

Document A: Reaganomics

Historical Context

The ascendancy of conservatism in the 1980's can be partially attributed to the economic "stagflation" of the Carter years. Reagan rejected the Keynesian economic theories in vogue since the New Deal era in favor of supply-side economic theory. Instead of moderate tax cuts and increased government spending to stimulate consumer demand, supply-siders favored simultaneous tax cuts and reductions in spending to encourage investors and entrepreneurs. By leaving money in the hands of those who start businesses, supply-siders argued, more jobs would be created. By cutting government spending, the growth of the deficit would be curtailed and interest rates would stay low, further encouraging investment and entrepreneurship.

Reagan delivered his April 28, 1981 address to Congress shortly after being wounded in an assassination attempt. In the spirit of the Reagan Revolution, he calls upon lawmakers to try a radical new approach to economic policy. Congressmembers received him with applause and quickly passed the Economic Recovery Tax Act of 1981 (which cut taxes by \$747 billion over five years) and the Omnibus Reconciliation Act of 1981 (which in one piece of legislation, cut over 200 social and cultural spending by \$136 billion over two years).

You wouldn't want to talk me into an encore, would you? Mr. Speaker, Mr. President, distinguished Members of the Congress, honored guests, and fellow citizens: I have no words to express my appreciation for that greeting. I have come to speak to you tonight about our economic recovery program and why I believe it's essential that the Congress approve this package, which I believe will lift the crushing burden of inflation off of our citizens and restore the vitality to our economy and our industrial machine.

First, however, and due to events of the past few weeks, will you permit me to digress for a moment from the all-important subject of why we must bring government spending under control and reduce tax rates. I'd like to say a few words directly to all of you... to express to all of you on behalf of Nancy and myself our appreciation for your messages and flowers and, most of all, your prayers, not only for me but for those others who fell beside me. The warmth of your words, the expression of friendship and, yes, love, meant more to us than you can ever know. You have given us a memory that we'll treasure forever. ...

The society we heard from is made up of millions of compassionate Americans and their children, from college-age to kindergarten. As a matter of fact, as evidence of that I have a letter with me. The letter came from Peter Sweeney. He's in the second grade in the Riverside School in Rockville Centre, and he said, "I hope you get well quick or you might have to make a speech in your pajamas." And he added a postscript. "P.S. If you have to make a speech in your pajamas, I warned you." ...

Now, let's talk about getting spending and inflation under control and cutting your tax rates. ...I won't be speaking to you very long tonight, but I asked for this meeting because the urgency of our joint mission has not changed. Thanks to some very fine people, my health is much improved. I'd like to be able to say that with regard to the health of the economy.

It's been half a year since the election that charged all of us in this government with the task of restoring our economy. And where have we come in this six months? Inflation, as measured by the Consumer Price Index, has continued at a double-digit rate. Mortgage interest rates have averaged almost 15 percent for these six months, preventing families across America from buying homes. There are still almost eight million unemployed. The average worker's hourly earnings

after adjusting for inflation are lower today than they were six months ago, and there have been over 6,000 business failures.

Six months is long enough. The American people now want us to act and not in half-measures. They demand and they've earned a full and comprehensive effort to clean up our economic mess. ... And that cure begins with the federal budget. And the budgetary actions taken by the Congress over the next few days will determine how we respond to the message of last November 4th. That message was very simple. Our government is too big, and it spends too much. ...

The House will soon be choosing between two different versions or measures to deal with the economy. One is the measure offered by the House Budget Committee. The other is a bipartisan measure, a substitute...

On behalf of the administration, let me say that we embrace and fully support that bipartisan substitute. It will achieve all the essential aims of controlling government spending, reducing the tax burden, building a national defense second to none, and stimulating economic growth and creating millions of new jobs. At the same time, however, I must state our opposition to the measure offered by the House Budget Committee. It may appear that we have two alternatives. In reality, however, there are no more alternatives left.

The committee measure quite simply falls far too short of the essential actions that we must take. ... It adheres to the failed policy of trying to balance the budget on the taxpayer's back. ... In short, that measure reflects an echo of the past rather than a benchmark for the future. High taxes and excess spending growth created our present economic mess; more of the same will not cure the hardship, anxiety, and discouragement it has imposed on the American people.

Let us cut through the fog for a moment. The answer to a government that's too big is to stop feeding its growth. Government spending has been growing faster than the economy itself. The massive national debt which we accumulated is the result of the government's high spending diet. Well, it's time to change the diet and to change it in the right way. ...

A gigantic tax increase has been built into the system. We propose nothing more than a reduction of that increase. The people have a right to know that even with our plan they will be paying more in taxes, but not as much more as they will without it. The option, I believe, offered by the House Budget Committee, will leave spending too high and tax rates too high. At the same time, I think it cuts the defense budget too much, and by attempting to reduce the deficit through higher taxes, it will not create the kind of strong economic growth and the new jobs that we must have. ...

Tonight, I renew my call for us to work as a team... The economic recovery package that I've outlined to you over the past weeks is, I deeply believe, the only answer that we have left. Reducing the growth of spending, cutting marginal tax rates, providing relief from overregulation, and following a noninflationary and predictable monetary policy are interwoven measures which will ensure that we have addressed each of the severe dislocations which threaten our economic future. These policies will make our economy stronger, and the stronger economy will balance the budget which we're committed to do by 1984.

When I took the oath of office, I pledged loyalty to only one special interest group--"We the People. " Those people--neighbors and friends, shopkeepers and laborers, farmers and craftsmen--do not have infinite patience. As a matter of fact, some 80 years ago, Teddy Roosevelt wrote these instructive words in his first message to the Congress: "The American people are slow to wrath, but when their wrath is once kindled, it burns like a consuming flame. " Well, perhaps that

kind of wrath will be deserved if our answer to these serious problems is to repeat the mistakes of the past.

The old and comfortable way is to shave a little here and a little there. Well, that's not acceptable anymore. I think this great and historic Congress knows that way is no longer acceptable. Thank you very much. Thank you. I think you've shown that you know the one sure way to continue the inflationary spiral is to fall back into the predictable patterns of old economic practices. Isn't it time that we tried something new? When you allowed me to speak to you here in these chambers a little earlier, I told you that I wanted this program for economic recovery to be ours--yours and mine. I think the bipartisan substitute bill has achieved that purpose. It moves us toward economic vitality.

Just two weeks ago, you and I joined millions of our fellow Americans in marveling at the magic historical moment that John Young and Bob Crippen created in their space shuttle Columbia. ...The space shuttle did more than prove our technological abilities. It raised our expectations once more. It started us dreaming again.

The poet Carl Sandburg wrote, "The republic is a dream. Nothing happens unless first a dream." And that's what makes us, as Americans, different. We've always reached for a new spirit and aimed at a higher goal. We've been courageous and determined, unafraid and bold. Who among us wants to be first to say we no longer have those qualities, that we must limp along, doing the same things that have brought us our present misery? I believe that the people you and I represent are ready to chart a new course. They look to us to meet the great challenge, to reach beyond the commonplace and not fall short for lack of creativity or courage. Someone, you know, has said that he who would have nothing to do with thorns must never attempt to gather flowers. Well, we have much greatness before us. We can restore our economic strength and build opportunities like none we've ever had before. As Carl Sandburg said, all we need to begin with is a dream that we can do better than before. All we need to have is faith, and that dream will come true. All we need to do is act, and the time for action is now.

Thank you. Good night.

Document B: Reagan's Strategic Defense Initiative (Star Wars)

Historical Context

In 1983, President Reagan proposed his Strategic Defense Initiative as an additional check on Soviet nuclear capability. Reagan envisioned space-based missile defense technology capable of striking down nuclear weapons before they reached the United States. The press derisively dubbed the plan "Star Wars", and many believed it was infeasible due to the enormous expense and technical innovation that it would require to become operational.

President Ronald Reagan: Address to the Nation on Defense and National Security-Part 2 of 2 (March 23, 1983)

Now, thus far tonight I've shared with you my thoughts on the problems of national security we must face together. My predecessors in the Oval Office have appeared before you on other occasions to describe the threat posed by Soviet power and have proposed steps to address that threat. But since the advent of nuclear weapons, those steps have been increasingly directed toward deterrence of aggression through the promise of retaliation.

This approach to stability through offensive threat has worked. We and our allies have succeeded in preventing nuclear war for more than three decades. In recent months, however, my advisers, including in particular the Joint Chiefs of Staff, have underscored the necessity to break out of a future that relies solely on offensive retaliation for our security. ...

One of the most important contributions we can make is, of course, to lower the level of all arms, and particularly nuclear arms. We're engaged right now in several negotiations with the Soviet Union to bring about a mutual reduction of weapons. ...

If the Soviet Union will join with us in our effort to achieve major arms reduction, we will have succeeded in stabilizing the nuclear balance. Nevertheless, it will still be necessary to rely on the specter of retaliation, on mutual threat. And that's a sad commentary on the human condition. Wouldn't it be better to save lives than to avenge them? Are we not capable of demonstrating our peaceful intentions by applying all our abilities and our ingenuity to achieving a truly lasting stability? I think we are. Indeed, we must.

After careful consultation with my advisers, including the Joint Chiefs of Staff, I believe there is a way. Let me share with you a vision of the future which offers hope. It is that we embark on a program to counter the awesome Soviet missile threat with measures that are defensive. Let us turn to the very strengths in technology that spawned our great industrial base and that have given us the quality of life we enjoy today.

What if free people could live secure in the knowledge that their security did not rest upon the threat of instant U.S. retaliation to deter a Soviet attack, that we could intercept and destroy strategic ballistic missiles before they reached our own soil or that of our allies?

I know this is a formidable, technical task, one that may not be accomplished before the end of this century. ... And as we proceed, we must remain constant in preserving the nuclear deterrent and maintaining a solid capability for flexible response. But isn't it worth every investment necessary to free the world from the threat of nuclear war? We know it is.

In the meantime, we will continue to pursue real reductions in nuclear arms, negotiating from a position of strength that can be ensured only by modernizing our strategic forces. At the same time, we must take steps to reduce the risk of a conventional military conflict escalating to nuclear war by improving our nonnuclear capabilities. ...

I clearly recognize that defensive systems have limitations and raise certain problems and ambiguities. If paired with offensive systems, they can be viewed as fostering an aggressive policy, and no one wants that. But with these considerations firmly in mind, I call upon the scientific community in our country, those who gave us nuclear weapons, to turn their great talents now to the cause of mankind and world peace, to give us the means of rendering these nuclear weapons impotent and obsolete.

Tonight, consistent with our obligations of the ABM treaty and recognizing the need for closer consultation with our allies, I'm taking an important first step. I am directing a comprehensive and intensive effort to define a long-term research and development program to begin to achieve our ultimate goal of eliminating the threat posed by strategic nuclear missiles. This could pave the way for arms control measures to eliminate the weapons themselves. We seek neither military superiority nor political advantage. Our only purpose -- one all people share -- is to search for ways to reduce the danger of nuclear war.

My fellow Americans, tonight we're launching an effort which holds the promise of changing the course of human history. There will be risks, and results take time. But I believe we can do it. As we cross this threshold, I ask for your prayers and your support.

Thank you, good night, and God bless you.

Document C: Preamble to the North American Free Trade Agreement

Historical Context

The North American Free Trade Agreement, known NAFTA, is a trade agreement among Canada, the United States, and Mexico. NAFTA went into effect on January 1, 1994. NAFTA is also used to refer to the tripartite trading bloc of North American countries. NAFTA called for immediately eliminating duties on half of all U.S. goods shipped to Mexico and Canada, and gradually phasing out other tariffs over a period of about 14 years. Provisions regarding worker and environmental protection were added later as a result of supplemental agreements signed in 1993.

Unlike the European Union, NAFTA does not create a set of supranational governmental bodies, nor does it create a body of law which is superior to national law. NAFTA is a treaty under international law

There was considerable opposition on both sides of the border, but in the United States it was able to secure passage after President Bill Clinton made its passage a major legislative initiative in 1993. The U.S. House passed NAFTA by 234-200 (132 Republicans and 102 Democrats voting in favor) and the U.S. Senate passed it by 61-38.

From the perspective of North American consumers, one of the effects of NAFTA has been the significant increase in bilingual or even trilingual labeling on products, for simultaneous distribution through retailers in Canada, the U.S., and Mexico in French, English, and Spanish.

North American Free Trade Agreement

PREAMBLE

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;
PROMOTE sustainable development;
STRENGTHEN the development and enforcement of environmental laws and regulations; and
PROTECT, enhance and enforce basic workers' rights;
HAVE AGREED as follows:

PART ONE: GENERAL PART

Chapter One: Objectives

Article 101: Establishment of the Free Trade Area

The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade, hereby establish a free trade area.

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

- a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;
- b) promote conditions of fair competition in the free trade area;
- c) increase substantially investment opportunities in the territories of the Parties;
- d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
- e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
- f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article 103: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.

Article 104: Relation to Environmental and Conservation Agreements

1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:

- a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended June 22, 1979,
- b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as amended June 29, 1990,

- c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, on its entry into force for Canada, Mexico and the United States, or
- d) the agreements set out in Annex 104.1,

such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.

2. The Parties may agree in writing to modify Annex 104.1 to include any amendment to an agreement referred to in paragraph 1, and any other environmental or conservation agreement.

Article 105: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state and provincial governments.

Document D: The Patriot Act and its Critics

Historical Context

Lack of cooperation among government agencies was seen as a contributor to the vulnerability of the US to terrorist attacks. As a result, various changes were made to combat this problem. Among these changes was the passing of the much debated PATRIOT Act, as well the creation of the Department of Homeland Security.

Summary of the USA PATRIOT ACT

The USA PATRIOT Act: Preserving Life and Liberty (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism)

Congress enacted the Patriot Act by overwhelming, bipartisan margins, arming law enforcement with new tools to detect and prevent terrorism: The USA Patriot Act was passed nearly unanimously by the Senate 98-1, and 357-66 in the House, with the support of members from across the political spectrum.

The Act Improves Our Counter-Terrorism Efforts in Several Significant Ways:

1. The Patriot Act allows investigators to use the tools that were already available to investigate organized crime and drug trafficking. Many of the tools the Act provides to law enforcement to fight terrorism have been used for decades to fight organized crime and drug dealers, and have been reviewed and approved by the courts. As Sen. Joe Biden (D-DE) explained during the floor debate about the Act, "the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy! What's good for the mob should be good for terrorists." (Cong. Rec., 10/25/01)

- **Allows law enforcement to use surveillance against more crimes of terror.** Before the Patriot Act, courts could permit law enforcement to conduct electronic surveillance to investigate many ordinary, non-terrorism crimes, such as drug crimes, mail fraud, and passport fraud. Agents also could obtain wiretaps to investigate some, but not all, of the crimes that terrorists often commit. The Act enabled investigators to gather information when looking into the full range of terrorism-related crimes, including: chemical-weapons offenses, the use of weapons of mass destruction, killing Americans abroad, and terrorism financing.

- **Allows federal agents to follow sophisticated terrorists trained to evade detection.** For years, law enforcement has been able to use "roving wiretaps" to investigate ordinary crimes, including drug offenses and racketeering. A roving wiretap can be authorized by a federal judge to apply to a particular suspect, rather than a particular phone or communications device. Because international terrorists are sophisticated and trained to thwart surveillance by rapidly changing locations and communication devices such as cell phones, the Act authorized agents to seek court permission to use the same techniques in national security investigations to track terrorists.
- **Allows law enforcement to conduct investigations without tipping off terrorists.** In some cases if criminals are tipped off too early to an investigation, they might flee, destroy evidence, intimidate or kill witnesses, cut off contact with associates, or take other action to evade arrest. Therefore, federal courts in narrow circumstances long have allowed law enforcement to delay for a limited time when the subject is told that a judicially-approved search warrant has been executed. Notice is always provided, but the reasonable delay gives law enforcement time to identify the criminal's associates, eliminate immediate threats to our communities, and coordinate the arrests of multiple individuals without tipping them off beforehand. These delayed notification search warrants have been used for decades, have proven crucial in drug and organized crime cases, and have been upheld by courts as fully constitutional.
- **Allows federal agents to ask a court for an order to obtain business records in national security terrorism cases.** Examining business records often provides the key that investigators are looking for to solve a wide range of crimes. Investigators might seek select records from hardware stores or chemical plants, for example, to find out who bought materials to make a bomb, or bank records to see who's sending money to terrorists. Law enforcement authorities have always been able to obtain business records in criminal cases through grand jury subpoenas, and continue to do so in national security cases where appropriate. These records were sought in criminal cases such as the investigation of the Zodiac gunman, where police suspected the gunman was inspired by a Scottish occult poet, and wanted to learn who had checked the poet's books out of the library. In national security cases where use of the grand jury process was not appropriate, investigators previously had limited tools at their disposal to obtain certain business records. Under the Patriot Act, the government can now ask a federal court (the Foreign Intelligence Surveillance Court), if needed to aid an investigation, to order production of the same type of records available through grand jury subpoenas. This federal court, however, can issue these orders only after the government demonstrates the records concerned are sought for an authorized investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the First Amendment.

2. The Patriot Act facilitated information sharing and cooperation among government agencies so that they can better "connect the dots." The Act removed the major legal barriers that prevented the law enforcement, intelligence, and national defense communities from talking and coordinating their work to protect the American people and our national security. The government's prevention efforts should not be restricted by boxes on an organizational chart. Now police officers, FBI agents, federal prosecutors and intelligence officials can protect our communities by "connecting the dots" to uncover terrorist plots before they are completed. As Sen. John Edwards (D-N.C.) said about the Patriot Act, "we simply cannot prevail in the battle against terrorism if the right hand of our government has no idea what the left hand is doing" (Press release, 10/26/01)

- Prosecutors and investigators used information shared pursuant to section 218 in investigating the defendants in the so-called "Virginia Jihad" case. This prosecution involved members of the Dar al-Arqam Islamic Center, who trained for jihad in Northern Virginia by participating in paintball and

paramilitary training, including eight individuals who traveled to terrorist training camps in Pakistan or Afghanistan between 1999 and 2001. These individuals are associates of a violent Islamic extremist group known as Lashkar-e-Taiba (LET), which operates in Pakistan and Kashmir, and that has ties to the al Qaeda terrorist network. As the result of an investigation that included the use of information obtained through FISA, prosecutors were able to bring charges against these individuals. Six of the defendants have pleaded guilty, and three were convicted in March 2004 of charges including conspiracy to levy war against the United States and conspiracy to provide material support to the Taliban. These nine defendants received sentences ranging from a prison term of four years to life imprisonment.

3. The Patriot Act updated the law to reflect new technologies and new threats. The Act brought the law up to date with current technology, so we no longer have to fight a digital-age battle with antique weapons-legal authorities leftover from the era of rotary telephones. When investigating the murder of *Wall Street Journal* reporter Daniel Pearl, for example, law enforcement used one of the Act's new authorities to use high-tech means to identify and locate some of the killers.

- **Allows law enforcement officials to obtain a search warrant anywhere a terrorist-related activity occurred.** Before the Patriot Act, law enforcement personnel were required to obtain a search warrant in the district where they intended to conduct a search. However, modern terrorism investigations often span a number of districts, and officers therefore had to obtain multiple warrants in multiple jurisdictions, creating unnecessary delays. The Act provides that warrants can be obtained in any district in which terrorism-related activities occurred, regardless of where they will be executed. This provision does not change the standards governing the availability of a search warrant, but streamlines the search-warrant process.
- **Allows victims of computer hacking to request law enforcement assistance in monitoring the "trespassers" on their computers.** This change made the law technology-neutral; it placed electronic trespassers on the same footing as physical trespassers. Now, hacking victims can seek law enforcement assistance to combat hackers, just as burglary victims have been able to invite officers into their homes to catch burglars.

4. The Patriot Act increased the penalties for those who commit terrorist crimes. Americans are threatened as much by the terrorist who pays for a bomb as by the one who pushes the button. That's why the Patriot Act imposed tough new penalties on those who commit and support terrorist operations, both at home and abroad. In particular, the Act:

- **Prohibits the harboring of terrorists.** The Act created a new offense that prohibits knowingly harboring persons who have committed or are about to commit a variety of terrorist offenses, such as: destruction of aircraft; use of nuclear, chemical, or biological weapons; use of weapons of mass destruction; bombing of government property; sabotage of nuclear facilities; and aircraft piracy.
- **Enhanced the inadequate maximum penalties for various crimes likely to be committed by terrorists:** including arson, destruction of energy facilities, material support to terrorists and terrorist organizations, and destruction of national-defense materials.
- **Enhanced a number of conspiracy penalties,** including for arson, killings in federal facilities, attacking communications systems, material support to terrorists, sabotage of nuclear facilities, and interference with flight crew members. Under previous law, many terrorism statutes did not specifically prohibit engaging in conspiracies to commit the underlying offenses. In such cases, the government could only bring prosecutions under the general federal conspiracy provision, which carries a maximum penalty of only five years in prison.
- **Punishes terrorist attacks on mass transit systems.**

- **Punishes bioterrorists.**
- **Eliminates the statutes of limitations for certain terrorism crimes and lengthens them for other terrorist crimes.**

The government's success in preventing another catastrophic attack on the American homeland since September 11, 2001, would have been much more difficult, if not impossible, without the USA Patriot Act. The authorities Congress provided have substantially enhanced our ability to prevent, investigate, and prosecute acts of terror.

In Defense of Liberty at a Time of National Emergency by Anthony D. Romero (Critic of Patriot Act)

A sustained war against terrorism in the United States is unlike any war we have ever fought: the enemy is diffuse; the targets are civilians; the threat is constant and the war may never reach a decisive public end. But as government takes affirmative steps to protect civilians, we must not allow the war to become an excuse for the government to do whatever it likes. Government has an obligation to protect the safety and security of its citizens, but it has an equally important responsibility to safeguard the freedoms and liberties that are the cornerstones of American democracy. Security and civil liberties do not have to be at odds, nor put on a collision course. Our goal should be to keep the American people both safe *and* free.

Admittedly, the terrorists who attacked the United States on September 11, 2001, took insidious advantage of American liberties and tolerance. They lived in our communities and enjoyed our freedoms. That does not mean, however, that those freedoms are at fault. Americans are equally concerned about the government doing too little to combat terrorism and too much to restrict liberty.

Recent changes to U.S. laws have given government expanded power to invade our privacy, imprison people without meaningful due process, and punish dissent.

The United States is facing a serious threat to its security. However, that threat is directed to our democratic values and freedoms. Consequently, every proposal to restrict liberty should be made to pass a "necessary and defensible" test. That is, we need to ask: (a) is the restriction necessary, i.e., will it, in fact, increase our security; and (b) is it defensible, i.e., will the increased benefit to security outweigh the cost to constitutional guarantees of procedural fairness, free speech, and privacy....

The USA Patriot Act (Patriot Act) is the cornerstone of the Bush administration's anti-terrorism efforts. However, there are many provisions of the Act that simply do not meet the basic test of maximizing our security and preserving our civil liberties:

1. *The overly broad definition of "terrorism."* The Act creates a federal crime of "domestic terrorism" that broadly extends to "acts dangerous to human life that are a violation of the criminal laws" if they "appear to be intended . . . to influence the policy of a government by intimidation or coercion," and if they "occur primarily within the territorial jurisdiction of the United States." This definition could easily be used to describe many forms of civil disobedience, including legitimate and peaceful protest.

2. *The indefinite detention of immigrants based on the attorney general's certification of a danger to national security.* This is a harmful provision with language so vague that even the existence of judicial review would provide no meaningful safeguard against abuse.

3. *Expanded wiretap authority.* The new legislation minimizes judicial supervision of law enforcement wiretap authority by permitting law enforcement to obtain the equivalent of blank search warrants, and by authorizing intelligence wiretaps that need not specify the phone to be tapped or be limited to the suspect's conversations....

4. *The use of "sneak and peek" searches to circumvent the Fourth Amendment.* Under this segment of the legislation, law enforcement officials could enter your home, office, or other private place and conduct a

search, take photographs, and download your computer files without notifying you until after the fact. This delayed notice provision undercuts the spirit of the Fourth Amendment and the need to inform individuals when their privacy is invaded by law enforcement authorities.

5. *The evisceration of the wall between foreign surveillance and domestic criminal investigation.* The new legislation gives the director of central intelligence the power to manage intelligence gathering in America and mandates the disclosure of terrorism information obtained by the FBI to the CIA—even if it involves law-abiding U.S. citizens....

Equally troubling is the fact that hundreds of immigrants have been arrested and detained since September 11. The vast majority had nothing to do with the terrorist attacks. Many are charged with minor immigration violations. Yet, the proceedings surrounding their detention have been shrouded in secrecy, thereby impeding the public's ability to scrutinize the actions of the Immigration and Naturalization Service (INS) and other law enforcement officials. Civil liberties and human rights groups have filed a Freedom of Information Act lawsuit, which seeks basic information on the detainees and the charges brought against them. The American Civil Liberties Union (ACLU) is currently exploring additional legal channels to challenge the treatment and prolonged detention of hundreds of immigrants....

Unfortunately, the debate over changes in law enforcement powers has drawn attention away from more salient questions—namely, how did the events of September 11 evade our intelligence services? What powers do law enforcement agencies now have that they didn't have then? And, how can these powers be used more effectively to combat terrorism? A full federal investigation surrounding the events of September 11 would provide the government and the American people with a better understanding of the failure in our law enforcement and security apparatus and what is needed to remedy it.

American history reminds us that we have tended to move in the wrong direction in times of national emergency. We can take three valuable lessons from our past:

1. *Conscription of opinion often goes hand in hand with conscription of soldiers....*
2. *National crises tend to encourage gross violations of due process....*
3. *Our national leaders will often exploit popular fear of foreigners during crisis periods....*

Finally, we should establish guidelines for evaluating new proposals that would affect our basic civil liberties. At the very least, proposed changes to restrict liberty should be examined and debated in public; they should be proven effective in increasing safety and security, and they should be fairly applied in a nondiscriminatory manner.

As the late Supreme Court Justice Thurgood Marshall wrote in a 1972 Supreme Court opinion: "This is a country which stands tallest in troubled times, a country that clings to fundamental principles, cherishes its constitutional heritage, and rejects simple solutions that compromise the values that lie at the roots of our democratic system."

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