

## USA PATRIOT Act

The USA PATRIOT Act, or, as it is popularly referred to, the Patriot Act, became law on October 26, 2001, through actions taken by the 107th U.S. Congress. Drafted in response to the September 11, 2001, World Trade Center and Pentagon attacks, the stated purpose of this legislation was "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism." USA PATRIOT is simply the acronym for this rather cumbersome title. The statute entered a difficult policy terrain by purporting to balance concerns about national security with the civil rights and liberties that define American society.

The Patriot Act covers a number of areas, as delineated in its 10 titles:

- Title I: Enhancing Domestic Security against Terrorism
- Title II: Enhanced Surveillance Procedures
- Title III: International Money Laundering Abatement and Anti-terrorist Financing Act of 2001
- Title IV: Protecting the Border
- Title V: Removing Obstacles to Investigating Terrorism
- Title VI: Providing for Victims of Terrorism, Public Safety Officers, and Their Families
- Title VII: Increased Information Sharing for Critical Infrastructure Protection
- Title VIII: Strengthening the Criminal Laws against Terrorism
- Title IX: Improved Intelligence
- Title X: Miscellaneous

Substantively, the Patriot Act strengthens the executive branch of government, in particular law enforcement and intelligence agencies, in dealing with the ongoing threat of terrorism. The act broadens the authority of federal officials to track and intercept communications for both foreign intelligence surveillance and local law enforcement, provides powers to the Secretary of the Treasury to combat money laundering and the corruption of financial institutions in order to disrupt terrorist finances, addresses concerns related to immigration and the need to keep foreign terrorists outside U.S. borders, and creates new crimes, penalties, and procedural rules to facilitate the War on Terror.

Introduced as HR 3162, the bill combined several earlier laws as well as antiterrorism bills that had already been brought forward in October 2001. Some of the earlier legislation had been passed during the Cold War, and reflected an era when "foreign surveillance" was used to monitor the actions of a distinct state apparatus, for example, the Soviet Union and its KGB spy network. The Foreign Intelligence Surveillance Act of 1978 (FISA) had thus been enacted at a time when a genuine distinction between *domestic* and *foreign* law enforcement could actually be drawn. There were less rigorous standards of probable cause, for example, when foreign intelligence investigations were being undertaken than those applied by local law enforcement in the apprehension of domestic criminals. By 2001 the global order had changed: the enemy was now transnational in origin, was not directly sponsored by any government, and in fact included individuals who had lived and worked within the United States for a number of years. The Patriot Act addressed this changed environment by allowing the Federal Bureau of Investigation to share information gathered under the "foreign intelligence" standard with local law enforcement agencies, in essence, as the Center for Public Integrity notes, "nullifying the higher standard of oversight that applied to domestic investigations," according to a report by Charles Lewis and Adam Mayle for the Center for Public Integrity. Further,

the act also amended the FISA requirements that such surveillance be allowed only when foreign intelligence was the primary purpose of an investigation; after 2001 the standards were weakened, and such intelligence must only be demonstrated to be a significant purpose within the investigation.

The prospect of decreased governmental oversight and judicial review for actions taken in the 2001 war on terrorism—which includes the enactment of the Patriot Act—has prompted criticisms and court actions from a number of quarters in the United States. In a summary of its report "The State of Civil Liberties: One Year Later," examining repercussions of 9/11, the Center for Constitutional Rights asserted that an erosion of the U.S. Bill of Rights had occurred, especially with regard to the First Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment rights of both citizens and noncitizens: "From the USA PATRIOT Act's overbroad definition of domestic terrorism, to the FBI's new powers of search and surveillance, to the indefinite detention of both citizens and non-citizens without formal charges, the principles of free speech, due process, and equal protection under the law [had] been seriously undermined." Similarly, the American Civil Liberties Union, the Center for Public Integrity, and the Electronic Frontier Foundation have also been among those who have published analyses critical of the effects of Patriot Act legislation on U.S. civil rights and liberties.

Some of the criticism has focused on the haste with which the legislation was enacted. Sponsored by Republican congress member F. James Sensenbrenner, who introduced it on October 23, 2001, the Patriot Act emerged from the political process several hundred pages in length and passed in short order, with a House vote of 357–66 on October 24 followed by Senate passage a day later, without amendment, by a vote of 98–1. It was signed by President George W. Bush a day later. The speed with which this legislation moved is even more impressive given the number of committees to which it had been referred. Affecting policy across a broad array of the public domain, the various provisions were sent to nine standing committees or subcommittees prior to debate on the House floor. The urgency was dictated by the fear that other terrorist actions were imminent, concern that the U.S. government was insufficiently equipped to address such attacks, and daily reports of letters carrying anthrax bacteria.

Such urgency is not without precedent in U.S. history. In the face of an undeclared war with France at the end of the 18th century, a young United States, led by the powerful Federalist Party, enacted the Alien and Sedition Acts of 1798, which in combination strengthened the president's hand in dealing with aliens, feared to be French sympathizers. In the aftermath of the U.S. Civil War, Congress passed a law that barred the Supreme Court from hearing appeals involving Reconstruction policies. This law was passed while the case of *Ex Parte McCardle* was pending before the Supreme Court in 1869; the case involved a Mississippi newspaper editor who was imprisoned without charge by military authorities. Again, in the midst of World War I, Congress passed the Espionage Act of 1917, under which nearly 2,000 citizens were arrested for such activities as interfering with draft registration and handing out antiwar leaflets. The Espionage Act was intended to prohibit forms of dissent seen as undermining the nation's war effort. Two years later, in *Schenck v. United States* (1919), the Supreme Court upheld a conviction under the act, ruling that the government could restrict speech that presented a clear and present danger to national security.

As enacted in 2001, the Patriot Act contained a sunset clause providing for its expiration as of December 31, 2005. The act was subsequently reauthorized several times with modifications.

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### Further Reading

Ball, Howard, and Mildred Vasan, eds. *The USA PATRIOT Act: A Reference Handbook*. Santa Barbara, CA: ABC-

CLIO, 2004; Center of Constitutional Rights. "The State of Civil Liberties: One Year Later: Erosion of Civil Liberties in the Post 9/11 Era." <http://www.ccrny.org/>; Cole, David, and James X. Dempsey. *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*. New York: New Press, 2006; Etzioni, Amitai. *How Patriotic Is the Patriot Act? Freedom versus Security in the Age of Terrorism*. New York: Routledge, 2004; Leone, Richard C., Greg Anrig Jr., and Greg Anrig, eds. *The War on Our Freedoms: Civil Liberties in an Age of Terrorism*. New York: Public Affairs, 2003; Lewis, Charles, and Adam Mayle. *Special Report: Justice Department Drafts Sweeping Expansion of Anti-terrorism Act*. Washington, DC: Center for Public Integrity, 2003; Stephens, Otis H. Jr., John M. Scheb II, and Kara E. Stooksbury, eds. *Encyclopedia of American Civil Rights and Liberties*. Westport, CT: Greenwood, 2006.

Select Citation Style:

### MLA

Urban, J. Kristen. "USA PATRIOT Act." *Issues: Understanding Controversy and Society*. ABC-CLIO, 2014. Web. 15 Sept. 2014.

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