

Since bursting onto the political scene in 2009, the tea party movement has sparked a renewed appreciation for the Constitution's restraints on the powers of the federal government. Washington's authority is not boundless. Rather, our Constitution establishes a strong, but limited, national government.

As Congress takes up legislation to reauthorize three expiring parts of the Patriot Act, it should take seriously the tea party's commitment to constitutional fidelity.

Judged by that standard, Patriot passes with flying colors. It just lets counterterrorism agents use some of the same tools that regular cops have used for decades. These tools have exacting safeguards to protect civil liberties, and federal courts have consistently upheld their constitutionality.

Take, for example, "roving wiretaps."

Mobsters, terrorists and other sophisticated criminals sometimes try to thwart surveillance by repeatedly switching cell phones. The result is a drawn-out game of cat and mouse. Investigators get a court order to tap a suspect's phone, only to find out he's already switched to a new one. So it's back to the judge for a fresh warrant.

Congress solved this problem for criminal cases decades ago. A 1986 law allows judges to issue wiretap orders that apply to specific people, instead of particular devices. That means agents can track a criminal — regardless of what phone he's using — without heading back to court.

The act allows the same thing in terrorism cases. The basic idea is to level the playing field. If a roving wiretap is good enough for Tony Soprano, it's good enough for Mohamed Atta.

Patriot contains robust protections for civil liberties. The court order is necessary: FBI agents can't start eavesdropping on their own, they need a judge's permission. They also have to prove

the suspect is an "agent of a foreign power" – a spy or terrorist. And they must notify the judge every time they go up on a new phone.

Federal courts unanimously agree that roving wiretaps are constitutional. One case emphasized that there is "virtually no possibility of abuse or mistake." Another concluded that "[r]oving wiretaps are an appropriate tool to investigate individuals ... who use cloned cellular phone numbers and change numbers frequently to avoid detection." The Patriot Act stands on a solid constitutional foundation.

Next, consider the act's "business records" provision.

In criminal cases, grand juries often issue document subpoenas to businesses, like credit card companies and online retailers. The Patriot Act lets agents get the same records in terrorism cases.

The act's civil liberties protections are actually stronger than those for law enforcement.

Prosecutors can issue grand jury subpoenas essentially on their own, but the Patriot Act requires the FBI to get a judge's approval first. The act also bars the government from investigating Americans "solely upon the basis of activities protected by the first amendment." And it imposes special limits when investigators seek sensitive materials, like medical records and library documents. The grand jury rules offer no such guarantees.

The underlying constitutional principles have been settled for decades. A long line of case law confirms that investigators may obtain records from businesses without a warrant or probable cause. This is so, the Supreme Court explained in 1979, because "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties."

Finally, there's the "lone wolf" provision — for terrorists whose ties to overseas groups may be a bit murky.

The FBI faced exactly this predicament before 9/11. Agents suspected that Zacarias Moussaoui – then in custody on immigration charges – was a terrorist. But they hadn't yet connected him to Al Qaeda, so it was unclear whether they could search his apartment or laptop. The 9/11 Commission later speculated that, if agents had investigated Moussaoui more fully, they might have unraveled the entire Sept. 11 plot.

The Patriot Act fixes this problem. It allows investigators to apply for a court order to monitor a suspected terrorist — even if they haven't yet found enough evidence to prove he's a member of a foreign terrorist organization.

Again, the Patriot Act makes it a priority to protect civil liberties. Agents have to convince a judge to let them investigate and follow a lone wolf. This tool can only be used to investigate international terrorism, not domestic terrorism. And "lone wolf" doesn't apply to Americans. It applies only to temporary visitors – like tourists or students.

Last week, the House Judiciary Committee voted to renew these three provisions, which are set to expire on May 27. We hope the rest of Congress quickly follows suit. Osama bin Laden is dead, but Al Qaeda is still very much alive.

This is no time to go wobbly in the war on terror.

*Rep. Steve King (R-Iowa) is vice chairman of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the House Judiciary Committee. Nathan A. Sales helped write the Patriot Act while serving at the Justice Department. He is now a law professor at George Mason University.*

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