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## **USA Patriot Act – The Congressional Revolt**

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The USA Patriot Act (P.L. 107-56) has been one of the most controversial acts passed in the wake of September 11, 2001. Among its many provisions, the USA Patriot Act has broadened the power of the Foreign Intelligence Surveillance Act (FISA), made the issuance of many forms of process mandatory, and imposed various gag order provisions. The USA Patriot Act has placed new limits on both congressional and judicial oversight of surveillance. Many people feel that the USA Patriot Act has altered the normal checks and balances between the executive, judicial, and legislative branches.

The following pending bills are a selection of the attempts by the 108th Congress to restore that balance.

- The bi-partisan **Freedom to Read Protection Act** (H.R. 1157) and its companion bill, **the Libraries, Booksellers and Personal Records Protection Act** (S. 1507), would withdraw library and bookseller records from the effects of section 215. Section 215 amends the Foreign Intelligence Surveillance Act (FISA) to require the court, on the government's certification, to issue an order to any business to turn over records and any tangible things, and imposes a gag order on the recipient.
- **The Library and Book Protection Act** (S. 1158), would require the government to meet a higher standard than currently required to get a section 215 order, and would require a probable cause warrant for counterintelligence access to certain enumerated library records.
- **The Benjamin Franklin True Patriot Act** (H.R. 3171) is a bi-partisan act that would require a debate to take place on specified provisions of the USA Patriot Act, and, unless approved after debate, would sunset each provision. This rectifies the lack of debate at the time the USA Patriot Act was passed.
- **The Surveillance Oversight and Disclosure Act of 2003** (H.R. 2429) would add reporting requirements and improve congressional oversight, by requiring a breakdown of surveillance orders by type (electronic, e-mail pen registers, physical searches, and access to records). The Senate version of this bill is the Domestic Surveillance Oversight Act of 2003 (S. 436).
- **The Reasonable Notice and Search Act** (S. 1701) would alter the delayed notice provisions of the "sneak and peek" warrants authorized by section 213, and would add section 213 to the list of USA Patriot Act provisions due to sunset on December 31, 2005. The Senate version of the bill is the Domestic Surveillance Oversight Act of 2003 (S. 436).
- **The Security and Freedom Ensured (SAFE) Act** (S. 1709) is a bi-partisan bill revising the roving wiretap and "sneak and peek" provisions, requiring additional reporting to Congress; expanding the sunset provision to four other sections; and requiring a "specific and articulable facts" standard if the government wants a section 215 order. SAFE also provides that libraries are not Internet service providers subject to a Section 505 national security letter.
- SAFE's companion bill in the House, the bi-partisan **Security and Freedom Ensured Act** (H.R. 3352), mirrors SAFE and further limits the definition of domestic

terrorism in the USA Patriot Act to "acts dangerous to human life," clearly excluding political protests.

- **The Patriot Oversight Restoration Act of 2003** (S. 1695) would require a number of other provisions of the USA Patriot Act to sunset in 2005, including sections 210 and 211 governing information electronic communication and cable service providers must provide to the government; section 213's delayed notification search warrants; sections 216 and 222, which expand pen register orders to computers; section 505's national security letter authority expansion; sections 507 and 508, which remove statutory privacy protections for educational records; and section 806's expansion of the government's civil forfeiture authority.
- **The Protecting the Rights of Individuals Acts** (S. 1552) is a bi-partisan bill to place restrictions on some provisions, including limiting the potentially broad scope of the current "sneak and peek" searches authorized by section 213; narrowing the currently broad definition of "domestic terrorism" to clearly exclude political protestors; requiring the government to give a statement of facts and circumstances on which it is relying to get personal records; meeting the probable cause standard where library records, medical records, records of purchasing or renting books, video, or music, or records of Internet access are requested; prohibiting Section 505 national security letters to obtain library records; limiting overly broad roving wiretaps; and reinstating a probable cause requirement for allowing the monitoring of Internet viewing.
- **The Civil Liberties Restoration Acts of 2004** (H.R. 4591 and S. 2528) would restore some due process rights under the Immigration and Nationality Act, including removing the blanket closure of all deportation hearings and ensuring due process for detained individuals and limit the secret seizure of records and require agencies to report on data mining activities to Congress.

This article is a revised portion of *Protecting the Lady From Toledo: Post-USA PATRIOT Act Electronic Surveillance at the Library*, 96 LAW LIBR. J. 449.

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