiating the wiretap;

Whereas the Foreign Intelligence Surveillance Act of 1978 authorizes wiretaps without the court orders otherwise required by the Foreign Intelligence Surveillance Act of 1978 for the first 15 days following a declaration of war by Congress;

Whereas the Authorization for Use of Military Force that became law on September 18, 2001 (Public Law 107–40; 50 U.S.C. 1541 note), did not grant the President the power to authorize wiretaps of Americans within the United States without obtaining the court orders required by the Foreign Intelligence Surveillance Act of 1978;

Whereas the President's inherent constitutional authority does not give him the power to violate the explicit statutory prohibition on warrantless wiretaps in the Foreign Intelligence Surveillance Act of 1978;

Whereas George W. Bush, President of the United States, has authorized and continues to authorize wiretaps by the National Security Agency of Americans within the United States without obtaining the court orders required by the Foreign Intelligence Surveillance Act of 1978;

Whereas President George W. Bush has failed to inform the full congressional intelligence committees about this program, as required by the National Security Act of 1947 (50 U.S.C. 401 et seq.);

Whereas President George W. Bush repeatedly misled the public prior to the public disclosure of the National Security Agency surveillance program by indicating his Administration was relying on court orders to wiretap suspected terrorists inside the United States, by stating—

(1) on April 20, 2004, that “When we’re talking about chasing down terrorists, we’re talking about getting a court order before we do so.”;

(2) on July 14, 2004, that “the government can’t move on wiretaps or roving wiretaps without getting a court order”; and

(3) on June 9, 2005, that “Law enforcement officers need a federal judge’s permission to wiretap a foreign terrorist’s phone, a federal judge’s permission to track his calls, or a federal judge’s permission to search his property. Officers must meet strict standards to use any of these tools.”;

Whereas President George W. Bush has, since the public disclosure of the National Security Agency surveillance program, falsely implied that the program was necessary because the executive branch did not have authority to wiretap suspected terrorists inside the United States, by making statements about the supposed need for the program, including—

(1) on January 25, 2006, stating at the National Security Agency that “When terrorist operatives are here in America communicating with someone overseas, we must understand what’s going on if we’re going to do our job to protect the people. The safety and security of the American people depend on our ability to find out who the terrorists are talking to, and what they’re planning. In the weeks following September the 11th, I authorized a terrorist surveillance program to detect and intercept al

Qaeda communications involving someone here in the United States.”; and

(2) on January 31, 2006, asserting during the State of the Union that “The terrorist surveillance program has helped prevent terrorist attacks. It remains essential to the security of America. If there are people inside our country who are talking with al Qaeda, we want to know about it, because we will not sit back and wait to be hit again.”; and

Whereas President George W. Bush inaccurately stated in his January 31, 2006, State of the Union address that “Previous Presidents have used the same constitutional authority I have, and federal courts have approved the use of that authority.”, even though the President has failed to identify a single instance since the Foreign Intelligence Surveillance Act of 1978 became law in which another President has authorized wiretaps inside the United States without complying with the Foreign Intelligence Surveillance Act of 1978, and no Federal court has evaluated whether the President has the inherent authority to authorize wiretaps inside the United States without complying with the Foreign Intelligence Surveillance Act of 1978: Now, therefore, be it

1 *Resolved*, That the United States Senate does hereby
 2 censure George W. Bush, President of the United States,
 3 and does condemn his unlawful authorization of wiretaps
 4 of Americans within the United States without obtaining
 5 the court orders required by the Foreign Intelligence Sur-
 6 veillance Act of 1978, his failure to inform the full con-
 7 gressional intelligence committees as required by law, and

1 his efforts to mislead the American people about the au-
2 thorities relied upon by his Administration to conduct
3 wiretaps and about the legality of the program.

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