



## The Patriot Act: One Step Closer to a Police State?

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*By The NorthStar News Staff*

### Civil Liberties Under Assault

In the aftermath of the September 11, 2001 terrorist attacks, our lawmakers on Capitol Hill were faced with a nation's growing insecurity and feelings of vulnerability from further attacks. The sense of urgency felt by members of Congress was exacerbated by a series of anthrax scares tied to letters mailed to various members of the House and Senate. In a climate of extreme uncertainty, careful deliberation over the most appropriate manner to respond to a new threat to national security was tossed aside in favor of a direction that would be dictated by fear and extremism.

While Congress was reeling from the destruction of the World Trade Center in New York City and the simultaneous assault on the Pentagon, combined with the downed aircraft in Pennsylvania, the Department of Justice (DOJ), under Attorney General John Ashcroft, was busy at work calculating how best to extend the federal government's police powers in this climate of fear. A similar exercise took place in 1996 following the attack on the Murrah Federal Building in Oklahoma City. At that time, the Justice Department sought to significantly expand its already considerable powers but was rebuffed by lawmakers on both sides of the aisle. Congress did pass the **Anti-terrorism and Effective Death Penalty Act**, but it did put a limit on the Justice Department's ability to violate a citizen's civil liberties in the name of fighting terrorism.

All bets were off once the symbol of American commerce and capitalism toppled in lower Manhattan. The Department of Justice saw an opening to revisit the 1996 legislation and, under the cover of fighting terrorism, include provisions that would be far reaching in terms of violating individual rights. Attorney General Ashcroft was well aware of the vacuum that existed on the question of national security, and rather than wait for Congress to catch its breath, he quickly seized the moment to define the threat as imminent and the reaction as prudent. The result was **H.R. 3162** or, the **Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act**; popularly known as the **USA-Patriot Act of 2001**.

The bill carried the imprint of the Ashcroft Justice Department from the outset. In spite of the significant constitutional questions that the legislation posed, there was little, if any, deliberation in either the House or Senate. Though there were different versions of the bill circulating among Justice Department staffers, several members of the judiciary committees in both chambers, and the White House, the normal legislative path was completely circumvented. The final version of the bill was worked out in secrecy, protected from criticism by a climate of fear and nationalism that, left unchecked, overwhelmed even the normal partisan bickering that takes place over the most trivial of matters on the Hill.

### Terrorism as a Cover; Congress as a Door Mat

Defying the usual deliberateness of the legislative process, H.R. 3162 was put on a fast track. The bill was introduced in the House of Representatives on October 23, 2001, only six weeks after the terrorists struck. The legislation was voluminous, some two hundred pages, almost three hundred sections, with a dizzying number of amendments to existing statutes. A House Judiciary Committee version was cast aside, despite bipartisan support, after heavy White House lobbying for the DOJ bill. Despite the complexity of the legislation, it was presented to the House for a vote the next day with members of having only one hour to consider the bill prior to casting their votes.

H.R. 3162 was passed on Roll Call 398 in the House of Representatives on October 24 by a vote of 357 in favor, 66 against and 9 members not voting. The partisan split was 211 Republicans voting in favor, 3 casting no votes and 5 not voting. There were 145 Democrats supporting the bill, 62 voting against and four not voting. There was one Independent voting in the affirmative and one voting against the bill.

A number of Black members of Congress ([NorthStar Network Directory of Black Members of Congress](#)) voted for H.R. 3162. Supporters included **Rep. Sanford Bishop** (D-GA), **Rep. Corrine Brown** (D-FL), **Rep. Julia Carson** (D-IN), **Rep. James Clyburn** (D-SC), **Rep. Chaka Fattah** (D-PA), **Rep. Harold Ford** (D-TN), **Rep. William Jefferson** (D-LA), **Rep. Gregory Meeks** (D-NY), **Rep. Juanita Millender-McDonald** (D-CA), **Rep. Charles Rangel** (D-NY), **Rep. Ed Towns** (D-NY), **Rep. J.C. Watts** (R-OK), and **Rep. Albert Wynn** (D-MD).

The House Minority Leader, Rep. Dick Gephardt (D-MI), and the current leader of the Democratic Caucus, Rep. Nancy Pelosi (D-CA), also supported the bill.

Voting against the bill were **Rep. Eva Clayton** (D-NC), **Rep. John Conyers** (D-MI), **Rep. Elijah Cummings** (D-MD), **Rep. Danny Davis** (D-IL), **Rep. Alcee Hastings** (D-FL), **Rep. Earl Hilliard** (D-AL), **Rep. Jesse Jackson, Jr.** (D-IL), **Rep. Sheila Jackson Lee** (D-TX), **Rep. Eddie Bernice Johnson** (D-TX), **Rep. Barbara Lee** (D-CA), **Rep. John Lewis** (D-GA), **Rep. Cynthia McKinney** (D-GA), **Rep. Carrie Meek** (D-FL), **Rep. Major Owens** (D-NY), **Rep. Donald Payne** (D-NJ), **Rep. Bobby Rush** (D-IL), **Rep. Bobby Scott** (D-VA), **Rep. Maxine Waters** (D-CA), **Rep. Diane Watson** (D-CA), and **Rep. Mel Watt** (D-NC).

The very next day the Senate took up H.R. 3162 and without amendment, and little debate, passed the bill by a vote of 98 to 1. Sen. Russ Feingold, Democrat from Wisconsin, cast the only dissenting vote. The USA-Patriot Act (Public Law [P.L.] 56) was born.

### Big Brother is Alive and Watching

At the center of the Patriot Act is the ability of the Justice Department to overstep constitutional boundaries in the name of national security. What the Patriot Act allows would have caused considerable outrage had it not been for the events of September 11, 2001. Rather than be viewed as soft on protecting citizens from terrorism, Congress capitulated to the heavy hand of the Justice Department and White House. Though the Patriot Act is set to expire or sunset in 2005, the dynamics of Beltway politics is that once done, undoing becomes a monumental task.

By far the most distinguishing feature of this statute is the lack of judicial oversight. It betrays the fundamental pattern of "checks and balances" in our federal system that keeps each branch of government in check by placing limits on each in relation to the other. The Patriot Act sidesteps judicial review by granting the Attorney General incredible discretion. The judiciary is now a mere bystander.

The breadth of the Act is also striking. Despite claims by the Bush administration to the contrary, the application of the Act is not restricted to suspected terrorists. It can also be employed against low-level offenders, including those responsible for non-violent crimes.

The Patriot Act has many provisions that are cause for alarm. Among the most egregious are:

The use of "sneak and peek" or *secret* searches, allowing government agencies to conduct searches of a house, apartment or office, under warrant, when the occupant is away. The Act allows photographs to be taken, physical property seized and electronic communications captured without immediate notification or "delayed notification" of the occupant. This item is exempted from the bill's sunset provision, meaning that the government's right to conduct these types of searches is now a permanent part of our criminal code.

The use of "roving wiretaps", giving the government the authority to tap any phone a target might use, including phone lines at public institutions such as libraries. This provision is an extension of powers granted under the Foreign Intelligence Surveillance Act (FISA) for criminal investigations. Prior to the Patriot Act, FISA wiretaps could only be authorized if gathering foreign intelligence was the primary objective. That is no longer the case. Police may now use FISA wiretaps for domestic purposes.

A low threshold for obtaining information related to Internet communications, including dialing, routing and signaling. Most of this information is located in the Uniform Resource Locator (URL) or web "address" and actual content. This authority, along with roving wiretaps, has prompted public libraries to begin taking steps to delete the temporary files on computers used by library visitors.

Easier government access to personal information, including medical records, student records, financial records, employment records, DNA samples, and drug testing records. Prior to the Patriot Act, FBI agents could obtain much of this information

with the approval of a judge or grand jury subpoena so long as they could justify the request as part of a criminal investigation. That is no longer the case. All the FBI has to do is “certify” the need and a judge has no authority to deny the request. The Patriot Act also overrides federal privacy statutes and bars notification of the person whose records are being obtained.

### **Fight is Now On to Prevent the Act from becoming Permanent**

The Patriot Act is set to expire in 2005. There is now an effort underway to make the Act permanent. Given the Act’s wide-ranging authority, it could forever alter the manner in which citizens conduct their daily lives. The climate of fear and anxiety that currently grips the United States is a perfect environment for reactionary legislation. The right elements are present for the most extreme public policy to be enacted under the “radar screen”, drawing little opposition from a public that has been scared into silence. Perhaps not since the McCarthy era have we witnessed the government move so publicly in this manner.

Already a draft Patriot Act II has been circulated on Capitol Hill to test the waters. It proposes to extend the government’s powers even further. For instance, the draft proposes that the government be given the authorization to revoke a person’s citizenship if there is evidence that the individual has supported a group that authorities have identified as a terrorist threat. This is just one of several provisions that could permanently alter civil liberties in the nation.

In retrospect, many members of Congress who supported the passage of the Patriot Act have come to realize the threat it poses to innocent citizens. With presidential election year politics looming in the background, the debate over the Act’s possible extension is certain to be spirited. For Democrats the Act could be a welcome defining issue for a party whose faithful were opposed to the Iraq War, at least according to numerous polls. This holds true even for Democrats who voted for the Patriot Act but can now claim a new perspective gained from time. For Republicans, opposing efforts to make the Act permanent will be extremely difficult because of the heavy hand of the White House, the Department of Justice, and some conservatives.

**Next:** The Patriot Act II: The Sequel is Worse than the Original.