A Patriot Act Surprise

Republicans have a long history of favoring small government except when it comes to surveillance and security, at which point civil liberties take a back seat. Last week, however, 26 Republicans in the House demonstrated a remarkable consistency by joining 122 Democrats to prevent the extension of three questionable provisions of the Patriot Act, the post-9/11 law created during the Bush administration.

The vote splashed some cold water on the House Republican leadership, which had been so confident that it raised the extension under fast-track rules that require a two-thirds majority. The leadership is planning to bring it back this week under the normal rules. It is almost certain to pass and be sent to the Senate.

Nonetheless, the concerns that briefly brought together liberals, Tea Party members and longtime centrists from both parties should send a message to the White House and the Senate. The provisions of the Patriot Act should be carefully re-examined before being hastily reauthorized year after year. The Tea Party-backed congressman Justin Amash of Michigan was right to say that some raise serious concerns about violating the ban on unreasonable searches and seizures.

Three provisions in the act are set to expire on Feb. 28, and would be renewed under the House bill, supported by the Obama administration, through December.

One would allow a roving wiretap on a terror suspect to monitor his conversations as he moves from phone to phone. That can be a useful tool, but the authorization is so broad that the government does not even have to specify the suspect’s name to get a warrant. The failure to provide a more narrow identification of the suspect is too lax and could lead to abuse.

Another expiring provision has long raised serious civil liberties concerns, allowing the government to examine library and bookstore records of suspects, along with hard drives, tax documents and gun records. Investigators are not required to show probable cause that the material is related to a terrorist investigation.
The third provision, allowing surveillance of “lone wolf” suspects who may not be tied to recognized terror organizations, is also overly broad but has never been used. Rather than renew it without debate, the government should explain whether it is really necessary.

The extensions will probably pass the House this week — though leaders do not plan to give anyone a chance to amend them — and go to the Senate, which should provide another opportunity for reconsideration. Senator Patrick Leahy of Vermont, the Judiciary Committee chairman, has introduced a bill that would add several safeguards to the act, most notably the phasing out of “national security letters,” which the F.B.I. has used to obtain evidence without a court order. These letters have been subject to widespread misuse and have never received proper oversight.

Unfortunately, the same bill that would bring the letters under control would extend the three expiring provisions in the Patriot Act through 2013. It is a much better measure, however, than a bill by Senator Dianne Feinstein that would extend the provisions for three more years without the new safeguards, or one by Senator Mitch McConnell that would make the three provisions permanent. Congress should not miss an opportunity to wield some oversight on this issue and determine whether the government could achieve its goals with less sweeping surveillance powers.