

Deal to renew USA Patriot Act extends police-state measures

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Republican negotiators in the House of Representatives and the Senate reached an agreement last week for the renewal of the USA Patriot Act, including the permanent extension of most of the provisions that had been set to expire by the end of this year. Once it is passed into law, the bill will extend sweeping attacks on democratic rights and consolidate a vast expansion of the powers of the state to spy on law-abiding individuals.

The bill upholds the right of the Federal Bureau of Investigation to order both public and private institutions to hand over their records on designated individuals, without the targeted people being informed of this government intrusion into their personal affairs. The FBI can issue so-called “national security letters” to banks, book stores, libraries, hospitals, Internet providers and other institutions requiring them to hand over the most sensitive and private information, even though the FBI has no evidence that the targeted individuals have committed or are about to commit a crime. No court order is required for such letters to be issued, and the institutions that receive the letters are not permitted to reveal their existence.

The Orwellian dimensions of this police-state provision were described by the *Washington Post* in a November 6, 2005 article as follows: “The records [a national security letter] yields describe where a person makes and spends money, with whom he lives and lived before, how much he gambles, what he buys online, what he pawns and borrows, where he travels, how he invests, what he searches for and reads on the Web, and who telephones or e-mails him at home and at work.”

The House-Senate agreement on extending the Patriot Act was reached after pressure was applied by the White House to resolve differences between bills passed this summer by the two chambers. While some Senators from both parties have raised objections to the final version, there is bipartisan agreement on the necessity to renew the

Patriot Act and permanently extend most of its provisions. The bill is set to come to the floor of both the House and the Senate this week for a final vote before being signed into law by President Bush.

When the Patriot Act was passed in October 2001, 16 of the more controversial measures had “sunset” provisions, i.e., they were automatically to expire by the end of 2005 unless renewed by Congress. The new bill would make permanent fourteen of these measures, while the other two would be extended for four years. House Republicans had been holding out for a seven-year extension, whereas the Senate had unanimously passed a four-year provision. Republican House leaders relented after the administration intervened to insure passage of a bill.

The agreement, known as the conference report, leaves most of the remaining provisions largely unchanged. Six senators, three Democrats and three Republicans, backed by certain corporate interests, including the US Chamber of Congress, have announced their opposition to the so-called “compromise” bill. These senators have pushed for modest amendments and worked to scuttle a previous agreement that was announced last month.

The provision expanding the powers of the FBI to obtain financial and other records by means of national security letters was not one of the sixteen that had to be renewed, as it was made permanent under Section 505 of the original act. The *Washington Post* revealed in its November 6 report that the FBI has issued more than 30,000 national security letters a year to businesses and other institutions since 2001, largely to obtain information on people who have no record of involvement in terrorist acts. This is a hundredfold increase over previous years.

Some businesses are concerned about this measure because of the onerous demands it places on companies to provide financial records of customers. The conference report reportedly includes an amendment that grants businesses the right to challenge the letters in court.

However, the court must accept as “conclusive” any government claim that disclosure of the investigation would damage national security.

The American Civil Liberties Union noted, “These provisions infringe on the separation of powers, by purporting to instruct federal courts that they must accept as conclusive a certification provided by the Executive Branch regarding fundamental First Amendment rights.”

Under the new agreement, the individual whose records are being sought still has no right to be informed of the search, since the letter is sent not to him or her, but to the institution from which the records are being sought.

In some ways, the new bill would make this provision of the Patriot Act even more egregious. It criminalizes any disclosure of a security letter “with the intent of obstructing justice,” and mandates a five-year prison sentence for this offense. A one-year prison sentence for anyone who discloses the existence of a national security letter (regardless of intent) is not included in the agreement, though it was part of the original House version.

Of the two measures that will be extended for four years, one expands the power of the government to obtain records through the Foreign Intelligence Surveillance Act (FISA). When the Patriot Act was originally passed, this provision received more attention than the national security letters, though in subsequent years it has been used less frequently. It also includes the power to extract records from libraries, bookstores and businesses, but requires the FBI to first obtain the approval of a secret FISA court.

The conference report includes a cosmetic “check” on the FBI, in the form of a requirement that the FBI provide a FISA court with a “statement of fact” that there are “reasonable grounds” to believe that the records are necessary for a terrorism-related investigation.

The other Patriot Act measure that will be extended for four years allows for roving wiretaps, i.e., wiretaps that are not tied to any particular phone or locality. This gives the government a broad license to tap multiple phones on the grounds that a criminal suspect may use them.

A separate provision, not part of the original Patriot Act, which allows the FBI to track suspected “lone wolf” terrorists is also set to be renewed for four years. This allows the government to target virtually any individual, without providing any evidence of a connection to a terrorist organization or foreign government.

The original Patriot Act granted the government broad powers to carry out “sneak and peak” searches of criminal

suspects without informing them. The government is required to show only that notice of the search could “jeopardize an investigation” or “unduly delay a trial.” The new bill would require the government to inform the subject of such a search within 30 days of the event. The Senate version had called for a seven-day period, while the House version gave the government 180 days before it had to tell the target that his house, office, vehicle or some other personal belonging had been searched. Both versions allowed the government to appeal to a court for an extension.

The rest of the over 300-page Patriot Act will remain largely as is, including the very broad definition of “domestic terrorism” to include wide swaths of political activity. There have been several reports over the past four years of government spying on antiwar and other political groups opposed to the Bush administration.

Also remaining in place is a measure giving the FBI increased leeway to use secretly recorded conversations in criminal prosecutions. This power was used in the politically motivated legal witch-hunt of Palestinian activist Sami Al-Arian, who was acquitted by a Florida jury of most charges earlier this month. The jury delivered a hung verdict on the other charges.

Six Senators—Democrats Russell Feingold of Wisconsin, Richard Durbin of Illinois and Ken Salazar of Colorado, and Republicans Larry Craig of Idaho, John Sununu of New Hampshire and Lisa Murkowski of Alaska—have declared their opposition to the bill. They are championing the original Senate version, which passed the Senate unanimously and differs only in minor respects from the current bill.

Feingold has threatened to filibuster, while Patrick Leahy of Vermont, the ranking Democrat on the Senate Judiciary Committee, has proposed a three-month extension to allow Congress to work out a more bipartisan compromise.

The bill that ultimately emerges will represent a bipartisan agreement on an unprecedented and permanent gutting of democratic rights and the legal framework for authoritarian forms of rule.



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