



July 20, 2005

United States House of Representatives  
Washington, DC 20515

Dear Member of Congress:

On behalf of the more than 750,000 members and activists of People For the American Way, we write in opposition to H.R. 3199, the “USA PATRIOT Act and Terrorism Prevention Reauthorization Act,” as drafted. While we support meaningful and thoughtful reform of the USA PATRIOT Act, this bill does not yet adequately address the concerns expressed both by legislators and the American public.

H.R. 3199 does little to correct the imbalance between national security and civil liberties concerns. More can certainly be done to protect and restore Americans’ privacy rights. For example:

- Sunsets  
H.R. 3199 permanently extends many of the most troubling provisions of the USA PATRIOT Act. Only the sunset provisions for Section 206 (roving wiretaps) and Section 215 (access to business records) are extended. These two provisions are now set to sunset on December 31, 2015. On the other hand, H.R. 3199 makes permanent the remaining fourteen currently sunsetted provisions, including Internet monitoring, emergency disclosures of email without a court order, and nationwide search warrants for electronic information, with terrorism as only an auxiliary concern of the investigation. These provisions should not be permanent. Instead, the House should, at minimum, extend the sunsets for some of these other, more controversial sunset provisions.

The House should also reconsider the new suggested duration of the two sunset provisions for Sections 206 and 215. While sunset provisions enable review within a specific timeline, the ten-year period for Sections 206 and 215 adopted during the House Judiciary Committee markup releases the next two administrations from virtually any obligation to review or respond to continually voiced concerns on the application of the USA PATRIOT Act. A more appropriate method for review would be another four-year sunset clause with frequent oversight by Congress.

- Minimal Factual Showing  
For many of the more intrusive provisions of the USA PATRIOT Act, such as Section 214 (FISA pen registers and trap and trace devices), Section 215 (access to business records), and Section 505 (National Security Letters), a government agent should be required to show “specific and articulable facts” that the records or information being sought in foreign intelligence investigations pertains to a suspected terrorist, spy or other foreign agent before he or she can obtain a court order for those records. H.R. 3199 does not yet go far enough in establishing an adequate factual showing.

- Roving Wiretaps  
Roving wiretaps permitted under Section 206 of the USA PATRIOT Act should have the same kind of ascertainment requirement that a criminal wiretap is subject to under existing federal laws other than the USA PATRIOT Act. This would require the time for interception to be limited to only the time reasonable to presume that the target of the wiretap is or was reasonably proximate to the tapped instrument. This would be an important step toward making sure H.R. 3199 limits the interception of innocent persons' communications.
- Judicial Review  
An amendment to H.R. 3199, adopted during the House Judiciary Committee markup, requires the Attorney General to regularly report on the use and application of Section 212 (emergency disclosures of email). This is a step in the right direction, but the USA PATRIOT Act is sorely lacking in judicial review in other important provisions. When certain types of surveillance are carried out on an emergency basis, existing federal laws other than the USA PATRIOT Act require the government to notify the judge after-the-fact. H.R. 3199 is largely written without the same caution.
- Notification to Target  
Targets of surveillance, searches, or records acquisition should be notified after-the-fact, provided that the investigation of the suspected target is concluded and notification would not interfere with related investigations or pose any threat or danger.

Furthermore, the catch-all provision in Section 213 of the USA PATRIOT Act, which allows delayed notification of a search when notification would unduly delay trial or jeopardize an investigation, potentially covers a host of situations where exigent circumstances do not actually exist. H.R. 3199 should eliminate this Section 213 catch-all authority which could potentially delay notification indefinitely.

Finally, H.R. 3199 includes a provision, adopted during the House Judiciary Committee markup, that would only allow delays in notification under Section 213 for periods of 180 days, renewable for 90-day extensions. This is an excessively long delay that should be shortened to a more reasonable period.

- Definition of Domestic Terrorism  
The current definition of "domestic terrorism" in the USA PATRIOT Act could potentially encompass acts of civil disobedience. While civil disobedience is made illegal by existing federal laws other than the USA PATRIOT Act, it is not necessarily terrorism. H.R. 3199 does not address this problem. Congress should limit the qualifying offenses for domestic terrorism to those that constitute a federal crime of terrorism, instead of any federal or state crime, as is currently the case.

As indicated above, many of the temporary provisions of the USA PATRIOT Act should not be made permanent, nor should overly long timelines be set up that eliminate meaningful review by Congress. Sunsets were incorporated into the USA PATRIOT ACT to provide Congress an opportunity to revisit the bill's sweeping grants of power to federal authorities, and this should

be continued. Since the fall of 2001, Americans from all points on the political spectrum have raised concerns about the application of these powers and have called for meaningful reforms.

We urge you to carefully consider the wide range of concerns over the USA PATRIOT Act and not support passage of H.R. 3199 in its current form.

Sincerely

Handwritten signature of Ralph G. Neas in cursive script.

Ralph G. Neas  
President

Handwritten signature of Marge Baker in cursive script.

Marge Baker  
Director, Public Policy