

***NewsBreak: Congress Extends USA PATRIOT Act by one month***  
**By George H. Pike\***

On the last day of the 2005 legislative session, the U.S. Congress passed Senate bill 2167, which extended the existing USA PATRIOT Act by one month. The Act's provisions, which had been set to expire on December 31, 2005, will now set to expire on February 3, 2006.

The bill was required after the Senate refused to accept a proposal which would have made most of the Act permanent. By a bi-partisan vote of 52-48, the Senate was unable to end a filibuster of the proposal (which requires 60 votes.) Unable to modify the proposal to satisfy opponents, or convince seven Senators to switch their votes (the eighth vote was Senate Majority Leader Bill Frist, who supported the proposal, but voted no for technical reasons involving Senate rules), the PATRIOT Act would have expired on December 31, 2005.

Throughout the summer and fall several versions of PATRIOT Act extension and reform bills were circulating through the House and Senate. After competing versions were enacted in each chamber, a joint House-Senate Conference Committee was established to work out a compromise. Their proposal was released on December 8, and approved by the House on December 14.

The compromise bill would have made many of the provisions of the PATRIOT Act permanent. However, the most controversial provisions, including Section 215 which permits access to business records such as library patron files, was only extended by four years. The bill also included a number of changes to Section 215 which purported to provide increased safeguards against misuse, although critics continued to argue that the safeguards were insufficient.

Another controversial area addressed by the compromise was the issuance of National Security Letters (NSL's). These letters can be issued by the FBI without court authorization, must be kept secret, and are used to obtain records from "electronic communication service providers." A recent NSL was challenged by a Connecticut recipient—identified as a member of the American Library Association—on constitutional grounds. The PATRIOT Act compromise endorsed the use of NSLs and proposed some additional safeguards. However, the compromise maintained the secrecy provisions and included the possibility of criminal penalties for violation, as well as proposing to make the PATRIOT Act's NSL provisions permanent.

Despite strong approval in the House, the PATRIOT Act compromise bill came before the Senate at a time of increasing concern and skepticism about the PATRIOT Act and the Bush Administration's impact on civil liberties in responding to terrorism. On the same day the compromise was to be voted on in the Senate, the *New York Times* reported that the Bush administration had authorized eavesdropping on Americans as well as foreign nationals without court approval. Although the Bush administration claimed that

the wiretapping was legal, several Senators mentioned the report as evidence of the need for stronger civil liberties protections than were in the compromise bill.

In the weeks leading up to the vote, a number of events also raised concerns about the PATRIOT Act. In early December, a federal jury acquitted University of South Florida professor Sami Al-Arian of advocating and financing terrorism. In a case which was considered the “first real test” of the PATRIOT Act, jurors concluded that Al-Arian’s speeches and recorded conversations were expressions of free speech and did not constitute advocating violence or financing terrorism. Later in December, the town of Coupeville, Washington became the 400<sup>th</sup> town, county or state to pass a resolution opposing the PATRIOT Act.

Also in December, the *New York Times* reported that FBI records showed “numerous violations” of surveillance and investigative procedures. In addition, there was a request by the FBI to bypass the Justice Department’s intelligence office, which reviews requests for business records under the PATRIOT Act. The FBI went so far as to complain that, “While radical militant librarians kick us around”, the Justice Department was preventing the FBI from using, “the tools given to us.”

Even the passage of the one-month extension was controversial. Initially, the Senate passed a six month extension and the White House indicated that President Bush would sign it. However, House leaders balked and only agreed to the one month extension, which ultimately the Senate agreed to. President Bush has indicated that he will sign the one month extension.

The passage of the extension maintains the status quo represented by the existing USA PATRIOT Act for a few weeks. However, the objections and concerns raised by critics of the PATRIOT Act are also maintained as well.

At this juncture a number of possibilities exist. If seven Senators can be convinced to switch their votes, the existing compromise would be approved by the Senate and sent to the President. More likely, the joint committee will reconvene (or a new joint committee convened) to hammer out a new compromise which will require a new vote in both the House and the Senate.

Congress will have barely one month in which to address the continuing concerns about the PATRIOT Act and develop a new compromise. Congress will also be occupied with the confirmation hearings for Supreme Court nominee Samuel Alito and other controversial proposals left dangling at the end of 2005, including oil drilling in the Arctic and federal budget cuts. Finally, the Senate has pledged to hold hearings on the wiretapping of U.S. citizens, which will likely cast a cloud over the PATRIOT Act debate.

The one-month extension allows both supporters and critics a bit of time to regroup. However, with such a short time to the next deadline, the political storm surrounding the Act is unlikely to die down. The continuing war in Iraq, the proposed wiretapping

hearings, litigation over NSLs, and continued criticism of the Act will drive the push for reform. But as the 109<sup>th</sup> Congress shifts into its second session, the 2006 elections begin casting a large shadow over anything Congress does. The elections also enhance the importance of contacting your representatives and letting them know your feelings about the USA PATRIOT Act.

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