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Patriot Act — Forgoing liberty for safety?

By John A. Russo

In his State of the Union address, President Bush reminded Americans that portions of the controversial Patriot Act will expire next year and warned that “the terrorist threat will not expire on that schedule.” That federal and local law enforcement personnel need modern, appropriate tools to defend us from terrorism is irrefutable. But what tools, and at what cost? Some sections of the Patriot Act are worse than useless: They are an assault upon the foundation of American freedom.

This is an era of rapidly changing communication technology. American intelligence-gathering had to be brought into the 21st century. Yet, no legislation can guarantee freedom from terrorist assault. Safety comes at a cost; freedom entails risk. So before we renew the existing Patriot Act or enact Attorney General John Ashcroft's proposed successor, we must evaluate its effectiveness and impact on civil liberties.

The Patriot Act extends the government's foreign intelligence surveillance powers, for the first time, over potential “domestic” terrorists, including American citizens. Several of its more pernicious provisions attack Americans' most cherished, constitutionally guaranteed rights and civil liberties:

► Federal agents may conduct surveillance and searches against U.S. citizens without having to show they have “probable cause” to suspect criminal activity. The targeted person is not notified, nor given a chance to challenge the action.

► Agents can conduct “sneak-and-peek” searches without prior notice in common domestic crime investigations. This provision prevents anyone from challenging a potentially wrongful search. Prior to the Patriot Act, courts have required law enforcement to “knock and announce” themselves before conducting searches.

► The government now has broad access to any person's business or per-

sonal records, including library records; book-buying habits; medical, marital counseling or psychiatric files; business records; Web-surfing habits, credit reports and even a person's genetic makeup.

► The government does not have to give notice, obtain a warrant or a subpoena, or show there is probable cause that a crime has been committed. Persons turning over personal data to the

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government (such as librarians, doctors, co-workers or neighbors) are prohibited, under threat of federal criminal prosecution, from telling anyone.

Were a totalitarian government to be imposed upon us, its inception would look strikingly like these provisions. History teaches us that such evils almost always begin justified by concerns for public safety and amid general panic. Without judicial safeguards, federal agents could abuse their newly authorized tools in situations neither Congress nor the American public contemplated.

Watching the State of the Union address, one would think that the renewal and expansion of the Patriot Act was a partisan issue. Not so. In a rare accord, both conservative organizations, such as the Eagle Foundation and the NRA, and liberal organizations, such as the ACLU, agree that our country's founders would be aghast at the Patriot Act's obliteration of the separation of powers doctrine. The virtual lack of congressional or judicial oversight of the Patriot Act has unnecessarily compromised the system of governmental checks and

balances.

More than 210 cities, the states of Alaska, Hawaii and Vermont and the National League of Cities have expressed deep unease about the Patriot Act. Many local and state law enforcement officials have voluntarily imposed stricter limits on surveillance methods than allowed by the Patriot Act. Increasingly, members of both major political parties question whether the Patriot Act effectively keeps us safe without threatening our individual liberties.

We should support the effort of Sens. Larry Craig, R-Idaho, and Richard Durbin, D-Ill., to repeal the most problematic Patriot Act provisions in the Security and Freedom Ensured Act (SAFE), and the proposed Library, Bookseller, and Personal Records Privacy Act from Sen. Russ Feingold, D-Wis., that would limit the Patriot Act's reach over libraries and booksellers.

The Bush administration has drafted, but not yet introduced, a new law dubbed Patriot II that further expands governmental intelligence powers, enabling the government to issue “administrative” subpoenas, without any court oversight, to obtain library and other intimate personal records. Enactment of Patriot II or further unexamined expansion of the original Patriot Act are clear and present dangers to American liberty, far beyond what any foreign enemies could inflict.

Congress prudently required the Patriot Act's most controversial provisions to “sunset.” We should carefully assess the Patriot Act, keep what we need, and scale back its more Orwellian provisions. What a shame if American freedom were to be shackled while Osama bin Laden and his allies still walk free.

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