



Written by [Steven J. DuBord](#) on December 1, 2009

House Enacts Limits as Patriot Act Set to Expire

Three controversial provisions of the Patriot Act are set to expire this New Year's Eve. They granted the federal government wide-ranging powers of surveillance and seizure with few limitations.

The Senate Judiciary Committee has already reauthorized the Patriot Act provisions with a bill that makes relatively minor modifications. The House Judiciary Committee made more extensive changes aimed at curtailing the potential abuse of power.

The House and Senate versions will have to be reconciled, but the Senate is going to have its hands full in December just tackling healthcare reform legislation. It is possible that Congress will simply vote for a temporary extension of the Patriot Act powers until the healthcare issue has been dealt with.



"This critical legislation protects our national security, as well as our civil liberties, and the clock is ticking," declared Representative Jim Sensenbrenner (R-Wisc.), who helped write President Bush's 2001 Patriot Act.

Representative John Conyers, Jr. (D-Mich.), who introduced the House bill to reauthorize the Patriot Act provisions, is more concerned that this opportunity to provide some checks and balances is not missed: "We have the opportunity to fix the most extreme provisions of that law and provide a better balance."

The provisions of the Patriot Act that are expiring were ably summarized as follows in an [ABC News story](#) for November 30:

1. **The Records provision.** This allows federal investigators with a court order to compel anyone to hand over "any tangible thing" showing "relevance" to a terrorist investigation from all business, hospitals, and some libraries. According to the U.S. Attorney General's office, there have been 220 such orders issued, but no major case to date has transpired because of information procured from them.

Both the Senate and the House bills renew the provision, but remove that presumption of "relevance" so that the burden of proof falls on the government to report facts and circumstances justifying what the items sought have to do with an investigation. A higher threshold of proof is specified for library circulation records and patron lists in both bills, but the House goes further to add booksellers to that group.

2. **The Roving Wiretaps provision.** The provision authorizes authorities to track a target by wiretapping any multiple lines of communication without specifically naming a target or what kind of



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communication they're using to the FISA (Foreign Intelligence Surveillance Act) courts issuing the warrant. The FISA court grants about 22 such warrants annually, according to a government document. The House bill renews the roving wiretaps, but puts more restrictions on the government proving an unnamed target as a specific individual to prevent dragnet operations. The Senate leaves the provision as is.

3. The Lone Wolf provision. This provision allows authorities to make use of secret surveillance orders to spy on non-Americans if there is proof that they are engaged in a terrorist activities, but not necessarily involved with a terrorist organization or foreign power. The Lone Wolf provision has never been used.

The House Judiciary Committee voted to allow the Lone Wolf provision to expire, stating that normal procedures for criminal investigations could be used instead; the Senate voted to renew it.

As can be seen, the House went further in scaling back the powers offered by these provisions of the Patriot Act. The House also addressed one Patriot Act provision that was not set to expire: national security letters (NSLs). The FBI uses these secret letters to legally compel third parties such as Internet service providers, banks, and travel companies to turn over client records as part of terrorism investigations.

But the NSLs are controversial because they do not require a court order and include a gag provision to prevent the third party from even talking about any NSLs they have received. The combination of no checks to balance a power that is shrouded in secrecy makes NSLs ripe for abuse.

According to Justice Department reports, the FBI issued more than 192,000 known NSLs during 2003-2006. Justice Department Inspector General Glenn Fine has made it known that there were at least 640 potential violations involving "serious misuse" of NSLs from 2003-2006.

Therefore the House voted to place tough restrictions and an expiration date on the provision for NSLs, paying heed to a coalition of 20 civil libertarian groups, among them the ACLU.

"To fail to narrow this authority would be reckless," said Michael German, formerly with the FBI and now a policy counsel for the ACLU. "Where the FBI is investigating a particle person, where the FBI has reasonable suspicion a person is acting for an agent or on behalf of a foreign terrorist organization, they have robust authorities, and that is perfectly appropriate and justifiable," German told ABC News.

"But what the national security letters do is allow them [the FBI] to collect information about people they don't suspect of doing anything wrong. And that's just a bridge too far," German said.

"Unless we get it right, I think we risk not just shredding our constitution which I'm not in favor of, but shredding our way of life," said Representative Jane Harman (D-Calif.), Ranking Member of the House Intelligence Committee.

The Founding Fathers would agree, though they would almost certainly go further and not just limit the ironically named Patriot Act but eliminate it. The disaster of 9/11 was not caused by the federal government's lack of totalitarian police state powers. Any Americans who think that safety can be found by accepting violations of their privacy and liberty need to then ask themselves who will keep them safe from the government.



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