

With bipartisan support, US Senate agrees to Patriot Act renewal

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With overwhelming bipartisan support, the USA Patriot Act is set for renewal next week. On Wednesday, the Senate voted 95-4 for a bill that will ensure the act will pass by March 10, with minor modifications of some of its most controversial and repressive measures.

The new agreement will permanently extend most of the Patriot Act's provisions that would otherwise expire, while making only insignificant changes to a law that has become symbolic worldwide of the attack on democratic rights.

When the Patriot Act was originally passed in October 2001, Congress mandated that 16 of its provisions would expire after four years. In the summer of 2005, both houses of Congress overwhelmingly (in the Senate, unanimously) approved slightly different extensions of these provisions. Both versions included the permanent enactment of 14 of the 16 temporary measures.

Passage of new legislation, however, was delayed after a handful of Republicans joined Senate Democrats in opposing a House-Senate compromise (also known as the conference report) that did not include some restraints on government powers included in the Senate version. Among the Republicans who opposed the compromise were John Sununu of New Hampshire, Larry Craig of Idaho, Lisa Murkowski of Alaska and Chuck Hagel of Nebraska.

From the beginning, the opposition within the Senate was of a largely token character. Everyone agreed that the Patriot Act should and would be extended, but there was some quibbling over details.

In particular, there has been concern within sections of the business community over measures that allow the government to demand records from businesses and other institutions, while preventing any challenge to these orders. This provoked the objections of certain Republicans. Democrats also took the opportunity to posture, briefly, as defenders of civil liberties. However, the legislation is now set to pass with the support of nearly the entire House and Senate, without any substantial changes.

Perhaps inadvertently, Arlen Specter, the Republican chairman of the Senate Judiciary Committee, summed up

well the nature of the proceedings in a comment to reporters on February 15. He called the changes to the conference report "cosmetic," but he noted, "Sometimes cosmetics will make a beauty out of a beast and provide enough cover for senators to change their vote."

For procedural reasons, the "cosmetics"—the amendments to the conference report as agreed to by the House-Senate committee set up to reconcile the versions passed by the two chambers—were voted on first, and passed the Senate on Wednesday by the 95-4 vote. The House of Representatives is scheduled to vote on the amendments next week, and the Senate must still vote on the original conference report, which has already been passed by the House. After this, the measure will be signed into law before March 10.

The original objections to the House-Senate compromise bill focused on some of the new spying powers the Patriot Act gives the federal government. One of the points of contention was Section 215 of the Act, which allows the government to seek approval from a court to require businesses and other institutions to turn over records of an individual if the records are considered relevant in a terrorist investigation.

This data may include such things as bank transactions, purchases, individual Internet records, phone calls and many other forms of personal information. The provision does not require the government to show that there is any reason to believe that the individual whose records are sought is himself engaged in terrorist acts. It therefore allows for what have been described as "fishing expeditions," with an extremely low hurdle to be met by the government in snooping into the most personal and private matters.

Some senators urged that this provision be amended to require that the government prove there was reason to believe the individuals targeted had a direct connection to terrorism. No such measure will be included in the final bill.

The Patriot Act also contains a provision that allows the FBI to obtain records from institutions by issuing a "national security letter." This gives the FBI access to similar information as does Section 215, but it does not require any

judicial review. The *Washington Post* reported in November of last year that since the Patriot Act was passed, records on tens of thousands of Americans have been collected in this way, and that many of the individuals have absolutely no connection with terrorism.

Senators objecting to the compromise measure reported out by the House-Senate committee did not target the use of national security letters as such. Rather, they criticized one aspect of the gag order that is placed on recipients of both Section 215 orders and national security letters. This gag order prevents companies and other institutions from revealing to anyone that they have received an order to turn over records.

The final bill will maintain the gag order for a period of at least one year, which is actually an extension over the original version of the Patriot Act, in which the period was only 90 days. A gag order can be challenged after this one year period, but the hurdle for having the gag lifted is extremely high. Some senators wanted this hurdle to be somewhat lower.

They had also called for placing a four-year sunset on the national security letter provision, and sought the inclusion of a requirement that the government quickly notify individuals targeted for “sneak and peak” searches. The latter provision of the Patriot Act allows the government to search the property of criminal suspects without informing them. The House-Senate compromise bill allows a maximum of 30 days before the individual must be notified of the search, but this cap can be indefinitely extended upon appeal. The critical senators wanted a 7-day cap, with provisions for indefinite extension.

The changes sought by those senators objecting to the House-Senate conference bill were thus extremely minimal. They would not seriously hamper the powers of the government.

The changes that were made to the conference report, however, are even more minimal. In addition to the one-year cap on gag orders, the changes to the conference report include: 1) a statement that libraries cannot be targets of national security letters unless they function as internet service providers; and 2) a provision that recipients of national security letters are not required to inform the FBI if they talk to a lawyer.

The entire anti-democratic framework of the Patriot Act remains in the final compromise. Through national security letters and Section 215, the government will continue to have expansive powers to secretly spy on US residents. This is in addition to the remainder of the provisions of the Patriot Act, which have never been called into question. These include the use of “roving wiretaps,” extended for another four years; the greater ability of the government to share

information and use information gathered under the Patriot Act in criminal prosecutions; and the very broad definition of “terrorism” to include a wide array of political activities.

The changes to the House-Senate conference report were agreed to earlier this month after discussions between the White House and Senate Republicans. Once the agreement was reached, Senate Democrats seized on the opportunity to abandon their own nominal opposition to the bill.

Dianne Feinstein of California declared that the bill “is a substantial improvement.” Richard Durbin of Illinois said it represented progress in “protecting civil liberties at a time when we are dealing with the war on terrorism,” while Senate Minority Leader Harry Reid called it “a step in the right direction.”

The Senate voted overwhelmingly to block efforts by Senator Russell Feingold of Wisconsin to add additional amendments to the bill before it was passed. On February 16, the Senate voted 96-3 to effectively suppress any new amendments. Then on February 28, a final vote was taken to end debate, and this passed 69-30.

The overwhelming support of the Democrats for the renewal of the Patriot Act comes only a few months after revelations of massive illegal domestic spying through another mechanism: the secret National Security Agency program set up by the Bush administration over four years ago. On Tuesday, Attorney General Alberto Gonzales released a letter “clarifying” his testimony before Congress last month. Gonzales said at the time that the NSA program was authorized by Bush “and that is all that he has authorized.”

In his letter, however, Gonzales said that he was referring only to the NSA program acknowledged by the President and that he “did not and could not address... any other classified intelligence activities.” The meaning of this could hardly be clearer: the NSA program and those powers authorized by the Patriot Act are only part of a more comprehensive program of spying on the American people, unprecedented in the history of the United States.



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