



Written by [Thomas R. Eddlem](#) on February 21, 2011

## **Patriot Act Attack on Fourth Amendment Extended, Despite Some Tea Party Opposition**

The Patriot Act clearly violates at least two of the four requirements of the Fourth Amendment to the U.S. Constitution regarding which searches are "reasonable" and constitutional. Under the Fourth Amendment, constitutional searches must have a court warrant, the warrant must be supported by an oath, the warrant must be based on "probable cause" and the warrant must describe what will be searched and what will be found. The Fourth Amendment [reads](#):



The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The *Boston Globe* (summarizing an imperfect [ACLU letter to Congress](#) on the same issue) [explained](#) the constitutional problems with the three Patriot Act provisions, stressing that they violate the Fourth Amendment's explicit requirements for specificity in a search and "probable cause":

The roving wiretap provision violates search-and-seizure protections by not requiring the government to tell a judge exactly what it wants to search or seize. The government should at least have to name a particular target.

Another provision the House declined to extend allows the government to seize "any tangible thing" — such as library or financial records — without having to disclose how that thing might be relevant to terrorists or terrorist activities. The government should have to show probable cause.

The third rejected provision of the Patriot Act, to be granted only in secret courts, permits surveillance of people who aren't US citizens and who have no connection to foreign terrorist organizations. This power has never been used. It could establish a worrisome precedent if used. Congress should let it expire.

Ironically, the ultra-leftist *Boston Globe* threw the budding Tea Party movement a bouquet for its opposition to the Patriot Act vote, titling its [house editorial](#) "In Patriot Act vote, Tea Party stands up for civil liberties." The spirited opposition by many Tea Party leaders to their own Republican Party's leadership has led some to wonder if a working alliance between liberals and Tea Party activists on defending the Bill of Rights exists. The *Christian Science Monitor* [reported](#) February 9 that "Many



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liberals tag the tea party movement as nativist, potentially racist, and out of step with progressive ideals. But some found themselves giving a nod of approval to tea-party-affiliated members of Congress who voted ... to nix parts of the Patriot Act on grounds that they let the government intrude too much on individual privacy in the name of national security."

But not everyone is jumping on board of this tentative and very limited coalition. The *Washington Post's* Greg Sargent [claimed](#) February 15 that the Tea Party fell in line behind the Patriot Act reauthorization, using a chart that inflated Tea Party membership and claimed to demonstrate that voting on the Patriot Act was no different between Tea Party activists and the Republican Party establishment. The Tea Party opposition to the Patriot Act made the difference in an earlier House vote that was held under a suspension of the rules, [killing a fast-track provision](#) to reenact the bill by the needed two-thirds majority vote. But it wasn't even close to stopping it when [the vote for passage](#) required a simple majority. In the House, 27 Republicans voted down the Patriot Act extension on final passage. Only seven of those were also members of the [51-member House Tea Party Caucus](#).

Of course, Tea Party-affiliated candidates such as [Ron Paul of Texas](#) and [Justin Amash of Michigan](#) also voted against the Patriot Act reauthorization, but don't formally belong to the House Tea Party Caucus. This means that House Tea Party members were several times as likely to vote against the Patriot Act extension as other Republicans, but most still voted for the bill.

In the Senate, half of the four members of the Tea Party caucus (Rand Paul of Kentucky and Mike Lee of Utah) [voted](#) against the bill, while Jim DeMint and Jerry Moran of Kansas voted for it.

The real impact of the Tea Party movement on Patriot Act reauthorization was the moral authority and eloquence that leaders of the Tea Party opposition brought to the debate. For example, Kentucky Senator Rand Paul persuasively [argued](#) that these Patriot Act provisions were precisely the objections colonists had to British general search warrants (called "[writs of assistance](#)") that sparked the American revolution and inspired enactment of the Fourth Amendment:

[Colonial-era Boston attorney and patriot] James Otis argued against general warrants and writs of assistance that were issued by British soldiers without judicial review and that did not name the subject or items to be searched.

He condemned these general warrants as "the worst instrument[s] of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever w[ere] found in an English law book." Otis objected to these writs of assistance because they "placed the liberty of every man in the hands of every petty officer." The Fourth Amendment was intended to guarantee that only judges—not soldiers or policemen—would issue warrants. Otis' battle against warrantless searches led to our Fourth Amendment guarantee against unreasonable government intrusion.

My main objection to the Patriot Act is that searches that should require a judge's warrant are performed with a letter from an FBI agent—a National Security Letter ("NSL").

I object to these warrantless searches being performed on United States citizens. I object to the 200,000 NSL searches that have been performed without a judge's warrant.

I object to over 2 million searches of bank records, called Suspicious Activity Reports, performed on U.S. citizens without a judge's warrant.

David Weigel of *Slate* [suggested](#) that arguments such as this may make Rand Paul the Senate's new



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[Russ Feingold](#), the Wisconsin Democrat who faced down Presidents of both parties, the Bush and Clinton administrations, on civil liberty issues during his three terms in the Senate. While Feingold was an ultra-liberal, big-spender on economic issues, he was often the conscience of the U.S. Senate on executive branch encroachments of personal constitutional liberty issues. Greg Sargent of the *Washington Post* [disagreed](#), neglecting to put Rand Paul in his [Pantheon](#) of liberal heroes. But the Patriot Act battle revealed a fissure between those members of the Tea Party who take their [oath](#) to "support and defend the Constitution of the United States" seriously and those who take orders from the Republican Party leadership.

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