



Written by [Steven J. DuBord](#) on September 21, 2009

Patriot Act Hearings This Week

The House and the Senate are scheduled to conduct their initial committee hearings this week on the question of reauthorizing three sections of the Patriot Act that will expire at the end of this year.

Civil liberties groups and some congressional Democrats want to rein in the Patriot Act, which gave the federal government extensive surveillance and confiscation powers. The Obama administration and some Republicans in Congress would like to keep the vast powers, the [New York Times reported](#) on September 19.



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Nine Democrats and an independent [sponsored a bill \(pdf\)](#) on September 17 that would seek to protect privacy by restricting surveillance and imposing safeguards. But Ronald Weich, Assistant Attorney General for Legislative Affairs, submitted a letter to Congress asking for all provisions of the Patriot Act to be renewed, hinting at only a slight willingness to compromise.

“We are aware that members of Congress may propose modifications to provide additional protection for the privacy of law abiding Americans,” Weich wrote. “The administration is willing to consider such ideas, provided that they do not undermine the effectiveness of these important authorities.”

Republicans have asked Kenneth Wainstein, a former Bush administration Assistant Attorney General for National Security, to speak at the hearings. “We have to be careful not to limit these tools to the point that they are no longer useful in fast-moving threat investigations,” Wainstein warned. “There is an important place for oversight of national security tools, and that oversight is being exercised by Congress and by the federal judges on the Foreign Intelligence Surveillance Court.”

Democrats have invited Suzanne Spaulding, a former top staffer for both parties on House and Senate intelligence committees. Spaulding would advise Congress to restrict the FBI’s use of Patriot Act powers, noting that “important safeguards” had been overlooked. As the Patriot Act now stands, it affords “a greater likelihood at a minimum of the government mistakenly intruding into the privacy of innocent Americans, and at worst having a greater capability of abusing these authorities.”

The first provision up for extension is one that allows federal investigators to obtain authorization for “roving wiretaps.” This allows investigators to follow a suspect as he changes phone numbers or phone service without needing a new warrant for each change. F.B.I. Director Robert Mueller stated at a recent Senate Judiciary Committee hearing that the bureau had applied for about 140 roving wiretaps between 2004 and 2009.

The second provision allows the FBI to get a court order allowing the seizure of any tangible items that may be relevant to an ongoing terrorism investigation. This could include, for example, computers, cellphones, or business records. Mueller said this provision was used more than 250 times from 2004 to



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The last provision requiring reauthorization deals with any “lone wolf” the FBI may want to wiretap even if they have no known connection to a terrorist group or hostile foreign government. Mueller said this authority had never been exercised.

Other parts of the Patriot Act that aren’t up for renewal are nonetheless coming under scrutiny. The FBI has made extensive use of “national security letters,” a form of administrative subpoena allowing the seizure of business records without judicial permission. These letters are used tens of thousands of times every year, and the Justice Department’s Inspector General has found that the FBI often abuses the letters.

Another point of controversy is a 2008 law which Congress used to give immunity from prosecution to telecommunications companies that participated in President Bush’s warrantless surveillance program. Obama voted for that law; Senators Russ Feingold (D-Wis.) and Richard Durbin (D-Ill.) would repeal the grant of immunity as part of their September 17 bill.

The Feingold-Durbin bill would also restrict the collection in bulk of overseas phone calls coming into the United States. It is doubtful the National Security Agency is currently capable of this, but the bill anticipates such future technological developments.

“Every single member of Congress wants to give our law enforcement and intelligence officials the tools they need to keep Americans safe,” Senator Feingold declared when the bill was filed. “But with the Patriot Act up for reauthorization, we should take this opportunity to fix the flaws in our surveillance laws once and for all.”

Unfortunately, Feingold and the sponsors of the bill to “fix” the Patriot Act don’t go far enough. The only way to fix the flaws in the Patriot Act is to repeal the entire act, as Congressman Ron Paul (R-Texas) explained in his 2005 piece “[Reconsidering the Patriot Act.](#)”



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