

Congressional Revolt Over Civil Liberties; PATRIOT Reform Hangs in the Balance

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(1) Congressional Revolt Against Failure to Protect Civil Liberties

At CDT, we pride ourselves on being "veterans" of the Congressional process, but we have never seen anything like this: a pro-civil liberties revolt. In both chambers and in both political parties, members of Congress are objecting to a "compromise" by House and Senate negotiators that would renew the PATRIOT Act without bringing its surveillance powers under tighter control.

Earlier this year, the Senate unanimously passed a bill that added some modest checks and balances to some of the more intrusive provisions of the PATRIOT Act, which had been hastily adopted in the wake of the 9/11 attacks. The House, in a divided vote, extended the PATRIOT Act powers without meaningful protections and added various extraneous provisions.

Last weekend, House and Senate negotiators (called "conferees") agreed on a tentative deal that rejected many of the Senate reforms. It looked like Congress had missed a golden opportunity to strike the right balance on powers that can intrude on the privacy of innocent Americans. No one wanted the PATRIOT Act to sunset, but there was a lot of support among the public for meaningful checks and balances. In Congress, the support for fixing the PATRIOT Act was bi-partisan.

As this week has progressed, opposition has grown to the weak compromise that would renew the PATRIOT Act without adequate checks and balances. As of Friday morning, November 18, the outcome hangs in the balance.

(2) Make Your Voice Heard: PATRIOT Reform Hangs in the Balance

You can have an impact. Members of the House and Senate will listen, if you call now. Urge your Senators and your Member in the House of Representatives to join the opposition to the weak reforms in the tentative deal on the PATRIOT Act. Urge the negotiators to go back to the table and adopt the stronger reforms of the Senate bill.

Go to <http://www.cdt.org/action/patriot/> [1]. Plug in your zip code and we'll give you the Washington DC phone numbers of your members of Congress. Don't send email - they won't read it in time, if ever. But their staffs do count phone calls, and constituent input still has an impact in Washington.

We have everything you need, including advice for the shy or tongue-tied, at <http://www.cdt.org/action/patriot/> [1]

(3) Issues Include Judicial Approval of Records Demands

A major issue of contention is Section 215 of the PATRIOT Act, which allowed FBI fishing expeditions for any records held by a business, without any factual basis to believe they relate to a suspected terrorist. The Senate reform was commonsense: require the government to offer some facts showing that the records sought related to a suspected spy or suspected terrorist. But the conferees dropped that reform.

Also worrisome was the failure of the Congress to tighten the standard for issuing "national security letters." These are issued by the FBI with no judicial approval at all and there is no requirement that the information sought be connected to a suspected terrorist. Failure to rein in these NSLs was particularly disturbing in light of recent revelations in the Washington Post that 30,000 of these letters are issued by FBI agents every year. If anything, the tentative deal would worsen matters, bolstering NSLs with contempt citations (for failure to comply) and criminal penalties (for disclosing their existence), thus making it even less likely businesses will resist them.

Another issue at stake: continued Congressional oversight. The Senate bill would have kept three PATRIOT powers -- including roving taps -- under a four year sunset, ensuring that the Justice Department would have to be careful in exercising them and responsive to Congressional demands for information about how they were being used. The tentative deal would have moved this back to 7 years, even though both the House and Senate had unanimously agreed on the tighter 4 year sunset.

For more information on PATRIOT issues: <http://www.cdt.org/security/usapatriot/overview2005.php> [2] and <http://www.cdt.org/security/010911response.php> [3].

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