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Congress's Patriotic Act

This is a law that defends America and, yes, preserves civil liberties, dammit

Who says you can't argue with success? In the past two years, terrorist cells in Buffalo, Detroit, Seattle, and Portland, Ore., have been dismantled; criminal charges have been brought against 225 suspected terrorists; and 132 of those suspects have been convicted. Terrorists haven't carried out another attack here because the domestic war on terrorism, aimed at prevention, has worked. Yet in July, 113 Republicans voted with a large House majority against a provision in the USA Patriot **Act** that federal officials see as playing a crucial role in disrupting terrorist plots. Lawmakers' ignorance of the law, the ACLU's effective disinformation campaign, a hostile media, and hysterical, partisan attacks from the presidential campaign trail now have the administration playing defense, despite its remarkably successful offense against terrorism.

Prompted by the recent vote, Attorney General John Ashcroft has embarked on a tour of 18 cities to make the case for the Patriot **Act** to the public. Ashcroft reminds his audiences that the law, passed in the Senate by a 98-to-1 vote (and in the House by 357 to 66) six weeks after the September 11 attacks, updated the ability of federal law enforcement to confront the threat of terrorism in three central ways. It removed the legal barriers that prevented law-enforcement and intelligence agencies from sharing information and coordinating activities -- barriers that Congress criticized in its report on what went wrong before 9/11. It brought surveillance laws from the era of the rotary phone into the age of cell phones and Internet communications. And it extended the authority that federal investigators use against the mafia and drug dealers to cover terrorists.

Where Congress overwhelmingly saw commonsense provisions clearly justified to protect American lives, hysterical critics are seeing a power grab by a would-be totalitarian state. According to a Los Angeles Times story, the Patriot **Act** amounts to "the legislative equivalent of a blank check." The Cleveland Plain Dealer spots the "seedstock of a police state." In an alarming Newsday op-ed, Sam Dash, the former chief counsel to the Senate Watergate Committee, warns of a presidential abuse of power that rivals the "horror" committed by Richard Nixon. Dash is now a law professor at Georgetown -- but, like most of the Patriot **Act** alarmists, he doesn't cite a single provision of the objectionable law to bolster his case.

Democratic presidential candidates are no more specific. In his "first five seconds as president," Dick Gephardt would fire Ashcroft. Sen. Edwards gets standing ovations for declaring, "We cannot allow people like John Ashcroft to take away our rights and our freedoms." John Kerry vows that when he's president, "there will be no John Ashcroft trampling on the Bill of Rights." Each one of them voted for the Patriot **Act**; but Howard Dean, a former governor, routinely assails the law itself for eroding "the rights of average Americans," and calls for its repeal.

Even when the media criticize a specific part of the new law, they usually get it wrong. In May, a major Time magazine story was subtitled, "Can Attorney General John Ashcroft fight terrorism on our shores without injuring our freedoms?" The demonstrable answer is yes. But the article was riddled with mistakes that led to a different conclusion. For example, the authors asserted, "If you are suspected of terrorist links, law enforcement can access your records, conduct wiretaps and electronic surveillance, search and seize private property and make secret arrests -- all without a warrant." In fact, federal authorities can't do any of those things without obtaining a court order.

In July, when Reps. C. L. "Butch" Otter (R., Idaho) and Dennis Kucinich (D., Ohio) argued for their amendment to prohibit funding for delayed-notification warrants, the discussion on the House floor was equally ignorant. If lawmakers don't want to be bothered understanding the law, they could at least try watching *The Sopranos* to learn how federal investigators lawfully operate. Section 213, the Patriot **Act** provision that the Otter amendment would de-fund, allows federal investigators to ask a court for permission to temporarily delay notifying a suspect that a court-issued search warrant has been executed. Sens. Patrick Leahy (D., Vt.) and Orrin Hatch (R., Utah) sponsored the provision, which permits delayed notification when there is a risk of flight, injury to an individual, intimidation of witnesses, destruction of evidence, or the serious jeopardizing of an investigation. In 1979, the Supreme Court called an argument that the practice is unconstitutional "frivolous." Without the ability to postpone notice of a warrant, investigators would be unable to install a wiretap in a terrorist's apartment without first informing the suspect.

The Justice Department is required to provide Congress with details on the implementation of the Patriot **Act** twice a year. In a 60-page report this May, the department explained that in the past two years, delayed-notice warrants under Section 213 had been sought (and approved) by courts just 47 times. This wasn't mentioned during the House's hasty consideration of the Otter amendment. Instead, Rep. Otter ludicrously claimed that Section 213 permits the CIA to operate domestically. Rep. Kucinich ignored the federal courts that have upheld the constitutionality of delaying notification of a warrant, and rested his own constitutional objection on the "common law." The amendment has not yet passed the Senate, but the administration is threatening a veto if it does.

A Republican congressional aide explains that over 100 House Republicans were not so much relying on Dennis Kucinich's legal opinions as they were reflecting what they are hearing from their constituents back home. The aide reports that his office is receiving copies of news articles about the Patriot **Act** from Republican constituents concerned about the alleged assaults on civil liberties. Another GOP aide notes that constituents vehemently opposed to the war in Iraq also strenuously object to the Patriot **Act**; voting for the amendment "gives members some cover."

Former assistant attorney general Viet Dinh, who began crafting the Patriot **Act** within days of 9/11, has been publicly engaging its critics over their wildly exaggerated case. In a recent debate, when Dinh had successfully defended the **act's** provisions, his opponent finally allowed that the alarming problem "is not within the Patriot **Act**, but the milieu of fear you've created." That would be a small milieu. According to a recent poll, 91 percent of the public says that the **Act** hasn't affected their own civil liberties.

Critics of the Patriot **Act** would rather rely on hypothetical questions, such as that cited recently in USA Today. According to Gallup, only 33 percent of Americans favor the government's taking all steps necessary to prevent terrorism "even if it means that your basic civil liberties would be violated." The two-thirds that would oppose eroding civil liberties includes Attorney General John Ashcroft.