

White House pushes for renewal of Patriot Act

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The Bush administration is campaigning for a renewal of the USA Patriot Act, claiming the law has been vital in tracking terrorists and disrupting their plans. The Patriot Act was signed into law in the wake of the 9/11 terrorist attacks, having been rushed through Congress in only five weeks. Its passage marked a major escalation in the assault on civil liberties, giving unprecedented spying powers to US police and intelligence agencies.

The White House is seeking to make these inroads into democratic rights permanent and add new ones. Bush has received enthusiastic support from congressional Republicans, and scant opposition from congressional Democrats.

On Tuesday, a Senate panel approved legislation that would provide the FBI with sweeping new subpoena powers for use in counterterrorism and counterintelligence investigations. The bill would make permanent eight intelligence provisions of the Patriot Act which are scheduled to expire at the end of the year, and authorize new information-gathering powers over and above those included in the 2001 law.

Following hours of closed-doors deliberations, the Senate Select Committee on Intelligence voted 11-4 to send to the full Senate a proposal granting the FBI the power to subpoena—without judicial approval—a wide range of personal documents pertaining to citizens and non-citizens alike. The measure will be considered by the Senate Judiciary Committee before coming to a full Senate vote, and must also be acted upon by the House of Representatives.

The American Civil Liberties Union's senior counsel for legislative strategy, Lisa Graves, commented, "Today's secret vote was a failure for the Fourth Amendment, the American people, and the very freedoms we hold dear. At a time when Americans from all walks of life are calling for the Patriot Act to be brought in line with the Constitution, the Senate Intelligence Committee

went ahead with an unwarranted expansion of the Patriot Act's already intrusive powers."

In early 2003, news leaked that the staff of then-Attorney General John Ashcroft had drafted an expansion of the Patriot Act. Dubbed by the press "Patriot II," the draft legislation provoked widespread public criticism and was shelved by the Bush administration. It now appears that the administration has adopted a strategy of legislating the measures contained in "Patriot II" in piecemeal fashion so as to avoid any public debate.

Speaking Thursday before a group of police officers in Columbus, Ohio, Bush cited the case of Iyman Faris as one of the Patriot Act's success stories in the "war on terror." In June 2003, Faris, a Columbus truck driver and naturalized citizen from Kashmir, pled guilty in closed-door proceedings to two counts of aiding a terrorist organization, waiving his right to trial. Faris had been accused of involvement in an unlikely plot to bring down the Brooklyn Bridge in New York City by cutting its suspension cables with acetylene torches.

As it was later revealed, Faris agreed to plead guilty only after threats by federal agents that he would be designated an "enemy combatant." He would then be subject to indefinite military incarceration without any recourse to legal counsel or the courts.

In fact, the Patriot Act has not led to the prosecution or conviction of a single individual connected to the 9/11 attacks.

The measure approved in secret session Tuesday by the Senate Intelligence Committee, if approved by the full Senate and passed by the House, would expand the police-state powers authorized by the Patriot Act.

One of the most sinister provisions would authorize the FBI to obtain library and other private records without any judicial review, removing the minimal safeguards currently in place. This was one of the aspects of "Patriot II" that drew the most criticism.

While under the current version of the Patriot Act, the FBI must first obtain authorization from the Foreign Intelligence Surveillance Court, the FBI would now be able to authorize its own “administrative subpoenas” to obtain records from libraries, businesses, medical facilities, financial institutions, etc.

Another provision of the legislation would further erode constitutional safeguards on records searches. Under section 215 of the Patriot Act, there is an express stipulation that “such investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.” In other words, the FBI cannot seek the records of an individual solely because he or she had spoken out against the government or its policies.

The Senate Intelligence bill deletes this limited safeguard with a clever twist. While an entire investigation still could not be based solely on an individual’s First Amendment-protected activities, certain records search subpoenas could be based solely on these activities—if they were relevant to an investigation based on something else!

The bill also gives more power to the FBI to proceed with surveillance for use in criminal prosecutions without showing “probable cause” that a crime has been committed. Under the current guidelines of the Patriot Act, searches that fall under the authority of the Foreign Intelligence Surveillance Court are authorized only when the acquisition of foreign intelligence constitutes a “significant” purpose of the investigation. This was another restriction on spying that “Patriot II” had sought to eliminate.

Under the new provisions, these secret searches and surveillance could be initiated for the sole purpose of criminal prosecution for certain crimes, such as terrorism. Such searches carried out for the sole purpose of gathering evidence for a criminal prosecution—without showing probable cause of a crime—would be in clear violation of Fourth Amendment protections against unreasonable searches and seizures.

The legislation also creates new powers for federal agents related to searches referred to as “mail covers.” Intelligence investigators would have statutory authority to track, without probable cause, the mail of ordinary citizens—the envelopes of any sealed mail, or the contents of mail that is unsealed.

The bill would also greatly expand the amount of information obtained with a court order, but without showing probable cause, through surveillance of the

Internet. It would require Internet service providers to supply, on the basis of “routing information,” such information as user name, address, telephone number, IP address, how long the user has used the services, payment method (including credit card numbers), and length of subscriber service.

Taken as a whole, this legislation constitutes a fundamental expansion of the police powers of the state, with ominous implications for the democratic rights of the American people. From its inception, the Patriot Act has provoked widespread opposition from civil liberties groups, advocates of the rights of immigrants and wide sections of the population.

This opposition, however, has not found significant expression among any section of the political establishment, and it is highly likely that some version of the bill will be passed by both houses of Congress. Leading Democrats have adopted the Bush administration line that the Patriot Act is a legitimate tool in the fight against terrorism.

Jay Rockefeller of West Virginia, ranking Democrat on the Senate Intelligence Committee, who voted for the new measure, commented on the first three-and-a-half years of the Patriot Act: “We concluded that these tools have helped keep America safe ... and should be made permanent.”

Senate Intelligence Committee member Barbara Mikulski (Democrat of Maryland) expressed the hope that the bill would be amended on the Senate floor “to protect national security while protecting constitutional rights.”

The proposed renewal and expansion of the Patriot Act has received minimal coverage in the print and broadcast media, which have effectively buried an issue with huge repercussions for constitutional rights and civil liberties.



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