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H.R. 3162

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct  
Terrorism (USA Patriot Act) of 2001

**Background**

In just weeks of terrorist attacks the Congress enacted the USA Patriot Act. H.R. 3132, a 342-page law that makes sweeping changes to more than 15 different statutes including the Foreign Intelligence Surveillance Act of 1978. Just 45-days after the tragic events of September 11, on October 26, 2001, President George W. Bush signed the USA Patriot Act into law. Drawing praise from law enforcement, the measure expands the ability to tap telephones and monitor internet usage in the pursuit of terrorist. Civil libertarians, on the other hand, saw the measure as a threat to personal liberties and an assault on privacy, free speech and freedom of information.

The complex provisions were enacted with speed, without inter-agency review and suspension of the normal committee and public hearing process. In fact, the Senate Judiciary Committee had a brief one-and-a-half hour hearing on the Act at which Attorney general Ashcroft testified but took no questions. The fast-tracked provisions included the September 11 victims' assistance. The measure was overwhelmingly approved by the House of Representatives 356-66; and by the Senate 98-1.

**Brief Summary**

The "Patriot Act" expands federal powers to search and conduct surveillance. The measure was enacted to enhance domestic security against terrorism. The Patriot Act expands surveillance procedures, monitoring of international money exchanges, removes obstacles to investigating terrorism, provides for increased information sharing capabilities among law enforcement and created a counter terrorism fund.

USA Patriot Act increases the authority of the Attorney General to detain and deport non-citizens with little or not judicial review; and the Attorney General and Secretary of State are also given the authority to designate domestic groups as terrorist organizations and deport any non-citizen who belongs to them. Increases the penalties of the Computer Fraud and Abuse Act; and defines computer crimes as "cyberterrorist" terrorist attack and offense.

Surveillance

USAPA expands all areas of surveillance including wiretaps, search warrants, pen/trap orders and subpoenas; and expands the definition of "domestic terrorism;" and expands the scope and penalties for Computer Fraud. Allows nationwide roving wiretaps; allows for the disclosure of customer records by Internet Service Provider (ISPs) and telecommunications services; and creates nationwide DNA database of terrorist and non-terrorist category of "any crime of violence." Allows law enforcement to get voicemail and other stored wire communications without an intercept order. And Provide relief of up to \$10,000 for those who discover that law enforcement or the foreign intelligence authorities have disclosed information about them improperly.

The measure expands the federal government's power to eavesdrop and have access to financial and computer records as "tools to track terrorists."

Sunset

Several of the surveillance provisions of USAPA expire on December 31, 2005. The Grand jury sharing of information, scope of subpoenas for records of electronic communications,

telecommunications privacy provisions and single jurisdiction search warrants for terrorism are not subject to the sunset.

### Discussion

Since the enactment of the Patriot Act, two states, 89 cities and counties, including San Francisco, Mill Valley, Oakland, Berkeley to Baltimore and Detroit have approved resolutions expressing concern and opposition to provisions of the Patriot Act. Additionally, civil libertarians and constitutional rights advocates including the American Civil Liberties Union (ACLU) and the Electronic Privacy Information Center (EPIC) have brought suits.

When the measure passed many moderates and civil libertarians in Congress agreed to support it if it contained a sunset, making many of the critical provisions temporary. Reportedly, democrats have grown increasingly concerned with the lack of information coming from the Justice Department on how its agents are using the new and expanded powers. Until such review and information is forthcoming, they have maintained strong opposition to any repeal of the sunset as proposed by Senator Orin Hatch.

### Opponents

According to Jerry Berman, executive Director for the Center for Democracy and Technology, the trouble with the bill [H.R. 3162] is that it's very sweeping and it can apply not just to suspected terrorist but people and organizations that may be engaged in lawful action. The Patriot Act was enacted directly in response to terrorist attacks on the World Trade Center and the Pentagon. Those terrorist attacks ignited the single largest criminal investigation in U.S. history. That investigation immediately cast a spotlight on government surveillance powers. Part of investigation includes expansion of Internet eavesdropping technology known as "Carnivore." Civil rights advocates have consistently cautioned against expanding surveillance powers unnecessarily arguing that there is little evidence that tougher surveillance could have prevented the September 11 tragedies.

"The passage of this broad legislation is by no means the end of the story," ACLU Executive Director Anthony Romero said in a statement. "We will now work with ACLU affiliates around the country to monitor its implementation.

The ACLU has rolled out a multimillion-dollar national campaign to challenge government anti-terror policies, dubbed *Keep America Safe and Free*. "The Bush administration has presented Americans with a false dichotomy that we must choose between being safe or free," said ACLU national spokes woman Emily Whitfield. "We're saying there doesn't have to be a choice. We can stay safe and free at the same time."

The ACLU has filed more than 24 lawsuits for civil liberties violations since September 11 attacks, including several for airline passengers who claim they were victims of racial profiling.

### Serra High School/Midcoast Council/Green Party and ACLU

Three Serra High School students Justin Alley, James Latimer, and Nathan Visconti have requested your Board oppose provisions of the Patriot Act. "The scary thing about this is, if the war on terrorism never ends, a generation of people are never going to know what it's like to have freedom," said Latimer. Specifically, the students are asking that police department not engage in racial profiling or

spying; that libraries throw out circulation records after a minimal amount of time; and that libraries post signs that warn people that USA Patriot Act allows governments to find out what books they are reading. Further, the students hope that your Board will ask local congressional delegation to fight for the repeal of the Act.

The Green Party of San Mateo County, the MidCoast Community Council and Peace Action of San Mateo County have all requested the Board of Supervisors oppose provisions of the Patriot Act. Copies of their correspondence are attached.

#### Application of the Law

According to federal officials and public records, the Justice Department and the Federal Bureau of Investigation have issued hundreds of "national security letters" that require business to turn over electronic records about finances, telephone calls, e-mail and other personal information. These letters, a type of administrative subpoena may be issued independently and are not subject to judicial review, unless a case comes to court. In 2002, United States Attorney General John Ashcroft had personally signed 170 "emergency foreign intelligence warrants" and the Justice Department made more than 1,000 applications for warrants to the "secret court." Moreover, it is reported that the Justice Department and FBI refuse to provide summary data about how often the letters are used. Legislation has been introduced to require the department to provide the data.

Senator Patrick Leahy, one of the authors of the Patriot Act, makes the case that before the Department of Justice asks Congress for more powers or to make Patriot Act permanent, it needs to disclose how its using its current powers. Thus far, the Department has balked at Freedom of Information Act requests from the press and the public, as well as Congressional requests for more detailed reporting.

#### Related Legislation

H.R. 1157, "Freedom to Read Protection Act of 2003." Would amend the Foreign Intelligence Surveillance Act to exempt bookstores and libraries from the Patriot Act. Among the most controversial provisions of the Patriot Act is the requirement that libraries and bookstores provide the federal government with records of its patrons' reading habitats. This measure would restore privacy protections to library and bookstore patrons. Some libraries routinely destroy records of what patrons check out, thus leaving no documentation. H.R. 1157 has 73 co-sponsors.

The Patriot Act gave the Justice Department and the FBI power to investigate terrorism including the ability to look at library records, computer hard drive and which books patrons check out, the web pages they visited and where they sent e-mails. Civil libertarians are concerned that these new powers are being used to check on the reading habitats of intellectual, civil rights leaders and other American citizens.

#### Recommendation

The Legislative Committee may wish to consider recommending your Board approve a resolution that supports the enactment of H.R. 1157, the "Freedom to Read Protection Act of 2003;" and oppose the repeal of the 2005 sunset date. H.R. 1157 would amend the Foreign Intelligence Surveillance Act to prohibit search or seizure of personal information from a bookseller or library. Additionally, this

measure would require the Attorney General to regularly provide information to the appropriate congressional oversight committee on the numbers of letters of request for information that have been made.