

US Congress votes to make Patriot Act permanent

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By “unanimous consent” the United States Senate moved last Friday to turn the bulk of the repressive legislation known as the USA Patriot Act into permanent law.

Passage of the measure followed less than a week a similar vote in the House of Representatives that would not only enshrine the Patriot Act in permanent law, but would significantly widen the police-state powers it grants the US government.

Differences between the two bills will be worked out in House-Senate conference committee hearings, which will inevitably result in a “compromise” that makes it even easier to spy upon and arrest US and foreign citizens alike.

Other provisions sought by the Bush administration to increase its repressive powers will undoubtedly be pursued piecemeal in the months ahead.

The Senate Intelligence Committee, for example, approved a different version of the legislation in June that would have given the Federal Bureau of Investigation the power to demand personal and business records of alleged terror suspects by means of “administrative subpoenas.”

This would have allowed the FBI to bypass any requirement that they present evidence to either a grand jury or a judge demonstrating any valid reason for obtaining such an order. The bill approved by the intelligence panel would also have granted the bureau unilateral power to intercept and read mail of those under investigation.

Senate Republican leaders indicated that the decision to approve the less controversial version drafted by the Senate Judiciary Committee stemmed from a desire to record a unanimous vote on the legislation before the Congress goes on its summer break, thereby presenting the Bush administration with the semblance of a victory. At the same time, they made clear that Senator Pat Roberts, the Kansas Republican who chairs the Intelligence Committee, intends to push for legislation granting the expanded subpoena powers to the FBI when Congress resumes deliberations and will receive the support of the leadership.

The measure approved by the full Senate makes 14 of the 16 provisions of the Patriot Act permanent. The remaining two—a measure allowing the use of roving wiretaps and another permitting the government to demand personal data from

libraries, bookstores and business institutions—are to continue for another four years, with another vote needed to further extend them.

The House legislation—approved July 21 by a vote of 257 to 171—made permanent the same 14 provisions, though it extended these two last measures by another ten years instead of four.

In the House, the Republican leadership engaged in a blatant abuse of power to block discussion and prevent the consideration of amendments submitted by the Democrats to deny the government unfettered power to seize library records and to set the vote on reconsideration of the more controversial surveillance provisions in four years rather than ten.

The tenor of the House “debate” was made clear last month when Representative F. James Sensenbrenner, the Republican chair of the House Judiciary Committee, gavelled a session to a close and had the microphones turned off in the middle of testimony presented by Democrats on the legislation.

The Senate version added largely cosmetic changes to the Patriot Act designed to assuage growing opposition to its wholesale attacks on essential constitutional rights. This ploy seemed to have had the desired effect, at least in some quarters. The American Civil Liberties Union characterizing the Senate bill as a “step in the right direction, but lacking in full protections for the civil liberties and civil rights of all Americans.”

The so-called “protections” that were included are less than minimal, characterized by loopholes that will in practice allow the US government to continue the virtually unrestricted surveillance of people of whom there is no evidence of engaging in criminal activity.

Thus, as the ACLU itself acknowledges, “the use of secret orders to search Americans’ personal medical, financial and library records under Section 215 would remain in place, but with a standard requiring some individual suspicion, although a very loose connection to a suspect would allow the government to obtain innocent persons’ records.”

Similarly it notes, “while the bill’s time limits on notification for the use of ‘sneak and peek’ powers under Section 213 (seven days for the initial period, with 90 days for renewal periods) are welcome, a troubling loophole could allow the

government to set them aside because the limits can be waived 'if the facts of the case justify' a longer period."

Also, the new bill introduces the right to challenge the FBI over issuance of search orders—which the act permits without judicial review—to obtain credit reports, Internet communications data from service providers, and so-called "financial records." However, as the ACLU acknowledges, the legislation retains "an automatic, permanent secrecy order that will be difficult to challenge." The obvious question is, how can you challenge illegal, unconstitutional searches and surveillance, when the very existence of these activities is a state secret?

To call such empty measures a "step in the right direction" under conditions in which the most repressive legislation ever enacted in the history of the United States is being turned into permanent law serves only to obscure the intensification of the attacks on civil liberties.

The Senate vote, in which the Democratic leadership voiced no opposition, is yet another indication of the vast gulf dividing the ruling establishment from the sentiments of masses of American people.

Since the original Patriot Act was rushed through Congress in September 2001 with neither serious discussion nor—as congressmen later admitted—the 343-page document even being read, there have been widespread popular expressions of opposition to the legislation.

Nearly 400 city governments—including most major US metropolitan centers—as well as seven state legislatures have passed resolutions condemning the Patriot Act's trampling on basic democratic rights. Yet the legislation has been made permanent without a single Democratic senator casting a vote against it. The "unanimous consent" method agreed to by the Democratic leadership allowed the bill to sail through without even a discussion, much less placing senators on record.

"Like all compromises, it includes provisions that are not supported by everyone in this body," said Senate Minority Leader Harry Reid, a Nevada Democrat. "However, Democratic and Republican members of the Judiciary Committee came together in a spirit of cooperation and compromise to agree on this bill, and I strongly support it," Reid said.

Significantly, on the same day that the Senate was casting its unanimous vote for the Patriot Act's renewal came the announcement in California of a US federal judge's ruling that a significant section of the measure is unconstitutional. The decision was focused on the way in which the law can be utilized to criminalize and repress nonviolent political activity.

US District Court Judge Audrey B. Collins in Los Angeles struck down a section of the law that prohibits anyone from providing "expert advice or assistance" to any group that the US State Department decides to place on its list of "terrorist organizations."

Judge Collins found that the law was so vague as to

potentially imprison those engaged in activities that clearly involved constitutionally protected free speech. The US authorities have used this and other provisions claiming aid to "terrorist" organizations—rather than any evidence of real or planned acts of violence—in almost all of the so-called terror cases it has pursued over the past four years.

"The USA Patriot Act places no limitation on the type of expert advice and assistance which is prohibited, and instead bans the provision of all expert advice and assistance regardless of its nature," Collins wrote in her ruling.

The result, she added, was that the law could be used to punish "unequivocally pure speech and advocacy protected by the First Amendment." While issuing an injunction against the government's use of this provision of the law against humanitarian organizations represented in the lawsuit challenging the Patriot Act, the ruling did not bar its use nationwide. The Justice Department, meanwhile, said it was reviewing the decision and is expected to appeal.

"This law is so sweeping that it makes it a crime for our clients to provide medical services to tsunami survivors in Sri Lanka and to provide assistance in human rights advocacy to the Kurds in Turkey," said attorney David Cole, who argued the case for the Center for Constitutional Rights. The CCR said that the government's "broad and vague definition of terrorism ... has a chilling effect on free speech."

The groups represented in the suit included the Human Rights Project, which was providing human rights advocacy training for the Kurdistan Workers Party (PKK) in Turkey, as well as Tamil-American organizations that were attempting to raise aid for Sri Lankan tsunami survivors in areas controlled by the Liberation Tigers of Tamil Eelam (LTTE). Both the PKK and LTTE are on the State Department "terrorist organization" list, as are such mass organizations as the Palestinian Hamas and Hezbollah in Lebanon.



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