

A Breakdown of the H.R. 3845, The USA PATRIOT Amendments Act of 2009 (10/27/2009)

Congressmen Conyers, Nadler and Scott have introduced the USA PATRIOT Amendments Act of 2009, which reforms a number of Patriot Act provisions. The bill reins in the government's spying powers and would:

Protect the privacy of records.

- H.R. 3845 amends the national security letter (NSL) authority so that the government can only access communications, financial and credit records when they pertain to a terror suspect or spy. Under the original Patriot Act, the government can collect the records of innocent people whenever it deems them "relevant" to an investigation – without any oversight by an impartial court. The current standard is so low that independent audits found that approximately 50,000 are issued every year and many are issued against people two or three times removed from an actual suspect.

Protect the privacy of communications.

- The Conyers-Nadler-Scott bill amends the Patriot Act's "roving John Doe" authority. That authority permits wiretap orders even without identifying either the person or the place to be tapped. The new bill would require the government to name either the person or the place.

Protect the privacy of homes and businesses.

- The Patriot Act made it easier for the government to secretly conduct searches without giving prior notice by authorizing "sneak and peek" searches whenever notice would jeopardize an investigation. H.R. 3845 reins in this authority by removing this broad catch-all, but permits government officials to continue secret searches in emergency or urgent circumstances.

Protect First Amendment rights.

- The USA PATRIOT Amendments Act requires that gag orders that come with national security letters or section 215 orders meet traditional First Amendment standards. If a recipient of one of these requests wishes to speak out about the government's actions, the burden will be on the government to convince a court that national security will be jeopardized if the recipient is not gagged.

The USA PATRIOT Amendments Act isn't perfect. The bill needs to be strengthened in two important ways.

Target terror prosecutions on those who intend to help terrorists.

- The bill should also amend the Patriot Act's so-called "material support" provision, which permits the prosecution of those who work with or for charities that give humanitarian aid in good faith to war-torn countries. Congress should add a provision that would limit prosecution to those who actually intend to support terrorist-oriented actions.

Limit the government's ability to obtain tangible evidence, even if it's unrelated to a terrorist.

- The Patriot Act permits the government to get a secret warrant for "any tangible thing," such as library or medical records, by showing only that the records are "relevant" to an investigation—a very easy standard to meet. The bill should require the government to show that the records relate to a suspected terrorist or spy to minimize the number of innocent people who are swept into terrorism investigations and government databases.