



November 18, 2005

United States Senate  
Washington, DC 20510

Dear Senator:

On behalf of the more than 750,000 members and activists of People For the American Way, we write in strong opposition to the conference report on H.R. 3199, the “USA PATRIOT Act and Terrorism Prevention Reauthorization Act,” as drafted. While we support meaningful security measures to combat terrorism, this conference report does not adequately address the privacy concerns that both legislators and the American public have expressed regarding certain sections of the USA PATRIOT Act.

This conference report departs from the spirit of the bipartisan Senate legislation (S. 1389) and does little to correct the imbalance between national security and civil liberties concerns. Although many ominous loopholes and standards issues remained, the bipartisan Senate legislation (S. 1389) thoughtfully addressed several critically important civil liberties concerns. More must be done to protect and restore Americans’ privacy rights. For example:

- Sunsets

The USA PATRIOT Act designated 16 provisions to expire on December 31, 2005, if not reauthorized. This conference report makes permanent 14 of those provisions, and sets seven year sunsets on the other two. Among the 14 provisions made permanent are powers for 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. Many of these provisions are among the law’s most troubling and should not be made permanent. They were initially given 4-year sunsets for exactly this reason.

The conference report should at the very least contain the 4-year sunsets on Section 206 (roving wiretaps) and Section 215 (access to business records) as included in the Senate legislation (S. 1389) and passed recently by the House in a motion to instruct. While sunset provisions enable review within a specific timeline, the 7-year period for Sections 206 and 215, adopted during conference, releases the next administration from virtually any obligation to review or respond to continually voiced concerns on the application of the USA PATRIOT Act.

- 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. The conference report 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 limiting the interception of innocent persons' communications.
- Notification to Target  
There should be limits set on the delayed notification of targets of surveillance, searches, or records acquisition. The vague catch-all "sneak and peek" provision in Section 213 of the USA PATRIOT Act, which allows delayed notification of a search when notification would "jeopardize an investigation", potentially covers a host of situations where exigent circumstances do not actually exist. The conference report should eliminate this catch-all authority, which could potentially delay notification indefinitely.
- 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. The conference report 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.

It is in your hands to provide the meaningful checks and balances necessary to protect our civil liberties. Since the fall of 2001, legislators and Americans from all points on the political spectrum have expressed serious unease 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 the conference report on H.R. 3199, as drafted.

Sincerely



Ralph G. Neas  
President



Marge Baker  
Director, Public Policy