

THE ORANGE COUNTY REGISTER

Editorial: Fix Patriot Act or don't extend it

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Crucial votes on extending the USA Patriot Act could happen as soon as Wednesday in both houses of Congress. The current extension of the act, passed three months ago, expires May 27. The act originally was passed by Congress in the wake of the 9/11 attacks almost 10 years ago. It greatly expanded government surveillance powers.

This is crucial because it involves' Americans Fourth Amendment "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Without that right, government has the ability to, among other things, spy on citizens at will. The Fourth Amendment was severely eroded earlier this month when the U.S. Supreme Court vastly expanded police powers to conduct warrantless searches.

Each of the three expiring powers needs revision, Julian Sanchez told us; he's a research fellow who studies surveillance for the libertarian Cato Institute. This month he wrote the policy paper "Leashing the Surveillance State: How to Reform Patriot Act Surveillance Authorities."

First is the so-called "lone wolf" provision, which has not yet been used. It allows the government to use the broad tools of the Foreign Intelligence Surveillance Act – designed to deal with people tied to foreign espionage agencies and terror groups – against noncitizens suspected of terror plotting, even when they lack any such ties. Mr. Sanchez said that this violates the longstanding distinction made between 1) true "foreign intelligence" investigations, where Fourth Amendment protections are relaxed; and 2) ordinary national security investigations, where the traditional tools of criminal law are used. He said it was wrong for the Patriot Act "to break down that barrier."

Second are "roving wiretap" orders. These allow investigators to follow a suspect who frequently changes phones or e-mail addresses, without the investigators returning to a judge for approval each time a new account is tapped. But, unlike roving orders for criminal investigations – which require the suspect to be named – the act's roving wiretaps need only include a "description" of the target. Such "John Doe" warrants, Sanchez said, "give the agent too much discretion to decide which communications to intercept."

Third is Section 215 of the act, which gives the FBI virtually unlimited authority to obtain business records and other tangible things, as long as they are "relevant" to "an authorized investigation ... to protect against international terrorism or clandestine intelligence activities." The FBI doesn't even need to show probable cause that the person being investigated is engaged in any criminal activity, and may sweep up information about people only loosely tied to an actual suspect.

The overall problem, Mr. Sanchez said, is that "the public and members of Congress are not aware of how these provisions are being used. There's an astonishing amount of information being collected in FBI databases, about people who aren't even suspected of doing anything. Yet, there's a record of their phone and e-mail contacts, maybe revealing sensitive political or religious affiliations."

Especially with Osama bin Laden dead, now is the time to reassess America's anti-terrorism laws, revising them to restore lost liberties. Our precious American freedoms define us.

Unless major modifications are made, we urge Orange County's six members of the House of Representatives to oppose the extension. In the previous extension, in February, three wisely did oppose it: Dana Rohrabacher and John Campbell, both Republicans, and Democrat Loretta Sanchez. They need to remain steadfastly opposed. We hope they are joined this time by the three representatives who backed the extensions in February: Republicans Ken Calvert, Gary Miller and Ed Royce.

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