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The PATRIOT Act and the Constitution: Five Key Points

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Currently, two of the PATRIOT Act's key provisions are up for reauthorization by Congress. As the deadline draws nearer, it is important to re-engage on the importance of the PATRIOT Act and explain how the law helps authorities to track down terror leads and dismantle plots before the public is in any danger.

Given the vast amount of misinformation about the act, it is equally important to lay out the constitutional basis for the PATRIOT Act as well as how it works to ensure that its powers are not abused.

Five Key Points. Here are five key points about the PATRIOT Act:

1. *It protects civil liberties and provides for the common defense.* The Constitution requires the President and Congress to respect and defend individual civil liberties but also provide for the common defense. The Constitution weighs heavily on both sides of the debate over national security and civil liberties—it is important to recognize both factors.
2. *Expectation of privacy is not unlimited.* The Supreme Court has ruled that Americans enjoy a “reasonable” expectation of privacy; however, this is not an unlimited expectation of privacy. This means that anything one exposes voluntarily to the public—or even to a third party—is not considered protected. Congress of course can expand these rights (and it has repeatedly); however, these protections yield to criminal and national security investigations.

3. *The law provides significant safeguards.* The PATRIOT Act does not provide investigators with unfettered power to spy on innocent Americans. What it does do is ensure that national security investigators have the same tools at their disposal to investigate terrorists that law enforcement agents have to investigate and prosecute drug dealers and rapists. These tools come with significant procedural safeguards, oversight, and reporting requirements and are subject to routine and aggressive oversight by the FISA court and Congress.
4. *It has passed constitutional muster.* No single provision of the PATRIOT Act has ever been found unconstitutional. This is a testament to the act's limited applicability, procedural safeguards, and extensive oversight mechanisms—as well as the fact that it often provides more protections than are afforded in criminal proceedings.
5. *Disagreements over the role of government are different from actual abuse.* Mere expansion of executive authority in the context of national security investigations alone does not in itself create actual abuse. Certainly, there are fundamental disagreements over the role of the execu-

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tive branch during wartime. However, careful monitoring and vigilant oversight are oftentimes the answer to potential abuses of power—not all-out prohibition.

Next Steps. Opponents of the PATRIOT Act have repeatedly sought to repeal the act's provisions or hamstringing the act with yet another set of bureaucratic hoops. However, Congress has extensively modified and tailored the act over the years, adding new safeguards with substantial court oversight. Adding more hoops for investigators to jump through—in time-sensitive investigations—would kill the law's ability to fulfill its very purpose: to help stop terrorism. Congress should:

- **Reauthorize the PATRIOT Act sunset provisions.** This should also include reauthorization of Section 6001 of the Intelligence Reform and Terrorism Prevention Act (also known as the “lone wolf provision”).
- **Seek permanent reauthorization.** Congress should permanently incorporate these tools into the broader counterterrorism framework.
- **Resist initiatives to erode key provisions.** Despite repeated attempts to demonstrate abuse, little evidence has been proffered to demonstrate that the provisions in the act have been misused. Tying the hands of investigators through more procedural safeguards would not make the country any safer.

Little Danger of Abuse. The key to the PATRIOT Act is empowering government to do the right things while exercising oversight to prevent any abuse of authority. As long as lawmakers keep a vigilant eye on police authority, the federal courts remains open, and the debate about governmental conduct is a vibrant part of the American dialogue, the risk of excessive encroachment on our fundamental liberties is minimal.

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