

The Right to Privacy  
A Thesis in Political Science

By  
Natalie Lorenzo

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## Abstract

Following the terrorist attacks of September 11th, 2001, the right to privacy in the United States underwent a significant transformation, particularly in the context of national security policy. This thesis asks: how have political actors and institutions shaped the legal construction of privacy rights in the post-9/11 United States? In the immediate aftermath of 9/11, the USA PATRIOT Act marked a foundational shift toward expanded surveillance authority under the justification of counterterrorism. In subsequent years, the Supreme Court and lower courts reinforced this trajectory through rulings such as *Maryland v. King*, *Holder v. Humanitarian Law Project*, and *United States v. Flores-Montano*, which collectively reflect a pattern of deference to state security interests in privacy-related cases. In addition to many rulings in the Supreme Court favoring privacy, the legislative branch also was shaping privacy rights through reauthorizing aspects of the Patriot Act that were initially set to sunrise. Finally the rhetoric in the executive branch also influenced the right to privacy in the years following 9/11. This can be seen through President George Bush's support of the initial Patriot Act and later presidents support of reauthorization. Another example of executive influences comes from both President Obama and President Trump advocating for the reauthorization of Section 702 of the Foreign Intelligence Surveillance Act which allows for warrantless surveillance of foreign threats. Overall this thesis shows how 9/11 resulted in the government infringing on civil liberties such as privacy rights through justification of protecting national security.

## **Introduction - The Right to Privacy**

One aspect of the Super Bowl that appeals to the majority of Americans, regardless of their interest in sports, is the commercials. Every year, these commercials, which cost companies millions of dollars to reach such a large audience, are widely discussed in the media in the days that follow. This year was no different, with content creators discussing the funniest and most impactful commercials that aired during the big game. During these discussions, one commercial stood out to many people. There was a seemingly heartfelt commercial that aired during the third quarter of the game, advertising a new feature being added to Ring doorbell cameras. This feature would allow footage from Ring cameras to be fed into an AI system known as Ring Search Party, which would, in turn, make it easier to locate lost pets. The ad depicts a child whose dreams come true when they are given a puppy, only to be devastated when it goes missing. Using mass-collected footage, the dog is returned to the child at the end, making for a cute and heartwarming commercial. However, many people tuning in did not see this commercial as a heartfelt way to rescue animals, but rather as a new avenue for mass surveillance.

While Ring did not partner with immigration services or law enforcement, it did partner with Flock Safety, a service that provides law enforcement, ICE, and even the Navy with camera footage. However, following backlash prompted by this commercial, Ring has ended its partnership with Flock Safety, claiming it was a much larger venture than they had anticipated.<sup>1</sup>

The Ring ad disturbed many people who viewed the company's dog-finding service as nothing more than a new form of mass surveillance. Even content creators, such as the owner of the "WeRateDogs" page, commented on the video. This X account with over 487,000 followers

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<sup>1</sup> Walker, Mark. "Amazon Ends Ring Partnership With Flock Safety, with over 487,000 followers, posted a video expressing concern about the Ring doorbell commercial and sharing statistics showing that After Super Bowl Ad Backlash." The New York Times, 14 Feb. 2026, [www.nytimes.com/2026/02/14/business/amazon-ring-flock-partnership-super-bowl.html](http://www.nytimes.com/2026/02/14/business/amazon-ring-flock-partnership-super-bowl.html)

posted a video expressing concern about the Ring doorbell commercial and sharing statistics that prove this system would not realistically help find lost pets. The account's creator also urged his viewers to get their dogs microchipped rather than relying on this new camera system.<sup>2</sup>

The backlash from the Ring ad revealed some of the deep-seated fears that privacy rights have been infringed upon by both the government and by private corporations. While often taken for granted as a fundamental right, privacy has long been a highly debated and contested issue. With no amendment in the Constitution enumerating this right, the definition of privacy has proved slippery, leading to frequent contestation. Even as the framers drafted the Constitution, one of their concerns was limiting government overreach. The Framers addressed these concerns by structuring a government with limited powers, using constitutional safeguards such as separation of powers and checks and balances to prevent overreach. The Framers designed a system that constrained state power to safeguard individual liberties. Yet in practice, these liberties have often been balanced against the demands of national security, producing a recurring trade-off between protecting civil freedoms and ensuring public safety.

What is privacy? Privacy refers to an individual's ability to act without others' knowledge. Why does it matter? Privacy is a significant concept as it is crucial to maintaining freedom. Part of freedom is having the ability to act without being monitored. In countries that are synonymous with a lack of freedom, there is also a lack of privacy. This includes, but is not limited to, limited or monitored website searches and a lack of private property. In the United States, privacy is significant because it is foundational to democracy and freedom for the people.

The true boundaries of privacy emerge in moments when the government prioritizes national security over the protection of civil liberties. This has created a context-dependent right to privacy. The right to privacy waivers when there is a real or suspected danger, such as during

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<sup>2</sup> WeRateDogs [@dog\_rates]. "We need to talk about that Ring Super Bowl ad." X (formerly Twitter), 10 Feb. 2026

World War II and during the Red Scare, when communism was perceived as an existential threat. This right to privacy is defined and shaped heavily by federal government institutions through congressional acts and court decisions.

While the right to privacy was litigated throughout the 1900s, privacy protections were expanded in the latter half of the century. A key turning point, however, occurred with the terrorist attacks of September 11th, 2001. This close-to-home attack exposed the government's national security weaknesses, which it sought to rectify immediately. The September 11th attacks brought fear amongst the American people. Public fear created conditions for rapid legislative action, as there was uncertainty about whether this was the first of a series of attacks or whether it could mean war for the United States. This concern about safety and the government's exposed vulnerabilities prompted a rapid response. The post-9/11 environment also saw a shift in public rhetoric, with displays of patriotism permeating everyday life. This can be seen in even simple aspects of life, such as some restaurants changing the menu item "French fries" to "freedom fries."<sup>3</sup> While seemingly trivial, these changes showed that American culture shifted towards prioritizing nationalism. This change in environment helped make the public more willing to accept changes to civil liberties perceived as security measures.

In October of 2001, Congress passed the US Patriot Act to address these concerns. This act drastically expanded the abilities of the government in tracking and surveilling terrorists at the expense of some individual civil liberties. The widened scope of surveillance was not widely contested as people prioritized increased national security in a time of fear. This act by Congress was a major turning point in the right to privacy and clearly illustrated how government legal mechanisms can alter rights. Nearly twenty-five years after the September 11th attacks, privacy rights remain significantly influenced by the Patriot Act.

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<sup>3</sup> Loughlin, Sean. "House Cafeterias Change Names for 'French' Fries and 'French' Toast." CNN, 12 Mar. 2003

What exactly does a right to privacy entail? Why is understanding the right to privacy significant? How have political actors and institutions shaped the legal construction of privacy rights in the U.S.? To answer these questions, this thesis examines the roles of the three branches of government in shaping the right to privacy in a post-9/11 world. In addition, it shows how the three branches constantly work to balance security concerns with the protection of civil liberties on a conditional basis.

To answer the research question, I use data from all three branches of government. This includes an analysis of the Patriot Act in its entirety and a study of all acts recently passed by Congress that affect the right to privacy as it exists today. Regarding the judicial branch, my methodology consists mainly of court cases and analysis of the lesser-known FISA court. The selection of court cases primarily illustrates both rulings for and against the right to privacy, along with significant rulings on suspected terrorism-related activity. Due to the lack of information available regarding the FISA court, I seek to use the acts that created the institution, along with media coverage and interviews with people involved in the court. Regarding information in the executive branch, I use any significant actions by individual leaders at the time a change in privacy occurred. In addition to these primary sources, I also look at secondary sources, such as media coverage of these passages and legal scholars' responses to changes in privacy rights.

While the right to privacy has been a widely contested topic, there is a lack of literature that incorporates actions from all three branches of government following the terrorist attacks of 9/11. For instance, the book, *Power Without Constraint* by Chris Edelson documents the executive branch's handling of 9/11 from Bush through Obama.<sup>4</sup> The book goes through each President's stance on surveillance, torture, and intelligence practices. While this book offers great

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<sup>4</sup> Edelson, Chris. *Power Without Constraint*. University of Wisconsin Press, 2016

detail about presidential powers, it also exemplifies the aforementioned gap in literature. Similarly, in the article “The US Patriot Act: A legal analysis” the author focuses primarily on the actions of Congress.<sup>5</sup> While it does mention the counterarguments of people claiming the Patriot Act had gone too far, it does not include a holistic approach to privacy rights. The right to privacy has been applied inconsistently over the past twenty-five years, so viewing the actions of a single branch or time period does not capture the overall picture of privacy rights. As aforementioned, I will include case studies, legal scholars' articles, news articles, and information taken directly from government websites. Combining these sources gives a holistic picture of how the right to privacy changes from year to year and case to case. For example, on a government website, the passage of the Patriot Act is portrayed as a widely supported, necessary measure that was not contested. In reality, many Americans were concerned about civil liberty abuses immediately following the passage of the act. Utilizing these various sources helps illustrate the different preexisting schools of thought: prioritizing national security or protecting civil liberties. The current gap in the literature surrounding privacy rights is significant because the right to privacy is not enumerated in the Constitution. Due to this lack of enumeration, political actors across all three branches are key to shaping the right to privacy and therefore need to be studied together.

To effectively answer the research question, this paper is organized into three main chapters and a conclusion. The first chapter provides background on the right to privacy and a brief history of privacy rights pre-9/11. The second chapter analyzes how 9/11 influenced the right to privacy, primarily by discussing the Patriot Act. In the third chapter, the government's actions from 2001 to the present are analyzed. Finally, the conclusion chapter summarizes the

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<sup>5</sup> Doyle, Charles. The USA PATRIOT Act: A Legal Analysis. American Law Division, 15 Apr. 2002, <https://apps.dtic.mil/sti/pdfs/ADA467389.pdf>

study's results and asserts that, while the government has taken some strides to protect privacy rights, it continues to infringe on the right to privacy under the justification of national security in post-9/11 America.

## **Chapter One - History of Privacy Rights**

Even pre-9/11, the government had the ability to change the construction of privacy rights depending on the historical context. The government restricts privacy rights when there is a perceived threat to national security. This can be seen through the Espionage Acts in World War I and the government's response to the Red Scare. While the Framers of the Constitution did not explicitly enumerate a right to privacy in the Bill of Rights, technological developments have heightened the need to recognize and protect it. The Framers could not have imagined the threats to privacy in a world full of cameras and websites tracking data. Before the September 11 attacks, the United States saw the emergence of legal protections for the implied right to privacy.

### ***Foundations of American Privacy***

While there is no explicit mention of privacy in the Constitution, the framers' prioritization of civil liberties, including specific rights and efforts to limit government abuses, laid the foundation for privacy rights today. When drafting the Constitution, the Founding Fathers had just witnessed a revolution against a government that denied personal liberties. The lack of people's say in government led to abuses of the citizens of the British Empire.

The need to prioritize civil liberties, as well as the creation of an implied right to privacy, is reflected in the Constitution's Bill of Rights. The First Amendment's protections of free speech, press, and assembly presuppose the existence of a right to privacy. The Third Amendment does not mention the right to private property, but it does prohibit the government from forcing members of the military into people's homes. The Fourth Amendment does not mention the right to private property ownership, but it does prohibit law enforcement from searching persons and property without probable cause. The Fifth Amendment contains the Takings Clause, which states that the government cannot confiscate property without just

compensation. The Ninth Amendment states that anything not explicitly stated in the Bill of Rights can still be a right if it is not listed. This is because the framers took into account that, in a changing society, the rights given to the people would also need to adapt. The Founding Fathers could never have imagined the dangers of wiretapping or AI surveillance. This is why the right to privacy is so important, yet not explicitly stated in the Constitution.

Early concerns about privacy often centered on property. The 19th century also witnessed an increase in the protection of private communications and personal information. In 1855, a Post Office agent stated that protecting the privacy of mail communications was significant, as it protected the privacy of one's thoughts from interception. The idea of mail security was furthered by the Supreme Court in *Ex Parte Jackson* in 1878, which ruled that the federal government could not open letters without a warrant. <sup>6</sup>

In 1890, two law partners, Samuel D. Warren and Louis D. Brandeis, published a work discussing the right to privacy, specifically mentioning invasions of privacy by the press. Following this, Warren and Brandeis are considered the founders of this new right of privacy for the recognition they brought to the issue. An article from Boston University School of Law states, "Warren and Brandeis, however, deserve neither full credit nor blame for the law's recognition of privacy as a protectible interest. They did not purport to add a novel right to the legal universe, but instead drew upon some of the established legal doctrines protecting personal privacy to propose an extension of remedies against the press." <sup>7</sup>

While a right to private property was established very early in the foundation of the United States, this right was still expanded throughout the 19th century. This included limiting

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<sup>6</sup> Seipp, David J. *The Right to Privacy in Nineteenth Century America*. Boston University School of Law, Faculty Scholarship Series, 1981. Boston University School of Law Scholarly Commons

<sup>7</sup> (Page 1893) Seipp, David J. *The Right to Privacy in Nineteenth Century America*. Boston University School of Law, Faculty Scholarship Series, 1981. Boston University School of Law Scholarly Commons

the ability of landlords from entering properties they had rented and the rights of house guests. The article mentioned above also states, “Whether the plaintiff was a property owner or a guest, and whether the defendant gained entry by force or by false pretenses, the trespass remedy protected domestic privacy.”<sup>8</sup> To further the right to private property, laws were also in place in the 19th century that limited “peeping Toms” and eavesdropping. This solidified and augmented the right to private property in the 19th century.

Another feature of privacy in the 19th century stemmed from public concern about information being disclosed during the census. In the later stages of the century, gossip columns, or “yellow pages,” were becoming more prominent, and therefore, people fought to protect private information more. In 1840, there were instructions drafted for census takers to treat information as confidential. By 1889, a penalty had been enacted for those who unlawfully disclosed census data. While the yellow pages were a media-driven threat to privacy and the census was government-enacted, they both contributed to a broader fear of losing control over personal information. Overall, concerns about privacy rights in the 19th century were handled differently than they are today, with the government siding more consistently with individual liberties.

### ***Privacy Rights in the 20th Century***

One of the first decisions regarding a government invasion of privacy is in the 1925 court case *Olmstead v. United States*. In this case, federal agents suspected a man, Roy Olmstead, of being a bootlegger, and without judicial approval, they installed wiretaps in his basement and in the streets near his house. Olmstead was convicted through evidence directly obtained from these

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<sup>8</sup> (Page 1895) Seipp, David J. The Right to Privacy in Nineteenth Century America. Boston University School of Law, Faculty Scholarship Series, 1981. Boston University School of Law Scholarly Commons

wiretaps. This brought up the constitutional question of “Did the use of evidence disclosed in wiretapped private telephone conversations violate the recorded party's Fourth and Fifth Amendments?”<sup>9</sup>

The Fourth Amendment is often mentioned in discussions of privacy rights. This amendment states that citizens have the right not to be subjected to unreasonable searches and seizures. This right assumes that private property is protected from government access unless the government has a good cause to search or confiscate something. In *Olmstead*, a five-to-four decision held that the wiretaps did not violate the Fourth and Fifth Amendments. This decision gave federal agencies the legal authority and precedent to obtain information through wiretapping without court approval.

This ruling stood until 1965 when the court case *Katz v. the United States* overturned it. The government had suspicion that Katz was transmitting gambling information to other states and installed an eavesdropping device on the public phone Katz frequented. Katz was later convicted using the evidence from the eavesdropping device. He challenged the evidence used, and the question, “Does the Fourth Amendment protection against unreasonable searches and seizures require the police to obtain a search warrant in order to wiretap a public pay phone?” was asked.<sup>10</sup> In a seven-to-one decision, the court overturned the precedent set in *Olmstead v. U.S.* and ruled in favor of Katz. This case established that the Fourth Amendment protects places, not just people, and therefore the eavesdropping device constituted an illegal search and seizure.

Another important court case that involves privacy came in 1972 with *United States v. United States District Court for the Eastern District of Michigan*.<sup>11</sup> In this case, three people

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<sup>9</sup> "Olmstead v. United States." Oyez, [www.oyez.org/cases/1900-1940/277us438](http://www.oyez.org/cases/1900-1940/277us438). Accessed 20 Nov. 2025.

<sup>10</sup> "Katz v. United States." Oyez, [www.oyez.org/cases/1967/35](http://www.oyez.org/cases/1967/35). Accessed 20 Nov. 2025.

<sup>11</sup> *United States v. United States District Court (Keith)*, 407 U.S. 297 (1972)

were allegedly planning to bomb a Central Intelligence Agency building, and in an effort to prevent this attack, officials used electronic surveillance to listen to their conversations without a warrant. The court ruled in a unanimous vote that the officials were required to obtain a warrant for this use of wiretapping and that allowing warrantless searches on the “vague” grounds of security concerns would set a dangerous precedent.

In addition to cases involving illegal search and seizure and evidence gathering, the right to privacy has also been implied and debated through cases involving bodily autonomy. While there is no enumerated right to privacy in the Constitution, cases such as *Griswold v. Connecticut*, *Lawrence v. Texas*, *Obergefell v. Hodges*, and *Roe v. Wade* have established a right to privacy constructed from a combination of amendments. The concept of implied rights is widely derived from *Griswold v. Connecticut*. This case concerned the legality of couples purchasing contraceptives and discussed the “penumbras and emanations” of the Constitution. In this case, ‘emanation’ refers to the explicit law in the Constitution, and ‘penumbras’ are the implied rights that derive from explicit law. In the *Griswold* decision, the court stated, “The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights.”<sup>12</sup>

As briefly aforementioned, per the *Griswold* decision, the amendments that make up the implied right to privacy include the First, Third, Fourth, Fifth, Ninth, and Fourteenth. The Third Amendment contains aspects of privacy protection by prohibiting soldiers from being quartered in citizens' houses. The Fourth Amendment, which prohibits unreasonable searches and seizures, also plays a significant role in the development of privacy rights. The Fifth Amendment’s explanation of due process includes provisions regarding the rights of those awaiting trial, along

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<sup>12</sup> *Griswold v. Connecticut*. 381 U.S. 479 (1965)

with the previously discussed Taking clause, which implies aspects of privacy. The Ninth Amendment is crucial to justifying the application of unenumerated rights, as it states that rights not enumerated in the Constitution remain valid. Finally, the Fourteenth Amendment extended due process and equal protection to all people born in the United States.

The term that defines the aforementioned concept is substantive due process. Substantive due process is the question of whether the government can deprive someone of their rights if they have a justifiable reason.<sup>13</sup> This case, along with other cases involving marriage rights, the right to purchase contraceptives, the right to abortion, and certain family rights, invokes the concept of substantive due process. Therefore, the combination of amendments in the Constitution creates a penumbra of a right to privacy.

The *Griswold v. Connecticut* decision was issued in 1965, during a period marked by significant social movements that emphasized the expansion of civil liberties, including the Civil Rights Movement and the Women's Rights Movement. These broader cultural shifts toward individual rights created a legal and political environment more receptive to recognizing and protecting privacy. As a result, the Court's willingness to affirm a constitutional right to privacy can be better understood within the context of this time period.

### ***Background of the FISA Court***

Only seven years after the decision in *Griswold*, the country witnessed a scandal that would result in the creation of a controversial branch of the judiciary: the FISA court. In 1972, President Nixon was discovered to be at the center of a scandal that would later be known as Watergate. This scandal consisted of Nixon's reelection team breaking into the Watergate hotel in an attempt to steal documents and tap phones. It was also discovered that Nixon had previously

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<sup>13</sup> Solove, Daniel J. A Taxonomy of Privacy. *University of Pennsylvania Law Review*, vol. 154, no. 3, 2006, pp. 477–560. Duke Law Scholarship Repository

installed a secret tapping system to record conversations in the Oval Office and Camp David Offices.<sup>14</sup> The Watergate Scandal was one of the main reasons used for establishing the FISA Court. The abuses by the federal government during the Watergate era called for stricter guidelines on both privacy and foreign intelligence collection. Nixon's domestic surveillance abuses prompted the creation of a service that would regulate surveillance issues.<sup>15</sup>

The FISA Court was established in 1978, long before 9/11, through a law passed by Congress titled the "Foreign Intelligence Surveillance Act." This act created a new court system in the federal government that would handle issues of gaining intelligence. The US government website defines the FISA court, saying, "The Foreign Intelligence Surveillance Court was established by Congress in 1978. The Court entertains applications made by the United States Government for approval of electronic surveillance, physical search, and certain other forms of investigative actions for foreign intelligence purposes."<sup>16</sup> The FISA Court system operates using two courts. The first is the Foreign Intelligence Surveillance Court (FISC), which has original jurisdiction over FISA applications and has eleven judges. The second is the Foreign Intelligence Surveillance Court of Review (FISCR), or the review court that hears appeals from the FISC and has only three judges. Titles I and III of the FISA Act also provide instructions on how government agencies should seek orders from the FISC for surveillance and searches regarding foreign intelligence.

This framework functions as follows: First, federal officials need approval from the Attorney General or a member of that office (e.g., the Deputy AG, Acting AG, or Assistant AG). The application must include the applicant's identity, information about the target's identity,

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<sup>14</sup> History Staff. The Watergate Scandal: A Timeline. History.com, A&E Television Networks, 9 Oct. 2018

<sup>15</sup> Gerstell, Glenn S. "Making Sense of the Debates Over FISA (Part One)." Council on Foreign Relations, 22 June 2020. <https://www.cfr.org/articles/making-sense-debates-over-fisa-part-one>

<sup>16</sup> Foreign Intelligence Surveillance Court. [fisc.uscourts.gov](https://www.fisc.uscourts.gov), United States Courts, <https://www.fisc.uscourts.gov/> Accessed 5 Jan. 2026.

justification for the surveillance or search, an explanation of the relationship of the target and location to be searched, a description of what will be searched or surveilled, a description of the information sought, minimization procedures, a discussion of how the action of the federal official will be carried out, and a discussion of prior applications. In addition to these nine guidelines, the applicant must, in some cases, provide the duration of the surveillance and include written certifications from executive branch officials regarding the significance of the information sought. There are also guidelines in Title V of FISA regarding business record orders that require a belief that the records pertain to an agent of a foreign power. Title VII of FISA addresses methods for acquiring foreign intelligence from people outside the United States and establishes procedures when this collection uses domestic communication infrastructure.<sup>17</sup>

In an article from the Brennan Center for Justice, the author writes, “Title III of the Omnibus Crime Control and Safe Streets Act of 1968 established the rules for domestic government wiretaps. FISA, enacted ten years later, focused on foreign intelligence.”<sup>18</sup> The author follows this by explaining that, despite its creation in the interest of foreign intelligence, FISA can overstep into domestic surveillance if not carefully monitored.

The legal proceedings before the FISC and FISCR address the legality of information collected by federal officials. One significant aspect of these courts is that these procedures are not applicable to the “state secrets privilege.” In other courts, this privilege allows the government not to disclose information on national security grounds. However, since the FISC court is already classified, classified information can be shared without a threat to national security concerns.<sup>19</sup>

## ***Conclusion***

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<sup>17</sup> Congress.gov, Library of Congress, <https://www.congress.gov/crs-product/technological/t/IF11451> Accessed 5 Jan. 2026.

<sup>18</sup> Goitein, Elizabeth, and Faiza Patel. What Went Wrong with the FISA Court. Brennan Center for Justice, 18 Mar. 2015

<sup>19</sup> Congress.gov, Library of Congress, <https://www.congress.gov/crs-product/technological/t/IF11451> Accessed 5 Jan. 2026.

While the initial creation of the FISA courts was not highly contested, concerns about their abuses have become more relevant as technology has improved. When the country's security is threatened, this concern for overreach grows into a reality. Given that FISA was created in response to the abuse of executive power, it is interesting how it has turned into a highly controversial institution that has the ability to abuse privacy rights. After the Watergate Scandal, FISA was designed to impose judicial oversight on government surveillance and thereby protect individual privacy rights. However, because of the FISA court's secrecy and its role in protecting national security, the tension between FISA's original purpose and its modern function has become increasingly apparent, particularly during periods of heightened national security concern. FISA itself was not inherently a threat to privacy rights, but its evolution demonstrates how legal mechanisms intended to limit government power can be reshaped into tools that expand it. This expansion of the FISA court and its shift towards being a threat to civil liberties can be seen following the terrorist attacks of 9/11.

## **Chapter Two - 9/11's Impact on Privacy Rights**

The terrorist attacks on September 11th, 2001, were full of tragedy and uncertainty. The attacks on September 11th included the hijacking of several airplanes by the terrorist group Al Qaeda. Two of these planes crashed into the Twin Towers in New York City causing them to collapse. In the wake of these attacks, the government found itself searching for answers about how it could have been so unprepared and unaware of the attacks that must have required significant planning. Perceived failures in government detection and prevention efforts led to the enactment of new legislation, most notably the Patriot Act.

### ***The Patriot Act***

Prior to the early 2000s, the right to privacy was established in cases like *Katz v. U.S.* and *Roe v. Wade*, but many privacy-related rights were altered following September 11th, 2001. In the aftermath of the terrorist attacks in New York City, national security became a top priority, often at the expense of individual privacy rights. A mere forty-five days after September 11th, the Patriot Act passed with widespread bipartisan support. The Patriot Act was a law enacted by Congress and signed by President Bush that drastically expanded the government's ability to conduct surveillance on suspected terrorists. Law enforcement agencies had the ability to conduct surveillance on other criminals, but the laws did not apply to suspected terrorists prior to the Patriot Act.

On October 25th, 2001, then Senator Joe Biden stated, “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.”<sup>20</sup> This showed how the government's rhetoric regarding the Patriot Act was that it did not necessarily create new

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<sup>20</sup> U.S. Department of Justice. Questions and Answers: USA PATRIOT Act. U.S. Department of Justice, n.d., [https://www.justice.gov/archive/ll/subs/q\\_support.htm](https://www.justice.gov/archive/ll/subs/q_support.htm)

resources for law enforcement but rather extended previously existing resources to terrorist cases. However, despite this rhetoric, the Patriot Act's provisions were extensive. In addition, despite widespread news that the Patriot Act was widely supported, many legal scholars claim that its bipartisan support was not as legitimate as it seemed. This is because, given the climate when the Patriot Act was being drafted and considered, just over a mere month after 9/11, many people in Congress signed the Patriot Act without fully reading and understanding the over one-hundred-page document. This can also be seen in the public's response to the government's prioritization of security over civil liberties. In a Gallup Poll in January of 2002, when asked whether the government should take all possible steps to prevent terrorism, even if it means infringing on civil liberties, 47% agreed, while 49% said the government should take steps to protect against terrorism but not violate liberties. This poll shows that only four months after the 9/11 attacks, the public was already divided on civil liberty infringement.<sup>21</sup>

The main body of the Patriot Act was divided into ten subcategories. The purpose of the act is defined on the second page, however, stating, "An act to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes." In the following chart, I will briefly touch on the major provisions of the sections of the Patriot Act in the order they are listed.

Section	Title	Summary
1	<i>Enhancing Domestic Security Against Terrorism</i>	<ul style="list-style-type: none"> <li>● Condemns discrimination against Arab and Muslim Americans;</li> <li>● Increases funding for the FBI;</li> <li>● Expands the National Electronic Crime Task Force Initiative.</li> </ul>

<sup>21</sup> Gallup. Civil Liberties. Gallup, <https://news.gallup.com/poll/5263/civil-liberties.aspx>

2	<i>Enhanced Surveillance Procedures</i>	<ul style="list-style-type: none"> <li>● Section 215 authorizes the government to access records under the Foreign Intelligence Surveillance Act.</li> <li>● Authority to intercept communications relating to terrorism and computer fraud</li> <li>● Authority to seize voicemail messages under warrants</li> <li>● Increases the scope to subpoena records of electronic communications</li> <li>● Allowed the government to gain access to records of books read, purchases made, medical and financial history, and academic studies</li> <li>● Allowed these accesses without probable cause</li> <li>● Enforced a gag order that would prevent businesses or libraries from disclosing these investigations</li> </ul>
3	<i>International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001</i>	<ul style="list-style-type: none"> <li>● “International Counter Money Laundering and Related Measures.” <ul style="list-style-type: none"> <li>○ Prohibit certain banking correspondents and deals with problems such as laundering money through foreign banks, corporations represented by fugitives, and international cooperation in investigations of money laundering, financial crimes, and financing terrorist groups</li> </ul> </li> <li>● “Bank Secrecy Act Amendments and Related Improvements.” <ul style="list-style-type: none"> <li>○ Includes provisions relating to reporting suspicious activities, anti-money laundering programs, increases in civil and criminal penalties for money laundering, and requiring more reporting regarding suspicious banking activities</li> </ul> </li> <li>● “Currency Crimes and Protection.” <ul style="list-style-type: none"> <li>○ addresses bulk cash smuggling into and out of the country, counterfeiting operations, and laundering the proceeds of terrorism</li> </ul> </li> </ul>
4	<i>Protecting the Border</i>	<ul style="list-style-type: none"> <li>● “Protecting the Northern Border” <ul style="list-style-type: none"> <li>○ Contains provisions to protect the northern border of the United States</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>● “Enhanced Immigration Provisions” <ul style="list-style-type: none"> <li>○ Includes rhetoric defining terrorism, the rules concerning detaining suspected terrorists and habeas corpus, visa rules and integrity, and a foreign student monitoring program</li> </ul> </li> <li>● “Preservation of Immigration Benefits for Victims of Terrorism” <ul style="list-style-type: none"> <li>○ Includes immigrant status, humanitarian relief for surviving spouses and children, and procedures for withholding benefits to terrorists or family members of terrorists</li> </ul> </li> </ul>
5	<i>Removing Obstacles to Investigate Terrorism</i>	<ul style="list-style-type: none"> <li>● Gave the Attorney General and Secretary of State the authority to pay rewards to combat terrorism,</li> <li>● Section 504 allowed coordination with law enforcement</li> <li>● Extended the Secret Service’s jurisdiction</li> <li>● Allowed intelligence agencies like the FBI and CIA to share details of investigations for the purpose of coordinating action against possible future terrorist attacks</li> </ul>
6	<i>Providing for Victims of Terrorism, Public Safety Officers, and Their Families</i>	<ul style="list-style-type: none"> <li>● “Aid to Families of Public Safety Officers” <ul style="list-style-type: none"> <li>○ Allowed for expedited payment for public safety officers involved in any aspect of a terrorist attack, and increases the payment for public safety officers</li> </ul> </li> <li>● “Amendments to the Victims of Crime Act of 1984.” <ul style="list-style-type: none"> <li>○ Details crime victims' funds, compensation, and assistance</li> </ul> </li> </ul>
7	<i>Increased Information Sharing for the Critical Infrastructure Protection</i>	<ul style="list-style-type: none"> <li>● Expansion of information sharing to facilitate a federal-state-local law enforcement response in the event of a terrorist attack</li> </ul>
8	<i>Strengthening the Criminal Laws Against Terrorism</i>	<ul style="list-style-type: none"> <li>● Defines domestic terrorism</li> <li>● Addresses terrorist attacks against mass transport systems</li> <li>● Prohibits the harboring of terrorists</li> <li>● Defines federal crimes of terrorism</li> <li>● States that there is no statute of limitations for certain terroristic offenses</li> </ul>

		<ul style="list-style-type: none"> <li>● Discusses maximum penalties for terrorism and penalties for terroristic conspiracies, post-release supervision of terrorism</li> <li>● Expands the biological weapons statute</li> </ul>
9	<i>Improved Intelligence</i>	<ul style="list-style-type: none"> <li>● Explains the role of the Director of the CIA</li> <li>● The authority to defer submitting intelligence reports to Congress</li> <li>● Creates a foreign terrorist tracking center</li> <li>● Creates a national translation center</li> </ul>
10	<i>Miscellaneous</i>	<ul style="list-style-type: none"> <li>● Contains sections that were not able to be categorized</li> <li>● Includes a definition of electronic surveillance</li> <li>● Includes a grant program for state and local domestic preparedness support.</li> </ul>

Table 1: The Patriot Act <sup>22</sup>

With ten major titles and many subsections, the Patriot Act contains numerous changes to how certain crimes are defined and punished, and expands the authority and power of many aspects of both State and Federal law enforcement. This is seen through the provisions that allow the government to intercept communications between domestic and foreign people and provisions allowing the government to access personal records, such as library data. This showed the expansion of a surveillance state under the justification of national security. In addition, these provisions demonstrate how post-9/11 security concerns reshaped legal standards, normalizing intrusions into private life that would have previously faced greater constitutional resistance. The government framed the passage of this extensive document as a necessary tool to combat future attacks on the United States and a way to have a framework to deal with terrorism if another attack were to occur. This can be seen in the rhetoric surrounding the passage of Section 504. Section 504, which allows coordination with law enforcement, is often discussed in the context of the Patriot Act. During the passage of the Patriot Act, Sen. John Edwards said in 2001, "We

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<sup>22</sup> All titles cited in this section: United States, Congress. USA PATRIOT Act of 2001. Public Law 107-56, 26 Oct. 2001.

simply cannot prevail in the battle against terrorism if the right hand of our government has no idea what the left hand is doing.”<sup>23</sup> This shows the justification for elements of the Patriot Act through claiming it is the bare minimum to give the government a chance in the fight against terrorism.

While this act was passed in October of 2001, it is crucial to understand the climate in which this was passed. Not only was this passed just over a month after 9/11, but the U.S. was also already engaged in war in Afghanistan, as the military action was first launched on October 7th. This was due to the discovery that the group that perpetrated the attacks on September 11th was the terrorist group Al-Qaeda. Al-Qaeda, based in Afghanistan, was led by Osama Bin Laden.<sup>24</sup> Given that this was passed in a wartime government, just rattled by the worst terrorist attack in the history of the United States, it is clear why it received so much initial support. The vote for the Patriot Act in the Senate was 98 to 1, with only Senator Russ Feingold, a Democratic Senator from Wisconsin, opposing the passage. Senator Feingold wrote an article in “The Nation” twenty years after the act's passage, explaining why he voted against it. He stated, “I voted against the Patriot Act because of the cost it was asking the American people to pay in the form of their civil rights, particularly their privacy rights, and especially for people of color.”<sup>25</sup> In this article, he explains that he believes his concerns were right after seeing the discriminatory impact on communities of color. The Patriot passed in the House of Representatives 357 to 66, with only three of the 66 nays being Republicans.<sup>26</sup> However, the view that this act is widely supported is opposed by legal organizations such as the American Civil Liberties Union (ACLU).

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<sup>23</sup> United States, Congress. USA PATRIOT Act of 2001. Public Law 107–56, 26 Oct. 2001.

<sup>24</sup> Federal Bureau of Investigation. “9/11 Investigation.” FBI, [www.fbi.gov/history/cases-and-criminals/911-investigation](http://www.fbi.gov/history/cases-and-criminals/911-investigation)

<sup>25</sup> Feingold, Russ. “Why I Opposed the Patriot Act.” *The Nation*, 26 Oct. 2021, [www.thenation.com/article/politics/patriot-act-anniversary/](http://www.thenation.com/article/politics/patriot-act-anniversary/). Accessed 7 Dec. 2025.

<sup>26</sup> “Detailed Senate Vote on the USA PATRIOT Act.” U.S. Department of Justice, [justice.gov/archive/ll/subs/detailed\\_vote\\_2001.htm](http://justice.gov/archive/ll/subs/detailed_vote_2001.htm). Accessed 7 Dec. 2025.

The ACLU claims that the Patriot Act, in reality, authorized mass suspicionless surveillance, failed to prevent any terrorist attacks, and violated rights to privacy, free speech, and association. The ACLU also argues that there was a lack of transparency in the law's enactment, depriving citizens of public debate for over a decade. While these claims come from an article published by the ACLU in 2024, they had responded to the passage of the Patriot Act almost immediately after its passage.<sup>27</sup> In an article published on December 14th, 2001, titled “Threats to Civil Liberties Post-September 11: Secrecy, Erosion of Privacy, Danger of Unchecked Government,” the ACLU makes predictions that the government will continue to abuse rights and that these abuses will be ineffective at countering terrorism. It states, “Most of the changes are permanent, apply to citizens as well as to non-citizens, and promise to be ineffective in the fight against terrorism.”<sup>28</sup> The remainder of the article classifies the actions of the anti terrorism measures into the categories of “secrecy, erosion of checks and balances, and circumventing long-standing personal privacy protections by muddying the important distinction between foreign intelligence gathering and criminal investigation.”<sup>29</sup>

### ***President George W. Bush***

Republican President George W. Bush was elected to the presidency in 2001. Former President Bush’s legacy was influenced by his handling of the 9/11 terrorist attacks during his first year in office. Bush declared a “War on Terror,” which would go on long after his presidency. This term referred to the United States declaring war on the Taliban in Afghanistan

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<sup>27</sup> “End Mass Surveillance under the Patriot Act.” American Civil Liberties Union, 30 Oct. 2024, [www.aclu.org/end-mass-surveillance-under-the-patriot-act](https://www.aclu.org/end-mass-surveillance-under-the-patriot-act).

<sup>28</sup> “Threats to Civil Liberties Post-September 11: Secrecy, Erosion of Privacy, Danger of Unchecked Government.” American Civil Liberties Union, 14 Dec. 2001, <https://www.aclu.org/press-releases/threats-civil-liberties-post-september-11-secrecy-erosion-privacy-danger-unchecked>. Accessed 7 Dec. 2025.

<sup>29</sup> “Threats to Civil Liberties Post-September 11: Secrecy, Erosion of Privacy, Danger of Unchecked Government.” American Civil Liberties Union, 14 Dec. 2001, <https://www.aclu.org/press-releases/threats-civil-liberties-post-september-11-secrecy-erosion-privacy-danger-unchecked>. Accessed 7 Dec. 2025.

and Saddam Hussein in Iraq. The war in Iraq was due to the belief that Iraq was in possession of “weapons of mass destruction” and not due to any believed involvement with the terrorist attacks on 9/11.<sup>30</sup> Bush was elected to a second term in 2004; however, in his second term, more criticisms surfaced about the war in Iraq, along with the infringements on civil liberties associated with the Patriot Act. A Gallup poll showed the changing approval rate of Bush as his presidency progressed. Immediately after 9/11, on September 21, 2001, Bush’s approval rating reached 90% but this did not last. His first term averaged 62% approval, while his second term averaged only 37%.<sup>31</sup>

Overall, George W. Bush’s response to 9/11 received strong bipartisan support. A government website describes the former president’s legacy, stating, “President George W. Bush led the national response in the uncertain days after the attacks, comforted a grieving nation, and demonstrated to the world American resolve.”<sup>32</sup> Bush’s presidency faced the task of responding to these attacks quickly and effectively. President Bush signed the Patriot Act into law in the month following the 9/11 attacks and years later signed its reauthorization during his second term. When signing the initial act he stated, “ Today we take an essential step in defeating terrorism, while protecting the constitutional rights of all Americans. With my signature, this law will give intelligence and law enforcement officials important new tools to fight a present danger.”<sup>33</sup> This marked a major shift in how the government interacted with the right to privacy.

As mentioned in previous chapters, the Patriot Act was passed quickly and with strong bipartisan support due to the climate in which it was drafted. While former President Bush did

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<sup>30</sup> Kimball, Daryl G. “The Case of Iraq’s ‘Missing’ Weapons.” *Arms Control Today*, vol. 33, no. 5, June 2003

<sup>31</sup> Gallup. “Presidential Approval Ratings — George W. Bush.” Gallup, [news.gallup.com/poll/116500/presidential-approval-ratings-george-bush.aspx](https://news.gallup.com/poll/116500/presidential-approval-ratings-george-bush.aspx).

<sup>32</sup> “9/11: The Steel of American Resolve.” George W. Bush Presidential Library and Museum, [georgewbushlibrary.gov/explore/exhibits/9-11-the-steel-of-american-resolve](https://georgewbushlibrary.gov/explore/exhibits/9-11-the-steel-of-american-resolve).

<sup>33</sup> The American Presidency Project “Remarks on Signing the USA PATRIOT ACT of 2001.” The American Presidency Project, 26 Oct. 2001

not directly write the Patriot Act, his public support and emphasis on the nation's need to respond were driving factors in its implementation. He fought for its implementation, signed the Patriot Act, and publicly supported its passage and, later, its reimplementation throughout his terms in office. In 2006, when the Patriot Act was up for reauthorization, Bush stated, "The terrorists have not lost the will or the ability to attack us. The Patriot Act is vital to the war on terror and defending our citizens against a ruthless enemy. This bill will allow our law enforcement officials to continue to use the same tools against terrorists that are already used against drug dealers and other criminals, while safeguarding the civil liberties of the American people."<sup>34</sup> This speech by President Bush shows how Bush influenced the public stance on the Patriot Act by advocating for its reauthorization and claiming it was a safeguard of civil liberties rather than a threat.

### ***Legal Scholars and the General Public's Response***

When reading about the Patriot Act on many government websites, it is framed as a time when the country came together and agreed on a piece of legislation to protect itself.<sup>35</sup> In another article published by the ACLU in January of 2002, titled "ACLU Calls for Monitoring of USA PATRIOT Act; Says Administration Misinformed Public After September 11," the ACLU argues for more limitations to be applied to the Patriot Act and discusses a lawsuit regarding the detaining of Muslim and Arab federal prisoners.<sup>36</sup> This article functions as a call to action for Congress to monitor the actions of the government under the guise of the Patriot Act, especially regarding detainees who were held for months without ever being charged with a crime.

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<sup>34</sup> U.S. Department of Justice. Life and Liberty Archive. U.S. Department of Justice, <https://www.justice.gov/archive/ll/archive.htm>

<sup>35</sup> 9/11 Memorial & Museum. "Module 4: Solidarity After 9/11." 9/11 Memorial & Museum, [www.911memorial.org/learn/resources/911-primer/module-4-solidarity-after-911](http://www.911memorial.org/learn/resources/911-primer/module-4-solidarity-after-911)

<sup>36</sup> "ACLU Calls for Monitoring of USA PATRIOT Act; Says Administration Misinformed Public After September 11." American Civil Liberties Union, 24 Jan. 2002, [www.aclu.org/press-releases/aclu-calls-monitoring-usa-patriot-act-says-administration-misinformed-public-after](http://www.aclu.org/press-releases/aclu-calls-monitoring-usa-patriot-act-says-administration-misinformed-public-after) Accessed 7 Dec. 2025for.

Not only is understanding legal scholars' responses to the Patriot Act important in studying the history of privacy rights, but understanding how the public reacted is also significant. While in some cases 9/11 brought about a surge of American patriotism, in others, it brought about concerns for civil liberties and discrimination. The news coverage from 2001 and 2002 highlights the American public's concerns about the passage of the Patriot Act. On September 27th of 2002, an article was published on the news platform *The Minnesota Daily* that illustrated some Americans' concerns.<sup>37</sup> This article, written by Matthew Brophy, who is a biweekly columnist at the paper, begins by stating, "Freedom is Slavery; War is Peace; Ignorance is Strength." This is the motto heralded by Big Brother in George Orwell's book, "1984." This motto might as well be from the George W. Bush administration. Since the tragic Sept. 11 attacks, the Bush administration has incrementally been seizing power, desecrating the U.S. Constitution and subordinating our civil rights in the name of national security." This opinion piece explores Brophy's feelings by comparing Bush's actions to the haunting dystopian novel "1984." In this article, he also explains that the rhetoric surrounding the Patriot Act made it practically unopposable. He stated that to oppose George Bush's actions would be considered unpatriotic or, at worst, as sympathizing with terrorists.

This was not the only news documenting the response to the Patriot Act. In a CBS News article published on June 24th, 2002, the author discusses the FBI's searches of libraries. The article titled "FBI Checks Out Liberties" explains that the FBI began collecting evidence of people's reading history from libraries and prohibiting librarians from releasing details about the searches.<sup>38</sup> The article quotes Judith Krug, the American Library Association's director of intellectual freedom, who claims, "the FBI was treading on the rights it is supposed to be

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<sup>37</sup> "Brophy, Matthew. "Bush Creates Orwellian Society." *The Minnesota Daily*, 27 Sept. 2002, <https://mndaily.com/230637/opinion/bush-creates-orwellian-society/>. Accessed 7 Dec. 2025."

<sup>38</sup> "FBI Checks Out Libraries." CBS News, <https://www.cbsnews.com/news/fbi-checks-out-libraries/>. Accessed 7 Dec. 2025.

upholding.” Krug also explained that the way the FBI threatened to prosecute librarians if they discuss the nature of searches “has nothing to do with patriotism.”<sup>39</sup>

It was not only American news outlets that were covering the response to the Patriot Act. BBC, a British news outlet, published a story on September 10th, 2002, regarding the backlash felt by American Muslims following 9/11.<sup>40</sup> It claims that there was a drastic increase in Muslim discrimination in America and that laws like the Patriot Act are partially to blame. The author, Barnie Choudhury, BBC social affairs correspondent, states, “There is racial profiling, where people can be stopped and searched simply because of their skin colour, appearance, clothing, and name. And then there is the mass questioning of Muslims throughout the US.”

In addition, the Fordham Urban Law Journal conducted a study of public opinion following 9/11, in which they developed a scale and asked questions about attitudes toward terrorism, Al Qaeda, and sacrificing liberties in the name of security. Regarding whether terrorism was ever justified by a political motive, a vast majority answered no. The results regarding attitudes towards the sacrificing of civil liberties in the name of security were widely mixed. The results were almost evenly split between people who do not favor giving up rights for protection and those who believe it is necessary. This study shows that while the people were very united against terrorism following 9/11, the way to handle security without violating rights was not an issue with widespread agreement.

This backlash highlights that the Patriot Act’s passage was not as widely accepted as claimed. Fear of being labeled unpatriotic, especially soon after the attacks, guided the lack of opposition and silence surrounding civil liberties abuses. This is significant because it signals a disconnect between the people and the government in response to these attacks. In addition, the

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<sup>39</sup> “FBI Checks Out Libraries.” CBS News, <https://www.cbsnews.com/news/fbi-checks-out-libraries/>. Accessed 7 Dec. 2025.

<sup>40</sup> Choudhury, Barnie. “US Muslims Hurt by Backlash.” BBC News, 10 Sept. 2002, <http://news.bbc.co.uk/2/hi/americas/2246887.stm> Accessed 7 Dec. 2025.

polls mentioned above showed that even in a time of fear, citizens were not overwhelmingly supportive of sacrificing rights for more security.

### ***Reauthorizations and Sunset Clauses***

Many provisions enacted under the Patriot Act greatly expanded the government's power and infringed on privacy rights; these infringements were generally accepted or at least justified in the wake of 9/11 and the War on Terror. However, now, as the United States approaches the 25th anniversary of the September 11th attacks, these infringements seem more unnecessary and unjustifiable than before. The return to normal life was not out of scope for the authors of the Patriot Act, and in drafting the act, a few clauses were set to sunset. Sixteen of the hundreds of sections were set to expire as of December 2005. These sixteen subsections included many controversial aspects, for example, the aforementioned Section 215. However, in the years following the passage of the initial Patriot Act, Congress has reauthorized numerous clauses that were supposed to sunset. While I will go into more detail regarding these reauthorizations in the second chapter, which discusses the legislative branch's effects on privacy rights, it is important to note that, in 2025, the Patriot Act still has influence, shaping privacy rights.

### ***FISA Post 9/11***

One month before the September 11th terrorist attacks, the FBI arrested Zacarias Moussaoui. Moussaoui was a French citizen of Moroccan descent who was in the US, attending a flight school in Minnesota. He had attracted some suspicion from instructors because he only wanted to practice flying, not landing or taking off, and he would only practice on jumbo jets. The FBI wanted to search his computer and applied for a FISA warrant. This application did not make it to FISC as the evidence linking Moussaoui to Al Qaeda was too weak. The Moussaoui

case is sometimes cited as key evidence that the FISA powers needed to be expanded in the interest of national security.

With the passage of the Patriot Act also came the expansion of the government's powers under FISA. According to an article in the Case Western Reserve Journal of International Law, this expansion in FISA extended, “the length of a FISA warrant has changed from 45 days to 120, with the possibility of a one-year extension. The FISC court can now approve wiretaps and break-ins when foreign intelligence is merely a "significant" part of the operation, rather than its focus. The Act also calls for unprecedented intelligence sharing among domestic and foreign agencies, breaking the wall so carefully erected in the 1970s between domestic crime fighting and foreign intelligence gathering.”<sup>41</sup> In addition, the FISC court initially had only seven federal judges, but this number was extended to eleven post 9/11. These expansions indicated the need for the FISA courts to handle more cases.

### ***Conclusion***

The passage of the Patriot Act drastically transformed people's privacy protections. Despite the rhetoric surrounding its passage, it allowed the government to infringe on individuals' rights in the name of national security and created legislation to institutionalize this process. The name “USA PATRIOT” in itself created a sales pitch of a united front of the country against terrorism. This title stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. This phrasing created the pressure for all members of Congress to agree to pass the act with fear of being seen as disloyal to the country or sympathetic to terrorism.<sup>42</sup> Overall, the passage of the Patriot Act led to the

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<sup>41</sup> Mayer, Jeremy D. “9-11 and the Secret FISA Court: From Watchdog to Lapdog.” Case Western Reserve Journal of International Law, vol. 34, no. 2, 2002, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1458&context=jil> Accessed 5 Jan. 2026.

<sup>42</sup> Levy, Robert A. “The USA Patriot Act: We Deserve Better.” Cato Institute, 1 Nov. 2001

government infringing on the right to privacy for years to come, using fear-mongering and claims of national security as justification.

### **Chapter Three - Post 9/11 to Present**

While many measures taken in the wake of the terrorist attacks on 9/11 were argued as justifiable given the current state of the country, in a world that is nearing twenty-five years post 9/11, privacy rights are still being influenced by these attacks. The Patriot Act has remained a controversial law and continues to shape our politics due to the reauthorization of clauses initially set to sunset. Privacy rights have also been influenced through judicial rulings and new legislative acts, some of which cite the 9/11 attacks as a justification. In addition to the judicial and legislative branches shaping the right to privacy, the United States has had three new presidents since George Bush's term ended, including two Democrats and a Republican. Changes in the executive office have also affected how the federal government has handled both surveillance and concerns about civil liberties abuses.

#### ***SCOTUS's Changing Stance on Privacy***

The Supreme Court of the United States is an example of how the rhetoric surrounding privacy rights is constantly changing in a post-9/11 world; however, the justifications for its limitations have remained the same. Although the Supreme Court has, in some cases, upheld the right to privacy over government overreach, it still often rules in favor of the government. The courts have frequently shifted from protecting individuals to limiting individual rights in the name of national security. In the following section, court cases ranging from 2004 to 2015 illustrate the various decisions the Supreme Court has made that either uphold or infringe on the right to privacy. These cases concern a variety of issues ranging from the treatment of the right to privacy for criminals to interactions at the border and with suspected terrorists. They also show the court's ability to protect privacy rights in some cases, but deny it in others.

In the 2004 court case *United States v. Flores Montano*, Manuel Flores-Montano was approaching the U.S.-Mexico border when inspectors believed his hand was shaking. Inspectors began disassembling the vehicle and revealed 37 kilograms of marijuana stashed in the fuel tank. In 2002, the Ninth Circuit Court of Appeals held that this search was non-routine and therefore required reasonable suspicion, which seemed to be lacking in this case. This raised the question: “Does the Fourth Amendment require customs officers at the international border to have reasonable suspicion in order to remove, disassemble, and search a vehicle's gas tank for illegal material?”<sup>43</sup> The court unanimously ruled that the government has the authority to inspect a vehicle's fuel tank at the border without suspicion. This decision cited national security as the rationale for allowing these searches. The ruling signaled a reduced judicial willingness to uphold civil liberties when national border security was at issue. This reflects the concerns of border security that resulted from the terrorist attacks on 9/11 and how three years after the attacks, they were still influencing the courts. While this ruling was not in favor of civil liberties, I argue that it is justifiable to increase searches regarding border security, as it is a reasonable safety precaution to know what people are bringing in and out of the country, especially so early in the War on Terror. However, this is a clear example of the government infringing on the right to privacy in the name of national security.

The next case is the 2006 case *American Civil Liberties Union v. NSA*. In this case, the American Civil Liberties Union or ACLU sued the National Security Agency (NSA) for a program that was implemented regarding electronic surveillance called the “Terrorist Surveillance Program.”<sup>44</sup> The ACLU claimed that this was an overreach of power, violating both the First and Fourth amendments. This overreach was due to the fact that this act allowed the

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<sup>43</sup>(All information about this case) "United States v. Flores-Montano." Oyez, [www.oyez.org/cases/2003/02-1794](http://www.oyez.org/cases/2003/02-1794).

<sup>44</sup> (All information about this case) American Civil Liberties Union. “ACLU v. NSA – Challenge to Warrantless Wiretapping.” ACLU, [www.aclu.org/cases/aclu-v-nsa-challenge-warrantless-wiretapping](http://www.aclu.org/cases/aclu-v-nsa-challenge-warrantless-wiretapping)

government to track Americans' calls and emails without obtaining a warrant. The U.S. District Court ruled in favor of the ACLU, prompting a response from then-President George Bush. Following this decision, he announced that wiretapping warrants would require approval from the FISA courts; however, he also claimed that the executive had the authority to permit warrantless wiretapping. While this seemed to signal a shift towards protecting privacy rights, the ruling did not last.<sup>45</sup>

Despite Bush's announcement, the case was overturned by the Sixth Circuit Court of Appeals after claiming that the ACLU did not have standing to sue the NSA, as they did not have evidence that they had been illegally surveilled. The ACLU tried appealing to the Supreme Court but was denied. This case shows another example of the government prioritizing national security over personal liberties.

In addition to border security, the next main reason for the courts to rule in favor of the government has to do with aiding terrorists. This can be shown in the court case of *Holder v. Humanitarian Law Project*. In this case, the plaintiffs were supporters of two groups that had engaged in unlawful activity. The supporters of these groups (the Kurdistan Workers Party ("KWP") and the Liberation Tigers of Tamil Eelam ("LTTE")) wanted to prevent the government from initiating sections of the Antiterrorism and Effective Death Penalty Act (AEDPA) against these groups. The humanitarian group sought to try to educate and advise the KWP and LTTE to act peacefully. Section 302 of the AEDPA allows the Secretary of State to designate a group as a terrorist group, and Section 303 makes it a crime to provide material support or resources to these groups. Section 303 is often discussed as it is arguably unconstitutionally vague. This case introduced the question, "Are provisions of the AEDPA which prohibit providing 'any . . .

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<sup>45</sup> American Civil Liberties Union. "ACLU v. NSA – Challenge to Warrantless Wiretapping." ACLU, [www.aclu.org/cases/aclu-v-nsa-challenge-warantless-wiretapping](http://www.aclu.org/cases/aclu-v-nsa-challenge-warantless-wiretapping)

service, . . . training, [or] other specialized knowledge' to designated foreign terrorist organizations unconstitutionally vague?"<sup>46</sup>

The Court ruled in a 6-3 decision for the government, claiming that any help offered to terrorist groups, even peaceful or educational help, could be banned if Congress decided that it could aid terrorists. This case, similar to the Flores Montano case, reflects the post-9/11 rhetoric of areas where the government is unwilling to permit the free exercise of civil liberties in the name of national security. It seems a reasonable assumption that border crossings and aiding terrorists would be some of the first areas the government would intervene heavily in. However, this case could be seen as a dangerous precedent where the government could deem opposition groups or any non-profit as a terrorist organization. Without a clear system of checks and balances or a procedure for determining which groups are terrorist organizations, this vague law could easily be abused by Congress or the Secretary of State.

The following case involves warrantless data collection regarding a criminal rather than suspected terrorists. There are multiple cases that illustrate warrantless data collection. In the 2012 case *United States v. Jones*, Antoine Jones was arrested for drug possession after the police installed a tracker on his Jeep.<sup>47</sup> This tracker was installed without a warrant or judicial approval, and the police used it to track Jones for a month. The case was unanimously decided that this action violated the Fourth Amendment. This protected privacy rights by holding that warrantless GPS tracking violated the right against unreasonable searches and seizures. This also showed that the government in a post-9/11 world was not above protecting privacy when it was determined that such protection did not violate national security.

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<sup>46</sup> (All information about this case) "Holder v. Humanitarian Law Project." Oyez, [www.oyez.org/cases/2009/08-1498](http://www.oyez.org/cases/2009/08-1498).

<sup>47</sup> (All information on this case) *United States v. Jones*. 565 U.S. 400 (2012).

In the next case, the courts ruled in favor of the government, citing security concerns. This occurred in the 2013 case of *Maryland v. King*.<sup>48</sup> In this case, Alonzo Jay King, Jr. was arrested under suspicion of first and second-degree assault charges. After King was arrested but before conviction, his DNA was swabbed and entered into a database. This revealed that King's DNA matched that of DNA from an unsolved rape case. This was the only evidence connecting King to the case, and he was tried and convicted of rape and sentenced to life in prison. King challenged his conviction, claiming that the DNA collection constituted a warrantless search. The courts ruled 5-4 against King, holding that DNA swabs are part of the arrest procedure and therefore do not require a warrant. This case was also decided on the basis of state security concerns over personal liberties. This also defined how certain rights are limited during detention related to a crime, including restrictions on protections against search and seizure.

This next case involves the ACLU accusing the government of overreach. In the 2015 court case, *ACLU v. Clapper*, the ACLU challenged the government's mass collection of metadata under the Patriot Act Section 215.<sup>49</sup> The ACLU argued that the government overstepped the APA, or Administrative Procedure Act, which can waive government immunity in cases such as this. The courts agreed with the ACLU that the government had overstepped in the amount of data it was collecting. This case is significant because it showed the judicial branch preventing the government from overstepping the bounds under the guise of a post-9/11 act. However, this case did take place fourteen years after 9/11. This also signals the decrease in the use of 9/11 as justification as time progressed.

A mere three years later, the courts again ruled in favor of privacy protection. In the 2018 case, *Carpenter v. U.S.*, the police arrested four men in connection with an armed robbery. One

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<sup>48</sup> (All information on this case) *Maryland v. King*. 569 U.S. 435 (2013).

<sup>49</sup> (All information about this case) *American Civil Liberties Union v. Clapper*, 785 F.3d 787 (2d Cir. 2015)

of the men confessed and allowed the police to access his cell phone number, along with the cell phone numbers of the other participants. This case proposed the question of “Does the warrantless search and seizure of cell phone records, which include the location and movements of cell phone users, violate the Fourth Amendment?”<sup>50</sup> The court decided in a 5-4 decision in favor of Carpenter, deciding that the warrantless collection of Carpenter’s cell records violated the Fourth Amendment.

Finally, the last court case to be discussed in this section is the 2022 case *Dobbs v. Jackson*. In this case, the Supreme Court overturned the previous decision made in *Roe v. Wade* regarding abortion rights. The *Dobbs* decision signals a drastic shift away from protecting privacy rights. This is because *Roe v. Wade* helped establish the implied right to privacy through the aforementioned combination of amendments. *Roe v. Wade* was overturned on the grounds that it was not based on an enumerated right. The majority decision in this case held that the combination of amendments creating the right to privacy in prior cases was not a constitutional argument and also rejected substantive due process. The opinion stated, “Next, the Court examines whether the right to obtain an abortion is rooted in the Nation’s history and tradition and whether it is an essential component of ‘ordered liberty.’ The Court finds that the right to abortion is not deeply rooted in the Nation’s history and tradition. The underlying theory on which *Casey* rested—that the Fourteenth Amendment’s Due Process Clause provides substantive, as well as procedural, protection for ‘liberty’—has long been controversial.”<sup>51</sup> This reasoning marks a significant departure from prior precedent by undermining the constitutional foundation of implied privacy rights and limiting their future expansion. Overturning this

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<sup>50</sup> (All information about this case) "Carpenter v. United States." Oyez, [www.oyez.org/cases/2017/16-402](http://www.oyez.org/cases/2017/16-402).

<sup>51</sup> *Dobbs v. Jackson Women’s Health Organization*. 597 U.S. (2022).

implied right-to-privacy decision also threatens other cases that relied on an implicit right to privacy or substantive due process such as *Griswold v. Connecticut*.

All of the court cases listed in this section demonstrate the judicial branch's ability to protect privacy rights by prohibiting abuses through warrantless searches or surveillance, but this analysis also shows that the government siding with privacy rights has become rare. Over the past 25 years, the courts have chipped away at the right to privacy, with the Dobbs decision epitomizing this erosion. However, determining the constitutionality of these sections and acts, especially those regarding FISA or the Patriot Act, shows the safeguards in the United States government to check overreach, even in the name of national security. Examining the spectrum of rulings in privacy cases shows how the judicial branch shapes privacy rights, expanding or narrowing them on a case-by-case basis. This also shapes the abilities of lower courts to implement rulings as they are bound by these precedents.

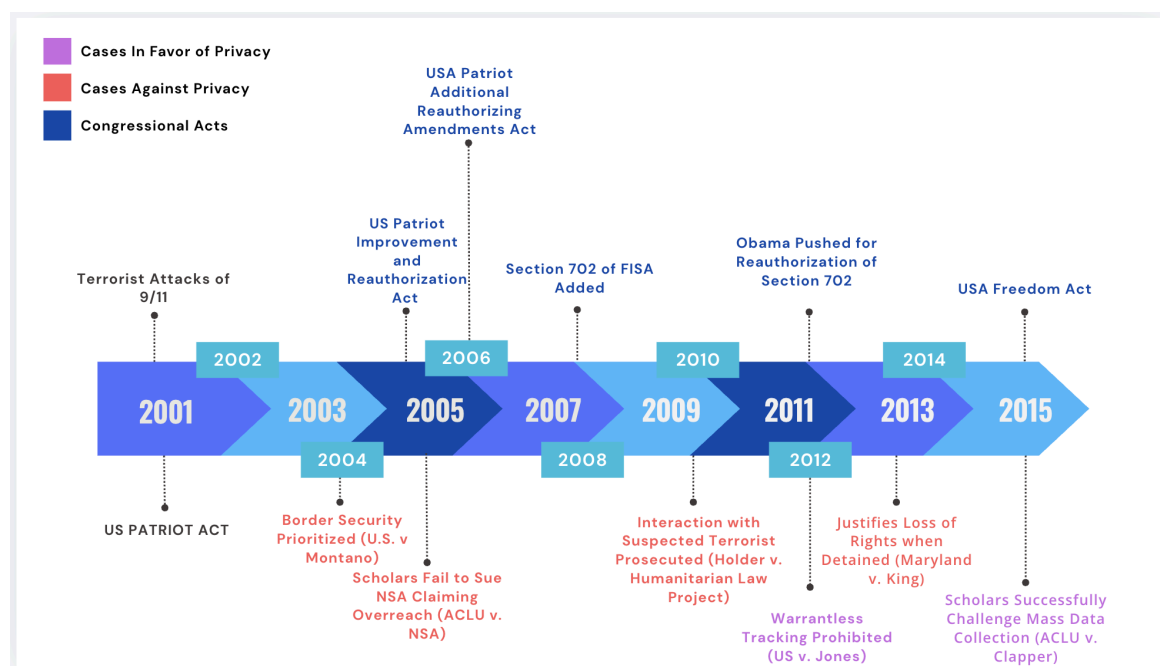


Figure 1: Timeline of Privacy Rights (Through Legislative Acts and Court Decisions)

### *The Patriot Act Reauthorizations and FISA Amendments*

When the legislative branch passed the Patriot Act in 2001, the justification for such an unprecedented act was clear. The nation just witnessed the worst terrorist attack in its history, and the American people were fearful that this would be a recurring tragedy. However, over time, the provisions granted by the Patriot Act were set to sunset as the nation recovered from the shock of 9/11. This did not turn out to be the case, as there have been multiple reauthorizations and extensions of the provisions drafted in 2001.

Four years after 9/11, Congress passed the USA Patriot Improvement and Reauthorization Act of 2005. This act extended many provisions of the Patriot Act and slightly altered others. The provisions added by this reauthorization extended the surveillance permitted on terrorists to include lone wolf terrorism or terrorists who lack affiliation to a certain group or country. This was detailed in Section 103 of the first title of the act titled, “Extension of sunset relating to individual terrorists as agents of foreign powers.”<sup>52</sup> This reauthorization, which includes provisions on lone-wolf terrorism, exemplifies the government's tension between protecting rights and prioritizing security. While reauthorizing the Patriot Act can be seen as a violation of civil liberties within itself, I argue that the growing relevance of lone wolf terrorism provided a reasonable justification for this overreach.

Another prominent change from the reauthorization act was to provisions relating to national security letters (NSLs). These initially referred to the government's ability to seize records without a warrant. Now, under the reauthorization, documents obtained through NSL can be challenged through judicial review. In addition, any misuse of the NSL provisions must be reported to Congress and carry major penalties.

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<sup>52</sup> United States, Congress. USA PATRIOT Improvement and Reauthorization Act of 2005. Public Law 109–177, 9 Mar. 2006.

These are just some of the provisions that were altered, but the USA Patriot Improvement and Reauthorization Act of 2005 is an eighty-seven-page document that extends many of the provisions of the initial Patriot as discussed in chapter one. While some of the revisions, such as the safeguards installed regarding NSLs, were made in response to rhetoric that the Patriot Act abused civil liberties, other aspects extended provisions initially set to sunset. This signaled that the government was aware of its civil liberty abuses and sought to rectify them, as seen in the litigation regarding NSLs, but did not do so at the expense of national security, as seen in the section extending the Patriot Act to lone-wolf terrorism.

In addition to this act, as part of the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006,<sup>53</sup> there were amendments made to the initial act, Foreign Intelligence Surveillance Act of 1978. The amendments to the Foreign Intelligence Surveillance Act, which established the FISA court, increased the rights of people who were ordered to comply with FISA. This included allowing Section 215 of the initial Patriot Act to be challenged. This section mandates that records be turned over when demanded by the FBI. These amendments allow Section 215 to be challenged in court. Another aspect of this also allows gag orders to be challenged in court. This refers to when the FBI demands that documents be turned over and forbids the owner from revealing that the FBI has them or has requested them. These new abilities to challenge governments' actions, even in national security investigations, show a shift towards valuing privacy rights.

### ***Section 702***

Section 702 of the FISA Act was added in 2008, thirty years after the initial act was passed. This section allows the U.S. government to conduct surveillance of foreign terrorists,

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<sup>53</sup> United States, Congress. USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006. Public Law 109-178, 9 Mar. 2006.

spies, and hackers without obtaining warrants. While the government cannot intentionally spy on individuals in the United States, Americans' information is often incidentally collected. Due to this incidental collection, Section 702 remains highly controversial now in 2025. When Section 702 was initially added in 2008, it included a sunset clause that expired in 2012. In 2012, the Obama administration pushed for the reauthorization of Section 702, claiming that its importance to national security still remained. While concerns about the collection of Americans' information were briefly addressed, they did not block the reauthorization. During the Obama administration, Congress reauthorized the act for five years, pushing it to 2017.

In 2017, Section 702 was set to sunset under the Trump Administration. In addition to having a new president, there was even more paranoia regarding privacy following the 2013 scandal in which a NSA contractor, Edward Snowden, exposed how much data the NSA collects from Americans. This NSA agent specifically leaked information regarding the PRISM program, which had given the NSA access to data from large tech companies such as Apple or Google.<sup>54</sup> Many legal scholars have concerns over the reach of the FISA courts and the possible violations of civil liberties that their access entails. In an article from the Brennan Center for Justice, the author calls for an end to the court's overreach. This article was published in 2014, only a year after the Snowden leak occurred. In the subtitle the article states, "The latest Snowden leak revealing the NSA's surveillance of five American Muslims raises new questions about whether the secret Foreign Intelligence Surveillance Court can be trusted to serve as a bulwark against government overreach."<sup>55</sup> This article details the targeted surveillance of Muslim's following 9/11 and how the FISC would approve surveillance if someone was believed to be an "agent of

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<sup>54</sup> Hagan, Molly. "Edward Snowden." EBSCO Research Starters, 2024.

<sup>55</sup> Patel, Faiza. Post-9/11 Overreach of Secret Federal Court Must End. Brennan Center for Justice, 18 July 2014, <https://www.brennancenter.org/our-work/research-reports/post-911-overreach-secret-federal-court-must-end>

foreign power.” Overall, many legal scholars call for limiting the FISC's overreach and emphasize concerns about civil liberties, especially in the wake of the Snowden revelations.

While the administration was still able to reauthorize the act for another six years with bipartisan support, critics of the passage stressed the invasion of privacy this act could enable. In 2023, the section was set to sunset again, yet was reauthorized despite being much more controversial. During this time's reauthorization debates, there was significant concern about digital privacy and controversy over the government's collection of private data. This led to a new act being passed in early 2024 titled “Reforming Intelligence and Securing America Act (RISAA).”

According to the U.S. Congressional records, RISAA, “This act reauthorizes Title VII of the Foreign Intelligence Surveillance Act (FISA) for two years and makes changes to FISA, including expanding restrictions on surveillance under Section 702. (Section 702 concerns acquiring communications of non-U.S. persons believed to be outside the United States to obtain foreign intelligence information. Information about U.S. persons may incidentally be acquired by this type of surveillance and subsequently searched or queried under certain circumstances.” One important measure under Section 702 is part of the next sunset date for 2026.

Due to the classified nature of the FISA court, little information about the cases in the court is available to the public. Media coverage often contains speculation about the court's operations without definitive information. However, in a 2013 NPR article, a former FISA judge discusses the court's post-9/11 decisions. The judge, Royce Lamberth, led the FISC court from 1995 until 2002. Despite being a Republican, Lamberth had handled controversies from both

parties during his time in D.C. and managed to “infuriate both Republican and Democratic administrations.”<sup>56</sup>

Many articles criticizing the FISA courts claim that the court became a “rubber stamp.” This implies that the judges were approving everything regardless of its merit. Lamberth addresses these claims, stating, “What I found that bothered me is the notion that the court was a rubber stamp because we’re approving so much. We’re approving it because it should be approved, because it’s valid, because what the government’s doing here is the kinds of things we should be doing.” He added that another attack in some form or another is inevitable and therefore, the U.S. needs strict measures to protect its security.<sup>57</sup> This viewpoint gives audiences an insider look into the secretive FISA court. Despite its possible aid in terrorist surveillance, the passage and reauthorization of Section 702 is a controversial abuse of the Fourth Amendment.

### ***USA Freedom Act 2015***

In addition to the reauthorizations discussed above, the 114th Congress passed the “USA Freedom Act” in 2015.<sup>58</sup> This act was passed by a vote of 338 to 88; however, it was more contested than this vote reveals.<sup>59</sup> The initial USA Freedom Act was supposed to be stronger than the one that was passed, further limiting the NSA's mass data collection, especially in the wake of the Snowden leak. However, Republican Mitch McConnell filibustered the vote on this initial act and rallied 42 senators, mostly Republican, to block the vote.<sup>60</sup> This led to the resulting act having weaker limitations on the NSA than the previously drafted version.

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<sup>56</sup> Johnson, Carrie. “FISA Court Judge Reflects: After Sept. 11, ‘Bloodcurdling’ Briefings.” NPR, 3 July 2013, [www.npr.org/2013/07/11/198329788/fisa-court-judge-reflects-after-sept-11-bloodcurdling-meetings-and-briefings](http://www.npr.org/2013/07/11/198329788/fisa-court-judge-reflects-after-sept-11-bloodcurdling-meetings-and-briefings) Accessed 5 Jan. 2026.

<sup>57</sup> Johnson, Carrie. “FISA Court Judge Reflects: After Sept. 11, ‘Bloodcurdling’ Briefings.” NPR, 3 July 2013, [www.npr.org/2013/07/11/198329788/fisa-court-judge-reflects-after-sept-11-bloodcurdling-meetings-and-briefings](http://www.npr.org/2013/07/11/198329788/fisa-court-judge-reflects-after-sept-11-bloodcurdling-meetings-and-briefings) Accessed 5 Jan. 2026.

<sup>58</sup> United States, Congress. Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 (USA FREEDOM Act). Public Law 114–23, 2 June 2015.

<sup>59</sup> Goitein, Elizabeth, and Faiza Patel. “House Overwhelmingly Passes NSA Reform Bill.” Brennan Center for Justice, 13 May 2015

<sup>60</sup> Goitein, Elizabeth. “McConnell’s Mistake on USA Freedom.” Brennan Center for Justice, 25 Nov. 2014. Brennan Center article

This act updated the privacy provisions of both the Patriot Act and previous reauthorizations. It includes eight titles that reform aspects of surveillance and document collection, including the following categories: business records, trap-and-trace devices, FISA acquisitions targeting people outside the US, FISA court, national security letters, and reforms related to maritime navigation and nuclear terrorism. It passed the Senate 67-32 and was signed into law by former President Barack Obama.

The USA Freedom Act effectively ended bulk collection of phone and internet records under Section 215, FISA pen registers, and national security letters. It prevented overreach by banning large-scale data grabs (e.g., entire cities or zip codes) and furthered the legislation that allows companies to challenge gag orders on national security letters and requires periodic review of those orders.

In addition, this act also addresses the FISA court. It creates an amicus curiae panel of privacy and tech experts. It also mandated the declassification of major FISA rulings. Overall, this act expanded transparency into the government's secretive aspects and increased government and company reporting on surveillance orders.

While these provisions of the act effectively shifted prioritization to restoring some levels of privacy and transparency, the Freedom Act also enacted legislation that prioritizes national security measures. It established a targeted call-detail record program to be overseen by the FISA court. It also closed a loophole and increased the ability of the government to track foreign terrorists entering the U.S. The US Freedom Act also increased the penalties for providing material support to terrorist groups and enhanced efforts against weapons of mass destruction proliferation and maritime threats. While Section 215 was set to expire on May 31, 2015, another major provision of the US Freedom Act allows for the limited emergency use of Section 215.

The US Freedom Act of 2015 demonstrates the legislative branch's attempt to address abuses of civil liberties often associated with government surveillance, without compromising national security. It aimed to end mass surveillance, increase transparency, and protect civil liberties while maintaining key counterterrorism tools.

The ACLU viewed the US Freedom Act as a historic step towards limiting government overreach into citizens' private lives. While the act was not as strong as the original 2013 draft, which the ACLU heavily supported, it was still strong enough to make history in the eyes of legal scholars. The ACLU states, “They demonstrate that the post-9/11 panic, in which members of Congress and the public were willing to sacrifice civil liberties in the face of nebulous national security claims, is fading.”<sup>61</sup> This quote encapsulates the legislative branch's ability to shape privacy rights: when the government deemed privacy less important than national security, it cast aside the priority of civil liberties in its name. Similarly, when the climate of the country changed to move away from the trauma that emerged in 2001, it started to allow privacy rights to emerge again. While privacy rights have not been restored to their pre-9/11 status, the government has tried to restore some rights lost following the passage of the Patriot Act.

There can be an assumption that any reauthorizations or further acts of the government signal the continued abuse of civil liberties; however, this act signals an important shift away from the post 9/11 mentality of sacrificing civil liberties. This act was passed under the Obama administration, which was outwardly supportive of privacy rights. The US Freedom Act signaled the legislative and executive branches working together to pull back on some infringements of the right to privacy, as the national security justification began to seem increasingly outdated 14

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<sup>61</sup> “What’s next for Surveillance Reform after the USA Freedom Act: ACLU.” American Civil Liberties Union, 27 Feb. 2023, [www.aclu.org/news/national-security/whats-next-surveillance-reform-after-usa-freedom-act](http://www.aclu.org/news/national-security/whats-next-surveillance-reform-after-usa-freedom-act).

years post-9/11. The table below illustrates the most important components of each reauthorization.

<p>“USA Patriot Improvement and Reauthorization Act of 2005”</p>	<ul style="list-style-type: none"> <li>● Extended the surveillance permitted on terrorists to include lone wolf terrorism or terrorists who lack affiliation to a certain group or country</li> <li>● Section 103 of the first title of the act titled, “Extension of sunset relating to individual terrorists as agents of foreign powers.”</li> </ul>
<p>“USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006”</p>	<ul style="list-style-type: none"> <li>● Amendments made to the initial act, “Foreign Intelligence Surveillance Act of 1978.”</li> <li>● Increases the rights of people who were ordered to comply with FISA <ul style="list-style-type: none"> <li>○ Allows Section 215 of the initial Patriot Act to be challenged in court</li> <li>○ Allows gag orders to be challenged in court</li> </ul> </li> </ul>
<p>Section 702</p>	<ul style="list-style-type: none"> <li>● Allows the U.S. government to conduct surveillance of foreign terrorists, spies, and hackers without obtaining warrants</li> <li>● Americans’ information is often incidentally collected</li> </ul>
<p>US Freedom Act</p>	<ul style="list-style-type: none"> <li>● Includes eight titles that reform aspects of surveillance and document collection, covering the following categories: business records, trap-and-trace devices, FISA acquisitions targeting people outside the US, FISA court, national security letters, and reforms related to maritime navigation and nuclear terrorism.</li> <li>● Ended bulk collection of phone and internet records under Section 215, FISA pen registers, and national security letters.</li> </ul>

	<ul style="list-style-type: none"> <li>● Prevented overreach by banning large-scale data grabs (e.g., entire cities or zip codes)</li> <li>● Addresses the FISA court. <ul style="list-style-type: none"> <li>○ Creates an amicus curiae, which is a panel of privacy and tech experts.</li> <li>○ Mandated the declassification of major FISA rulings.</li> </ul> </li> </ul>
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Table 2: Reauthorizations and the US Freedom Act

### *Today's Legislative Stance*

While some of the most impactful legislation regarding the right to privacy was passed as a result of the terrorist attacks on September 11th, 2001, these attacks are no longer the basis of recent privacy legislation. Almost 25 years after 9/11, there are more threats to privacy with less justification for abuses. This relates heavily to the increase in technological capacities and access to technology. Almost every family has brought electronic devices into their homes, and with them, controversy over what components of these devices can be used as evidence in a court of law. From debates over browsers spying on search history to cameras embedded in computers and cell phones that watch every move their users make, the more technologically advanced society gets, the more opportunities for privacy violations arise. Whilst working with the judiciary and executive branches, Congress drafts legislation that helps illustrate and address the concerns of the American people. In the remainder of this chapter, I will discuss the most recent legislation concerning privacy rights as they relate to consumer protection, health, finances, and children's protection. This legislation comes from the 119th Congress (2025-2026), and due to the fact that that calendar year has yet to conclude, many of these acts have not yet been passed

and signed into law; however, to understand modern-day concerns regarding privacy, it is important to view the current state of the legislative agenda.<sup>62</sup>

### *Consumer Privacy Cases*

When looking at recent legislation regarding consumer privacy cases, it is crucial to understand the role of technology in society. Technology's innovations have developed many threats to privacy and can lead to a feeling of being watched at all times in an almost dystopian fashion. Several aspects of the recent privacy legislation relate to this. The first piece of legislation is titled "Informing Consumers about Smart Devices Act." This act was proposed and passed by the House in April of 2025. If passed by the Senate and signed by the President, this act would require the manufacturers of internet-connected devices to disclose whether they have a camera or microphone if one would not "reasonably expect" it to have one. To clarify, when purchasing something that could possess a camera, but it is not clear if it does (not a cellphone or laptop), the manufacturer would have to alert the consumer. This act addresses the paranoia surrounding non-consensual technological surveillance and seeks to limit it by promoting transparency. This act was sponsored in the House by Republican Russ Fulcher of Idaho and in the Senate by Republican Ted Cruz of Texas.

The second piece of legislation regarding digital consumption is the "Take it Down Act." This act was signed into law on May 19th of 2025, and it criminalizes the nonconsensual distribution of intimate visual depictions of individuals. This includes artificially made digital images referred to as "deepfakes." This act also addresses growing concerns regarding the usage of AI online. Previously, the criminality of creating and posting an artificially generated compromising image of someone was unclear. This act responds to growing concerns about what

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<sup>62</sup> All legislation cited from 119th Congress: Fazlioglu, Müge. US Federal Privacy Legislation Tracker, [iapp.org/resources/article/us-federal-privacy-legislation-tracker/](https://iapp.org/resources/article/us-federal-privacy-legislation-tracker/).

can be distributed on the internet and the prominence of AI-generated images. This legislation was also sponsored by Republican Senator Ted Cruz, along with Maria Salazar, who is a Republican from Florida.

The next crucial piece of legislation, drafted in 2025, regarding privacy rights is the “AI Accountability and Personal Data Protection Act.” While this act is yet to be passed, it would establish a federal tort regarding the use, collection, processing, and sale of individuals' data without their consent. This is another common concern involving the sale of personal data when using online software. This bill, proposed with general privacy protections, shows the government is still trying to fill the gaps resulting from the lack of an explicit right to privacy. This act was sponsored by Senator Josh Hawley from Missouri.

Finally, the last piece of legislation from the 119th Congress regarding consumer privacy rights is the “Stop Price Gouging in Grocery Stores Act of 2025.” This act prohibits retail stores from using surveillance cameras to set their prices. It also requires the disclosure of the use of facial recognition technology by retail stores. This addresses a growing concern that retail stores use surveillance to view consumer habits and set prices accordingly. This legislation was proposed by Rashida Tlaib, who is a Democrat from Michigan. This legislation also reflects an ongoing debate over algorithmic or “dynamic” pricing, which analyzes consumer behavior to effectively set prices. This issue is seen as highly controversial and used in aspects of consumption, from buying houses to buying concert tickets.

These consumer privacy cases that have been proposed in the last few months illustrate ongoing concerns over privacy rights and the legislative ability to shape these rights. None of the issues discussed in the chapter are mentioned in the Constitution, and there is a limited ability to show how these surveillance concerns violate citizens' rights. This explains the problematic

aspects of lacking an explicit right to privacy and how technological advancements have further complicated these issues.

### ***Health Privacy Cases***

The next aspect of privacy rights relates to health privacy cases. The 119th Congress has drafted three pieces of legislation relating to this topic. The first piece of legislation was proposed in March and is titled “American Genetic Privacy Act of 2025.” This act prohibits the sale or disclosure of ancestry-related information acquired through DNA testing to the People’s Republic of China or any of its entities. This act reflects an ongoing fear related to programs such as ancestry.com. “Ancestry” was marketed as a service where consumers could purchase a kit, swab their DNA, and receive a report detailing their ethnic and genetic makeup to reveal more about their heritage. A few years after this became popular, there was a sudden outburst of controversy over the service, which was accused of disclosing confidential genetic information. This act demonstrates the legislature's ability to shape privacy concerns by effectively criminalizing the disclosure of ancestry-related information to certain entities. This act was sponsored by Tim Burchett, who is a Republican from Tennessee.

The other two pieces of legislation that were drafted regarding health privacy relate to reproductive rights. The first of these acts, titled “Reproductive Data Privacy and Protection Act,” amends Title 18 of the United States Code to ensure that requests for data do not pertain to sexual health treatment or care. This was sponsored by Democrat Ten Lieu from California. The second act on health privacy related to reproductive rights is the “My Body, My Data Act of 2025.” This act requires entities to minimize data collection and allows individuals to modify privacy policies regarding reproductive or sexual health information. This act was sponsored by Senator Mazie Hirono, who is a Democrat from Hawaii, along with Representative Sara Jacobs,

who is a Democrat from California. The right to privacy is often brought back to reproductive rights and sexual autonomy, and this aspect of privacy rights receives the least bipartisan support.

### ***Financial Privacy***

The next aspect of the legislative branch's role in shaping privacy rights concerns financial privacy. Financial privacy is another type of privacy that many Americans place a high value on. The first piece of legislation is the “Homebuyers Privacy Protection Act.” This act was signed into law on September 5th, 2025, and prohibits consumer reporting agencies from providing credit reports to third parties in cases regarding mortgage transactions. This law limits “trigger leads,” which are when companies can purchase buyers’ data when they apply for a mortgage. This shows the government supports the privacy of financial data, which can also help reduce predatory marketing practices. This law was sponsored by Representative John Rose, a Republican from Tennessee, and Senator Jack Reed, a Democrat from Rhode Island.

The next piece of legislation is titled “Protecting Military Servicemembers Data from Foreign Adversaries Act of 2025,” and it prohibits data brokers from selling and trading lists of military service members to certain nations. This aligns with the first act, as it shows the legislative branch’s effort to protect citizens' privacy and limit the financial gain from selling their private information. This bill was sponsored by Senator Bill Cassidy, who is a Republican from Louisiana.

In line with this notion of expanding financial privacy rights, the third piece of legislation is the “Taxpayer Notification and Privacy Act of 2025,” which requires that taxpayers be notified when third parties request information about them. This act, sponsored by Republican Senator John Barrasso of Wyoming, demonstrates a level of transparency that would help ensure stronger financial privacy protections. Similarly, the “Bank Privacy Reform Act” eliminates provisions

within past banking acts that require financial institutions to report some information to government agencies. This also shows a shift towards greater financial privacy protection, as it reduces the obligation of banking institutions to report private transactions to the government. This act was sponsored by Republican Representative John Rose from Tennessee.

Finally, the last piece of financial privacy legislation from the 109th Congress is the “Protecting Privacy in Purchases Act.” This act prohibits payment card networks from assigning firearm retailers a merchant category code that would distinguish them from other sporting goods or general merchandise purchases. This act was sponsored by Republican Representative Riley Moore from West Virginia and Republican Senator Bill Hagerty from Tennessee.

All of the acts regarding financial privacy show the legislative working to shape privacy rights to better protect people's private financial information. From lowering requirements on banking institutions to report financial activity to protecting information such as credit scores from being sold to third parties, the most recent legislation shows a priority on protecting citizens' privacy rights.

### ***Children’s and Educational Privacy***

The next section of recent privacy legislative acts involves one of the most pressing issues, namely that of children's access to technology. Children have become exposed to technology at a younger age, and therefore, limits regarding what they can access on the internet and who can access their information have become necessary. The first piece of legislation is titled “Kids Off Social Media Act.” This act, despite being sponsored by Democratic Senator Brian Schatz of Hawaii, has received bipartisan support. The “Kids Off Social Media Act” prohibits social media platforms from allowing children to create or maintain accounts. In this instance, children are defined as people under the age of 13. This act also requires platforms to

delete the accounts and personal data collected from children and prohibits the use of automated recommender systems to individuals under the age of 17. An “automated recommender system” refers to software such as TikTok’s “For You” page, which custom-designs the content that is shown based on individual preferences.

In a similar fashion, the “Children and Teen’s Online Privacy Protection Act” also received bipartisan support despite being sponsored by Democratic Senator Edward Markey from Massachusetts. This act extends privacy protections to children ages 12 to 16 by imposing obligations, including prohibitions on marketing to children and teens. This act also tries to limit the pull for children to join social media and, in turn, aims to protect their privacy.

The next act applies to all age groups and to privacy rights on online software, and it has also received bipartisan support. This act, named “Data Elimination and Limiting Extensive Tracking and Exchange Act,” was proposed by Democratic Senator Edward Markey as well, and it establishes a centralized system that allows individuals to request the deletion of their personal information from data brokers. This also requires that data brokers who collect personal information from people with whom they do not have a relationship register with the FTC or the Federal Trade Commission.

The final children’s privacy act that had bipartisan support was sponsored by Republican Senator Marsha Blackburn from Tennessee and is titled, “Kids Online Safety Act.” This act required online platforms, video games, messaging applications, and video streaming services to prevent harm to minors, implement protections for minors’ personal data, add parental control of privacy settings, and refrain from using personalized recommendation systems targeted at children under the age of thirteen. This is an explicit attempt by the legislature to help increase privacy rights and limit exposure to inappropriate content for children with access to the internet.

The following two pieces of legislation did not receive bipartisan support as they were supported primarily by the Republican Party. Both of these acts were sponsored by Representative Mary Miller, who is a Republican from Illinois. The first act is titled, “Shielding Children's Retinas from Egregious Exposure on the Net Act.” This act would establish age-verification requirements for websites with content that could be seen as harmful to minors, to ensure minors cannot access it. The second piece of legislation is the “Parents Opt-in Protection Act,” which ensures that students are not required to reveal personal information without prior written consent. Both of these acts also shift towards protecting children's right to privacy, as well as protecting them from accessing harmful content, regardless of internet access. While democrats do support protecting children from exposure to inappropriate content, acts such as these raise concerns about censorship, which limits complete bipartisan support.

### ***Conclusion***

When viewing the actions of the Legislative, Judicial, and Executive branches throughout the 2000s, there is a clear shift involving their construction of privacy rights. Following the events of September 11th, 2001, the government had a clear goal of protecting the country even if it meant violating the rights of individual citizens. There was a tradeoff between protecting national security and allowing citizens to have the utmost privacy. Now, in a world approaching 25 years since 9/11, the rhetoric following 9/11 is still relevant, and privacy rights are still rarely protected when viewed against national security concerns. While there are certain components of the Patriot Act that are still relevant today, many decisions being made and sponsored by members of the 119th Congress lean toward protecting privacy rights and extending them further than before. However, many court rulings still favor increased security over the protection of civil liberties. This signals an increasing danger, as these extensions of privacy rights are crucial

in a world of rapidly evolving technological capabilities and the ability of many companies to exploit consumers to obtain information. To complicate this further, younger generations are gravitating towards using technology at earlier ages, putting their privacy and information at risk before they are old enough to understand the consequences. The legislation being considered and drafted by Congress in the last few months shows a focus on the right to privacy being expanded to cover new technological issues, from cameras in supermarkets to artificially generated images of people in compromising situations, to health and financial privacy, and finally to minors' protections and limited access to the internet. It is also worth noting that many features regarding the legislative shaping of the right to privacy received bipartisan support. The acts discussed above were introduced and sponsored by a combination of republicans and democrats and very few were opposed by either party.

### **Conclusion: How has the Right to Privacy been Altered?**

When analyzing the evidence of court cases, the president's actions, and legislative acts, it is clear that the application of privacy rights has been altered significantly throughout U.S. history. From not being enumerated in the Constitution to being expanded and contracted based on the changing political climate, it becomes clear that the right to privacy will continue to change in the future as well. When viewing the Supreme Court prior to 9/11, the branch seemed more likely to uphold privacy rights when they came into question. Through the creation of laws in the 19th century to limit eavesdropping and leaking census information to court cases, such as *Roe v. Wade*, that established a right to privacy through substantive due process and a combination of amendments, the right to privacy was being strengthened by the government until 2001.

Following the terrorist attacks of 9/11, the government transitioned to favoring national security over civil liberties. By invoking national security as justification, the government eroded privacy through the Patriot Act and its subsequent reauthorizations. The government continues to erode privacy rights by not allowing clauses of the Patriot Act to sunset and through court cases such as *Dobbs v. Jackson*, which overturns the concept of an implied right to privacy.

One of the most relevant examples of the ongoing changes being made to privacy rights through reauthorizations involves the discussion of Section 702 of FISA. Section 702 was set to be voted on in Congress in April of 2026 however after not being able to reach a consensus the deadline was moved ten days with the hope of passing the reauthorization. Section 702, which gives the federal government the power to conduct warrantless surveillance on foreign targets but also indirectly collects domestic information, has been a contested aspect of the FISA act since 2001. In 2024 when the act was up for reauthorization, lawmakers had attempted to add an

amendment to the act that would have addressed some of the civil liberty infringement concerns. This amendment would have required the government to obtain a warrant anytime a citizen's information was involved in an investigation. However, FISA was reauthorized in 2024 without the amendment being added.<sup>63</sup> Now approaching an April 30th deadline, President Donald Trump has been using social media to convey his opinion on the necessity of the reauthorization. He stated, "I am willing to risk the giving up of my Rights and Privileges as a Citizen for our Great Military and Country! Our Military Patriots desperately need FISA 702, and it is one of the reasons we have had such tremendous SUCCESS on the battlefield."<sup>64</sup> The support of President Trump along with the historic support of past presidents shows the rhetoric of the government that this section is crucial to national security and therefore needs to be reauthorized despite possible civil liberty infringement.

Overall, when viewing the changes made to the right to privacy in the past twenty-five years, the answer to the question "*How have political actors and institutions shaped the legal construction of privacy rights in a post 9/11 America?*" becomes clear. Political actors and institutions alter the legal construction of privacy rights by expanding them in times of peace and in the absence of security concerns, and contracting them when national security can be invoked as justification.

In the post 9/11 section discussing court cases, the court alternates between protecting individuals' privacy, such as in the cases where they disallowed evidence that was obtained without a warrant, and hindering privacy rights in cases where terrorists or border security was involved. In the latter of these cases, invoking national security interests provides a compelling reason to infringe on privacy rights, especially in post-9/11 America. Another way political

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<sup>63</sup> Brennan Center for Justice. "Section 702 of the Foreign Intelligence Surveillance Act." Brennan Center for Justice, 8 Apr. 2026, updated 10 Apr. 2026

<sup>64</sup> TrumpReposter. "Post." Bluesky, 11 May 2026, bsky.app/profile/trumpreposter.bsky.social/post/3mjk3lxbwxs2r.

actors and institutions shaped privacy rights in post-9/11 America is evident in various legislative acts that both preserve and harm the right to privacy. The reauthorizations of the Patriot Act use the justification of national security to continue to violate civil liberties. In addition, they use more modern threats, such as the relevance of lone wolf terrorism, to further these acts despite some calls to sunset. However, the current Congress has been looking to pass many laws that would protect consumers, digital, children, financial, and health privacy as modern technology continues to threaten those aspects of society. This new legislation shows the government's attempt to begin to protect privacy rights; however, the government continues to infringe on privacy by using security as a justification.

While doing research on the right to privacy in a post 9/11 America, questions regarding the link between privacy and democracy were at the forefront. An article in the Boston Review touches on how democracy and privacy are linked, stating, “If we are going to live in a democracy, the bulk of power needs to be with the people. And whoever has the data has the power. Privacy is important because it gives power to the people.”<sup>65</sup> As aforementioned, the concept of protecting individuals' civil liberties from the abuses of a government was a priority of the founders of America's democracy. This is because the concept of having a government of the people and for the people requires that the people's liberties be protected. In many authoritarian countries, the people lack freedom due to a lack of privacy. From not being able to search up questions on the internet without surveillance to not being able to read certain books from a library, these limits to the consumption of information come from a lack of privacy.

Democracy and privacy are linked, and having the right to privacy is essential in a democracy. After seeing the government abuse the right to privacy in the past twenty-five years, does this erosion of privacy signal an erosion of democracy in the United States? The United

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<sup>65</sup> Véliz, Carissa. “Why Democracy Needs Privacy.” Boston Review, 6 Apr. 2021. Boston Review article

States has witnessed an increase in democratic backsliding in recent years, and this could be linked to infringements on civil liberties, such as the right to privacy. In addition, the gap between government actions and the public's response to infringements on civil liberties highlights a potential threat to democracy, as diminished public resistance may allow the expansion of state power with limited accountability.

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