

# Individual privacy vs. national security



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Individual Privacy vs. National Security ENG 122 Individual Privacy vs. National Security Since October 26, 2001, Americans have been debating the issue of the USA PATRIOT Act (PLAW 107-56, 2001) and its claimed encroachment of American civil liberties and Constitutional rights. Many Americans oppose this new law because they believe it gives the Federal Government and its agencies too much freedom to conduct surveillance using various methods (i. e. cell phones, internet, financial systems databases), and argue that freedom goes against their First Amendment rights which protect their freedom of speech and their Fourth Amendment Rights which protect “ the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” (Justice, 2006). It can be said that some Americans also believe that the PATRIOT Act is unethical and unconstitutional, based on my research, and has little to no benefit to National Security.

Many Americans do not understand how important this new legislation is and how beneficial it could be when the systems that are being implemented have a chance to grow and the government agencies that have been tasked with using this new legislation have the opportunity to perfect its application. The PATRIOT Act legislation, while controversial, has been far more beneficial to the safety of the American People and National Security while not illegally violating Constitutional rights.

In this research, data has been collected from various sources to show that the PATRIOT Act of 2001 does in fact have merit where National Security is concerned and does not necessarily infringe upon individual privacy unless there is good cause for the Federal agencies involved to use the methods

outlined in the law to gather information on suspected acts of terrorism and other terrorist related crimes. Since the attacks of September 11, 2001, our National Security has been in the forefront of many Americans' minds and our Government as a whole.

The rights afforded to the American people by the Constitution of the United States and the Bill of Rights are clear however they were written in a time much different than today. It would be ludicrous to think our founding fathers could have anticipated the types of threats our society faces today and yet they did a fantastic job of providing the framework in which the American people have lived by since 1787. That framework has made the United States a model for other countries and their governments to follow in order to better protect its citizens.

That being said, it is quite clear that this framework, while somewhat “ all encompassing”, is not without flaw and from time to time needs perfection. The attacks on our way of life in September 2001 have shown that our system and our Constitution have inherent vulnerabilities that need to be addressed. This is where the PATRIOT Act comes into play. The PATRIOT Act was designed to address shortcomings in the way Federal agencies conduct investigative activities.

While it can be said that the opportunity to abuse the provisions listed in the PATRIOT Act could become a problem and without proper oversight could infringe on American civil liberties, current events have dictated a closer look at the way in which Federal Agencies investigate threats on the American way of life. It is an important viewpoint that needed closer evaluation due to

the nature of the law and the benefit, which is evident in much of the research that was conducted, speaks for itself.

The problem is implementing and maintaining this legislation has not come without its pitfalls and feverish debates have taken place due to the implications the PATRIOT Act has on American Civil Liberties. The PATRIOT Act gives the Federal Government increased freedom to use existing laws in an effort to better protect the American people. While conducting the research, countless articles and news related stories in which the American people have vehemently opposed this new legislation and have taken a firm oppositional stance with regard to their beliefs and how this law affects their Constitutional rights have been discovered.

Collected data provides documented proof that the PATRIOT Act has been instrumental to the arrest of over 310 terrorist suspects of which 179 have been convicted (Freddoso, 2004). Additionally, the U. S. Department of the Treasury reports 1, 526 requests for information have been made to date, of which 378 cases of Terrorism/Terrorist Financing cases have been reported as well as 1, 148 cases of Terrorist related activities related to Money Laundering (FinCEN Reg. 14(a), 2011). The FinCEN Regulation 314(a) fact sheet also states “ these requests included 15, 741 subjects of interest. Of these, financial institutions have responded with 100, 084 total subject matches: 99, 046 positive and 1, 038 inconclusive. Additionally, based on law enforcement feedback to the Department of the Treasury, 88 percent of 314(a) requests for information have resulted in arrests or indictments (FinCEN Reg. 314(a), 2011).

What this demonstrates is actual, recordable progress is being made and this forward motion is vital to National Security and protecting our financial system in a very effective way while accomplishing this task quite differently than prior to the attacks of September 11, 2001. Law enforcement is making progress, and the PATRIOT Act, while controversial, is proving to be a valuable tool in assisting them with tackling the enormous task of protecting the American way of life. Research has shown that the PATRIOT Act allows law enforcement to use various types of surveillance against additional crimes of terror.

Law enforcement can conduct investigations without tipping off terrorists, Federal agents ask a court for an order to obtain business records in national security terrorism cases, the PATRIOT Act facilitates information sharing and cooperation among government agencies so that they can better “ connect the dots,” The Patriot Act reflects new technologies and new threats, law enforcement officials may obtain a search warrant anywhere a terrorist-related activity occurs, victims of computer hacking can request law enforcement assistance in monitoring the “ trespassers” on their computers, and it allows for higher maximum penalties for various crimes likely to be committed by terrorists; enhanced a number of conspiracy penalties, eliminates the statutes of limitations for certain terrorism crimes and lengthens them for other terrorist crimes and prohibits the harboring of terrorists (Justice Department, 2011).

Research has also determined that many Americans hold the misconception that the PATRIOT Act allows Federal agencies abusive powers that encourage corruption, secrecy, fraud and discrimination. “ Even proponents for the use

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of private databases acknowledge the grave privacy and due process implications that arise from the new combination of vast stores of personal information and the computing power to aggregate and analyze it”

(Northouse, Barquin & Fishkin, 2005). The PATRIOT Act has given law enforcement increased freedom to accomplish their mission without the limitations of bureaucratic “ road blocks” which hamper investigative procedures, yet it does not include the freedom to do so illegally.

Many believe that there are not sufficient checks and balances in place to prevent misuse of the legislation and the ways in which law enforcement obtain information through Federal Agency cooperation and data collection through the use of private databases. In fact, in order for the Federal Bureau of Investigation to obtain records from private databases and private telecommunication companies such as cell phone providers or internet email providers, they are still required to “ obtain search warrants from the FISA court each time it wants to eavesdrop on a telephone conversation, e-mail message, or other form of communication within the United States,” and “ In order to obtain a warrant from the FISA court, the FBI must present evidence to show that the target is linked to a terrorist organization or other foreign agent or power” (Risen, 2006).

This is important because it demonstrates that the PATRIOT Act does not authorize Federal agencies “ free reign” as applied to National Security and many of the practices prior to the 9/11 attacks to remain in effect. Federal agencies are still required to use the rule of law, albeit less restrictive due to the PATRIOT Act, in order to conduct surveillance of suspected terrorist or activities attributed to a known terrorist network. Research has shown that

the rule law is still first and foremost the way in which Federal agencies conduct business. Above all, the fact remains: If an individual is doing nothing wrong, the individual has nothing to fear. Protecting the American People is of utmost importance, and that protection often comes at a price many are not willing to pay.

The American way of life is at stake here, so the question of how much is our freedom really worth, requires thoughtful analysis and the willingness to allow our government the tools to fight terrorism in the twenty-first century. The PATRIOT Act is clearly a step in the right direction. An example of how the different agencies are monitoring and ensuring compliance to the provisions of the PATRIOT Act, and doing so legally, can be seen in a U. S. Justice Department audit which exposed potential abuses by the Federal Bureau of Investigation further proving that there is in fact a system of checks and balances in place and that any agency using PATRIOT Act illegally will not be able to do so under the provisions of the PATRIOT Act (Associated Press, 2007). The U. S.

Department of the Treasury also requires law enforcement to certify that all other investigative methods have been exhausted or are unavailable when a request for information under FinCEN Regulation 314(a) is made (FinCEN Reg. 314(a), 2011). These are important facts that should be considered when making the argument that oversight of the provisions listed in the PATRIOT Act is ineffective or absent altogether. Agencies are monitoring the way the agencies involved are using the provisions in the PATRIOT Act. While some of the agencies have in fact used the PATRIOT Act to obtain

information illegally, those agencies will not be allowed to continue illegal activities without consequence.

In 2007, after allegations that the FBI illegally obtained information email, telephone and banking information through the use of illegal National Security documents, the director of the Federal Bureau of Investigation, Robert Mueller, stated “ I am committed to ensuring that we correct these deficiencies,” adding that he would not resign his position (Kirchgaessner, 2007). While Mr. Mueller was allowed to retain his position as head of the FBI, this incident shows that while government agencies have more open avenues to collect data, doing so illegally will not be tolerated, and the agencies will not be allowed to use the PATRIOT Act as a shield to obtain information without following the rule of law. Statements have also been found that claim “ excessive secrecy thwarts Congressional oversight” (German & Richardson, 2009). The legislation, in-and-of-itself, does not create an atmosphere of additional secrecy.

The PATRIOT Act “ was designed to correct five perceived weaknesses, or failures, of the national government to prevent the 9/11 atrocity. It sought 1) to improve sharing of information between law enforcement and foreign intelligence agencies; 2) to gather antiterrorism intelligence by taking advantage of the flexible warrants’ requirement of the Foreign Intelligence Surveillance Act (FISA); 3) to expand wiretap authority over electronic communications; 4) to seize funding utilized in terrorist activities; and 5) to impose mandatory detention and deportation of non-U. S. citizens who are suspected of having links to terrorist organizations” (Banks, Cohen & Wells, 2004).



It allows agencies to identify, respond and eliminate reported terrorist activities, using existing laws, without bureaucratic limitations that could otherwise hamper investigations and impede the success Federal agencies have in securing our nation's borders in the future. In conclusion, it is important to note that America has not played victim to a terrorist attack of the magnitude of the 9/11 attacks since September 11, 2001. The difficulty Federal agencies have is providing factual information that can be attributed directly to the PATRIOT Act. The PATRIOT Act legislation, while controversial, has been far more beneficial to the safety of the American People and National Security while not illegally violating Constitutional rights. Several arrests, resulting in convictions have been made which can be directly attributed to the PATRIOT Act.

Federal Agencies are using the law to better communicate effectively in an effort to prevent other terrorist attacks on a scale similar to what was experienced in September 2001 and they are doing so by using existing laws with more freedom than they had in the past. While there have been growing pains, and there have been a few instances, which were considered abuse of the new law, “ checks and balances” are being implemented and they are working, but perfecting the PATRIOT Act's application will take time. Nevertheless, progress is being made and our country has been safer as a result of implementing the new legislation. How much of this safety can be attributed directly to the PATRIOT Act remains to be seen.

Reform of the PATRIOT Act is something that needs to be explored and more transparency with regard to how Federal agencies conduct business under the provisions of the PATRIOT Act seems to be what opponents of the

legislation are looking for, it is evident that the provisions of the law are making a positive impact on the security of our country and the safety of the American people. That, in and of itself, is worth the price for our American way of life, and our freedom. References Associated Press. (2007). Justice Department: FBI acted illegally on data. Audit finds agency misused Patriot Act to obtain information on citizens. Retrieved from [http:// www. msnbc. msn. com/id/11100916/](http://www.msnbc.msn.com/id/11100916/) Barquin, R. & Fiskin, J. (2005). Protecting What Matters : Technology, Security, and Liberty since 9/11. C. Northouse, (Ed. ). Pg. 101, para. 1. Washington, D.

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