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The Fourth Amendment after the USA Patriot Act: Cross-State Comparison on the Effect of Ideology and Partisanship in State Legislation of Anti-Patriot Act Resolutions and Wiretapping/Eavesdropping Laws

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ABSTRACT

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The USA Patriot Act, passed in September 2001, changed the standards of Fourth Amendment rights and protections. The USA Patriot Act gave more authority to the government and diminished the rights and privileges given to individual citizens. An eruption of Fourth Amendment legislation and cases arose in the states following the passage of the act and it created a problem for policy and implementation. The legislation presented, for the USA Patriot Act and wiretapping/eavesdropping laws, demonstrated the differences in opinions on these issues on the individual state level. These drastic differences in policy between states created a question of why individual states act so varied both in their policies and implementation.

This thesis unfolds the relationship between Fourth Amendment legislation and the ideology/partisanship of individual states. Partisanship and ideology are often considered to be major factors in the decision-making process of state governments. In the first wave of legislation, the partisanship/ideology of the states did not affect the type of legislation passed. However, in the second wave of legislation, partisanship/ideology appeared to play a more significant role. Therefore, the question emerges as to why ideology/partisanship did not correlate with the legislation passed in the first wave, yet it did show a relationship in the second wave. While, there is no definitive answer, this thesis explored the possible reasons and the other factors that could of contributed to the type of legislation passed in the individual state governments.

Table of Contents

Chapter One: Introduction, Literature Review and Methodology

David Meserve said, "We are refusing to follow orders which violate the civil rights of Arcata citizens. We want to protect people's rights." This statement clearly explains the decision of Arcata, a small town in California, to outlaw the USA Patriot Act, which had been enacted shortly after the attacks on the World Trade Center in September of 2001. Many states, cities and towns had previously condemned the Act, but this town on the North Coast was the first to make cooperation with the Act an actual crime. Beginning in May of 2003, any city department head that voluntarily complies with investigations or arrests under the Patriot Act would be fined $57. Meserve, a new City Council member at the time, called this move, "a non-violent, preemptive attack" on the part of the city government (Nieves 2003, 5). Arcata may have been the first to act in this way, but it definitely was not the last. Many other states, cities and towns followed their example and refused to comply with the USA Patriot Act. Many states, such as Maine and Montana, believed that the USA Patriot Act was unconstitutional not only under their own state constitutions, but also under the United States Constitution. Other states thought that the Patriot Act was a threat to freedom and to individual rights. In 2008, the question of wiretapping and eavesdropping, both warrantless and with a warrant, become a central issue in the United States. The state legislation varied immensely from allowing wiretapping/eavesdropping under any circumstance to banning wiretapping/eavesdropping on all counts. The role of ideology plays a questionable role in the grand scheme of the Fourth Amendment question. It would seem natural that conservative states would allow the federal government more power and restrict the rights of individuals, while liberal states would desire to prevent the federal government

from establishing a police state and instead would give more rights and freedoms to their citizens. However, in many cases, the stance or take on the issue (in terms of whether the USA Patriot Act or wiretapping/eavesdropping is constitutional) is not consistent with the partisan-control of the state as a whole, as well as the ideology of the citizenry. This surprising discovery calls into question the role of partisan-control and ideology in decision-making on the state-level. While, sometimes, the changes made by the state governments are decided by their partisanship, but in other situations, partisanship plays little to no role in the decisions made by these states. Therefore, the importance and role of ideology and partisan-control becomes an important factor and question when discussing these Fourth Amendment issue.

Introduction:

In the beginning of the history of the United States, the federal government has been a primary institution of lawmaking and the U.S. Constitution remained a primary document for the rights and protections of its citizens. However, beginning in the 1980s, state constitutions began offering greater protections and state courts handed out more severe and a larger amount of decisions. The states became more willing to adapt the US Constitution to their states specific needs instead of following the Constitution strictly. The states began to treat their state constitutions as an independent source of individual rights and are increasingly more willing to change their interpretation of the U.S. Constitution. The attack on the World Trade Center on September 11th 2001 came at a time when judicial and legislative federalism was reinvigorating itself in the United States. The attack created a national security crisis, which resulted in the USA Patriot Act. This act changed or altered many aspects of individual rights, which created a

situation where the states did not know how to react to these changes. Some states agreed with the changes considered crucial for the safety of the United States citizens, while other states felt that individual rights were being infringed upon too much. Therefore, many states acted differently from each other and this created a problem for legislation, courts cases and implementation.

Implementation:

Federalism, both judicially and legislatively, creates controversy when implementation is necessary. This has become a problem on a large scale involving a large range of issues. Specifically, through all of the changes made through the USA Patriot Act and the updating of wiretapping/eavesdropping laws, the federal government as well as all of the state/local governments has lost a solid definition or understanding of Fourth Amendment rights. The "reasonable" amount of privacy has become too varied among the states and this has confused the idea of a universal right to privacy. Instead, not only has it become different between the federal and state governments but also each state government is in conflict with each other. This becomes problematic for implementation and poses a threat to the rule of law. Justice O'Hern spoke on the subject in terms of advocating for a more uniformity: "Respect for laws flows from a belief in its objectivity. To the extent possible, we ought not personalize constitutional doctrine. When we do otherwise, we vindicate the worst fears of the critics of judicial activism"(Fitzpatrick 2004, 10). In having different laws or beliefs on a state-to-state basis, it demonstrates that each state is using its own interests to come to decisions regarding the Fourth Amendment. While, federal rights are meant to create a minimum standard and the states are meant to be able to offer their citizens greater protections, differences become a problem when states do

not even agree with the minimum standards that the federal government offers. When this happens on a state-to-state basis, it becomes a problem because the states are now rejecting the standards set forth by the U.S. Constitution and the federal government. The Fourth Amendment, therefore, is no longer offering a uniform minimal standard of protection. This is where subjectivity in the understanding of the United States Constitution becomes problematic, because the states are using their own bias or beliefs to go against the already-established federal standards. Therefore, implementation of these federal standards become problematic because now some states are offering less protection or less amount of rights. Each state is now trying to implement their own set of standards and that creates difficulty for the federal government.

United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act:

The United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (further referred to as the USA Patriot Act or Patriot Act), passed and implemented swiftly after the World Trade Center attacks on September 11th, 2001 changed or more specifically expanded the application of the Fourth Amendment principles or rights immensely in five principle ways: (1) authorizing roving wiretaps; (2) permitting seizure of business records without the normal parameters for a search and seizure warrant; (3) allowing warrantless wiretaps in situations where foreign intelligence is a significant concern; (4) authorizing sneak-and-peak searches; and (5) permitting the use of a pen register and trap-and-trace device (Smith 2004, 20). These five issues were the priority circumstances that the Patriot Act dealt with in terms of the Fourth Amendment. Each part created controversy not only for the federal government,

but also for each individual state government. The Patriot Act made substantial changes to Fourth Amendment rights, as Americans had known it up to that point. These major transformations shocked many and infuriated others. Jeremy Smith discusses in his piece, the "USA Patriot Act: Violating Reasonable Expectations of Privacy Protected by the Fourth Amendment without Advancing National Security", the five main changes to the USA Patriot Act and how these changes created problems for the constitutionality of the Fourth Amendment. The USA Patriot Act is the basis for the explosion of Fourth Amendment legislation both in the federal government and the state governments. The seriousness of the situation is evident in the fact that twenty-eight out of the fifty states passed legislation on the state-wide level dealing with this issue.

The first of the five principle changes was in terms of authorizing roving wiretaps. Section 206 of the US Patriot Act amended the Foreign Intelligence Surveillance Act of 1978 (FISA). Congress passed FISA in order to restrain law enforcement abuses by the federal government while establishing procedures for federal authorities to gain foreign intelligence information in order to combat foreign terrorism (Smith 2003, 23). Section 206 broadened the roving surveillance authority of the federal government in violation of the particularity requirement of the Fourth Amendment. This requirement of the Fourth Amendment requires that warrants "particularly describe the place to be searched, and the persons or things to be seized"(Smith 2003, 23). However, in section 206, the roving wiretaps may monitor the target of the surveillance wherever the target goes as well as monitor any specified person implicated as an accomplice of said target "in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person"(Smith 2003, 22).

Furthermore, these wiretaps allow the federal government to wiretap any service provider without geographical limitation. This created less rights and less freedom for all individuals and gave more power to the federal government. The states were lost with their role in this new environment and many states did not know how to react to these changes. Some found their states rights threatened while others felt these changes were needed during this national security crisis.

The second change was under section 215, which made it easier for the federal government to obtain access to records in international investigations. It authorized many high level agents of the FBI to apply for an order of "any tangible thing". This broad order, however, incredibly extended the previously accepted definition of records, and allowed for the government to gain access to more sensitive, private papers than ever before. In addition, before the broadening of FISA, it required the government in their application to that there were "specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power"(Smith 2003, 24). Under the new parameters, the need for specific and articulable facts was removed which allows for the government to obtain an individual's record without having to show articulable suspicion and the people involved were expanded to not only foreign powers but to any United States person. The combination of the two signified that United Sates citizen "can be ordered to produce records without any level of individualized suspicion of wrongdoing" and consequently the federal government has "circumvented the Fourth Amendment in the name of combating international terrorism"(Smith 2003, 24). While, it may seem that the states would not be concerned with changes concerning international investigations, this provision actually affects every

single United States citizens. Therefore, any person can be a suspect and several states found this a violation of the Fourth Amendment. People in individual states took a variety of stances against section 215 of the Patriot Act. Some published resolutions explaining the constitutional provisions that were violated, such as Brookline, Massachusetts, which posted the resolution in public places like bulletin boards, the lobby of the Town Hall, libraries and public schools. Others published resolutions that explained the dangers of violating the act, like the City of Aztec, Mexico, which directed public libraries in the city to post in a prominent place the following notice: "WARNING: under Section 215 of the federal USA PATRIOT Act (Public Law 107-56), records of the books and other materials you borrow from this library may be obtained by federal agents. That federal law prohibits librarians from informing you if federal agents have obtained records about you. Questions about this policy should be directed to: Attorney General John Ashcroft, Department of Justice, Washington, DC 20530"(American Civil Liberties Union 2003, 53). This created more publicity and controversy over the issue and allowed states to get their opinion out there without going as far as to outlaw or overturn section 215 in their own state. Some states went ever further and actually refused to follow this provision in their own state. For example, Montana encouraged their law enforcement agencies not to participate in investigations authorized under the Patriot Act. In addition, it strongly advised Montana's attorney general to review any state intelligence information and destroy it unless it was directly related to suspected criminals. State Senator Jim Elliot, a Democrat from Trout Creek, said, "Montana isn't the first state that passed a resolution, but this resolution is the strongest statement against the constitutional violation of any state and almost every city or county"(American Civil Liberties Union 2003, 44).

The third adaptation was in section 218, which allowed warrantless wiretaps if the primary purpose of the surveillance is criminal investigation, provided that gathering foreign intelligence is a significant purpose. The main change here was before the federal government could obtain court orders only when gathering foreign intelligence was the purpose of the investigation. Now, after the change, it only has to be a significant purpose of the search. Before the change, foreign intelligence was the one and only reason the federal government could obtain court orders. Foreign intelligence had to be the purpose for the court order. Now, however, foreign intelligence only has to be part of the reason for the court order. It is possible, with this change, that the main reason could be something else altogether, but as long as somehow foreign intelligence is related, a court order could now be obtained. Therefore, the amount necessary to warrant the search has gone down tremendously. This means that court orders can be obtained for criminal investigations if there is a purpose of gathering foreign intelligence information. With the expansion under section 218, many debates became evident. One of the most important ones is in regards to the special needs exception. Many attempted to justify the expansion of warrantless wiretaps through the special needs exception and several court cases resulted from this dilemma. In addition, the general reasonableness principle was put into question in regards to the expansion of warrantless wiretaps. There was immense debate on extending the general reasonableness balancing inquiry beyond temporary seizures at roadblocks since the Court has repeatedly assessed that only temporary seizures, but not searches, are allowed in roadblock cases. Both of these were eventually declared unconstitutional but during this time, it created much controversy among the citizens of the United States. Seizures in cars are one of the biggest problems for the states in the

United States Patriot Act. Many states found warrantless seizures unconstitutional and refused to allow them to occur in their own state. For example, the state of Georgia found warrantless wiretaps to be unconstitutional and reversed many court decisions dealing this issue. However, others found that this expansion of federal power is necessary for the prevention of terrorism in the United States. Larry D. Thompson presented his argument to the National Commission upon the United States in which he had concluded that, "section 218 is critical to the federal government's ability to conduct the coordinate, integrated campaign necessary to win the war against terrorism. Without section 218, our ability to prevent future terrorist attacks by "connecting the dots" could be seriously compromised"(Thompson 2003, 10).

The fourth adaptation is in section 213 of the USA Patriot Act, which broadened the authority for delaying notice of the execution of a warrant. This delay allowed for police officers to complete sneak-and-peek searches, which are searches conducted without sufficient notice. The authorization of a delay is subject to three conditions: first, "a court must find reasonable cause to believe that providing immediate notification may have an adverse result, second, the warrant must prohibit seizure of any tangible property, any wire or electronic communication, and generally any stored wire or electronic communication unless there is reasonable necessity for the seizure, third, the warrant must provide for giving notice within a reasonable period of its execution, which may be extended by the court based on good cause"(Smith 2003, 30). This broadening of the Patriot Act was considered a great violation of the Fourth Amendment. The issue of privacy becomes a controversial one with these changes to the Fourth Amendment. According to Smith, "the sneak-and-peek searches authorized by section 213 contradict

fundamental principles of Fourth Amendment law and, in so doing, intrude on privacy interests"(Smith 2003, 34). This is the basis of the controversy of the changes in the Patriot Act in terms of the Fourth Amendment. This provision was most definitely the biggest issues of the states in the Patriot Act. As mentioned previously, this provision was considered one of the greatest violations of the Fourth Amendment. Many state officials found this provision unacceptable and there were attempts to change or overturn this section of the USA Patriot Act. A crucial example of this on the federal level would the bipartisan Security and Freedom Enhancement (SAFE) Act of 2005, which was sponsored by Senator Larry Craig, a Republican from Idaho and Senator Richard Durbin, a Democrat from Illinois. The SAFE Act was meant as an alternative to the Patriot Act in order to curtain some of the powers that the federal government had been given under the Patriot Act. Senator Russ Feingold, a Democrat in Wisconsin believed that, "The SAFE Act takes the right approach: It permits the government to conduct necessary surveillance, but only within a framework of accountability and oversight, It ensures both that our government has the tools to keep us safe, and that the privacy and civil liberties of innocent Americans will be protected"(Asset Protection Corporation 2005, 5). Government officials from several different states focused their efforts on the SAFE Act as a way to fight the Patriot Act and overturn the "sneak-and-peek" searches that they believed were unconstitutional. An example on the state level would be when the state of Alaska declared on May 21st 2003 that their State agencies are "barred from participating in intelligence investigations that would require the acquisition or retainment of information or property, even if authorized under the USA PATRIOT Act" (American Civil Liberties Union 2003, 30).

The fifth and last adaption to the USA Patriot Act in terms of the Fourth Amendment is in section 216, which broadened the scope of the previous pen resister and trap-and-trace statutes. The federal government, with this change, was permitted to track Internet usage and e-mail communications. Smith found section 216 to be unconstitutional under the Fourth Amendment for two reasons. First, the Fourth Amendment protects all electronic communications and second "assuming arguendo that non-content is not itself protected by the Fourth Amendment, it must be protected as a prophylactic measure because for all practical purposes it is impossible to monitor non-content without violating the privacy of content"(Smith 2003, 63). There is a strong belief that monitoring web sites and electronic communications is considered a search and in the pivotal case, Katz v. United States, a test was created for determining whether a search has occurred for Fourth Amendment purposes. Society has developed an expectation for the amount of privacy that is reasonable and when the Internet and electronic communications are thrown into the mix, it creates more problems with Fourth Amendment expectations. In addition, the Fourth Amendment, during its history, has protected the content of sealed letters. However, with the introduction and the popularity of electronic communications, the question of what needs to be protected becomes a big issue.

Wiretapping and Eavesdropping from 2008 to Present:

The Electronics Communications Privacy Act of 1986 (ECPA) was the first federal law to deal with warrantless searches of devices and the issue of wiretapping. There were three parts to the act. The first was title one of the ECPA, which is often referred to as the Wiretap Act. It prohibits the "intentional, actual or attempted

interception, use, disclose or procurement of any other person to intercept or endeavor to intercept any wire, oral or electronic communications". There were a few exceptions to this rule. They include operators and service providers for uses "in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service". It also allowed for people to do so as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, however these federal, state and other government officials must obtain judicial authorization in the form of a warrant in order to legally wiretap. The other important part of the act for this discussion is title three of the ECPA which is the Pen Register and Trap and Trace Statute, which requires the government to obtain a warrant before collecting real-time information, such as dialing, routing, and addressing information related to communications. These devices often referred to as "pen/trap" devices, allow the police to intercept the contents of landline phones, cellular phones and email accounts. With these devices, the police can see the incoming phone numbers, the outgoing phones numbers, the time and length of the calls, whether the call connected or went to voicemail, the contents of SMS text messages, and the content of "post-cut-through dialed digits", which are the digits dialed after the call is connected like a banking PIN number. In addition, the government can also get access to all email information, including email addresses, email content and the URLs of every website visited on a computer. The most crucial part of this act was that it amended Title three of the Omnibus Crime Control and Safe Streets Act of 1968 (also referred to as the Wiretap Act) to include the restrictions on wiretaps beyond just telephone calls and to involve all electronic communications, including cell phones, instant messaging, emails and text messaging. Since 1986, the EPCA has been amendment several times. It was

first amended by the Communications Assistance to Law Enforcement Act (CALEA) and then more importantly by the USA Patriot Act in 2001 and the USA Patriot reauthorization act in 2006. However, specific concern about wiretapping did not occur until 2008, when the Foreign Intelligence Act of 1978 (FISA) Amendments Act of 2008 was passed. These amendments lowered the standard for warrantless searches and wiretaps. FISA established that "agents need only demonstrate probable cause to believe that the target of the surveillance is a foreign power or agent of foreign power that a significant purpose of the surveillance is to obtain foreign intelligence information and that appropriate minimization procedures are in place"(US Department of Justice). In addition, government agents do not need to demonstrate that commission of a crime is imminent. These changes or additions created an environment where many states passed new legislation on the state level dealing with wiretapping and eavesdropping, both with a warrant and warrantless searches. Some states were worried about the effects of this new federal legislation on the people's civil liberties and therefore passed laws tightening the rules regarding wiretapping/eavesdropping. Other states understood the need for wiretapping/eavesdropping and therefore passed legislation allowing these practices to occur freely and openly in their states.

Fourth Amendment and the Reasonable Expectation of Privacy:

Many states disagree on how to interpret the Fourth Amendment and the reasonable expectation of privacy. Some states believe that the changes in the USA Patriot Act are acceptable, while others find it unacceptable and a clear violation of the Fourth Amendment in the US Constitution. In Michael E. Keasler's article, "Independent Sate Ground: Should Sate Courts depart from the Fourth Amendment in construing their

own constitutions, and if so, on what basis beyond simple disagreement with the United Sates Supreme Court result?: The Texas Experience: A case for the lockstep approach", he discusses the debates between state constitutions and the US Constitution. In particular, he looks at the interaction between the Fourth Amendment of the US Constitution and Texas's corollary provision, Article I, Section 9 of the Texas Constitution, in context of the exclusionary rule. The author believes that while many states have begun to give their citizens greater protections under their own state constitutions, the interpretations by the Supreme Court of the Fourth Amendment of the US Constitution has offered citizens an adequate balance between the right to be free from unreasonable searches and seizures and the need to protect society from criminal behavior. The exclusionary rule, which "prohibits introduction into evidence of tangible materials seized during an unlawful search, and of testimony concerning knowledge acquired during an unlawful search" is at the basis of this argument (Keasler 2004, 22).

Literature Review:

Legislative federalism becomes an issue when dealing with the changes in law or implementation concerning search and seizure laws under the Fourth Amendment. The legislative branch of the federal government constantly passes new or changes old laws. These laws are considered the basis for all states and citizens of the United States to comply and follow. However, when individual states pass or change laws in their own state legislative branch, this create a problem for implementation and policy. When this occurs, it becomes unclear which set of laws is supreme and which set of laws the people and the states should follow. The state police institutions are now trying to follow two set of laws that in conflict with each other. In addition, the federal government does not

know how to police correctly and effectively since not only are there two different branches of laws but in addition, often different states have different laws, which means the federal government is dealing with more than two sets of laws. These different sets of laws make governance significantly more difficult and often create an imbalance between the federal and state governments.

The federal government and the state governments often come into conflict with each other. The two different systems do not always work harmoniously together. Instead, problems often occur when it comes to decision-making, implementation and even policing. Kathryn R. Urbonya discusses the interweaving of state practices with federal protections and how it raised important federal questions, particularly when dealing with criminal law enforcement. The Court have both agreed and disagreed with modern state practices and policies creating problems of consistency. The states and the federal government therefore come into conflict with each other and often it ends in the courts mistrusting the states and their practices. Urbonya demonstrates how the federal government struggles to reach a balance of reasonableness for the Fourth Amendment with the states. An important example that the author brings up is the exclusionary rule. Originally, the federal courts decided that the states could decide on their own whether to include this rule in their laws, but in a later decision, the courts changed their mind and ruled that it was necessary to the Fourth Amendment and therefore, the states had to include in their laws and practices. This demonstrates that the federal United States constitution is the bottom and no state can provide fewer rights to their citizens. Similarly, Robert K. Fitzpatrick discusses the dilemmas that arise between the federal government and the states. The states and the federal system often come into conflict and

it becomes difficult to decide which is the supreme authority. Fitzpatrick mentions how Justice Brandeis said, "that one of the major advantages of the federal system is the ability of each state to act as "a laboratory" conducting policy experiments that the rest of the country (both other states and the federal government) can observe and perhaps emulate if they are successful"(2007, 24). The state laws and policies are essentially treated as trials and used for further policymaking in other states and even in the federal government. Fitzpatrick, however, argues that the states are the supreme authority. He states that, "while Supreme Court precedent can be valuable sources of wisdom for state courts, state judges themselves bear ultimate responsibility for the passage of their state constitutional ship"(2007, 24). For Fitzpatrick, the states are the ultimate authority on making decisions that affect the people of the state. The problem arises, however, in how to use these state constitutions properly. Several states have established an answer to this question. Brown demonstrates how New Mexico has established three ways to decide if a departure from federal precedent is justified and allowed: "a flawed federal analysis, differences between state and federal government, and distinctive state characteristics"(2002, 23).

States struggle with one of the most important decisions in terms of law making, which is whether to divulge from the federal government and make their own decisions regarding protection to the citizens of their states. Many states do not know if they should diverge and if they do decide to go down that route, the amount is still unknown. Robert L. Brown discusses Arkansas' decision in this dilemma and how the state ultimately decided to follow its own constitution instead of relying on the United States Constitution. In 2002, Arkansas gave two news reasons for diverging from federal

precedent: “the proliferation of statutory law in Arkansas that protects privacy and the textual and structural differences between the Bill of Rights and our own Declarations of Rights”(Brown 2002, 8). Brown views state constitutions as truly independent documents and therefore they should be treated as an independent source of authority. On the same note, Robert F. Williams discusses how in 2006 the Arkansas Supreme Court decided that it could interpret the United States Constitution to provide greater protection than the United States federal precedent provided as well as the fact that the Oregon Supreme Court decided that it could interpret the Fourth Amendment more restrictively than interpreted by the United States Supreme Court. Brown clearly believes that Arkansas is going in the right direction, while Oregon must have made a mistake and this was “not the law and surely must be an inadvertent error”(Brown 2002, 10). Brown discusses the lessons learned by Arkansas while first implementing this New Judicial Federalism: first, there are two different kinds of constitutional law, federal and state and second, state constitutions are real constitutions, but they are very different from the United States Constitution. The only problem is that truly independent state constitutions cannot exist fully until this idea of independent state doctrines is recognized and actually internalized by the lawyers and judges of Arkansas. In addition, Brown looks at the five different kinds of state constitutional rights that must be distinguished from each other and evaluated by state courts: “(1) State constitutional provisions that are identical to their federal counterparts, (2) state constitutional rights provisions that are only slightly different from their federal counterparts, (3) state constitutional rights that are substantially different from their federal counterparts, (4) state constitutional rights provisions with no federal counterpart, and (5) limitations on government, not contained

within the Declaration of Rights, but which are enforced by the courts as if they are rights provisions"(Brown 2002, 28).

While many states expand their rights and simply use the federal government as a guideline, not all states are comfortable with the notion of expanding their rights and instead follow the Equivalence Model. Alexander Justiss expands on this model and the understanding beyond it. He explains it as a "lockstep analysis that generally interprets state constitutions as guaranteeing rights equivalent to analogous federal provisions"(Justiss 2004, 13). The proponents of this model, despite the attempts of many states to give greater protections to their citizens than the United States Constitution, feel more comfortable with a procedure that "automatically presumes that the United States has accurately and finitely established the definition and scope of necessary individual rights"(Justiss 2004, 13). This model automatically refers to the federal government and simply offers the same amount of protections to the people of that state. Justiss demonstrates that advocates of this model justify their approach in two ways. First, due to the similarity often found between state and federal rights require respectful deference to federal interpretation and second, since the state courts are a lower tier in the federal hierarchy, the state's role should be to interpret as the Supreme Court would and not diverge in a different direction. Finally, Justiss discusses how this model promotes uniformity and can help both the states and the federal government with implementation and understanding of the laws. Similarly, Patrick Baude discusses the benefits of using a state-federal equivalence system. Baude argues that from the standpoint of a state supreme court, there is not a strong need to separate state constitutions from federal ones since both of the documents are binding on the state supreme court level. Baude points

out that this equivalence is stated in the Court of Appeals of Indiana: “the equal protection provisions of the state and federal constitutions are designed to prevent the distribution of extraordinary benefits or burdens to any one group”(1987, 5). In addition, by using the equivalency model, it avoids the issue of which government (the states or the federal) has the ultimate power of decision-making. Baude argues that because of adequate state ground doctrine, the United State Supreme Court has actually had few opportunities to exercise jurisdiction over homogenized state-federal decisions. By using the equivalence model, the problem of jurisdiction does not exist and instead the state and federal governments can be in harmony.

The dilemma of exceptions in the United State Constitution, specifically the Fourth Amendment, in this case, has caused problems for both the state and federal governments, especially when the two governments become intertwined on a single issue. Lawrence A. Dany discusses a specific case in Florida, where originally the Florida State Supreme Court agreed that the police were in violate of the Fourth Amendment when they attempted to seize property in a car without a warrant. However, the United States reversed the decision of the Florida Supreme Court, and stated that the Fourth Amendment does not require the police to get a warrant before seizing a car from a public place if there was probably cause to believe that there was contraband inside the automobile. This case provides the background for the eventual exception to the automobile rule. In addition, this case was also the beginning to a problem between the federal and states governments. For example, Dany demonstrates how the state governments were often in disagreement with the federal government and therefore many decisions were not in harmony between the two sets of government. The inconsistencies

produced problems for creating standards of rights, such as a reasonable right to privacy. Automobiles created an even bigger problem in terms of what is considered unreasonable verses reasonable. An enormous debate occurred dealing with warrantless searches of containers in an automobile and many cases occurred that dealt with this issue. Norma J. Briscoe argues that warrantless searches of containers in automobiles "are contrary to the protection afforded against unreasonable searches under the Fourth Amendment of the United States Constitution" and that "society has a strong interest in the privacy of individuals; this interest is manifested by the constitutional ban on unreasonable searches and seizures"(1993, 13). Briscoe argues that while the other exceptions to the automobile rule (for example, warrantless searches if there is probable cause for contraband), a warrantless search of closed containers in automobiles is an inappropriate extension of the automobile exception. Briscoe also discusses how only six states offer protection for their citizens when it comes to closed containers. In addition, the states differ between themselves in the amount of protection they provide. These differences create a problem for implementation as well as for policing. Similarly, Sherry F. Colb discusses the moves made by the United States Supreme Court in terms of the Fourth Amendment and how these moves have "steadily eroded privacy in specific cases, and conceptually promise to eliminate it altogether, because they do not admit of any logical stopping point"(2002, 2). This becomes a problem, because the United States Supreme Court has taken a doctrinal position that is indefensible, even for the most tough-on-crime Justices. Colb argues that the Court cannot even escape its previous mistakes because in recent decision that open the possibility of broader Fourth Amendment protection, it displays an ambivalence of the US Supreme Court about the moves made previously and allows people to call into

question the decisions and conclusions made by earlier precedent. Colb states that unfortunately, “both the moves and their occasionally disavowal occur beyond the surface, rendering the doctrine, and privacy itself, unstable”(2002, 2). This, therefore, creates a problem for the states because if the federal level of privacy is unstable, then the states have nothing stable to base their own laws or protections on for their citizens. The state governments and the federal government do not coexist in a harmonious way and instead, the state Supreme Courts often disagree with the United States Supreme Court, since a good amount of ambivalence and confusion exists in the area of Fourth Amendment protection and meaning.

One of the reasons that the Fourth Amendment causes a significant amount of problems both in the states and in the federal government is because of the vastness of the amount of laws passed or modified in the aftermath of the passage of the USA Patriot Act. This was not a problem that affected one states and it was not a matter where only one or twos laws changed effecting the situations. Instead, the amount of the legislation was large and also very important. Often, other types of laws or ideas become involved in the Fourth Amendment and create even more of a dilemma and even more confusion for the lawyers, judges and law enforcement officials in their attempt to follow and implement Fourth Amendment protections and privacies. This becomes a problem because there is a large amount of overlap in laws and many laws fit into the Fourth Amendment. Robert P. Mosteller and Kenneth S. Broun discuss how the privilege law and the confidentiality law are considered to fit into the realm of the Fourth Amendment. These laws were not considered to fall into this category until a North Carolina case in May of 2009. However, the authors believe to consider both of these laws part of the

Fourth Amendment would create even more confusion as well as create a greater amount of problems for the Fourth Amendment that already exist. The authors argue that the reasonable expectation of privacy concept relied upon by the majority in the Rollins v. North Carolina case is a Fourth Amendment concept and "its application to privilege law would both change outcomes in many and perhaps unintended ways, and engender confusion"(2010, 7). They believe that using the Fourth Amendment for this case under privilege law would stretch the understanding of the Fourth Amendment in ways that would not help, but only hurt the privacy and protection of the people of the United States. The reasoning behind this theory is that when using normal modes of electronic communication, many of those do not have the reasonable expectation of privacy that is required for protection under the Fourth Amendment. Therefore, "if the confidentiality required for most privileges disappears whenever we can no reasonable expectation of privacy under the Fourth Amendment, our zone of protection under the privileges will suffer a major limitation this is not easily rectified"(Mosteller and Broun 2010, 9). The authors claim that allowing this change in the Fourth Amendment protection would put a limitation on people's protections in a possibly harmful way. Secondly, Mosteller and Broun discuss the reasonable protection of confidentiality, which is considered an essential concept to the marital confidential communications privilege and to other evidentiary privileges, and the reasonable expectation of privacy under the Fourth Amendment. They look at while these two protections overlap in many circumstances; they are essentially distinct from each other. The authors argue that, "to confuse the two is both to change the privilege law and we believe to damage important interests in maintaining privacy of intimate marital and professional communications in an

increasingly interconnected world"(Mosteller and Broun 2010, 14). The authors believe to connect or overlap the two concepts, as opposed to keeping them separately, would not only change privilege law and not necessarily for the better, but would also harm the privacy interests of people in both marital and professional circumstances when it comes to communication.

The role of partisanship is an important factor when discussing the legislative branch of the country for both the state and federal governments. Some believe that partisanship plays not only a large but also influential role in the decision-making process. There are some that go as far to suggest that partisanship is as important as precedent. Thomas A. Garrett discusses in his analysis of the West Virginia legislature, that the voting patterns of a large majority of the legislators were directly mirrored by the preferences of his/her political party. He found that partisanship, more often than not, is a significant influence in the voting patterns of the state legislators.

On the other hand, some find that partisanship does not play an important role in decision-making and instead, other factors are more significant for legislators.

Edward Rubin reviews the work of Brian Z. Tamanaha who had developed his own theory, which he calls, "balanced realism". In sum, the theory states that, "that law is sometimes uncertain" and government officials "must then rely on their own views, including their political views, to reach a resolution"(Tamanaha 2010, 56). Tamanaha does not believe that partisanship does not play any role, but instead he argues it does not play a decisive or significant role. Tamanaha discusses the role of legislators, both in the state and federal governments. He discovered, in his opinion somewhat shockingly, that legislators are "motivated solely by their desire to retain their jobs by being reelected, and

that neither their own ideology nor their desire to represent their constituents' views determines their behavior to any significant extent"(2010, 74). He discovered that partisanship does not, contrary to popular belief, play any role in the decisions of legislators. Despite the notion that the people of that state are voting for those people because they have corresponding political values, Tamanaha discovered that instead these people are simply interested in keeping their jobs.

The role of the ideology of the citizenry of any given state is an essential factor in considering the decision-making process of the state government. Christine A. Kelleher, in her paper, "Representation in American Local Governments: The Intersection of Ideology and Institutions" discusses her finding that show that the ideological preferences of citizens do actually influence the policies of governments on the local level (Kelleher 2005, 3). In her research, the author finds a direct relationship between the ideological preferences of its citizens and the types of decisions made by their respective governments. In addition, the author discusses how local governments and state governments are not incredibly different and therefore, the trends should be similar. Therefore, since "local governments respond to public opinion. When citizens are liberal, local governments form more liberal policies; conversely, when public opinion is conservative, more conservative policies result", the same result should occur in the state governments (Kelleher 2005, 16).

Methodology:

There were twenty-eight states that passed legislation regarding the USA Patriot Act in the years 2002 to 2006. These states that passed laws were: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Maine, Maryland,

Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming. In order to get the most complete and in depth picture of the relationship between partisan-control and the specific states that passed legislation, all of the states were examined. The first step was to examine the partisan-control of each state and place them into categories based on the partisanship.

The first group of states is the ones that were fully Democratic, both in the governorship and the state legislature, during the time that the legislation was passed. The states that were fully Democratic were Delaware, Illinois, Maine, New Jersey, New Mexico, Oregon, and Washington.

The second category of states is the ones that were fully Republican, both in the governorship and the state legislature, during the time that the legislation was passed. The states were Alaska, Connecticut, Idaho, Nevada, New Hampshire, Rhode Island and Utah.

The third category has many subcategories to it. The third group is the states that had mixed government during this time. The states that had mixed government were Arizona, California, Colorado, Hawaii, Maryland, Massachusetts, Minnesota, Missouri, Montana, North Carolina, Tennessee, Vermont, Wisconsin, and Wyoming. These states, however, were mixed in several different ways. Three states, Wisconsin, Montana and Colorado had a Democratic legislature, but a Republican governor. Five states, Wyoming, Massachusetts, Hawaii, California, and Arizona had a Republican legislature, but the Democrat Party controlled the governorship. One state, Maryland, had a mixed legislature (one part of the state legislature was controlled by one party, while the other

part of the legislature was controlled by the other party) and a Republican governor. Three states, Missouri, North Carolina and Tennessee, had a Democratic legislature but a mixed governorship (each party controlled the governorship during part of the time that the legislation was passed). The final group is the two states, Minnesota and Vermont, who had a Republican legislature, but a mixed governorship. The partisan-control of the twenty-eight states varied greatly.

There were sixteen states during the time period of 2008 to present that passed legislation dealing with warrantless searches, wiretapping and eavesdropping. These states were: California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Maine, Michigan, Nebraska, New Jersey, New York, North Carolina, South Carolina, Tennessee, and Texas. Once again, it was necessary to look at the partisan-control of the states and place them into categories.

The first category is the states that were fully Democratic, both in governorship and state legislature, during the time that the legislation was passed. Those eight states were: Colorado, Illinois, Iowa, Maine, Michigan, New Jersey, North Carolina, and California.

The second group is the states that were fully Republican, in the governorship and the state legislature, during the time period that the legislation was passed. The four states that fit this criterion were Georgia, Nebraska, South Carolina, and Texas.

The last category is the states with mixed governments, which had several subcategories to it. The first subcategory is the two states, Hawaii and Connecticut, who had a Democratic legislature but a Republican governor. The second subcategory is the two states, New York and Tennessee, who had a mixed legislature (one party controlled

one part of the state legislature, while the other party controlled the other part) and a Democratic governor.

Democratic states throughout the history of the United States have given more rights and freedoms to their citizens, especially situations when new legislation is passed that threatens the country as a whole. On the other hand, Republican states have provided more authority to the police, as they believe that in times of emergency that is the best way to protect their citizens. A different example of this occurring in the United States is when Arizona, a Republican-controlled state since 1993, gave the police more power and authority to check not only if people are legal, which often target minorities, but also prevents those people from partaking in certain activities. However, Democratic states, Maryland and Connecticut went in the opposite direction and passed laws that allowed illegal immigrant students to attend public colleges at in-state rates. Following that line of logic, in my thesis, I hypothesis that Democratic states are likely to provide their citizens with more protection of their liberties and restrict the amount of authority given to the police, while Republicans are likely to provide more authority to the police and restrict the people's liberties, and finally, that the mixed states will develop a compromise between police authority and the liberties and rights of the people. My hypothesis plans to shows that the actions taken or laws passed by the state government will match the ideology or the partisan control of these states. I will go about proving my hypothesis by examining each individual states and looking at the laws passed in the last tens years that deal with the Fourth Amendment under the USA Patriot Act as well as legislation regarding wiretapping/eavesdropping. I will then see if these laws increased police authority or increased liberties in the individual states. By looking at the laws and then

comparing them to the partisan-control of the state at that time, I will be able to see if indeed the ideology or the partisan control of the state really does align with the actions taken in regards to Fourth Amendment laws following the passage of the USA Patriot Act.

Chapter Two: Anti-Patriot Act Resolution in Twenty-Eight States

The USA Patriot Act, passed by Congress quickly after the World Trade Center Attacks on September 11th 2001, changed the standards of protection under the Fourth Amendment. The Patriot Act was viewed by many as an urgent piece of legislation that would protect the country from terrorism and national security threats. Congress passed the law almost unanimously, with the House passing it 357 to 66 and the Senate, even more strikingly, passing it 98 to 1. However, once passed, the opposition towards the Patriot Act grew and many state legislatures felt that the new law infringed on the people's Fourth Amendment rights. The United States Constitution provides an outline for the minimum amount of protections provided to its citizens.

The attitude from the people in the United States towards the USA Patriot Act was incredibly split. While, some believed that the Patriot Act was in direct conflict with the US Constitution and that the passage of the act threatened the country's civil liberties, others felt that the legislation was necessary in wake of the World Trade Attacks in New York City and that certain civil liberties needed to be constrained for the sake of national security. The Princeton Survey Research Associates International conducted the *Pew Research Center for the People and the Press survey* on January 4th to 8th 2006. The first question asked was if the Patriot Act is a necessary tool that helps the government find terrorists or does it go too far and poses a threat to civil liberties. Data was conducted, first in December of 2004 and then again in January of 2006. In 2004, thirty-three percent of people found it necessary, thirty-nine percent of people thought it went too far and twenty-eight percent were unsure. In 2006, thirty-nine percent of people thought it were necessary, thirty-eight believed it had gone too far, and twenty-three were unsure of their thoughts regarding the Patriot Act (Princeton Survey Research Associates International

2006). There are two interesting trends occurring here. First, each category (necessary, goes too far, and unsure) have roughly one-third of the percentage, which demonstrates that people's opinion of the USA Patriot Act was incredibly varied. A large percentage of people felt either way about the Patriot Act. There was no clear majority opinion on the issue. The second aspect to note is that from 2004 to 2006, the percentages remained pretty much the same. The percentage of people that believed it was necessary went up by nine percent, while the number of people who thought it had gone too far went down by one percent. While, the percentages did not change much at all, the amount of people who felt it was necessary did grow by a small majority. This is interesting considering the amount of anti-Patriot Act legislation and rhetoric that emerged after the passage of the act in 2001. Other polls were taken that help to create a more complete picture of the people's opinions and beliefs concerning the Patriot Act and the situation in the United States as a whole. The CNN/USA Today/Gallup Poll from December 16th to 18th of 2005 posed the following question to adults nationwide: "Which comes closer to your view? The government should take all steps necessary to prevent additional acts of terrorism in the US, even if it means your basic liberties would be violated. OR, the government should take steps to prevent additional acts of terrorism, but not if those steps would violate your basic civil liberties. Data was compiled from 2002 until 2005 and then put together in a chart in order to see if there were any interesting trends during the three-year period. In January of 2002, forty-seven percent of people said that the government should take all steps necessary, while forty-nine percent polled basic civil liberties should not be violated. However, in December of 2005, only thirty-one percent of people believed that the government should take all steps necessary to prevent terrorism, while sixty-five

percent felt that basic civil liberties should not be violated (CNN/USA Today/Gallup Poll 2005). There was huge shift in the opinions of people regarding whether basic civil liberties should be violated or undermined for the sake of preventing terrorism and increasing the national security of the United States. In 2002, the two sides were almost even, with the "don't violate civil liberties" side leading with by two percent. However, only three years later, in 2005, the two sides were no longer even and instead, double the amount of people believed that their basic civil liberties should not be violated for the sake of preventing additional acts of terrorism in the United States. The final poll that reveals something about the people's perception and opinion of the USA Patriot Act was a survey taken by the *Center for Survey Research and Analysis at the University of Connecticut* during the month of August in 2005. The survey asked adults nationwide, "As you may know, shortly after September 11, 2001, a law called the USA Patriot Act was passed the federal government. How familiar are you with the Patriot Act: extremely familiar, very familiar, somewhat familiar, not too familiar, or not at all familiar?" The range presented is not only shocking but also troubling. Only three percent of people were extremely familiar with the USA Patriot Act and only twelve percent were very familiar with it. The biggest percentage was forty-three percent, which represents the amount of people that were somewhat familiar with the Patriot Act. However, twenty-one percent of people were also both not too familiar and not at all familiar with the legislation (Center for Survey Research and Analysis at the University of Connecticut 2005). Theses numbers show that not only is the amount of knowledge about the USA Patriot Act incredibly varied and quite a large range, but also many people know very little about it. This is surprising considering the importance of the legislation and the fact

that it resulted from such a catastrophic event for the United States. Clearly, the USA Patriot Act is not a clear-cut issue and the opinions about it are incredibly diverse and stirred up quite a controversy in the United States.

Ideology/Partisan-Control:

In explaining why some states passed pro-civil liberties legislation, while others passed pro-police authority legislation, we suggest that the ideology and the partisan-control of the state government is a major factor in the type of legislation passed by the individual states. It is hypothesized that Republican-controlled states will pass legislation that allows the police to have more power and authority, while the states controlled by the Democrats will pass legislation that ensures that the civil rights and liberties of the people are protected. The Democratic Party, in the last couple of decades, has been focused on the protection of civil rights. The Party, throughout history, concerned itself with making sure that the civil rights and civil liberties explicitly presented in the United States Constitution were of the highest importance. Not only the federal Democratic Party platform, but also each individual state platform expressed the commitment and the necessity to the right to privacy (Democratic Platform 2008). Many state Democratic Party platforms specifically emphasize their belief in the protection of civil rights and civil liberties. The Republican Party, on the other hand, has remained a party willing to allow the government to intervene and to have more power if necessary. The Republican Party, in the wake of the September 11th attacks on the World Trade Center, stated that they were willing to forgo some of their rights for issues of national security. The Republican Party was prepared to allow changes like warrantless wiretapping and warrantless search and seizures to occur if it meant that the country would be better

protected from enemies and terrorists. Their main concern was to protect the country from threats and security problems and if sacrifices needed to be made then it would be done without a problem. Therefore, it would be reasonable to assume that the Democratic states and the Republican states would pass legislation that is consistent with their respective party beliefs.

The study of the post-Patriot Act legislation examines whether the relationship between the type of laws passed and both the ideology of the citizenry and the partisan control of the state government holds true. The study looks at whether the party affiliations of a particular state effects its decisions regarding law making following the passage of the USA Patriot Act. It would appear to be logical that not all states would fight against the USA Patriot Act and that there would be some that found the changes not only necessary but also good for the United States during this time. Historically in many instances, Republican states tend to allow more police power and be more willing to forgo civil liberties for the sake of security and safety. For example, many Republican states have given the police the authority to question people in depth about their immigration status. States, like Arizona, Utah and Georgia have implemented harsh policies, in which the police have more freedom to act tougher and were given more power to act in new ways. Georgian police officers were given full power to interrogate people regarding their immigration status under any circumstance. This is a power not usually vested in a state police official, however, Georgia, along with several other Republican states, gave their state police this power and the authority to act with their own discretion on the issue. Democratic states, on the other hand, are more likely to restrict police power in order to protect the civil rights of its citizens. On the issue of

immigration, states controlled by the Democrat Party do not want to create harsh policies that require the police to be stricter and that give the police more authority. In addition, the Democrat Party believes that these kinds of laws open the door to racial profiling. The Democrat Party asserts that these immigration laws infringe on the civil rights and civil liberties of the people of these states. Mayor Chris Coleman of Saint Paul, Minnesota publically banned funded travel to Arizona after the law was passed and said, that "the state law set a dangerous example to the rest of the country by creating a culture that made racial profiling acceptable"(Gaynor 2010, 4). The Democrats were much less willing to allow police power to expand for the sake of national security concerns, while the Republicans felt an increase of police authority was necessary in these situations. Therefore, it would follow that the same would apply for the state legislation following the USA Patriot Act. The USA Patriot Act increased police power and authority, allowing the government to act in ways never permitted before.

The areas of concern are the ones that deal with Fourth Amendment issues. Those are the following: (1) Section 206 authorizing roving wiretaps; (2) Section 215 permitting seizure of business records without the normal parameters for a search and seizure warrant; (3) Section 218 allowing warrantless wiretaps in situations where foreign intelligence is a significant concern; (4) Section 213 authorizing sneak-and-peak searches; and (5) Section 216 permitting the use of a pen register and trap-and-trace device. All of these areas are new expansions of the federal government's power and authority. Therefore, it is hypothesized that those Democratic states, that generally restrict police power and focus on the protection of civil liberties, would be opposed to

the USA Patriot Act, while Republican states, that are more generous with their allowance of police power, would be in support of the USA Patriot Act.

Data:

To answer the question whether state governments passed legislation regarding the USA Patriot Act based on the ideology of their citizenry and the partisanship of the government, data were assembled into a chart. The chart demonstrates not only the ideology of the citizenry and partisan control of each individual state, but it also reveals which states and what type of legislation was passed following the passage of the USA Patriot Act. Information regarding the percentages of each political ideology (liberals, moderates and conservatives) for individual states was taken from Gerald Wright's research on ideology party identification (Wright 2004). In his research, he had the percentages of liberals, moderates and conservatives for each state from 1976 to 2003. The only states where the information was not available were Hawaii and Alaska. However, historically, Hawaii has been strong Democrat state, while Alaska has been consistently Republican. Therefore, the lack of data for those two states did not create a problem. The only data relevant for this discussion was the percentages from 2001 to 2003. Those numbers were put into a chart so that they could be easily compared with the partisan control of governorship and the legislature of each state. An average of those numbers were taken in order to account of any inconsistencies of one single year as well as to give a more well-rounded picture of the ideology percentages of the citizenry for the period directly after the World Trade Attacks and subsequent passage of the USA Patriot Act[1]. After creating a list of all of the averages of the ideological percentages and putting

[1] The data for 2001, 2002 and 2003 is available in the appendix (page 130)

them in alphabetical order by state, the next step was obtaining the information regarding the laws passed by the individual states regarding the USA Patriot Act. The legislation passed on the state level from the years of 2001 to 2006 was examined and a list was compiled. The years, 2001 to 2006, were used because 2001 was the year that the USA Patriot Act was passed and 2006 was the year that the last state passed anti-Patriot Act legislation. From there, that information was put into the same chart as the percentages of the ideology of the citizenry. The last step was to create a list of the partisan control of both the state legislature and the governorship based on the year that the USA Patriot Act legislation was passed in that particular state. All of that was then transferred into the chart so that all three factors could be compared.

State	Legislature	Governorship	AVG L	AVG M	AVG C	Legislation
Alabama	Democrat	Republican	14.9	46.6	38.4	
Alaska	Republican	Republican				Anti
Arizona	Republican	Democrat	21.46	41.3	37.2	Anti
Arkansas	Republican	Democrat	15.86	40	44	
California	Republican	Democrat	26.73	42.4	27.5	Anti
Colorado	Democrat	Republican	25.83	45.2	28.9	Anti
Connecticut	Republican	Republican	26.53	47.2	26.3	Anti
Delaware	Democrat	Democrat	25.4	46.7	27.8	Anti
DC			36.13	48.4	15.4	
Florida	Republican	Republican	20.13	46.2	33.7	
Georgia	Republican	Mixed	22.7	38.4	38.9	
Hawaii	Republican	Democrat				Anti
Idaho	Republican	Republican	16.93	40.3	42.7	Anti
Illinois	Democrat	Democrat	21.03	48.5	30.4	Anti
Indiana	Democrat	Democrat	21.23	41.6	37.1	
Iowa	Democrat	Democrat	19.73	44.6	35.6	
Kansas	Democrat	Democrat	14.7	48.5	39.6	
Kentucky	Republican	Mixed	17.03	46.2	36.7	
Louisiana	Democrat	Mixed	17.76	40.9	41.3	
Maine	Democrat	Democrat	23.3	46.4	30.2	Anti
Maryland	Mixed	Republican	23.3	45	31.6	Anti
Massachusetts	Republican	Democrat	27.83	43.8	28.2	Anti
Michigan	Mixed	Republican	21.66	46.8	31.4	
Minnesota	Republican	Mixed	18.4	50.7	30.9	Anti
Mississippi	Republican	Mixed	17.3	38.2	44.4	
Missouri	Democrat	Mixed	19.2	45.5	35.2	Anti

Montana	Democrat	Republican	17.83	51.1	30.9	Anti
Nebraska	Republican	Republican	16.16	43.2	40.6	
Nevada	Republican	Republican	15.5	46.1	38.3	Anti
New Hampshire	Republican	Republican	16.8	46.4	36.8	Anti
New Jersey	Democrat	Democrat	23.26	47.6	29.1	Anti
New Mexico	Democrat	Democrat	24.93	35.4	39.6	Anti
New York	Republican	Mixed	26.56	42.6	30.8	
North Carolina	Democrat	Mixed	19.43	45.5	35	Anti
North Dakota	Republican	Republican	14.7	44.4	40.8	
Ohio	Republican	Republican	21.9	42	36	
Oklahoma	Mixed	Democrat	14.1	44	41.8	
Oregon	Democrat	Democrat	24.2	39.9	35.8	Anti
Pennsylvania	Democrat	Democrat	23.4	45	31.6	
Rhode Island	Republican	Republican	22.7	49.7	27.5	Anti
South Carolina	Republican	Republican	17.03	41.6	41.3	
South Dakota	Republican	Republican	14.16	41.3	44.5	
Tennessee	Democrat	Mixed	18.93	42.1	38.9	Anti
Texas	Republican	Republican	18.53	40.6	40.8	
Utah	Republican	Republican	16.1	41.9	42	Anti
Vermont	Republican	Mixed	32.93	45.7	21.2	Anti
Virginia	Democrat	Republican	18.73	45.4	35.7	
Washington	Democrat	Democrat	21.53	47.4	33	Anti
West Virginia	Democrat	Democrat	17.56	47.4	34.9	
Wisconsin	Democrat	Republican	19.8	43.9	36.3	Anti
Wyoming	Republican	Democrat	27.56	47	25.4	Anti

The first column lists the states in alphabetical order. The second column shows the party control of the state legislature during the time that the anti-Patriot Act legislation was passed, mostly within the years of 2002 to 2006. If the legislature was controlled by the Democrats in both houses for the entirely of the time, it is considered Democratic. If the legislature was Republican controlled in both houses for the entirely of the time, it is considered Republican. If the legislature was split in any way, either during the years or split between the houses, it is considered mixed. The third column shows the party control of the governorship during the same time period as the legislative control. The same rules apply to defining the party control of the governorship as did for defining

the party control of the legislature. The next three columns, column four, five and six, represent the average percentages of the ideology of the citizenry. The data were complied for the years 2001 to 2003 and then the average was taken, which is the number that is displayed in this chart. In column four, the percentage of Liberals is displayed, in column five, the percentage of Moderates is revealed and in column six, the percentage of Conservatives is shown. The final column, column seven, reveals whether the states passed any anti-Patriot Act legislation. In that column, the word, anti, represents that the state did pass some form of anti-Patriot Act legislation.

The chart below reveals that the states that passed these anti-Patriot Act laws differ immensely. Some of the states were under purely Republican government, both the governorship and the legislature (in both houses) were run by the people affiliated with the Republican party during the time that the anti-Patriot Act laws were passed in those states. Other states were under the Democratic Party completely, with the governor and the legislature (in both houses) being part of the Democratic Party. The rest of the states had a mixed government in some way. This could mean several different things. The first option is that the Democratic Party controlled the legislature and the governor was affiliated with the Republican Party. The second option is the opposite, that the Republican Party controlled the legislature, while the governor was part of the Democratic Party. The third option was that the governor was affiliated with the Democratic Party, but the legislature was mixed. If two different parties control the two branches of the legislature, then it is mixed. For example, the Democrats may control the House, but the Senate is controlled by the Republicans, or vice versa. The chart reveals the mystery as to why states that are so different in government ideology can have the

same views on a piece of controversial legislation that was passed by such a wide margin at the national level. According to the chart, the partisan control of the governments did not affect the type of legislation passed concerned with the USA Patriot Act.

The chart revealed that the partisan control of the state did not play a key role in determining the type of the legislation that would be passed at the state level. However, in order to get a more complete picture of the individual states, the ideology of the citizenry needs to be examined. The percentages compiled in the chart above explain the exact breakdown of liberals, moderates and conservatives in each individual state. Based on the hypothesis presented in the first chapter, the most logical trend would be that the states with largest percentage of liberals and the lowest percentage of conservatives would be ones to pass the anti-Patriot Act legislation. However, after taking a look at the numbers, there was no apparent trend between the ideology of the citizenry and the states that passed anti-Patriot Act legislation. Instead, the twenty-eight states that passed legislation range immensely in terms of the ideology of their citizenry. Idaho, which has the second largest percentage of conservatives at 42.7 percent, passed anti-Patriot Act legislation, while Vermont with the second largest percentages of liberals also passed anti-Patriot Act legislation. Therefore, based on these numbers, it appears that there is no connection between anti-Patriot Act legislation and the ideology of the citizenry.

The chart helps to establish not only which party was in control of the legislature and the governorship, but also the ideological breakdown of the citizenry of each individual state. From examining this chart, it becomes evident that the states that passed anti-Patriot Act legislation vary in their party control. Out of the twenty-eight states that passed legislation, seven of them were fully Republican, with both the legislature and the

governorship being controlled by the Republican Party during this period of time. Seven states were fully controlled by the Democrat party during the frame of period when the legislation in question was passed. In addition, five states were controlled by the Republicans in the legislature but controlled by the Democrats in the governorship. On the flip side, three states were controlled by the Democrats in the legislature but controlled by the Republicans in the governorship. Finally, the remainder of the states, which is five of them, had mixed control during this period of time, whether it was in the legislature or the governorship.

The other important numbers to consider are the average percentages of the ideology of the citizenry. None of the states, even the ones that were controlled completely by a Democratic government, had a majority percentage of Liberals in their state. All fifty-one states either had a majority percentage of Moderates or Conservatives. In examining the numbers of only the twenty-eight states that passed USA Patriot Act legislation, every state, except for three, had a majority percentage of Moderates. Those three states, New Mexico, Idaho and Utah, had a majority percentage of Conservatives. Out of all the states, only nine states had a majority percentage of Conservatives. Those states are Arkansas, Georgia, Louisiana, Mississippi, South Dakota, Texas and the three mentioned previously. The rest of the states had a majority percentage of Moderates in their population.

Republican States:

The states that are most inconsistent with the presented hypothesis are the completely Republican-controlled states. Those states consist of Alaska, Connecticut, Idaho, Nevada, Rhode Island and Utah. Those seven states were fully controlled by the

Republican Party, both in the legislature and in the governorship. Based on past actions and decisions of the Republican Party as a whole, it is surprising that those states passed anti-Patriot Act legislation. As mentioned previously, the Republican Party historically has been forgiving with allowing more police authority and less concerned with the civil liberties of the people. The passage of the USA Patriot Act called into question whether the balance between police authority and the right of civil liberties had been thrown out of whack. Many believed that the USA Patriot Act had threatened the basic civil liberties that the United States Constitution promises to each person. Historically, the Republican Party would be content with forgoing some civil liberties for the sake of the security of the country. For example, many Republican-controlled states passed new voting laws that created new regulations and therefore restricted many people, specifically minority groups, from being able to vote. Between the years of 2004 and 2007, these Republican-controlled states passed laws not only requiring photo identification but also restricting the types of photo identification that are considered valid. Indiana, Georgia, Missouri, Pennsylvania, and Wisconsin all passed these types of laws in their individual states. These rules created a civil rights and civil liberties violation, as it restricted the amount of people that could vote in these elections. Many believed that these laws were aimed at suppressing the minority vote, as these people tend to align themselves with the Democrat Party. However, the Republican governments affirmed that these changes were necessary to ensure the safety of the country and the people in order to be protected against voter fraud. However, these seven states acted in the opposite way. All of those states passed anti-Patriot Act legislation stating that while the people of the state did support the efforts of the United States government in its attempt to keep the country safe

after the attack on the World Trade Center, the state did not support the USA Patriot Act and felt that some of the provisions threatened the civil liberties of its people.

Findings:

Alaska, a state that has consistently had a Republican-controlled legislature since 1995 and a Republican-controlled governorship since 2003, passed anti-Patriot Act legislation that was more strict and strong in its language than many of the other states. Since 1968, Alaska has voted for the Republican candidate in the presidential election and its population is largely a Republican-leaning one. Yet, Alaska, was not only one of the first states to pass a statewide resolution against the USA Patriot Act, but the legislation itself was also much more powerful than many of the legislation passed by other states. Alaska, in May of 2003, passed the statewide resolution publicly declaring their anti-Patriot Act sentiment.

The statewide resolution against the USA Patriot Act, revealed Alaska's strong disdain and rejection of this controversial piece of legislation. The state government stated in their resolution that while the state legislature supports the United States government in its campaign against terrorism, Alaska will not allow the campaign to be "waged at the expense of essential civil right and liberties of citizens of this country" (Public Law 2222 2003). The state wanted to make it clear that they are not against the fight against terrorism and they do not support terrorist activities. However, Alaska is not willing to forgo important civil rights and civil liberties for the sake of the national security threat. In addition, Alaska goes even further and resolves, "it is the policy of the State of Alaska to oppose any portion of the USA Patriot Act that would violate the rights and liberties guaranteed equally under the state and federal constitutions" (Public Law

2222 2003). The government gave their citizens the freedom and right to not follow parts of the USA Patriot Act. Alaska was publically declaring that the USA Patriot was unconstitutional and they were refusing to allow their civil rights and liberties to be taken away without a fight. The Alaskan state government specifically called out several provisions that they believed to be an infringement of the people's rights and liberties. The most important one for the purposes of this paper is the issue of search and seizure laws. The resolution stated, "in accordance with Alaska state policy, an agency or instrumentality of the State of Alaska, in the absence of reasonable suspicion of criminal activity under Alaska State law" may not:

> (1) initiate, participate in, or assist or cooperate with an inquiry, investigation, surveillance, or detention;
> 2) record, file, or share intelligence information concerning a person or organization, including library lending and research records, book and video store sales and rental records, medical records, financial records, student records, and other personal data, even if authorized under the USA PATRIOT Act (Public Law 2222 2003)

It is evident that Alaska's concern here is mainly warrantless or invalid warrant searches. The government does not want the people of their state engaging in activities that could infringe on the rights of their fellow citizens. Therefore, Alaska made it illegal to act in any way that would threaten people's civil rights and civil liberties, especially in terms of Fourth Amendment rights.

The resolution by the Alaskan state government was co-sponsored by both parties. While, as mentioned previously, it would be intuitive that this would be a centrally an issue pushed by the Democrats, however this is completely untrue. This resolution was a complete bipartisan attempt. The measure was passed in the state House, by a vote of 32-1, with twenty-seven Republicans and thirteen Democrats in the house. The state Senate

passed the resolution with a vote of 19-0, with twelve Republicans and eight Democrats in the Senate. Bob Lynn, a Republican from Anchorage, was in fact the only one to vote against the resolution. He believed that the job of evaluating the Patriot Act should be left to Congress, specifically the Congress members of Alaska. While, he admitted that the USA Patriot Act is not perfect, he did believe that these extraordinary measures were needed to protect the country from terrorism.

When Alaska passed this resolution, especially considering the harsher nature of the legislation, the media exploded. Newspapers all over the country began to follow the story of Alaska's bold attempt to change federal legislation. In a statement given to ABC News, David Guttenberg, a Democrat who co-sponsored the bill, said, "We have a concern that [the Patriot Act] could be abused. The potential for abuse is too great. America is an open state. There's a cost to that. Where are we willing to sacrifice for that? Guys are dying on the battlefield to protect our freedom. It's up to us to protect those freedoms here at home"(Schabner 2003, 3). Representative Guttenberg felt that the sacrifices made by allowing the USA Patriot Act to occur without restrictions was a greater threat to the United States than allowing extra precautions and rules during the national security dilemma. Alaska was making a bold statement, not only to the federal government, but also to the rest of the country. The state was showing that the sacrifices to civil rights and liberties would not be tolerated. In addition, many Alaskan government members believed that the bi-partisan support for the resolution would help to urge the federal government to make changes to the Patriot Act. John Coghill, a Republican from North Pole who co-sponsored the resolution, stated, "We hope that a resolution like this, with the bipartisan support that is has, will urge Congress to reexamine the provisions of

the USA Patriot Act that challenge the individual freedoms that make this country great. If we sacrifice our freedom, we let terrorism win"(Schabner 2003, 5). There are two important points being made in this statement. First, the belief that bi-partisan support will add an extra element and add urgency to the issue and the second is the belief that the terrorism wins if the people's civil rights and civil liberties are taken away or threatened too greatly.

Connecticut, had a Republican governor from 1995 to 2010 and until 2006, had a Republican legislature, passed the anti-Patriot Act legislation on May 15th, 2003. The Connecticut anti-Patriot Act legislation affirmed the state's disapproval of the new law and firmly established its belief that the USA Patriot Act was an infringement on people's civil right and civil liberties. The new law or resolutions called upon the Connecticut state government and police officials to work to preserve the essential and basic rights of the people of this state. The resolution stated:

> WHEREAS, New Legislation has been drafted by the Bush Administration entitled the Domestic Security Enhancement Act (DSEA) (also known as PATRIOT II) which contains a multitude of new and sweeping law enforcement and intelligence gathering powers, many of which are not related to terrorism, that would severely dilute, and could undermine, many basic constitutional rights, as well as disturb our unique system of checks and balances; now, therefore,
> 1. Affirms their strong support for the fundamental constitutional rights and its opposition to Federal measures that infringe on civil liberties; and
> 2. Strongly supports the rights of immigrants and opposes measures that singles out individuals for legal scrutiny or enforcement activity based on their Country of origin; and
> 3. Calls upon the law enforcement officials to continue to preserve resident's freedom of speech, religion, assembly; privacy; rights to counsel and due process in judicial proceedings; and protection from unreasonable searches and seizures; and to not engage in nor permit detentions without charges or racial profiling in law enforcement; and
> 4. Affirms the privacy rights and intellectual freedoms of its residents and supports librarians, booksellers and other communications dealers in protecting those rights; (Public Law 107 2003)

There are several aspects of the USA Patriot Act that the state of Connecticut finds to be not only problematic but also unconstitutional. The state government wants to ensure that its people are not being unfairly treated. The Connecticut resolution against the USA Patriot Act, while still a bold statement to call a piece of federal legislation unconstitutional, was one of the weaker laws. Therefore, the media did not really focus on the resolution and the state of Connecticut did not shock the country, especially considering it was not the first state to do so and more radical resolutions were appearing.

Idaho, who has had a Republican governor since 1995 and a Republican legislature since 1961, passed their state anti-Patriot Act legislation on March 30th, 2005. Idaho was one of the leaders in the fight against the USA Patriot Act in its current form. This is because Senator Larry Craig of Idaho was one of the primary supporters for the Security and Freedom Act of 2003 (SAFE Act), which called for amending several of the controversial provisions of the USA Patriot Act. The state legislation passed affirmed Idaho's support for the SAFE Act and therefore, Idaho's belief that the USA Patriot Act needs to be amended. The Idaho resolution against the USA Patriot Act stated:

> WHEREAS, the SAFE Act amends the Patriot Act to modify the provisions regarding the roving wiretaps to require that the identity of the target be given and that the suspect be present during the time when surveillance is conducted; and
> WHEREAS, the SAFE Act revises provisions governing search warrants to limit the circumstances when the delay of notice may be exercised and to require reports to the Congress when delays of notice are used; and
> WHEREAS, the SAFE Act requires specific and articulable facts be given before business records are subject to investigation by the Federal Bureau of Investigation; and
> WHEREAS, the SAFE Act provides that libraries shall not be treated as communication providers subject to providing information and transaction records of the library patrons; (House Joint Memorial No. 7 2005)

The resolution explained how the SAFE Act would require more information to be revealed and allow for the minimization of the invasion of people's privacy rights. Idaho

strongly believed that amendments to the USA Patriot Act were necessary and that several provisions needed to be reworked and restructured to prevent the threatening of its citizen's civil rights and civil liberties. The anti-Patriot Act rhetoric in the state of Idaho is especially interesting for many reasons. First, Idaho has remained a strong Republican state for most of its history. It tends to follow Republican thinking and supports traditional Republican issues. More surprisingly, Senator Larry Craig is a conservative Republican, who up until that point had supported President Bush on all issues. However, Craig emerged as one of the frontrunners in the fight against the present form of the USA Patriot Act. Craig joined with Democrat Richard Durbin from Illinois to introduce the SAFE Act, which would put several checks on the powers allowed through the USA Patriot Act. The biggest problem is the issue of the sneak and peek searches, which the SAFE Act would effectively stop. Due to Larry Craig's efforts, Idaho emerged as one of the leaders in the fight against the USA Patriot Act in its original form.

Nevada, a state that has had a Republican governor since 1999 and a Republican legislature until 2007, passed an anti-Patriot Act resolution on May 5th 2006. Nevada passed their statewide resolution against the USA Patriot Act right before the legislature switched to being controlled by the Democratic Party. According to the original hypothesis, this would seem counterintuitive, however, after looking at all the states and their ideology percentages/partisan control, this type of action falls into line with the other state. The Nevada resolution against the USA Patriot Act stated:

> NOW, THEREFORE, BE IT RESOLVED that Nevada affirms its strong opposition to terrorism, but also affirms that any efforts to end terrorism not be waged at the expense of the fundamental civil liberties, rights, and freedoms of the people of the City of Las Vegas, the United States, or the word;
> BE IT FURTHER RESOLVED, that it is the policy of Nevada to oppose any portion of the USA PATRIOT Act that would violate the rights and liberties

> guaranteed equally under state and federal constitutions; and
> BE IT FURTHER RESOLVED, that in accordance with the state and federal constitutions, Nevada is opposed to actions which violate due process [Fifth Article of Bill of Rights] and right to privacy [Fourth Article of Bill of Rights] without probably cause; and
> BE IT FURTHER RESOLVED, that the Nevada is opposed to the collection or maintenance of information about the political, religious, or social view, association, or activities of any individual, unless the information directly relates to an investigation or criminal activities based on articulable suspicion; (Public Law 107-56 2006)

The Nevada Resolution states that it is an official policy of the state to oppose any section of the USA Patriot Act that may violate the people's civil rights and civil liberties that are guaranteed in the United States Constitution. The state of Nevada reveals the belief that the USA Patriot Act (at least certain sections of it) infringes on the rights of the people, especially when dealing with the right to privacy under the Fourth Amendment.

Rhode Island, a state that had a Republican governor from 1995 to 2010 and a Republican legislature until 2006, passed a version of an anti-Patriot Act legislation on December 18th, 2003. Rhode Island was one of the earlier states to pass a resolution concerning the USA Patriot Act. The resolution stated the following:

> WHEREAS, The USA Patriot Act was written to respond to the attack on our nation, it weakens, contradicts and undermines the basic constitutional rights outlined above. The Act, a 342 page document, was hastily enacted in six weeks without public hearings, or a Congressional "mark-up"; and
> WHEREAS, Examples of the Patriot Act's threat to these fundamental rights include the Government's expanded power to: engage in limited judicial supervision of telephone and Internet surveillance; grant law enforcement and intelligence agencies broad access to sensitive medical, mental health, financial, and educational records with little, if any, judicial oversight; expand the government's ability to conduct secret searches of individual's homes and businesses, including monitoring what books are bought from bookstores or borrowed from libraries; and limits the disclosure of public documents and records under the Freedom of Information Act; and
> WHEREAS, The Department of Justice interpretations of the Patriot Act and Executive Orders appear to impact on selective racial and religious groups including residents of other nations. This has caused alarm among many of our

> local citizens and non-citizens who fear an emergent climate for racial and ethnic profiling. (Public Law 3072 2003)

Rhode Island strongly asserts the danger and threatening nature of the USA Patriot Act. The state government believes that the USA Patriot Act threatens the people's fundamental rights and liberties. The government states in the resolution that the provisions in the legislation are a serious cause for alarm and that the federal government needs to make changes. However, this state does not take anything into their own hands, instead, the resolution simply reveals the state's opinion on the USA Patriot Act.

Utah, has consistently had a Republican governor since 1985 and throughout its entire history, it has had a fully Republican legislature. Therefore, it is clear that Utah has historically been incredibly Republican, both in ideology and partisan-control. The resolution passed by the state of Utah on February 19th 2003 not only demonstrated the state's disapproval of the USA Patriot Act but also the state's commitment to protecting the civil rights and civil liberties of the people. The Utah resolution against the USA Patriot Act stated:

> All Departments continue their strong commitment to preserve residents' freedom of speech, religion, assembly and privacy; the right to counsel and due process in judicial proceedings and the protection from unreasonable searches and seizures.
> 2. Any federal or state law enforcement officials acting within Utah work in accordance with the policies and procedures of Utah and when cooperating with Departments, continue to guarantee the fundamental constitutional rights of all Utah residents.
> 3. Our Congressional delegation monitor the implementation of the Acts and Orders cited herein and advocate for the protection of fundamental rights and liberties guaranteed by the United States and Utah Constitutions. (Public Law 0174 2003)

The Utah resolution showed the state's belief in protecting the civil rights and civil liberties that are guaranteed under the United States Constitution. The Utah resolution

reveals the need for all policies and rules to fall under the guidelines under the US Constitution.

New Hampshire had a Republican legislature until 2006 and had a Republican governor from 2003 to 2005. The New Hampshire resolution was passed on February 11th 2003 and stated as follows:

> Whereas, we believe these civil liberties are precious and are now threatened by:
> A. The USA PATRIOT Act,
> which all but eliminates judicial supervision of telephone and Internet surveillance;
> greatly expands the government's ability to conduct secret searches;
> gives the Attorney General and the Secretary of State the power to designate domestic groups as terrorist organizations;
> and grants the FBI broad access to medical, mental health, financial, library, educational and other records of and about individuals without having to show evidence of a crime and without a court order; and
> And Whereas, this law and particularly target foreign nationals and people of Middle Eastern and South Asian descent, but could effect any one of us in the U.S.A. acting and speaking legally in opposing government policy; (Public Law 520 2005)

The New Hampshire resolution against the USA Patriot Act in its original form merely stated all of the provisions that the government found to be problematic. The New Hampshire government did not require anything from its officials, instead, the resolution was simply proclaiming the state's disapproval of the USA Patriot Act.

Democratic States:

There were seven states that passed anti-Patriot Act legislation that were fully controlled by the Democrats, both in the legislature and in the governorship. These states consist of Delaware, Illinois, Maine, New Jersey, New Mexico, Oregon and Washington. Based on not only the hypothesis presented, but also based on the pattern of actions and decisions of the Democratic states. Democratic states tend to focus more on civil rights and civil liberties. The privacy and the rights of the people are more emphasized in states

controlled by the Democratic Party. In the Democratic Party Platform of 2010, the commitment to civil rights is stated clearly:

> Civil Rights are not just abstract principles. They represent nothing less than our ability to provide for ourselves and our families and to live free from discrimination or persecution. For decades, Democrats have fought for these values, working to ensure that all Americans have the opportunity to fully participate in our society—to live in a place where there are no second-class citizens, where each of us can go about our lives without fear of discrimination. (2010)

The Democratic Party strongly asserts that the civil rights protected in the United States Constitution are not just words or random ideas. Instead, they must be protected to the fullest ability and it is the duty of the government to ensure that the people's civil rights and civil liberties are never taken away or threatened.

Findings:

Delaware, a state that has had a Democratic governor since 1993 and a Democratic legislature for most of its history, passed the anti-Patriot Act legislation on September 22nd 2003. The Delaware resolution against the USA Patriot Act in its original form stated:

> WHEREAS, the USA Patriot Act, which was written to respond to the attack on our nation, was hastily enacted in six weeks without public hearings or a Congressional mark-up, weakens, contradicts and undermines the basic constitutional rights outlined above; and
> WHEREAS, Examples of fundamental rights threatened by the Patriot Act include the Government's extended power to: participate in telephone and internet surveillance with limited judicial supervision; dilute judicial oversight in law enforcement and intelligence agencies access to personal medical, mental health, financial, and educational records; expand the government's ability to conduct warrant less searches of individual's homes and businesses, including monitoring what books are bought from the bookstore or borrowed from libraries; and limit access to public documents and records under the Freedom of Information Act; and
> WHEREAS, per the Justice Department's interpretation of the Patriot Act it appears that the impact of the law will be on selective racial and religious groups.

> This is a cause for alarm for those who fear an emergence of racial and ethnic profiling; (Public Law 40-A 2004)

The Delaware resolution against the USA Patriot Act demonstrated the state's opinion regarding this controversial piece of legislation. The state government believed that the USA Patriot Act was infringing on the people's basic and fundamental rights and liberties. The state of Delaware believed that some of the key provisions in the USA Patriot Act created a fundamental problem for the people of the United States.

Illinois has had a Democratic governor since 2003 and a Democratic legislature from 2003 to 2010. The state passed a version of their anti-Patriot Act resolution on October 1st 2003. The state passed this resolution around the same time that Illinois became fully controlled by the Democrats, in both the legislature and the governorship. The Illinois resolution stated:

> WHEREAS, examples of the provisions in the USA PATRIOT Act and Executive Orders that may undermine the constitution and the rights and civil liberties of Chicago residents include:
> A significant expansion of the government's ability to access sensitive medical, mental health, financial and educational records about individuals; and lowers the burden of proof required to conduct secret searches and telephone and Internet surveillance
> Giving law enforcement expanded authority to obtain library records, and prohibits librarians from informing patrons of monitoring or information requests
> Granting the Attorney General the power to subject citizens of other nations to indefinite detention or deportation even if they have not committed a crime
> Authorizing eavesdropping on confidential communications between lawyers and their clients in federal custody
> Limiting disclosure of public documents and records under the Freedom of Information Act (Public Law 27-R-03 2003)

Illinois, in its resolution, merely states the parts of the USA Patriot Act that the government believes is not only threatening to the civil rights and civil liberties but also unconstitutional under the United States Constitution. The resolution for the state of Illinois did not take any extra steps and it did not contain stronger language, instead, it

merely demonstrates another state that disagrees with the provisions of the USA Patriot Act.

Maine, a state with a Democratic governor from 2003-2010 and a Democratic legislature since 1997, passed the anti-Patriot Act legislation on March 23rd 2004. The Maine resolution stated:

> RESOLVED: That We, the Members of the Maine State Legislature reaffirm our sworn oaths to defend the Constitution of the United States and the Constitution of Maine and our solemn commitment to continue to protect and champion the rights and liberties of Maine citizens that are guaranteed under the state and federal constitutions
> RESOLVED: That the Maine State Legislature urges the Federal Government to continue to exercise its jurisdiction over immigration matters and encourages the Federal Government to work cooperatively with the states to provide assistance and training necessary to protect our country; and be it further
> RESOLVED: That the Maine State Legislature implores the United States Congress to review provisions in the USA PATRIOT Act and other measures that may infringe on civil liberties and ensure any pending and future federal measures do not infringe on Americans' civil rights and liberties; (Public Law 203 2004)

Maine, like many other states, did not agree with some of the provisions in the USA Patriot Act. The state government believed that these provisions threatened the basic rights that are guaranteed to people under the United States government.

New Jersey had a Democratic governor from 2002-2009 and a legislature controlled by the Democrats from 2002 to present. The New Jersey resolution against the USA Patriot Act, passed on June 9th 2004 stated:

> BE IT FURTHER RESOLVED, that the State of New Jersey affirms its commitment to uphold civil rights and civil liberties, and therefore expresses its opposition to:
> a. investigation of individuals or groups of individuals based on their participation in activities protected by the First Amendment, such as political advocacy or the practice of a religion, without reasonable suspicion of criminal activity unrelated to the activity protected by the First Amendment;
> b. racial, religious, or ethnic profiling;
> c. deployment of biometric identification technology that is unreliable; and
> d. establishment of networks of general surveillance cameras unless such a

> network is subject to regulations that provide reasonable and effective protections of privacy and due process rights of individuals who appear in recorded material;
> e. "sneak and peek" searches, pursuant to Section 214 of the PATRIOT Act, unless the search is authorized and conducted in accordance with applicable State law;
> f. establishment or maintenance of anti-terrorism reporting system that creates an electronic record on an individual unless subject to regulations that provide for the protection of individuals subject to unfounded reports; (Public Law 189 2004)

New Jersey's resolution stated the provisions that the state believed were unconstitutional and therefore were a threat to the fundamental civil rights and civil liberties promised under the United States Constitution.

New Mexico had a Democratic governor from 2003 to 2010, as well as Democratic legislature for the majority of its history. The New Mexico resolution against the USA Patriot Act stated the following:

> WHEREAS, fundamental rights granted by the United States Constitution are threatened by actions taken at the federal level, notably by passage of sections of the USA PATRIOT ACT and several Executive Orders which, among other things:
> Violate the First and Fourth Amendments to the Constitution through the expansion of the government's ability to wiretap telephones, monitor e-mail communications, survey medical, financial and student records, and secretly enter homes and offices without customary administrative oversight or without showing of probable cause;
> WHEREAS, the State of New Mexico adheres to the principle that no law enforcement agency, or any other city agency, may profile or discriminate against any person solely on the basis of ancestry, race, ethnic or national origin, color, age, sexual orientation, gender, religion, or physical or mental disability; (Public Law 1087 2003)

New Mexico felt that some of the provisions of the USA Patriot Act violated several amendments of the United States Constitution. The state government believed that the federal government should not have the power to violate both the First and Fourth Amendments and therefore, New Mexico was affirming their opposition to this piece of federal legislation.

Oregon has consistently had a Democratic governor since 1987 and has had a Democratic legislature since 2003. The anti-Patriot act resolution was passed on October 29th 2003, which stated:

> WHEREAS, the State of Oregon has the following laws recognizing the value of freedom and privacy for its residents: ORS 181.575, prohibiting law enforcement from collecting and maintaining information about the political, religious and social views, associations or activities of any individual or group unless such information directly relates to an investigation of criminal activities in which that individual is allegedly involved; and ORS 181.850, protecting our diverse immigrant population from undue scrutiny by prohibiting law enforcement from detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws; and
> WHEREAS, certain provisions of the U.S.A. P.A.T.R.I.O.T. Act (Public Law 107-56, hereafter referred to as the UPA) threaten these state laws, as well as our constitutional rights and liberties, by allowing the Federal Government to investigate, engage in surveillance and detain people without some of the protections historically provided by our state and federal constitutions, such as the right to due process of law, the right to counsel and the right to privacy, and, in their enforcement, pose a particular threat to the civil rights and liberties of persons who are Arab, Muslim, or of South Asian descent; (Public Law 111 2003)

Oregon went slightly farther with its resolution and actually put into effect certain laws that would prevent law enforcement officials from being able to act in ways that Oregon found unconstitutional under the USA Patriot Act. Oregon, as a state, felt strongly about the unconstitutionality of some of the provisions. Therefore, the state government of Oregon created these laws to restrict police power and stop the infringement of people's civil rights and civil liberties.

Washington has had a Democratic governor since 1985 and a Democratic legislature for most of its history. The state of Washington passed its anti-Patriot Act legislation on February 18th 2003, which stated the following:

> WHEREAS federal policies adopted since September 11th, 2001, including provisions of the USA PATRIOT ACT (Public Law 107-56) and related executive orders, regulations and actions threaten fundamental rights and liberties

> by:
> (B) Limiting the traditional authority of federal courts to curb law enforcement abuse of electronic surveillance in anti- terrorism investigations and ordinary criminal investigations;
> (C) Expanding the authority of federal agents to conduct so-called sneak and peek or black bag searches, in which the subject of the search warrant is unaware that his property has been searched;
> (D) Granting law enforcement and intelligence agencies broad access to personal medical, financial, library and educational records with little, if any, judicial oversight;
> (G) Permitting the FBI to conduct surveillance of religious services, Internet chat-rooms, political demonstrations, and other public meetings of any kind without having any evidence that a crime has been or may be committed; (Public Law 0483 2003)

The state of Washington believed that some of the provisions of the USA Patriot Act were problematic. Those provisions threatened the fundamental rights and liberties guaranteed under the United States Constitution. Those provisions were expanding police authority too greatly and allowing the government too much power over the people. The government of Washington wanted these provisions to be reworked and revised so that both the state of the country and the fundamental rights of the people were safe.

Democratic Legislature and Republican Governorship:

Some states during the time that the legislation was passed in their respective state, had a legislature and a governorship that was controlled by different parties in one way or another. This group of states: Colorado, and Montana had a legislature completely controlled by the Democratic Party, while the governorship was under the control of the Republican Party. This mixing of parties in the state government should have created a problem in passing legislation or making a stance against the USA Patriot Act. However, this is not true in these two states. Colorado and Montana all managed to pass resolutions that strongly and clearly demonstrate the disdain for the USA Patriot Act.

Findings:

Colorado, during the time that the anti-Patriot Act legislation was passed, had a Democratic legislature (from the years of 2004 to 2010) and a Republican governor (from the years of 1999 to 2006). Colorado passed its anti-Patriot Act resolution on May 9th 2005, in which it stated:

> Be It Resolved by the Senate of the Sixty-fifth General Assembly of the State of Colorado, the House of Representatives concurring herein:
> (2) That it is the policy of the state of Colorado to oppose any provision or application of the "USA PATRIOT Act" that would violate the rights and liberties guaranteed by the state and federal constitutions;
> (3) That, in accordance with the policy of this state, no agency or instrumentality of the state should, without reasonable suspicion of criminal activity under Colorado law:
> (a) Initiate, participate in, assist, or cooperate with any inquiry, investigation, surveillance, or detention;
> (b) Record, file, or share intelligence information concerning any person or organization, including library lending and research records, book and video store sales and rental records, medical records, financial records, student records, internet mail and usage records, and other personal data, even if authorized under the "USA PATRIOT Act"; or
> (c) Retain such intelligence information. (Public Law 05-044 2005)

Colorado's state government not only believed that some of the provisions of USA Patriot Act threatened the fundamental civil rights and civil liberties of the United States Constitution, but that the state police officials should not even allow these provisions to exist in the state of Colorado. The state made it legal for government officials to oppose any part of the USA Patriot Act that they felt was unconstitutional.

Montana, during the time that the anti-Patriot Act legislation was passed, had a Democratic legislature (until 2005) and a Republican governor (until 2004). The Montana resolution was passed on February 14th 2004 and stated as follows:

> BE IT FURTHER RESOLVED, that in accordance with Montana state policy, in the absence of reasonable suspicion of criminal activity under Montana law, the 59th Montana Legislature exhorts agents and instrumentalities of this state to not:
> (1) initiate or participate in or assist or cooperate with an inquiry, investigation,

> surveillance, or detention under the USA PATRIOT Act if the action violates constitutionally guaranteed civil rights or civil liberties;
> (2) record, file, or share intelligence information concerning a person or organization, including library lending and research records, book and video store sales and rental records, medical records, financial records, student records, and other personal data, even if authorized under the USA PATRIOT Act, if the action violates constitutionally guaranteed civil rights or civil liberties; or
> (3) retain any of the intelligence information described in subsections (1) and (2) of this clause if the information violates constitutionally guaranteed civil rights or civil liberties. (SJ 19 2004)

Montana, when it passed its anti-Patriot Act legislation, made it illegal for government officials to partake in an investigation in any sort of way that deals with the USA Patriot Act. Montana's state government believed that they should not involve themselves with this controversial piece of federal legislation and therefore, the state would make it clear by declaring involvement with it to be illegal.

Republican Legislature and Democratic Governorship:

Five states, out of the twenty-eight that passed anti-Patriot Act legislation, had a state government that was controlled by the Republican Party in the legislature, but a Democrat was in charge for the governorship, during the time that the anti-Patriot Act legislation was passed in the respective state. These five states: Arizona, California, Hawaii, Massachusetts and Wyoming, all had this type of mixed government, that would expect to create problems for agreeing on issues, especially one as complex and controversial as the USA Patriot Act. However, these five states, managed to create a harmonious government and pass some form of resolution against the current form of the USA Patriot Act.

Findings:

Arizona had a Democratic governor from 2003 to 2009 and a Republican legislature for most of its history. The anti-Patriot Act legislation in this respective state was passed on May 5th 2003 and states:

> WHEREAS, Arizona affirms its strong opposition to terrorism, but also affirms that any efforts to oppose terrorism not be waged at the expense of civil rights and liberties of people of Tucson and the United States; and
> WHEREAS, provisions of the USA PATRIOT Act expand the authority of the Federal Government to detain and investigate, and engage in the electronic surveillance of, United States citizens and non-citizens and threatens our civil rights and liberties guaranteed under the United States Constitution; and
> WHEREAS, the state of Arizona recognizes that an infringement of the constitutionally guaranteed rights of any person under the color of law is an abuse of power, a breach of public trust, a misappropriation of public resources, and a violation of civil rights and must be beyond the scope or governmental authority. (Public Law 1031 2003)

The state of Arizona reveals in its resolution that it does not agree with some of the provisions of the USA Patriot Act. In the resolution, the state makes it clear that the provisions do threaten the fundamental civil rights and civil liberties of the people.

California had a Democratic governor but a Republican legislature during the time that the anti-Patriot Act legislation was passed. The resolution was proposed on April 18th 2005, but was not passed until February 18th 2006:

> Be it further resolved, That the State of California will ensure that no state resources be provided for any action that would violate the United States Constitution, or the Constitution of the State of California, including but not limited to, all of the following:
> (2) Recording, filing or sharing intelligence information concerning a person or organization, including library lending and research records, book and video store sales and rental records, medical records, financial records, student records, and other personal data, even if authorized under the U.S.A. PATRIOT Act.
> (3) Demanding nonconsensual releases of student and faculty records from public schools and institutions of higher learning.
> (4) Eavesdropping on confidential communications between lawyers and their clients. (Public Law 100 2006)

California declared in its resolution against the USA Patriot Act that no state resources may be used for any action or decision that violated the amendments of the United States Constitution. State resources include both money and manpower so the state of California is refusing to partake in any sort of investigation involving the USA Patriot Act.

Hawaii had a Republican legislature but a Democratic governor during the period that the anti-Patriot Act legislation was passed. The resolution was passed on April 25th 2003 and stated as follows:

> BE IT FURTHER RESOLVED that to the extent legally possible, no state resources including law enforcement funds and educational administrative resources may be used for unconstitutional activities, including but not limited to the following under the USA Patriot Act:
> (1) Monitoring political and religious gatherings exercising their First Amendment Rights;
> (2) Obtaining library records, bookstore records, and website activities without proper authorization and without notification;
> (3) Issuing subpoenas through the United States Attorney's Office without a court's approval or knowledge;
> (4) Requesting nonconsensual releases of student and faculty records from public schools and institutions of higher learning; and
> (5) Eavesdropping on confidential communications between lawyers and their clients. (Public Law 180 2003)

Hawaii strongly believes that some of the provisions of the USA Patriot Act are unconstitutional and threatening to the fundamental civil rights and civil liberties. Hawaii does not want to use any state resources for investigations dealing with the USA Patriot Act. However, the state of Hawaii is only willing to limit state resources within legal limits. The state government is not willing to go outside the legal scope and go fully against the federal government.

Massachusetts had a Republican legislature and a Democratic governor during the time that the legislation was passed in this respective state. The resolution stated:

> WHEREAS the rights and liberties of the citizens and non-citizens of Massachusetts protected by the Constitution of the Commonwealth of Massachusetts and the United States Constitution and its Bill of rights are threatened by provisions of the USA Patriot Act, which authorize:
> Expansion of the government's ability to secretly enter and to conduct searches of the homes and businesses of Marblehead residents when they are absent and without their knowledge;
> Law enforcement officials to monitor residents telephone and internet use and access medical, mental health, library, business, financial, educational, and other records about an individual without evidence of criminal behavior and without court order;
> WHEREAS any infringement on the Constitutional rights of any person is an abuse of power, a breach of the public trust, and beyond the scope of governmental authority. (Public Law 1881 2004)

Massachusetts declares in its resolution, which provisions of the USA Patriot Act are threatening to the basic civil rights and civil liberties. The state, however, does not make bolder claims and instead, merely demonstrates the state's strong disagreement in the constitutionality of the USA Patriot Act.

Wyoming had a Republican legislature and a Democratic governor during the time that the legislation was passed. The resolution passed on January 6th 2004 and it stated:

> WHEREAS, federal, State and local governments should protect the public from terrorist attacks such as those of September 11, 2001, but should do so in a rational and deliberate fashion to ensure that any new security measures enhance public safety without impairing Constitutionally protected rights and without infringing on civil liberties; and
> WHEREAS, a broad coalition Wyoming citizens of diverse political views believes the USA Patriot Act (Public Law 107-56) undermines our Constitutional rights; and
> WHEREAS, the preservation of our Constitutionally-guaranteed civil rights and liberties is essential to our Republic; and
> WHEREAS, the USA Patriot Act and related executive orders, regulations and actions threaten these rights and liberties.
> WHEREAS, each Wyoming Commissioner has duly sworn their oath to uphold the United States Constitution and the Wyoming Constitution. (Public Law 105 2004)

The Wyoming resolution is one of the weaker ones out of the twenty-eight states. The resolution only declares that the USA Patriot Act threatens the basic civil rights and civil liberties guaranteed by the United States Constitution.

Republican Governorship and Mixed Legislature:

Maryland was the only state, out of the twenty-eight, that had a Republican governor, but the legislature was mixed, with the house and senate being controlled by different parties. The mixed legislature often can result in inefficient government and it can be hard to pass laws, especially with controversial things like the USA Patriot Act. However, Maryland got past the divided government and passed the resolution against this controversial piece of legislation.

Findings:

Maryland passed its resolution on May 19th 2003 and it stated:

> IT IS HEREBY FURTHER RESOLVED, and is the policy of the State of Maryland, that the State of Maryland:
> 1. Directs the Police Department of Maryland to:
> d. Refrain, whether acting alone or with federal or state law enforcement officers, from collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct; and
> f. Refrain from using racial profiling to stop drivers or pedestrians for the purpose of scrutinizing their identification documents without particularized suspicion of criminal activity;
> 2. Directs public libraries within the City of Baltimore to post in a prominent place within the library a notice to library users as follows: "WARNING: Under Section 215 of the federal USA PATRIOT Act (Public Law 107-56), records of the books and other materials you borrow from this library may be obtained by federal agents. That federal law prohibits librarians from informing you if federal agents have obtained records about you. Questions about this policy should be directed to: Attorney General John Ashcroft, Department of Justice, Washington, DC 20530". (Public Law 78 2003)

The Maryland resolution asks the police officials to refrain from using the powers given to them in the USA Patriot Act if those powers are an infringement on the people's fundamental civil rights and civil liberties. However, the state government of Maryland does not make it illegal for police officials to these powers. Instead, the government of Maryland is merely asking them to use their judgment and avoid using this new authority.

Republican Legislature and Mixed Governorship:

Two states, Minnesota and Vermont, had a legislature controlled by the Republican Party during the time that the legislation was passed, but both parties controlled the governorship, at one point in time. It would make sense that different governors would have different beliefs regarding the USA Patriot Act. However, these two states still managed to pass their respective legislation even after the partisan-control of the governorship changed.

Findings:

Minnesota had a Republican legislature and both Republican and Democratic governors during the time that the anti-Patriot Act legislation was passed. The resolution stated the following:

> Be It Further Resolved that all City law enforcement agencies and personnel promptly report to the Minneapolis City Council and Human Rights Commission, to the extent legally possible, all instances in the City of Minneapolis, where activities, investigations, or proceedings have violated the fundamental rights and liberties enumerated above, including but not limited to each instance of:
> A person detained without charges, denied the right to counsel, or denied a public and speedy trial;
> A search warrant executed without notice to the subject of the warrant;
> Electronic surveillance or wiretaps conducted without judicial approval;
> Surveillance of religious or political meetings; and
> Obtaining records from educational institutions, libraries, and bookstores without judicial approval.
> And they shall refrain from using State resources, including personnel and

> administrative or law enforcement funds to advance such unconstitutional activities. (Public Law 486 2002)

The Minnesota resolution does two things. First, it lists the problems that this particular state government has with the USA Patriot Act. Second, it declares that states resources, such as state officials or state money, will not be used for activities or investigations considered to be unconstitutional under the United States Constitution.

Vermont has a Republican legislature and both a Republican and Democratic governor during the time period that the anti-Patriot Act legislation is passed. The Vermont resolution states the following:

> Whereas, section 213 greater lowers the threshold required for a court to issue a search warrant, and
> Whereas, section 216 nearly eliminates judicial supervision of telephone and internet surveillance,
> Whereas, several sections of the bill, including 215, 218, 358, and 508, permit law enforcement authorities to have broad access to sensitive mental health, library, business, financial, and educational records despite the existence of previously adopted state and federal laws which were intended to strengthen the protection of these types of records, and
> Whereas, there has been an especially strong outcry in Vermont against the ability of federal authorities, under section 215 of the Act, to obtain judicially-issued warrants for library or bookstore patron records based on minimal information, and the accompanying prohibition on librarians and bookstore personnel from revealing any information regarding the request. (Public Law 210 2003)

The Vermont legislation simply states the parts of the USA Patriot Act that are considered to be unconstitutional by the state government under the United States Constitution. The Vermont resolution did not make any bold claims in its law.

Democratic Legislature and Mixed Governorship:

The last three states: Missouri, North Carolina and Tennessee, had a Democratically-controlled legislature, while the governorship was controlled by both parties, during the period that the anti-Patriot Act legislation was passed in their

respective states. These states, despite the change in governorship, managed to still pass these anti-Patriot Act resolutions.

Findings:

Missouri had a Democratic legislature and both a Democratic and Republican governor during the time period that the anti-Patriot Act legislation was passed. The Missouri resolution stated:

> BE I T RESOLVED BY THE STATE OF MISSOURI:
> Section 1. That the State of Missouri, has been, and remains, firmly committed to the protection of civil rights and civil liberties for all people including citizens and non-citizens alike.
> Section 2. That the State of Missouri, respects and values public safety intelligence gathering as an indispensable part of law enforcement and of national security. The State intends that the methods of gathering information be in strict compliance with the protections for individual liberty provided for in the United States Constitution and the Missouri Constitution. (Public Law 273 2004)

The resolution by the state of Missouri is one of the less harsh and weaker ones. The resolution only states that the USA Patriot Act is considered a violation of people's civil rights and civil liberties. It does not even go into detail about the specific provisions of the USA Patriot Act, instead the resolution simply uses general terms to discuss the disapproval of the Act.

North Carolina, which had a Democratic legislature and both Democratic and Republican governors during the time when the anti-Patriot Act legislation, passed a resolution, which stated:

> Whereas, North Carolina has a diverse population that is vital to our community's character, and that we have a long tradition of protecting human rights and civil liberties that protect all of our residents, including non-citizens and the recently-immigrated; and
> Whereas, As a State, we are concerned that provisions of the USA Patriot Act and several Executive Orders could possibly lead to abuse in enforcement; and
> Whereas, In a time of concern over terrorism, our country must find a balance between the need for national security and the need for protection of our basic

> civil rights and liberties; and
> Whereas, The North Carolina Human Relations Commission has passed a resolution stating that some aspects of the USA Patriot Act and some Executive Orders may be an unnecessary threat to the civil rights and liberties of the people of Greensboro. (Public Law 111 2004)

North Carolina's resolution speaks to the necessity of looking at the balance between the need for national security and the need to protect the civil rights and civil liberties of the people of the United States. This resolution discusses the possibility of abuse in allowing the USA Patriot Act to continue in its current form.

Tennessee, which had a Democratic legislature but both Republican and Democratic governors, passed a resolution concerning the problems of the USA Patriot Act. The resolution stated:

> Within the 1016 sections of the Act the government's ability to access sensitive medical, mental health, financial, and educational records about individuals. It removes any burden of proof required to conduct telephone and internet surveillance.
> Section 213 allows any branch of the Federal or state governments to break into your home or business, to remove any times (or place items) they wish without a warrant and without Informing the person or business of the total violation of the Fourth Amendment.
> Section 215 gives law enforcement expanded authority to obtain library and book store records (violating Fourth Amendment) while prohibiting librarians and store workers from informing patrons of monitoring requests (violating the First Amendment).
> Tennessee recognized in the Bill of Rights and the Declaration of Independence.
> BE IT FURTHER RESOLVED that, to the extent legally possible, no State employee or department shall assist or voluntarily cooperate with investigations, interrogations, or arrest procedures, public or clandestine, that are in violation of individuals God-given rights that are simply enumerated by the first ten amendment to the United States Constitution; (Public Law 03-02-020 2003)

The Tennessee resolution discusses the specific provisions that are problematic for this state government. In addition, the resolution reveals the state government's policy that no state employee may be involved with a federal investigation that deals with these controversial provisions. However, the government of Tennessee is unwilling to go

beyond the legal scope to prevent state employees from participated with these investigations. If it is against federal law to not cooperate than the state employee should involve him or herself with the investigation and not break the law set by the federal government.

Conclusion:

The twenty-eight states that passed anti-Patriot Act legislation vary not only in the partisan-control of the state, but also in the ideological percentages of the citizenry. The hypothesis that Democratic states would pass legislation that would restrict police power, while Republican states would pass legislation that would tighten civil rights and liberties, turned out to be false. Instead, states, independent of their partisan-control, passed anti-Patriot Act legislation. The USA Patriot Act was an extremely controversial piece of legislation and the severity of it may have caused states to act in ways that are not consistent with their state partisanship. However, it may be the case that federalism is growing in the United States and instead, states are beginning to act in ways they feel is correct and are branching off from the federal government to create their own path.

Federalism plays an especially important role in the discussion of Fourth Amendment issues and laws. The term, Fourth Amendment federalism has developed throughout the years in the United States and the United States Supreme Court's Fourth Amendment jurisprudence "has suggested a peculiar interest in deferring to modern state search and seizure laws when determining what constitutes a reasonable police practice." (Urbonya 2005, 34) With the idea of federalism, "the Court has viewed current state laws as a source to define the scope of the Fourth Amendment. This interweaving of state practices with federal protections raises important federalism questions, particularly when

the context involves criminal law enforcement." (Urbonya 2005, 23) The conflict discussed by Urbonya, between the state and federal governments, is the same problem with the anti-Patriot Act resolution passed in the twenty-eight states. It becomes an issue of when to follow state law and when to follow federal law. Although, historically, federal law has always remained the supreme law, with this idea of Fourth Amendment federalism growing, it has increasingly become the trend to give the states more power and discretion when it comes to issues of the Fourth Amendment. Therefore, with these anti-Patriot Act resolutions, that largely deal with concerns about Fourth Amendment rights and privileges, it becomes a problem of which law is now considered to be supreme. Are the states given the power to not only make these decisions but also to implement them legally or are these new laws in conflict with federal statutes and therefore, illegal and punishable under federal law? This very conflict becomes a huge problem in the implementation stages of these laws. When those twenty-eight individual states start to implement these laws, the questions arises of which set of laws are supreme. This can create a problem for both the federal and state governments.

These anti-Patriot Act resolutions are significant for the discussion of states rights and legislative federalism. These twenty-eight states are standing up for their rights and they are stating that the individual states of the United States do not have to simply follow the federal government and their decisions. The states can make their own rules and can fight the federal government on certain issues that may be considered to be an infringement on rights or even unconstitutional. Therefore, with these anti-Patriot Act resolutions, the states are expanding the idea and the parameters of Fourth Amendment federalism. In addition, the states are also ferociously using the idea of states rights to

their benefit. The individual states are branching off from the federal government and paving their own path in order to make their states not only a safer place, but also a place where the fundamental civil rights and civil liberties guaranteed under the United States Constitution are protected to the fullest.

Chapter Three: Wiretapping/Eavesdropping Legislation in Sixteen States

The eruption of anti-Patriot Act legislation virtually stopped after 2006. The tension between the intervention of the federal government for the sake of national security and the necessity to protect Fourth Amendment rights guaranteed under the United States Constitution appeared to have calmed down for the time being. However, this period of relative calm was very short. In 2008, a new Fourth Amendment concern emerged as the question of the legality of warrantless searches and wiretapping, especially with cell phones, became a central issue in the United States. With new technology developing rapidly in the twenty-first century, the question of people's reasonable expectation of privacy increased in its importance. While the issue of growing technology in relation to warrantless searches and the advancing ability to wiretap has been around for years, the new threat of terrorism and the national security problem not only brought it back to the forefront of people's mind but also heightened the concern.

Many surveys were conducted between 2006 and 2008, which reveal much about the people's opinions on issues regarding terrorism, national security and warrantless searches. One of the questions posed by ABC News/Washington Post Poll on May 11th 2006, was if people approve or disprove of the way Bush handled protecting Americans' privacy rights as the government investigates terrorism. Fifty-one percent approved, forty-seven percent disapproved and two percent were unsure (ABC News/Washington Post Poll 2006). This shows that the opinion of people regarding Bush's handling of privacy rights was completely split, with the approval side a little higher than the disapproval side.

Another poll was taken reporting, "that the National Security Agency has been collecting the phone call records of tens of millions of Americans. It then analyzes calling

patterns in an effort to identify possible terrorism suspects, without listening to or recording the conversations. Would you consider this an acceptable or unacceptable way for the federal government to investigate terrorism?" Sixty-three percent replied saying it was acceptable, while thirty-five percent said it was unacceptable (ABC News/Washington Post Poll 2006). Almost twice the amount of people believed that that this type of action by the government was acceptable. This fact demonstrates that people were willing to give up some of their civil rights and civil liberties for the sake of national security and investigating terrorism. While, this exact question was not asked prior to 2006, the question of terrorism and its relationship to civil liberties was a major concern from 2001 to the present. In 2003, the Associated Press Poll asked the following question: "In order to curb terrorism in this country, do you think it will be necessary for the average person to give up some individual freedom or not? Fifty one percent responded that the average person will have to give up some freedom, while forty-three responded that the average person will have to have to do so (Associated Press Poll 2003). This demonstrates two important points. First, it reveals that a majority of people, from the beginning, was aware that some of their civil liberties would be infringed upon for the sake of national security. Second, it shows that the tension between these changes in laws and the people's civil liberties was an important topic of discussion from the beginning.

Another poll was taken to gauge people's opinions about the government collecting phone records, it asked, "If you found out that the NSA had a record of phone numbers that you yourself have called, would that bother you, or not? If yes: would it bother you a lot or just somewhat?" Twenty-four percent of people believed it would

bother them a lot, ten percent of people said it would bother them somewhat and a sixty-six percent of people said it would not bother them (ABC News/Washington Post Poll 2006). A shockingly large amount of people reported that they would be comfortable with the federal government (specifically the National Security Agency) having open access to their phone records.

In April of 2006, the Los Angeles Times/Bloomberg Poll was conducted. One of the most crucial questions asked to adults nationwide was "as you may know, George W. Bush authorized federal government agencies to use electronic surveillance to monitor phone calls and e-mails within the United States without first getting a court warrant to do so. Do you consider this an acceptable or unacceptable way for the federal government to investigate terrorism?" Forty-eight percent of people said it was accepted, forty-seven percent said it was unaccepted and five percent said they were unsure (Los Angeles Times/Bloomberg Poll 2006). This poll demonstrates how split the public was on this issue. Clearly, some people felt in was inappropriate, while others believed it was the right course of action.

The final poll taken by CBS News surveyed adults nationwide and asked, "after 911, President Bush authorized government wiretaps on some phone calls in the U.S. without getting court warrants, saying this was necessary in order to reduce the threat of terrorism. Do you approve or disapprove of the President doing this?" Out of all adults, fifty-one percent approved, forty-seven percent disapproved and two percent were unsure. However, out of the Republicans, eighty-three percent approved, while sixteen percent disapproved and one percent were unsure. The Democrats, on the other hand, thirty-three percent of them approved, sixty-three percent disapproved and four percent

were unsure. Finally, out of the Independents, forty-two percent approved, fifty-seven percent disapproved and one percent was unsure (CBS Poll 2006). These statistics match up with the proposed hypothesis. Republicans had the highest approval percentage out of any of the political parties. On the other side, Democrats had the smallest approval percentage out of any of the political parties. These statistics shows that Democrats are uncomfortable with invasions of their privacy, while Republicans are more willing to allow government intervention.

Ideology/Partisan-Control:

In explaining why some states passed pro-civil liberties legislation, while others passed pro-police authority legislation, we suggest that the ideology and the partisan-control of the state government is a major factor in the type of legislation passed by the individual states. It is hypothesized that Republican-controlled states will pass legislation that allows the police to have more power and authority, while the states controlled by the Democrats will pass legislation that ensures that the civil rights and liberties of the people are protected. Therefore, it would follow that Democratic states would pass legislation that would either not allow these searches or create more strict laws regarding them, while Republican states would pass laws that would allow them (on a broader level) to occur in their individual state.

The study of the warrantless searches legislation among the seventeen states examines whether the relationship between the type of laws passed and both the ideology of the citizenry and the partisan control of the state government holds true. The study looks at whether the party affiliations of a particular state effects its decisions regarding legislation dealing with the issue of warrantless searches, particularly with cell phones and technology in general. It would be logical that not all states would have the same

opinion regarding warrantless searches. Warrantless searches are allowed under the United States Constitution under certain circumstances, however in other situations, they can be considered a violation of the people's civil rights and civil liberties under the Fourth Amendment. Some people, particularly Arab Americans, are concerned about the legality of warrantless searches and the new program has "increased feelings of being targeted and put under surveillance due to their ethnic background and contact with friends and family in the Middle East" for this group of people (Kayyali 2006, 4). As alluded by the article previously mentioned, the federal government allows warrantless searches to occur sometimes for the sake of national security and to diminish the threat of terrorism in circumstances not specified in the United States Constitution. Republicans, historically, tend to favor legislation that gives the police more authority while the Democrats are less likely to do so. Therefore, it would follow that the legislation passed concerning warrantless searches and wiretapping would reflect the trend of these political parties.

As suggested by the poll data explored above, people that identify with the Democrat Party are most uncomfortable with the federal government's intrusion of warrantless searches, either in the form of seizing actual phones and computers or illegally wiretapping to listen into people's conversations, for the sake of national security and the possibility of diminishing the threat of terrorism in the United States. The Republican Party, however, is more content to give up, temporarily, some of the civil rights and civil liberties guaranteed under the United States Constitution, if it is means protecting the country from both foreign and domestic threats. Therefore, the legislation concerning the

legality of warrantless search that was passed from 2008 until present should reflect the preferences and the trends of both political parties.

Data:

To answer the question whether state governments passed legislation based on the partisan-control of individual states, a chart was assembled breaking down the partisanship of the legislature and the governorship of each state government, along with the legislation passed by the states. The chart shows whether each state government passed legislation that allowed warrantless searches to occur or whether legislation was passed to prohibit these searches from occurring. This chart allows for an easy comparison between the partisan breakdown of the states and the type of legislation passed.

	Legislature	Governorship	Legislation
Alabama	Republican	Republican	
Alaska	Republican	Mixed	
Arizona	Republican	Republican	
Arkansas	Democrat	Democrat	
California	Democrat	Democrat	Anti
Colorado	Democrat	Democrat	Pro
Connecticut	Democrat	Republican	Pro
Delaware	Democrat	Democrat	
Florida	Republican	Republican	
Georgia	Republican	Republican	Pro
Hawaii	Democrat	Republican	Anti
Idaho	Republican	Republican	
Illinois	Democrat	Democrat	Anti
Indiana	Republican	Republican	
Iowa	Democrat	Democrat	Anti
Kansas	Republican	Mixed	
Kentucky	Mixed	Mixed	
Louisiana	Mixed	Mixed	
Maine	Democrat	Democrat	Anti
Maryland	Democrat	Democrat	
Massachusetts	Democrat	Democrat	
Michigan	Democrat	Democrat	Anti
Minnesota	Democrat	Republican	

Mississippi	Mixed	Republican	
Missouri	Republican	Mixed	
Montana	Mixed	Democrat	
Nebraska	Republican	Republican	Pro
Nevada	Mixed	Republican	
New Hampshire	Mixed	Democrat	
New Jersey	Democrat	Democrat	Anti
New York	Mixed	Democrat	Pro
North Carolina	Democrat	Democrat	Anti
North Dakota	Republican	Republican	
Ohio	Mixed	Mixed	
Oklahoma	Republican	Mixed	
Oregon	Mixed	Democrat	
Pennsylvania	Mixed	Democrat	
Rhode Island	Democrat	Republican	
South Carolina	Republican	Republican	Pro
South Dakota	Republican	Republican	
Tennessee	Mixed	Democrat	Anti
Texas	Republican	Republican	Pro
Utah	Republican	Republican	
Vermont	Democrat	Mixed	
Virginia	Mixed	Mixed	
Washington	Democrat	Democrat	
West Virginia	Democrat	Democrat	
Wisconsin	Mixed	Mixed	
Wyoming	Mixed	Republican	

The first column lists the states in alphabetical order. The second column lists the partisan-control of the legislature at the time the individual state passed legislation regarding warrantless searches. If no legislation was passed, the partisan-control of the legislature was based on the entire time period of 2008 to present. The third column lists the partisan-control of the governorship at the time the individual state passed legislation. The same guidelines as the second column are followed if there was no legislation passed about warrantless searches. The final column lists the type of legislation passed, if any was passed in that state. In this chart, pro refers to states that allow warrantless searches and anti refers to states that do not allow warrantless searches to occur in their respective state.

Republican States:

Four fully Republican states passed legislation regarding warrantless searches and illegal wiretapping. During the time that the legislation was passed in the respective state, the Republican Party in both the legislature and the governorship controlled these four states, Georgia, Nebraska, South Carolina, and Texas. Following the Republican Party's stance on forgoing civil rights and civil liberties for the sake of national security and to diminish the threat of terrorism, these states should allow not only wiretaps in general but also warrantless wiretaps in certain circumstances.

Findings:

Georgia, a state that has a fully Republican state government in both the legislature and the governorship, passed a law allowing the use of warrantless cell phone searches. In 2011, the state of Georgia updated their state laws to make it clear that it was unlawful for "any person in a clandestine manner intentionally to overhear, transmit, or record or attempt to overhear, transmit, or record the private conversation of another which shall originate in any private place" (O.C.G.A. § 16-11-62). At first glance, it appears that the Georgia state government is against warrantless searches, especially when dealing with warrantless wiretapping. However, in the statute, it clarifies to say that this law is inapplicable to cellular telephone conversations. The government of Georgia believes that the interception of cell phone conversations is legal given that "the public accessibility of "FM" radio waves waives any justifiable expectation of privacy" (O.C.G.A. § 16-11-62). This state finds that since cell phones run on the same radio waves that are available to the public, there is no violation of privacy. In addition, they believe that people don't even have an expectation of privacy with their cell phones and

therefore, people's Fourth Amendment rights, which are guaranteed under the Fourth Amendment of the United States Constitution, are not violated or threatened.

Nebraska, a state that has been controlled by the Republican Party for most of its history, passed a very complex and complicated law concerning wiretapping and warrantless searches of devices. Under Nebraska law, it is unlawful to:

> (a) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;
> (b) Intentionally use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when (i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication or (ii) such device transmits communications by radio or interferes with the transmission of such communication;
> (c) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection;
> (d) Intentionally use or endeavor to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this subsection; or
> (e) Having knowledge that an investigative or law enforcement officer has been authorized or has applied for authorization under sections 86-271 to 86-2,115 to intercept a wire, oral, or electronic communication, give notice or attempt to give notice of the possible interception to any person in order to obstruct, impede, or prevent such interception. (R.R.S. Neb. § 86-290)

Any of these violations are guilty of a Class four felony under Nebraska law. A Class four felony is punishable up to five years in prison, a ten thousand dollar find or both. The law lays out what is illegal in this state, however the law also lays out, in great detail, what is legal to do in the state of Nebraska:

> It is not unlawful under sections 86-271 to 86-295 for an employer on his, her, or its business premises, for an operator of a switchboard, or for an officer, employee, or agent of any provider, the facilities of which are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his, her, or its employment while engaged in any activity which is a necessary incident to the rendition of his, her, or its

> service or to the protection of the rights or property of the carrier or provider of such communication services.
>
> (b) It is not unlawful under sections 86-271 to 86-295 for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.
>
> (d) It is not unlawful under sections 86-271 to 86-295:
>
> (i) To intercept or access an electronic communication made through an electronic communications system that is configured so that such electronic communication is readily accessible to the general public;
>
> (e) It is not unlawful under sections 86-271 to 86-295 and 86-298 to 86-2,101:
>
> (i) To use a pen register or a trap-and-trace device; or
>
> (ii) For a provider of an electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service from fraudulent, unlawful, or abusive use of such service (R.R.S. Neb. § 86-290)

Nebraska clearly lines up the situations and the people where wiretapping and eavesdropping are allowed. The most important part of this section is the part where wiretapping is allowed if one of the parties consents prior to the interception. In addition, wiretapping is permitted if the electronic communications is readily accessible to the general public. However, this is quite vague because different states have defined this availability to the general public differently. This leaves much open to the discretion of the police and the state government officials since the parameters of the law are not clear. Therefore, the government can still use wiretapping/eavesdropping to somewhat of their discretion without violating the state laws.

South Carolina, a fully Republican state during the time period of 2008 to present, passed a state law allowing the use of warrantless wiretapping in certain circumstances.

The South Carolina legislation stated that, “any agent of the South Carolina Law Enforcement Division specifically designated by the Attorney General or his designated Assistant Attorney General may intercept the wire, oral, or electronic communication if an application for an order approving the interception is made within forty-eight hours after the interception begins to occur”(S.C. Code Ann. § 17-30-95). Within this law, warrantless interceptions or wiretaps may occur, but the warrant must be requested within forty-eight hours and if it is denied, the wiretap must cease. This law struck a happy medium between the two sides. It allowed warrantless wiretapping to occur in certain circumstances but also required that the government follow the law within a certain period of time.

Texas, a state that has had a governor from the Republican Party since 1995 and a Republican legislature since 2002, passed a law regarding warrantless searches and wiretaps. The Texas law stated that law enforcement officials were permitted “to obtain pen register and trap and trace information without a showing of probable cause as the use of a pen register was not a search and person entertained no actual expectation of privacy in the telephone numbers he dialed” (Tex. Code Crim. Proc. Ann. art. 18.21 § 3(c)). This law allowed for warrantless wiretaps to occur and did not even classify them as a search. Therefore, since these wiretaps were not considered a search under Texas law, the people could not have any expectation of privacy and there was no violation of the search and seizure rights under the Fourth Amendment of the United States Constitution.

Democratic States:

Seven fully Democratic states passed legislation dealing with the issue of warrantless searches. These states were controlled by the by the Democrat Party in both the legislature and the governorship. Those states were the following: California, Colorado, Illinois, Iowa, Maine, Michigan, New Jersey and North Carolina. Considering the Democratic Party's history of their commitment to the people's civil rights and civil liberties, it should follow that these states will not allow wiretapping, especially warrantless wiretapping.

Findings:

California, a state that became fully Democratic in both the governorship and the state legislature in the last election, passed a law strictly prohibiting warrantless wiretaps of people's cell phones. California's new law generated a lot of media attention, since before this law was passed, warrantless wiretaps of cell phones were allowed in this state. The controversial new law specifically addressed the growing problem of how the development of new technology has lead to many new devices and techniques to eavesdrop on private conversations and that the "invasion of privacy resulting from the continual and increasing use of such devices and techniques has created a serious threat to the free exercise of personal liberties and cannot be tolerated in a free and civilized society"(Penal Code Section 630). The California legislature was the only state to specifically discuss the consequence of allowing warrantless wiretaps to occur. The state of California believed that wiretaps of devices, specifically cell phones, was a threat to people's civil liberties and was a violation of Fourth Amendment rights guaranteed under the United States Constitution. However, the state government of California does

understand the necessity for the federal government to use wiretapping techniques in certain circumstances. Therefore, in the California law regarding warrantless wiretaps, it says, “the Legislature recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques in the investigation of criminal conduct and the apprehension of lawbreakers. Therefore, it is not the intent of the Legislature to place greater restraints on the use of listening devices and techniques by law enforcement agencies than existed prior to the effective date of this chapter”(Penal Code Section 630). The state legislature of California does not wish to stop the government from doing their job and protecting the people from outside threats, however, they are equally worried about the possible civil liberties violations that could occur from allowing wiretapping. That is the reason California passed such a harsh law regarding wiretapping:

> Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison, or by both a fine and imprisonment in the county jail or in the state prison. (Penal Code Section 631)
>
> Every person who, maliciously and without the consent of all parties to the communication, intercepts, receives, or assists in intercepting or receiving a communication transmitted between cellular radio telephones or between any cellular radio telephone and a landline telephone shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and

> imprisonment. If the person has been previously convicted of a violation of this section or Section 631, 632, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment. (Penal Code Section 632)

This law is, by far, the harshest passed by any state regarding warrantless searches and the use of wiretapping. Wiretapping, now including cellular phones, emails and instant messages, became illegal in the state of California and the punishment was a monetary fine, time in prison or both. The state government was making a strong statement with this law and stating clearly that they did not support the use of warrantless search or wiretapping of any kind. The California law generated a lot of press attention, not only in comparison to the other states, but also in general. Some of this attention has to do with the outlandish statements people in California were making about wiretapping and privacy rights. CNET News reported that three nonprofit groups believed that Gmail violated California's wiretapping law. A letter was sent to California Attorney General Bill Lockyer where the Electronic Privacy Information Center argued that Gmail needed to be shut down because it "represents an unprecedented invasion into the sanctity of private communications" (McCullagh 2004, 1). The alleged invasion is the service Gmail has where they provide one gigabyte of Web-based mail storage in exchange for context-sensitive advertising that appears on the right side of the screen. The Privacy Rights Clearinghouse and the World Privacy Forum, who also signed the letter, said "we believed that Gmail violates California's wiretapping laws, subjecting both Google and Gmail users to criminal and civil penalties" (McCullagh 2004, 2). People in California were clearly very concerned about the threat of wiretapping and the possibility of violating their privacy rights. Therefore, the state government of California was reacting

to the people's concerns and updating their wiretapping laws to include all forms of communications, with the most important and controversial being cell phones.

Colorado, a state that has had a Democratic governor since 2007 and a fully Democratic legislature from 2004 to 2010, passed laws regarding the legality of wiretapping. According to Colorado law,

> (1) Any person not a sender or intended receiver of a telephone or telegraph communication commits wiretapping if he:
> (a) Knowingly overhears, reads, takes, copies, or records a telephone, telegraph, or electronic communication without the consent of either a sender or a receiver thereof or attempts to do so; or
> (b) Intentionally overhears, reads, takes, copies, or records a telephone, telegraph, or electronic communication for the purpose of committing or aiding or abetting the commission of an unlawful act; or
> (c) Knowingly uses for any purpose or discloses to any person the contents of any such communication, or attempts to do so, while knowing or having reason to know the information was obtained in violation of this section; or
> (d) Knowingly taps or makes any connection with any telephone or telegraph line, wire, cable, or instrument belonging to another or with any electronic, mechanical, or other device belonging to another or installs any device whether connected or not which permits the interception of messages; or
> (f) Knowingly uses any apparatus to unlawfully do, or cause to be done, any act prohibited by this section or aids, authorizes, agrees with, employs, permits, or intentionally conspires with any person to violate the provisions of this section (Colorado Statute §18-9-303).

In the state of Colorado, wiretapping is a class six felony, except if the wiretapping involves a cordless phone, and then it is a class one misdemeanor. Colorado's law makes it very clear that the state does not tolerate any form of wiretapping or intentional eavesdropping. Colorado does not permit wiretapping, even with a warrant. This is a bold statement, especially considering that wiretapping can be used effectively in police situations. Colorado, as mentioned previously, does make wiretapping a felony, but it has one exception, with the cordless phone. The state government has declared this type of

wiretapping to be a misdemeanor and not a felony. This is an interesting statement considering cordless phones are part of the new debate in 2008.

Illinois, a state that has been run by the Democratic Party, in both the legislature and the governorship, since 2003, has one of the strictest laws concerning eavesdropping and wiretapping out of all the states. The Illinois legislation makes it against the law to use any eavesdropping device to record a phone call or any conversation without the consent of all parties involved. This includes both private and public places. The punishment is harsh; it can be up to fifteen years in prison. This law was put into effect in order to protect the rights of all citizens of Illinois. It was created to ensure that people's privacy rights were not violated. However, in this state, the law has been abused by police officers that use it against citizens to unfairly arrest them. This law has created much controversy and a lot of problems in the state of Illinois. Many believe that the law is not only unfair, but also unconstitutional under the United States Constitution. Tiawanda Moore, a twenty-one year old woman who was acquitted in 2001 of violating the eavesdropping law after recording Chicago Police officers discouraging her from filing a complaint alleging that another officer had touched her inappropriately, filled a federal suit against the city. Moore claims that the eavesdropping law "specifically exempts individuals who record police officers under reasonable suspicion that another party to the conversation is committing, is about to commit a crime which a recording would provide evidence" (Huffington Post 2012). Moore spent over two weeks in Cook County Jail, even though the police officer she recorded had committed a crime and abused his power as a police officer. As of January 2012, Illinois Representative Elaine Nekritz (Democrat from Naperville) introduced a bill that would reverse the law. She

spoke on the issue, "I believe the existing statue is a significant intrusion…so with the prosecutions and the court cases that have been reported about, it just seemed that there is a problem in need of a swift solution" (Second City Cop 2012). This demonstrates that even government members are concerned about this provision and that they believe the law needs to be amended. In addition, the American Civil Liberties of Illinois has actually challenged the law as unconstitutional, but no changes have been made as of the present. However, it is clear that not all people agree with this view. In September of 2011, United States 7th Circuit Judge Richard Posner said that, "news of the law being repealed or even weakened would cause gang members, snooping bloggers and reporters to rejoice" (Huffington Post 2012). Clearly, the interested parties on the issue in the state of Illinois are very split on the issue of eavesdropping and wiretapping.

Iowa, a state that had a Democratic governor from 1999 to 2010 and a fully Democratic Legislature until 2010, passed laws regarding warrantless wiretapping. Under Iowa law, "any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor" (Iowa Code § 727.8). Iowa made the use of warrantless wiretapping a misdemeanor by law, and this includes the federal government's wiretapping people's phones for the sake of national security, which was explicitly stated in the state statute. Iowa did not support warrantless wiretapping of any kind, which included both landlines and cellular devices.

Maine, a state that was fully Democratic until the 2010 election, passed severe laws dealing with the issue of warrantless wiretaps. Maine made the interception of wire

and oral communication a Class C crime under their state criminal code. Class C crimes in the state of Maine are punishable by up to five years in prison and a five thousand dollar fine. An interceptor is classified as "someone other than the sender or receiver of a communication who is not in the range of "normal unaided hearing" and has not been given the authority to hear or record the communication by a sender or receiver"(Me. Rev. Stat. Ann. Tit. 15, § 710). An interceptor can basically be classified as any third party not in hearing distance that has not been given authority to listen into the conversation by both parties. Any type of wiretapping under the Maine state government was a crime and was punishable by law.

Michigan, a state that was fully Democratic during the time period of 2003 to 2010, passed legislation regarding eavesdropping and wiretapping. The law stated that "any person who is present or who is not present during a private conversation and who willfully uses any device to eavesdrop upon the conversation without the consent of all parties thereto, or who knowingly aids, employs or procures another person to do the same in violation of this section, is guilty of a felony punishable by imprisonment in a state prison for not more than 2 years or by a fine of not more than $2,000.00, or both" (MCL § 750.539c).

New Jersey, a state that had a Democratic governor from 2002 to 2009, and a Democratic legislature since 2004, passed laws regarding the legality of wiretapping. Under New Jersey law, a person is violating the law if they:

> a. Purposely intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication; or
> b. Purposely discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or

> c. Purposely uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication (N.J. Stat. § 2A:156A-3)

Anyone in violation of this law is guilty of a crime of the third degree. The state wants to be clear that wiretapping in most circumstances is a serious crime and will be punishable under the law. New Jersey, however, had several provisions where wiretapping, warrantless or with a warrant, was allowed. Under New Jersey law, a person may intercept a wire or electronic communication if:

> (1) the owner or operator of the computer or other device authorizes the interception of the computer trespasser's wire or electronic communications on the computer;
> (2) the person acting under color of law is lawfully engaged in an investigation;
> (3) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's wire or electronic communications will be relevant to the investigation; and
> (4) such interception does not acquire communications other than those transmitted to or from the computer trespasser.
> b. For purposes of this section, "computer trespasser" means a person who accesses a computer or any other device with Internet capability without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the computer or other device. The term "computer trespasser" does not include a person known by the owner or operator of the computer or other device with Internet capability to have an existing contractual relationship with the owner or operator of the computer or other device for access to all or part of the computer or other device (N.J. Stat. § 2A:156A-3)

There are certain circumstances where New Jersey will allow wiretapping, either with a warrant or warrantless. These situations have to do with either lawfully being involved in an investigation or intercepting the communications of a computer trespasser. The state of New Jersey believes that computer trespassers do not have an expectation of privacy and therefore, wiretapping their electronic communications does not violate their First and Fourth Amendment rights.

North Carolina, a state that has had a Democratic governor since 1993 and a Democratic legislature from 2005 to 2010, passed an interesting law regarding wiretapping. Many states that have been examined throughout this chapter require that consent of both parties for the use of legal wiretapping or eavesdropping. However, in the state of North Carolina, only one parties needs to consent in order to make it legal. While, the penalties for illegal wiretapping are still harsh in this state, the "one-party rule" makes it easier to achieve legal wiretapping. The North Carolina law has many rules and exception to it, making it one of the more complicated and complex laws out of all of the wiretapping legislation. Under their law, the interception and disclosure of all types of communications prohibited:

> (a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if, without the consent of at least one party to the communication, the person:
> (1) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.
> (2) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
> a. The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communications; or
> b. The device transmits communications by radio, or interferes with the transmission of such communications.
> (3) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through violation of this Article; or
> (4) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Article (N.C. Gen. Stat. § 15A-287)

All of these actions are illegal, if committed without the consent of at least one of the parties involved. The person committing the crime would be guilty of a Class H felony, which is a stronger punishment than some of the states, which made it a misdemeanor. A

Class H felony in the state of North Carolina is punishable for up to thirty months in prison and a fine of an undetermined amount. Although, the state of North Carolina has many rules and stipulations regarding the illegality of wiretapping and eavesdropping, the state also laid out many situations in which wiretapping is legal. It is not unlawful for any person to:

> (1) Intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;
> (2) Intercept any radio communication which is transmitted:
> a. For use by the general public, or that relates to ships, aircraft, vehicles, or persons in distress;
> b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communication system, including police and fire, readily available to the general public;
> (d) It is not unlawful under this Article for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.
> (e) Any person who, as a result of the person's official position or employment, has obtained knowledge of the contents of any wire, oral, or electronic communication lawfully intercepted pursuant to an electronic surveillance order or of the pendency or existence of or implementation of an electronic surveillance order who shall knowingly and willfully disclose such information for the purpose of hindering or thwarting any investigation or prosecution relating to the subject matter of the electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as shall be required or allowed by law, shall be guilty of a Class G felony. (N.C. Gen. Stat. § 15A-287)

While, North Carolina has made it clear that they do not approve of warrantless wiretapping, they are aware that there are situations that warrant using them. They are not making them fully illegal, instead the state makes it clear in what circumstances wiretapping is legal and in what circumstances it is classified as a felony.

<u>Democratic Legislature and Republican Governorship:</u>

These states during this specific time period had a state legislature controlled by the Democrat Party and a governor from the Republican Party. There were two states, Connecticut and Hawaii, with this breakdown that passed legislation dealing with warrantless searches.

Findings:

Connecticut, a state that had a Republican governor from 1995 to 2010 and a Democratic legislature for most of its history, passed some very specific laws regarding eavesdropping and wiretapping. The Connecticut statute stated that:

> No person shall use any instrument, device or equipment to record an oral private telephonic communication unless the use of such instrument, device or equipment (1) is preceded by consent of all parties to the communication and such prior consent either is obtained in writing or is part of, and obtained at the start of, the recording, or (2) is preceded by verbal notification which is recorded at the beginning and is part of the communication by the recording party, or (3) is accompanied by an automatic tone warning device which automatically produces a distinct signal that is repeated at intervals of approximately fifteen seconds during the communication while such instrument, device or equipment is in use (Conn. Gen. Stat. § 52-570d)

While, this provision seems quite simple and uncomplicated compared to some of the other states, Connecticut legislation has many exceptions to the law. The provisions of the section above do not apply to:

> (1) Any federal, state or local criminal law enforcement official who in the lawful performance of his duties records telephonic communications;
> (2) Any officer, employee or agent of a public or private safety agency, as defined in section 28-25, who in the lawful performance of his duties records telephonic communications of an emergency nature;
> (3) Any person who, as the recipient of a telephonic communication which conveys threats of extortion, bodily harm or other unlawful requests or demands, records such telephonic communication;
> (4) Any person who, as the recipient of a telephonic communication which occurs repeatedly or at an extremely inconvenient hour, records such telephonic communication;

> (5) Any officer, employee or agent of any communication common carrier who in the lawful performance of his duties records telephonic communications or provides facilities to an investigative officer or criminal law enforcement official authorized pursuant to chapter 959a to intercept a wire communication;
> (6) Any officer, employee or agent of a Federal Communications Commission licensed broadcast station who records a telephonic communication solely for broadcast over the air;
> (7) Any officer, employee or agent of the United States Secret Service who records telephonic communications which concern the safety and security of the President of the United States, members of his immediate family or the White House and its grounds; and
> (8) Any officer, employee or agent of a Federal Communications Commission broadcast licensee who records a telephonic communication as part of a broadcast network or cooperative programming effort solely for broadcast over the air by a licensed broadcast station. (Conn. Gen. Stat. § 52-570d)

Connecticut, lays out many situations and scenarios that allow wiretapping. Many states have the same provisions for the ways that wiretapping is legal, however, Connecticut has a few that are different than the rest. For example, the allowance of wiretapping for people that are being harassed through phone conversations is a special provision for this state. Although, this provision does not specifically deal with police authority, it does demonstrate the differences in wiretapping provisions across the states. These differences are important to note because they can cause confusion among the people and can also become a problem for the federal government for implementation purposes.

Hawaii, a state that Republican governor from 2003 to 2010 and Democratic legislature for most of its history, passed laws regarding eavesdropping and wiretapping. The Hawaii statute made it illegal to "intentionally intercept, attempt to intercept or have someone else intercept any wire, electronic or oral communication through the use of a device" (HRSS 803-41). The legal way a person can intercept communication is when the person is part of the conversation or one of the parties consents to the interception. The only exception to this rule is if the communication is intercepted for the purpose of

committing a criminal or wrongful act. The Hawaii statute specifically covers cellular telephone communications, however, the radio portions of cordless telephone communications are not protected. Violation of any of the above laws is a class C felony and is punishable by up to five years in prison and a fine of ten thousand dollars.

Mixed Legislature and Democratic Governorship:

These states during this specific time period had a state legislature that was controlled by both parties. The Democrat Party and the Republican Party each controlled one of the houses. These two states, New York and Tennessee, also had a governor from the Democrat Party during this time.

Findings:

New York, a state that has had a Democratic governor since 2007 and a legislature that has been split between parties for the majority of its history, passed a complex law dealing with eavesdropping and wiretapping. Under New York law, there are several provisions and rules when dealing with wiretapping and surveillance of devices:

> 1. An eavesdropping or video surveillance warrant must be executed according to its terms by a law enforcement officer who is a member of the law enforcement agency authorized in the warrant to intercept the communications or conduct the video surveillance.
> 2. Upon termination of the authorization in the warrant, eavesdropping or video surveillance must cease and as soon as practicable thereafter any device installed for such purpose either must be removed or must be permanently inactivated as soon as practicable by any means approved by the issuing justice. Entry upon a private place or premise for the removal or permanent inactivation of such device is deemed to be authorized by the warrant.
> 3. The contents of any communication intercepted or of any observation made by any means authorized by this article must, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any such communication or observation must be done in such way as will protect the recording from editing or other alterations.
> 4. In the event an intercepted communication is in a code or foreign language, and the services of an expert in that foreign language or code cannot reasonably

> be obtained during the interception period, where the warrant so authorizes and in a manner specified therein, the minimization required by subdivision seven of section 700.30 of this article may be accomplished as soon as practicable after such interception.
> 5. A good faith reliance by a provider of a wire or electronic communication service upon the validity of a court order issued pursuant to this article is a complete defense against any civil cause of action or criminal action based solely on a failure to comply with this article (NY CLS CPL § 700.35)

New York law establishes the right way to lawfully wiretapping electronic communications. Wiretapping and eavesdropping are allowed, but only when these steps are followed correctly. Therefore, it is evident that New York State understands the importance of wiretapping, but realizes that it can be abused and people's civil rights and civil liberties need to be protected. In addition, New York lays out the rules for the right way to approach temporary authorization for eavesdropping or video surveillance in emergency situations:

> 1. In an emergency situation where imminent danger of death or serious physical injury exists and, under the circumstances, it is impractical for the applicant to prepare a written application without risk of such death or injury occurring, an application for an eavesdropping or video surveillance warrant need not be in writing but may be communicated to a justice by telephone, radio or other means of electronic communication.
> 2. Where an oral application for an eavesdropping or video surveillance warrant is made, the applicant therefore must identify himself and the purpose of his communication or observation, after being sworn as provided in subdivision three of this section. The application must meet the requirements of section 700.20 of this article and provide the same allegations of fact required by that section.
> 4. Upon oral application, the court may, where it finds that an emergency situation exists and that the requirements of section 700.15 of this article have been satisfied, issue a temporary eavesdropping or video surveillance warrant authorizing eavesdropping or video surveillance for a period not to exceed twenty-four hours. Such eavesdropping or video surveillance warrant shall be executed in the manner prescribed by this article. The twenty-four hour period may not be extended nor may a temporary warrant be renewed except by written application in conformity with the requirements of this article. (NY CLS CPL § 700.21)

New York believes that there are certain circumstances where warrantless or modified warrants are necessary. This law lays out the process getting an oral warrant and this state understands that these situations will come up and they want to be prepared so that the law protects everyone involved.

Tennessee, a state that had a Democratic governor from 2003 to 2010, and a state legislature in which each party has controlled part of it for the last decade, passed a law regarding wiretapping and electronic surveillance. A person commits an offense who:

> (A) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
> (B) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
> (i) The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
> (ii) The device transmits communications by radio, or interferes with the transmission of the communication; (Tenn. Code Ann. § 39-13-601)

Tennessee believes that wiretapping is illegal and that any person who wiretaps has committing an offense under their state law. Tennessee, however, does have several provisions where wiretapping with a warrant is allowed:

> (2) Notwithstanding any other law, providers of wire or electronic communications service, their officers, employees, or agents, landlords, custodians, or other persons are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications, if the provider, its officers, employees, or agents, landlord, custodian or other specified person has been provided with a court order signed by the authorizing judge of competent jurisdiction that:
> (A) Directs the assistance;
> (B) Sets forth a period of time during which the provision of the information, facilities, or technical assistance is authorized; and
> (C) Specifies the information, facilities, or technical assistance required.
> (4) It is lawful under §§ 39-13-601 -- 39-13-603 and title 40, chapter 6, part 3 for a person acting under the color of law to intercept a wire, oral or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

> (7) It is lawful, unless otherwise prohibited by state or federal law, for any person:
>
> (A) To intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;
>
> (B) To intercept any radio communication that is transmitted by:
>
> (i) Any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;
>
> (ii) Any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;
>
> (iii) Any station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services (Tenn. Code Ann. § 39-13-601)

Tennessee allows wiretapping to occur with a warrant under several circumstances. Most importantly, the state government does not allow wiretapping without a warrant. All circumstances must be done within the confines of the law. However, Tennessee does allow wiretapping with a warrant as long as one party has consented to it. In addition, there are several other circumstances where wiretapping is allowed, in which no parties need to consent as long as a warrant has been requested and approved by the government.

Conclusion:

While, there is definitely more of a relationship between partisan-control of the states and the type of legislation passed concerning wiretapping, both warrantless and with a warrant, in those states, there is still some inconsistencies. Out of the 12 states with either fully Democratic or Republican controlled governments, 11 of them passed legislation consistent with the ideals and goals of their political party. One state, Colorado, went against the hypothesis by passing legislation inconsistent to the partisanship of the state. In addition, the states with mixed government, four in total, also passed inconsistent legislation. For example, two states, Connecticut and Hawaii passed legislation with opposite intensions. However, the breakdown of the partisan-control in

those two states was exactly the same. The Democratic Party controlled the legislature and the Republican Party controlled the state legislature. Another example is the two states, New York and Tennessee. Those two states had the same partisan-control in their government and yet the type of legislation passed was not the same. Those two states had a mixed legislature and a Democratic governor. Yet, New York passed pro-wiretapping/eavesdropping laws and Tennessee passed anti-wiretapping legislation. Therefore, although there is much more consistency with the hypothesis in this wave of legislation, there is still some inconsistency in the relationship between the partisanship/ideology and the legislative decisions of the state governments.

In addition, there is a lot of variance in the type of legislation passed by the state governments. States on the same side of the issue still pass legislation that is unique to that state. This demonstrates that even though partisan-control can be an important factor in the decision making process, it is definitely not the only elements. There are other factors that influence the state governments to pass a certain type of legislative decision. It is clear that while partisanship of both the legislature and the governorship can sway the passage of legislation, it is certain not the only piece of the puzzle.

Chapter 4: Comparison of the Two Periods of Legislation

The passage of the USA Patriot Act in 2002 resulted in twenty-eight states passing anti-Patriot Act legislation between the years of 2002 to 2006. These states range in their geographical location, population size, and most importantly, partisan-control and ideology of the citizenry. The hypothesis that Democratic states will pass legislation that protects its people's civil rights and civil liberties and limit police authority, while Republican states will be more willing to forgo some civil rights and civil liberties for the sake of national security and to diminish the threat of terrorism, did not hold true for this concentration of state legislation. It was revealed that the partisan-control of the governorship and the state legislature, as well the ideology of the citizenry does not affect the type of legislation passed dealing with Fourth Amendment concerns after the passage of the USA Patriot Act in 2001. The second wave of legislation, which dealt with the issue of wiretapping, both warrantless and with a warrant, resulted in another explosion of state legislation. Seventeen states passed legislation regarding wiretapping and eavesdropping. The same hypothesis was presented for this case and it was revealed that there was more truth here than with the previous cluster of legislation. The Democratic states passed anti-wiretapping laws and the Republican states passed pro-wiretapping laws in this case. Unlike the previous set of legislation, the partisanship of the states matched up with the type of legislation passed in that respective state. The issue that now emerges is the relationship between the two waves of legislation. The following questions must be considered in order to fully understand the relationship between the two periods of legislation: Which states passed legislation in the immediate post-Patriot Act period (2002-2006) and which states passed legislation in the period of 2008-present concerning

wiretapping/eavesdropping? Did the same states pass laws in the first time period and the second one; if not, why did states choose to pass legislation in only one specific issue? Did those states change partisan-control, ideology or the type of legislation passed? All of these questions are essential in the understanding of why states passed the legislation they did between 2002 and the present. The relationship between the two phases of legislation must be compared in order to better comprehend the dynamic between the federal government and the individual state governments.

Post-Patriot Act:

In the years following the federal passage of the USA Patriot Act, twenty-eight states passed legislation firmly stating the problems of the Patriot Act. The language and severity of these laws varied, but they all sent the same basic message. The Patriot Act was problematic for the United States and several of the provisions in it threatened the fundamental civil rights and civil liberties guaranteed under the Fourth Amendment of the United States Constitution. These twenty-eight states varied in the partisan-control of their state government. Seven states: Alaska, Connecticut, Idaho, Nevada, New Hampshire, Rhode Island and Utah, were controlled by the Republican Party, in both the governorship and the state legislature during the time that the anti-Patriot Act legislation was passed. Seven states: Delaware, Illinois, Maine, New Jersey, New Mexico, Oregon, and Washington, were controlled by the Democrat Party, in both the governorship and the state legislature during that time period. Thirteen states: Arizona, California, Colorado, Hawaii, Maryland, Massachusetts, Minnesota, Missouri, Montana, North Carolina, Tennessee, Wisconsin and Wyoming were controlled by some form of mixed government during the time that the anti-Patriot Act legislation was passed.

It is important to not only look at the twenty-eight states that passed anti-Patriot legislation, but to also examine the partisanship and the ideological breakdown of the citizenry of all fifty states. This creates a more clear and whole picture of the partisan-control of the states and how that specific characteristic affected the passage of legislation on the state level. During the time period of 2002 to 2006, there were twelve states that were completely controlled by the Democrat Party. Out of those twelve states, seven of them passed anti-Patriot Act legislation. This ends up revealing that fifty-eight percent of the Democratic states passed this type of legislation. For the Republican states, there were fourteen of them during this time, out of those fourteen, seven of the states passed legislation. The percentage for the Republican states is fifty percent, which is slightly lower than that of the Democratic states. Finally, there were twenty-four states that had a mixed government. Out of these twenty-four states, thirteen of them passed legislation. The percentage ends up being fifty-four percent, which is slightly lower than the Democratic states, but slightly higher than the Republican states. However, all three types of government have roughly the same percent. Each of the three scenarios has about half of the states passing anti-Patriot Act legislation. Therefore, not even states with the same partisan-control breakdown were acting in the same manner. Some were passing legislation, which others were not. In the period of 2002 to 2006, there was no consistency within the states in regards to anti-Patriot Act legislation.

In looking at the relationship between the two waves of legislation, it is important to note which states changed their partisan-control and which states did not during the time from the first wave to the second wave of legislation. In all fifty states, twenty-nine had the same partisan breakdown from the first wave to the second and twenty-one states

had some kind of change in the partisan-control of their state government. The states were pretty much split in whether a partisan-control shift occurred from the period of 2002 to 2006 and the time of 2008 to present. The states acted in several different ways. Some states, whether they changed partisan-control or not, did not pass legislation in either the first wave or the second wave. Some states that either did not shift partisan-control, passed legislation in one of the two waves. Other states that had the same partisan-control in both time periods passed legislation in both waves. There are two especially important groups of states. The first one is the states that shifted partisan-control in some way that also passed legislation in both waves. The second one is the states that shifted partisan-control and yet they only passed legislation in one of the waves. These two groups even more undermine the hypothesis that starts will pass legislation based on the ideology of its citizenry and the partisan-control of its state government. These states act in a mysterious fashion. The main question emerges as why did these states act differently in these two waves. If the government changed in a significant way, then the results make sense and follow the hypothesis to a smaller degree. However, if no governmental shift in terms of partisan-control occurred, then the driving force behind the actions and decisions of states passing legislation is mostly likely some other factor besides partisan-control and the ideology of its citizenry.

The two waves of legislation were close together in terms of both subject matter and time period. Both waves dealt with Fourth Amendment concerns and the issue of the federal government having too much control over its people. In addition, the second wave began only two years after the first one. Not much time elapsed between the two. However, there were several differences. The range of states varied, the type of

legislation was different and the outcome regarding the hypothesis was not consistent. In the first wave, all of the states passed anti-Patriot Act legislation. Not a single state passed legislation agreeing with the USA Patriot Act on the Fourth Amendment issues. In the second wave, some states passed anti-wiretapping laws, while others passed pro-wiretapping laws. The legislation among the states varied and individual states stance on the issue was quite different. It is clear that the reaction from the states on these two issues varied widely. Therefore, the hypothesis in which Democratic states will pass legislation diminishing police authority for sake of the people's civil rights and civil liberties, while Republican states will pass legislation to forgo certain civil rights and civil liberties for the sake of national security and to diminish the threat of terrorism, did not hold for the first wave of legislation, but did have more truth for the second wave. While, there were definitely some exceptions to this rule, it did mostly follow that states acted in a way consistent with the partisan-control of their state during the second wave of legislation.

The issues and concerns of the two waves were very similar. The legislation immediately following the passage of the USA Patriot Act specifically dealt with the problems of that piece of legislation and how those changes infringed and threatened the fundamental civil rights and civil liberties guaranteed under the Fourth Amendment of the United States Constitution. The second section of legislation, from 2008 to present, considered the issue of wiretapping, both warrantless and with a warrant, and whether new technology was threatening those fundamental rights and liberties of the people. Fourth Amendment concerns were at the root of the problem. The balance between the federal government and the people of the United States was being called into question.

Some government officials and legislatures believed that the federal government needed to given more power in certain circumstances, while others, such as the American Civil Liberties Union, thought that some rights and liberties should never be tampered with regardless of the circumstance. John McCain is one example of a person involved in the government that agrees with the argument that the government needs to be given more power in certain situations. He spoke to Fox News in 2007 about his strong belief in both the NSA Program and the Bush Administration. The American Civil Liberties Union is just organization that strongly believe that the people's civil rights and civil liberties are of the upmost importance for the United States. The group filed a lawsuit in 2009, which attempted to challenge the FISA Amendments Act. However, they were unsuccessful because a court judge accepted the government's argument that if one cannot prove they were the targets of electronic surveillance, they cannot sue over it.

The question of how far the federal government and the police should be allowed to go to protect the country became a central issue in both waves. In the first wave, it was specifically the certain sections of the USA Patriot Act that were called into question. Those sections were considered, by many, to be a violation of the United States Constitution and therefore, threatened those very basic rights and liberties promised to the people under that great doctrine. The second wave focused on the issue of wiretapping and eavesdropping, especially in the age of technology and electronic devices.

Comparison of the States:

States	2002-2006	2008-present
Alabama		
Alaska	Yes	
Arizona	Yes	

Arkansas		
California	Yes	Yes
Colorado	Yes	Yes
Connecticut	Yes	Yes
Delaware	Yes	
Florida		
Georgia		Yes
Hawaii	Yes	Yes
Idaho	Yes	
Illinois	Yes	Yes
Indiana		
Iowa		Yes
Kansas		
Kentucky		
Louisiana		
Maine	Yes	Yes
Maryland	Yes	
Massachusetts	Yes	
Michigan		Yes
Minnesota	Yes	
Mississippi		
Missouri	Yes	
Montana	Yes	
Nebraska		Yes
Nevada	Yes	
New Hampshire	Yes	
New Mexico	Yes	
New Jersey	Yes	Yes
New York		Yes
North Carolina	Yes	Yes
North Dakota		
Ohio		
Oklahoma		Yes
Oregon	Yes	
Pennsylvania		
Rhode Island	Yes	
South Carolina		Yes
South Dakota		
Tennessee	Yes	Yes
Texas		Yes
Utah	Yes	
Vermont	Yes	
Virginia		
Washington	Yes	
West Virginia		
Wisconsin	Yes	

Wyoming	Yes	

This chart shows the states that passed legislation dealing with the specific issue at hand (whether it be the actual USA Patriot Act provisions or the legality of wiretapping/eavesdropping with or without a warrant) in each of the respective time periods. The chart lists all of the states in alphabetical order in the first column. The second column reveals the states that passed anti-Patriot Act legislation in the time period of 2002 to 2006. The word yes signifies that the state did pass this type of legislation. The third column reveals the states that passed legislation regarding the issue of wiretapping/eavesdropping in the years of 2008 to present. Once again, the word yes demonstrates that the state did pass this type of legislation. This chart does not distinguish whether a state passed legislation supporting wiretapping/eavesdropping or passed laws against wiretapping/eavesdropping, it simply shows whether states did pass legislation on this topic of discussion.

This chart (further referred to as Chart One) helps to see the relationship between the two time periods. It shows which states passed legislation in the first time period, which state passed laws in the second, and which states overlapped for both. This is important information in order to answer the question of why certain states passed legislation and others did not. A chart is an easy and clear way of showing this data. Therefore with this chart, the trends and patterns can more easily be recognized and an answer to the questions can be more easily produced.

States	2002-2006	2008-present
Alaska	Republican	Mixed
Arizona	Mixed	Republican
California	Mixed	Democrat

Colorado	Mixed	Democrat
Connecticut	Republican	Democrat
Delaware	Democrat	Democrat
Georgia	Mixed	Republican
Hawaii	Mixed	Republican
Idaho	Republican	Republican
Illinois	Democrat	Democrat
Iowa	Democrat	Republican
Maine	Democrat	Republican
Maryland	Mixed	Democrat
Massachusetts	Mixed	Democrat
Michigan	Mixed	Democrat
Minnesota	Mixed	Mixed
Missouri	Mixed	Mixed
Montana	Mixed	Mixed
Nebraska	Republican	Mixed
Nevada	Republican	Mixed
New Hampshire	Republican	Mixed
New Mexico	Democrat	Democrat
New Jersey	Democrat	Democrat
New York	Mixed	Mixed
North Carolina	Mixed	Democrat
Oklahoma		Mixed
Oregon	Democrat	Mixed
Rhode Island	Republican	Mixed
South Carolina	Republican	Republican
Tennessee	Mixed	Mixed
Texas	Republican	Republican
Utah	Republican	Republican
Vermont	Mixed	Mixed
Washington	Democrat	Democrat

This chart (further referred to as Chart Two) shows the thirty-four states that passed legislation and their partisan-control (of the governorship and the state legislature) of that time period. Column one lists the states, in alphabetical order, that passed legislation in either one of the waves or both of the waves. Column two lists the partisan-control of the individual state during the time period of 2002 to 2006. Column three lists the partisan-control of the individual state during the period of 2008 to present. The

partisan-control represents both the governorship and the state legislature. If the state is considered to be "Democrat" in the last two columns, it means that the Democratic Party controlled both the legislature and the governorship. If the state is considered to be "Republican" in the last two columns, it means that the Republican Party controlled both the legislature and the governorship. If the state is considered to be "Mixed" in the last two columns, it could mean a variety of things. It could mean that different parties controlled the legislature and the governorship. On the other hand, it could also mean that the governorship or the state legislation changed party control during the specific time period. This chart reveals whether the individual states changed partisan-control or whether it stayed the same in the two time periods. This chart allows for a comparison between the states that did change partisan-control and the states that did not. This can help answer the question of why certain states passed legislation concerning one issue, but did not do the same for the other.

States	2002-2006	2008-present
California	Mixed	Democrat
Colorado	Mixed	Democrat
Connecticut	Republican	Republican
Hawaii	Mixed	Republican
Illinois	Democrat	Democrat
Maine	Democrat	Republican
New Jersey	Democrat	Democrat
North Carolina	Mixed	Mixed
Tennessee	Mixed	Mixed

This final chart shows the nine states that passed legislation during both time periods concerning the respective issue. Column one lists the nine states in alphabetical order. Column two lists the partisan-control of those individual states during the time that the anti-Patriot Act legislation was passed. Column three lists of the partisan-control of

those states during the time that the wiretapping/eavesdropping legislation was passed. This chart focuses on the nine states that passed legislation in both periods and it reveals which states changed their partisan-control and which states stayed the same.

Out of the twenty-eight states in the first wave and the sixteen states in the second wave, only nine states passed legislation concerning Fourth Amendment during both time periods. These nine states were: California, Connecticut, Colorado, Hawaii, Illinois, Maine, North Carolina, New Jersey and Tennessee. Five of the states had the same partisan-control during both time periods, while four of the states had some sort of shift in partisan-control in their state government. Illinois, Maine and New Jersey were fully controlled by the Democrat Party in both waves. No fully Republican state passed legislation during both time periods. Hawaii and Tennessee had mixed governments during both waves of legislation. Hawaii was Republican-controlled in legislature and Democratically-controlled in the governorship during the 2002 to 2006 time period, but in the second wave, Hawaii was Democratically-controlled in the legislature and controlled by the Republicans in the governorship. However, in both waves, this state passed legislation that protected the people's fundamental civil rights and civil liberties and placed restrictions on the police and their authority. Tennessee, the other mixed government state, had a Democratic legislature and a mixed governorship in the first wave and a mixed legislature with a Democratic governor during the second one. The type of legislation passed was the same in the state of Tennessee, despite the change in government control. Four states had a significant change in partisan-control during the two time periods. Colorado was a state with a mixed government (Republican governorship and Democratic legislature) during the first wave of legislation passed.

During the second wave, Colorado was fully Democratic in both the legislature and the governorship. However, despite the shift, the type of legislation was consistent during both time periods. Connecticut had a fully Republican government in immediate aftermath of the passage of the USA Patriot Act, however in 2008, the state had a mixed government, with a Democratic legislature and a Republican governorship. For this state, however, during the first wave, the legislation was anti-Patriot Act and aimed at protecting the rights and liberties of the people. In the second wave, the legislation supported wiretapping and promoted the intervention of police authority and power when needed. In this case, the shift in the partisan-control did affect the type of legislation passed in the state of Connecticut. However, even though the legislation did change with the shift in partisan-control, it did not shift in the desired way. In this case, a shift more to the liberal side did not correlate to legislation more focused on protecting the fundamental civil rights and civil liberties and containing the power of the police. Instead, as the Republicans controlled less of the Connecticut government, the legislation became more focused on allowing the police to have more power and more willing to restrict the right and liberties of the people for the sake of national security and to lessen the threat of terrorism. North Carolina, a state that has a mixed government (Democratic legislature and a mixed governorship) during the first wave of legislation and was fully Democratic in their government in the second wave, passed similar type of legislation in both time periods. Despite the change in government, the state of North Carolina passed legislation that was similar in nature. The final state, California, had a mixed government Republican legislature and Democratic governorship) during the first wave of legislation, and a fully Democratic government during the second wave. The California state

government passed similar legislation during those two time periods. The change in government did not change the ideals and goals that are most important to that particular state. The ways in which the states act are incredibly important to understanding the relationship between the state governments and the federal government.

Colorado, one of the four states that passed legislation in both waves discussed previously, did have a slight shift in government between the two time periods. However, the only change to occur was that the state went from having a Republican governor to a Democratic governor. The partisan-control of the legislature stayed the same and therefore, it follows that the type of legislation would be similar in both waves. The crucial point for Colorado was early. In October of 2007, the American Civil Liberties Union (ACLU) accused administrators at Boulder Valley's Monarch High School of "committing felonies by seizing students' cell phones, reading their text messages, and making transcriptions to place in students' permanent files"(Christ 2011, 3). Rosemary Harris Lytle, a spokesperson for Colorado's branch of the ACLU went on to affirm that these students have legally protected rights and that this seizure of cell phones was infringing of those fundamental rights. This controversy sparked Colorado's interest and devotion to the issue of wiretapping and was undoubtedly a big factor in the passage of such strong and harsh wiretap and eavesdropping laws.

Connecticut, a state that passed Fourth Amendment legislation during both waves of legislation, shows quite a bit of diversity in the type of laws passed, even on issues that are quite similar in nature. The 2001 controversial passing of the USA Patriot Act created the explosion of anti-Patriot Act legislation from twenty-eight different states. Connecticut was one of the states to do so. Once again, in 2008, when the problem of

wiretapping came to the forefront as a severe and important issue, Connecticut spoke once again. However, this time, the state of Connecticut acted differently. The legislation passed by this state was more flexible in giving the police more rights and privileges. The two sets of legislation had very different goals. The former was meant to protect the people and to remain loyal to the basic civil rights and civil liberties promised in the United States Constitution. The latter was meant to give the police more power and to restrict the people in certain necessary situations. It is important to reveal why the state emphasized different aspects in the laws. In this situation, the partisan-control of the government did shift. Therefore, it is essential to discover whether the partisan-control shift was a main reason or if there was another driving force that changed the ways of the state government officials of Connecticut. In this case, partisan-control did not appear to the main factor in the shift towards a government that allowed more police power in exchange for forgoing some of the people's civil rights and civil liberties for the sake of a bigger national cause. Several One possible explanation for the main cause for this shift, at least in the state of Connecticut could be to be the recent explosion of gambling. In 2009, Connecticut faced a serious gambling ring problem. It appeared to the both the federal and state government that illegal gambling was occurring all over the state of Connecticut. A yearlong investigation took place and in 2010, several illegal gambling rings, both in sports and online, were exposed. In this yearlong investigation, hundreds of wiretaps were used and undoubtedly, the most crucial part of the investigation of this illegal activity. The most famous of these busts was when the Connecticut state police arrested thirteen people, including a radio host, for their involvement in an illegal sports betting rings (Harford Courant 2010, 3). The exposure of this crime exploded in the

media. People nationwide knew about the gambling ring in Connecticut. The state government of Connecticut not only realized that gambling was a huge problem, but also realized that wiretapping can be incredibly helpful in certain circumstances. After this major gambling ring bust occurred, the government of Connecticut amended their state wiretapping laws to make them more specific and clearer to the general public.

North Carolina passed legislation in both waves and there was a change in partisan-control between the two time periods. However, like the situation in Colorado, the only shift that occurred was the governorship. The legislature remained fully controlled by the Democrat Party. Therefore, it follows that the legislation passed in both time periods would be relatively similar in its goals and focus. One of the possible main forces behind the tightening of North Carolina's wiretapping laws was the exposure of a Division of Motor Vehicles (DMV) scandal regarding illegal wiretapping. The federal government, specifically the FBI, investigated an employee by the name of George Tatum, who had a special phone in his office that allowed him to listen in on the calls of his employees without their knowledge (Associated Press 2012). After this crime was revealed, North Carolina became more concerned with the issue of wiretapping and eavesdropping. Following this exposure, the state government tightened their laws and made them more comprehensive in order to better protect the people of North Carolina.

California, a state that passed legislation in both waves and did experience a shift in partisan-control, is slightly different from the rest of the states. California is the only state that experienced a change in the legislature during the two time periods. In the 2002 to 2006 period, the Republican Party controlled the legislature, but in the 2008 to present time period, the Democratic Party controlled the legislature. However, considering the

shift went from less Democratically controlled to more Democratically controlled, the legislation passed is in line with the rest of the states. It has already been shown that partisan-control did not affect states in the first wave, but it did affect states in the second. Therefore, it would follow that California would pass anti wiretapping laws during the 2008 to present time period. In 2010, California amended their wiretapping laws in an important way. The law was changed to add the Internet, email, text message and cell phones. Previously, the law only protected landlines and all other technology was open to any form of wiretapping and eavesdropping. California strengthened their laws and included new forms of communication in order to better accommodate its people.

There were several states that only passed legislation in one of the two waves. Twenty-five states were not consistent and only address Fourth Amendment concerns in either the first or the second time period. The following states only passed legislation in the first wave: Oregon, Alaska, Nevada, New Hampshire, Rhode Island, Arizona, Maryland, Massachusetts, Minnesota, Missouri, Montana, Wisconsin, Wyoming, Delaware, New Mexico, Washington, Idaho and Utah. The remaining states only passed laws in the second wave: Georgia, New York, Michigan, Iowa, Nebraska, South Carolina, Texas and Maine. The question emerges as to why these states passed legislation in one wave, but not another. The legislation in both time periods is closely related. They both have to do with the relationship between the government and the fundamental civil liberties guaranteed under the United States Constitution. Former FBI Director William Sessions said, "The balance between civil liberties and sufficient intelligence gathering is a difficult one…We need to be sure that we provide an effective means to deal with criminality…At the same time, we need to be sure that we are mindful

of the Constitution, mindful of privacy considerations, but also meet the technological needs we have to gather intelligence"(Mayeux 2004). Sessions' words describe the tension perfectly. This is the fundamental problem faced by the states in both sets of legislation. However, many of the states only passed legislation during one of the waves. A shift in partisan-control cannot explain these results. As some states have no shift, some shift from Republican to Democrat, while others shift in the opposite direction, Democrat to Republican. The only factor that is consistent among the states that did not pass legislation in the first wave, but did do so in the second, is that in each of those seven states, there was an event or a situation that triggered the need for an updated wiretapping law in the respective state.

All seven of the states that only passed legislation in the second wave had some sort of big event or situation that most likely contributed to the passage of new legislation regarding wiretapping and eavesdropping. In the case of Michigan, Maine and Texas, all states that are against the use of wiretapping, it was pivotal court cases and successful arrests, which created the need for a revised wiretapping law. Georgia, New York, Nebraska, South Carolina and Texas, the five states that support the use of wiretapping, all had tremendous success in using wiretapping to convict criminals and therefore revisions in their respective wiretapping laws were necessary. It appears that court cases and arrests by the police created situations that allowed for the respective state to make a decision regarding wiretapping and eavesdropping. It was not partisan-control that changed the way states acted; instead it was the judicial branch and the police that affected the legislative decisions of these state governments.

The conclusion that the judicial branch and the police as an organization affected the legislative decisions of these state governments shows the importance of the relationships between these three institutions. It is clear that these three institutions, the judicial branch, the police, and the legislative branch are interconnected. The legislative branch does not make decisions independently and instead is impacted by several outside factors. The legislature does not blindly follow the ideals and trends of its political party. Instead, other factors are influential in the decision-making process. The relationship between the ideology/partisanship and the legislative decisions of the state governments is not as strong as previously believed. While, it can be a factor, it is apparent that other elements are just as important to the legislative decisions of the state governments.

Chapter 5: Conclusion

The passage of the USA Patriot Act in 2001, following the attacks on the World Trade Center in New York City on September 11th, created an explosion of anti-Patriot Act legislation by twenty-eight states. These states passed legislation not only disagreeing with the amendments concerning the Fourth Amendment but also declaring the amendments to be a threat to the people's civil rights and civil liberties and even, in certain circumstances, stating that they were unconstitutional under the United States federal Constitution. From 2001 until 2006, individual states expressed their dismay, disgust and fear of the provisions laid out in the USA Patriot Act. These twenty-eight states believed change was necessary and acted on it independently of the federal government. These states varied in both ideology of the citizenry as well as the partisan-control of the governorship and the state legislature. Some of the states were fully controlled by the Democratic Party, while some were fully controlled by the Republican Party and some form of mixed government controlled others. However, the results were the same regardless of the partisanship of the state. All twenty-eight states passed the same type of legislation. The presented hypothesis that states pass legislation reflective of values of the political parties in control in the state legislature and the governorship proved to be false for the legislation passed in the immediate post-Patriot Act climate. The assumption that states would pass laws consistent with the goals and ideals of the partisanship of their state government as not true for this set of legislation. Republican-controlled states did not pass legislation that expanded the authority of the police and put limitations on the people's fundamental civil rights and civil liberties for the sake of national security. Instead, Republican states acted in the same manner as the Democratic states. Each of the twenty-eight states pushed against the USA Patriot Act and declared it

to be an infringement of the people's basic civil rights and civil liberties protected under the United States Constitution. Some of the states went even further to assert that the specific sections of the USA Patriot Act were unconstitutional and immediate change was necessary to protect the people of the United States.

The critical question that emerges from the exploration of these resolutions is why states of varied partisanship and diverse ideology all passed similar legislation regarding the issues of the Fourth Amendment in the USA Patriot Act of 2001. While, the legislation did vary to some extent, the desired result was the same: to change the USA Patriot Act to better suit the people of the United States and their inherent rights and liberties. These states differed from fully controlled by the Republican Party to every type of mixed government imaginable all the way to fully controlled by the Democratic Party. However, a consistency or an agreement between the two political parties formed to a certain extent and they both appeared to want the same results. Therefore, there are two possibilities for the peculiar outcome. First, this group of legislation following the passage of the USA Patriot Act could be an exception to the rule. The rule, in question, is that the Republicans vote for legislation that increases police power and Democrats vote for laws that oppose police authority. It may be that the political climate in which these amendments were created allowed for the passage of them without thoroughly examining the possible ramifications. Another possibility is the extreme jump in support of President Bush by the people of the United States in the period immediately following the September 11th attacks in New York City. It is important to assess and examine all of these options in order to try to understand the driving forces behind the decisions of these individual states.

The USA Patriot Act was passed quickly, in a period of worry and distress. The United States had a devastating attack on its own soil. The terror and fear in the United States after the attacks on the World Trade Center create a situation where the federal government could act in extreme ways without any criticism from the people. This attack was unprecedented and therefore, the people put their full faith and trust into the federal government. The Bush Administration believed national security was of the upmost importance in the immediate aftermath of the attacks on the World Trade Center on September 11th 2001. The federal government was largely concerned with swiftly making changes that would protect the United States from further international terrorist threats. People simply agreed that the USA Patriot Act was not only necessary, but also the right course of action. The USA Patriot Act was passed within a month after the attacks. The legislation passed in its first attempt, with the House of Representative passing it 357 to 66 and the Senate passing it 98 to 1. However, the quick and almost seamless passage of the Act is, to many, the reason there is bipartisan support for changes to it. Harry F. Tepker, scholar at the University of Oklahoma discusses how the "push for quick passage avoided discussion of controversial measures" (2002, 3). He goes on to assert that the "truncated legislative process avoided real, needed debate of how effectively to improve the nation's ability not only to collect intelligence, but also to efficiently and wisely synthesize collected data into useful information" (Tepker 2002, 4). Therefore, it is evident, that this piece of legislation was passed without careful examination and serious debate.

Related to the quick passage of the USA Patriot Act in 2001, was the sizeable jump in support of Bush and his administration in the post-September 11th climate.

Immediately following the attacks on the World Trade Center, the approval ratings for President Bush increased by almost forty percent (Time/CNN Poll). His approval rate shot up to eighty-six percent and peaked in late September of 2001 at ninety percent, which was the "highest approval rating recorded for any president by the Gallup Organization". The Gallup Organization has been conducting polls since Franklin D. Roosevelt was in the White House. These polls revealed that the United States public not only approved of President Bush, but they also approved of the decisions he was making. According to a Gallup Poll, the trust in the government to "do what is right" went from forty-three percent in the summer of 2001 to over sixty percent immediately after the September 11th attacks (Moore 2002, 5). The effect of the overwhelming support by the people is important to note. The tremendous support made it politically difficult for Congress to question the President's decisions or policies. Therefore, many members of Congress may have decided to vote for the USA Patriot Act regardless of their own views on the piece of legislation. This would then explain why down the road governments of varied partisanship and ideology passed similar legislation. During that specific time, it was more difficult to disagree with the USA Patriot Act, however, as the years passed and the approval for Bush decreased, it was more plausible to fight against the Patriot Act.

Both Democrats and Republicans that now want to revise the USA Patriot Act believe that these provisions appeared to be necessary in the immediate aftermath of the attacks on September 11th, but the quick passage of them did not allow for thorough examination of them. Representative Barney Frank, a Democrat from Massachusetts and Senator Robert Byrd, a Democrat from West Virginia have been especially critical of the

procedure in which the USA Patriot Act was originally passed. Both believe that not enough time was allocated for the discussion of the provisions in this piece of legislation. These government officials were not necessarily against the Patriot Act instead they thought that the manner in which it was passed did not allow for careful and thorough examination of its provisions. Byrd, in early October 2011, spoke on the Senate floor: "Our responsibility as senators is to carefully consider and fully debate major policy matters, to air all sides of the issue, to act only after full deliberation…Yes, we want to respond quickly to urgent needs, but a speedy response should be used as an excuse to trample full and free debate" (Congressional Record 2001, 35). Several Republicans follow the same train of thought as these two Democratic government officials. Larry Craig of Idaho and Lisa Murkowski of Alaska joined the fight to amend the original Patriot Act, originally supported the USA Patriot Act, but after the provisions were put into effect, they both changed their minds and beginning in 2003, they supported amending the Act. With both examples, it is clear that the passage of the USA Patriot Act was rushed and therefore, people in both the House and the Senate, voted for it without fully understanding not only the Act itself but also the potential consequences of it.

A group of Republicans, in the years following, felt that some of the provisions were too strong, even for Republican standards and they believed the culprit was the political climate that allowed for the passage of the USA Patriot Act. Many of the Republicans that support immediate change to the USA Patriot Act are not against the actual act, but instead, believe that its current state (before the revisions in 2006) is not acceptable. State Representative Janet Miller, a Republican from Boise, Idaho stated, "The Patriot Act was a very good idea. I think they just wrote it so hastily that they

maybe went more in-depth than they should have done" (The Spokesman Review 2004). The disapproval of the Patriot Act, for numerous people, did not come from the basic idea of the legislation but instead the specific nature of the amendments. Some believed that the USA Patriot Act has been written and passed too hastily which allowed for a more extreme than necessary version of the act to be passed. Idaho's GOP platform plank said that, "The Patriot Act is necessary to facilitate the cooperation between law enforcement agencies. We support appropriate amendments to limit the incursion upon personal freedoms, rights and liberties of American citizens"(The Spokesman Review 2004). Once again, the point of contest is not the actual USA Patriot Act, but the fact that changes need to be made to protect the people for injustice and infringement on their civil rights and civil liberties.

While some Republicans, like the ones mentioned previously, supported anti-Patriot Act legislation because they felt the legislation had been passed too quickly and too hastily, many did not feel comfortable with the potential threat to their ability to legal and safety own guns in the United States. While, the USA Patriot Act does not explicitly discuss gun rights, this group of people thought that the provisions in the Patriot Act could be expanded in such ways that would threaten the people's right to own guns in their homes. The freedom and ability to own guns in this country has remained a central and constant concern for the Republican Party. Therefore, it follows that some Republicans would feel violated by the specific provisions of the USA Patriot Act. Harry Schneider, the legislative chairman of the Pennsylvania Sportsman Association spoke on the issue, "Most gun owners are not very enthusiastic and they're very apprehensive about aspects of the Patriot Act, specifically about search-and-seizure

rules"(Associated Press 2004). It appears that one of the strong groups of people opposed to the USA Patriot Act and the Bush Administration are the gun rights groups or the gun advocates.

A strand of libertarianism, in many Republicans, appeared to come to the forefront because of the USA Patriot Act. Angel Shamaya, the executive director of KeepAndBearArms.com spoke on the support of the gun owners in altering the USA Patriot Act, "It's not just gun rights for use, it's the Bill of Rights. A lot of gun-rights advocates are from mildly upset to livid over President Bush and his administration" (Los Angeles Times 2004). Gun owners and gun-rights advocates were unhappy with the provisions in the USA Patriot Act and they sided with the Democrats in the need to bring immediate change and protect the rights and liberties guaranteed under the Bill of Rights. Wayne LaPierre, the Executive Vice President of the National Rifle Association (NRA) said, "There's a fine line between individual rights and national security concerns and we've been watching that carefully in Washington. So far, this administration seems to walk with those interests in mind, but we are watching every day" (Associated Press 2004). The NRA and the people that support the organization understood the constant confliction and tension between the importance of national security and the sacredness of the civil rights and civil liberties guaranteed under the United States Constitution. They became more comfortable with embracing libertarianism due to the USA Patriot Act. This is just one of the many changes that resulted from the passage of the USA Patriot Act and the subsequent fight to change the original piece of legislation.

Several conservative figures discuss their involvement in the Anti-Patriot Act movement and how their political party does not automatically mean they agree with the

actions and decisions of the Bush Administration. Newt Gingrich, former speaker of the House spoke about his position on the USA Patriot Act despite his political position as a conservative, "Look, I believe that U.S. Attorney with a compliant Grand Jury, can find an excuse to indict almost anybody, and I think it is very dangerous. I'm a conservative, I believe that the power of the state is a very frightening power but we need the State in order to protect ourselves against enemies who would kill us, but we want to be very careful about not having some future politician or some future political appointee decide that they have a giant loophole that would violate your civil rights or my civil rights and I think it could be easily be misused. I do think it's a legitimate concern"(The Kojo Nnamdi Show 2003). Gingrich discuss several important points here. First, he acknowledges the extraordinary power that the federal government has through this new legislation. Second, he points out that despite his position as a conservative, he still finds the expanded powers of the federal government to be problematic and frightening. Third, he does believe that these provisions in the USA Patriot Act could easily result in situations that would violated the people's civil rights and civil liberties. Finally, he does declare that passage of the USA Patriot Act and the potential outcome of it is a legitimate concern for the United States.

Conservatives, as a whole, appear to be just as concerned with the potential effects of the USA Patriot Act as the Democrats are in the post-September 11th world. It is not just an issue that the Democrat Party was concerned about in the years directly following the passage of the USA Patriot Act. Wayne LaPierre, the Executive Vice President of the National Rifle Association (NRA) has spoken about the issue on numerous occasions. On April 4th, 2004, he made two very interesting statements about

the citizens of the United States, the federal government and the everlasting conflict between national security and the Bill of Rights. LaPierre, a conservative by every measure of standards does not agree with all of the provisions set forth in the USA Patriot Act. He makes it clear, however, that he is not against the Bush Administration, but at the same time, not willing to tolerate these provisions: "I have great respect for this administration. But that doesn't mean I have to agree with confiscating nail clippers from grandmothers and poking magnetic wands up skirts at the airport"(Los Angeles Times 2004). Although, a conservative (as he refers to himself as) and in favor of the current administration, LaPierre is not simply going to allow the federal government to act without discretion or criticism. He strongly believes in standing up against the federal government and speaking up if the Bill of Rights is being violated or threatened: "Too many are too timid to ask what these outrages are supposed to achieve. Too many are too polite to say that our Bill of Rights is too sacred to give up for homeland security or for anything else"(Los Angeles Times 2004). LaPierre makes two points that are of importance for this discussion. First, he discusses the compliance of the United States population. Many people do not inquire about the provisions of the USA Patriot Act and what they are explicitly suppose to accomplish or change. In addition, many people in this country do not follow the news carefully, which means they are uninformed. This is a huge problem, especially with issues that primarily concern the people and their everyday activities. USA Today/Gallup in 2006 took a poll of adults nationwide asking the following question: "As you may know, as part of its efforts to investigate terrorism, a federal government agency obtained records from three of the largest U.S. telephone companies in order to create a database of billions of telephone numbers dialed by

Americans. How closely have you been following the news about this: very closely, somewhat closely, not too closely, or not at all?" Twenty-eight percent of people responded with very closely, thirty-nine percent said somewhat closely, twenty percent replied with not too closely and twelve percent answered with not at all (USA Today/Gallup Poll 2006). These percentages reveal the extent to which the American public follows the news. It is clear by these percentages that the typical United States citizen is not intensely concerned with the major issues facing the federal government and the United States as a whole. His discussion leans to the view that this issue of the USA Patriot Act was unique and the two political parties joined together for this specific cause. He believes that this type of issue is one that attracts people across the political spectrum. He does not identify the problems with the USA Patriot Act as strictly a Democrat concern. He goes further into the concern as one that should be of interest to everyone: "I just think we need, for our own long term protection, we need to draw very sharp distinctions between things we're prepared to do to go after terrorism for national security and things we're prepared to do for criminal reasons"(The Kojo Nnamdi Show 2003).

While there is a group of people that believe the legislation protesting the USA Patriot Act is a unique case and not representative of anything else. Some think that this outbreak of state legislation, all of which directly was in conflict, whether it was directly countermanding the Patriot Act, protecting it or simply calling for revision, with the federal legislation, was the states standing for their rights and asserting their power as sovereign bodies separate from the federal government. In every single case of the twenty-eight states that passed legislation, all of them go against the federal government

and the decision they made that these measures were necessary for the safety of the United States and its citizens. Each state, to some degree, pushed against the federal government by disagreeing with some of the provisions in the USA Patriot Act. All of these states are asserting their power to pass their owns laws and have their own standards separate from the federal government. Many believe that this explosion of legislation demonstrates a strong respect and necessity for states rights.

The eruption of the anti-Patriot Act legislation lasted from 2002 to 2006 and it appeared that the tension of Fourth Amendments rights between the federal government and individual states was over. However, in 2008, a new conflict emerged to the forefront. The issue of wiretapping and eavesdropping became of great importance and urgency. The use of wiretapping and eavesdropping, both with a warrant and warrantless, arose as a primary issue for the federal government. The increasing use of wiretaps on regular citizens of the United States created much controversy and it paved the path for sixteen states to pass their own state laws dealing with wiretapping and eavesdropping. These sixteen states, ranged from fully Democratic, to mixed government, all the way to fully Republican. However, unlike in the first wave of legislation, not all of the states passed the same type of legislation. Instead, during this period, some of the states passed anti-wiretapping legislation, while others passed pro-wiretapping legislation. The presented hypothesis, which states that Democratic states are more likely to pass legislation that give less power to the police, while Republican states are more likely to allow legislation that restricts the rights and liberties of the people for the sake of a specific cause, actually proved to be correct this time. The fact that the hypothesis is correct, at least for this specific example, is further proved through survey data. In 2007,

Princeton Survey Research Associates International conducted a Newsweek Poll asking the following question to adults nationwide, “In light of this news and other executive actions by the Bush-Cheney Administration, in general, do you think they have gone too far in expanding presidential power, or not?” (Newsweek Poll 2007). Out of the Republicans, twenty-five percent said that the government had gone too far, but seventy-three percent replied that the government had not gone too far (Newsweek Poll 2007). Out of the Democrats, eighty-one percent answered that the government had gone too far, while fourteen percent said that the government had not gone too far (Newsweek Poll 2007). Finally, out of the Independents, sixty-one percent responded that the government had gone too far and thirty-five percent said that the government had not gone too far (Newsweek Poll 2007). These numbers perfectly correspond with the presented hypothesis concerning the attitudes of the Democratic and Republican parties. The majority of the people polled from the Republican Party believed that the federal government had not gone too far with their actions regarding the national security measures, such as wiretapping, eavesdropping and the general collecting of information otherwise considered private. On the other side, the majority of people from the Democrat Party felt that the federal government had gone too far in their decisions regarding the various national security measures in the years following the attack of the World Trade Center and the passage of the USA Patriot Act. A more specific poll for this issue was taken by FOX News/Opinion Dynamics in which the following question was asked to all registered voters: “Do you think the president should or should not have the power to authorize the National Security Agency to monitor electronic communications of suspected terrorists without getting warrants, even if one end of the communication is

in the United States?" Out of all registered voters, fifty-four percent responded with the government should have the power, while forty percent said that the government should not have the power. With the voters aligned with the Democrat Party, thirty-five percent stated that the government should have the power and fifty-seven percent said that they should not. Out of the Republican voters, seventy-nine percent responded that the federal government should have this power, while fifteen percent said the government should not. The Independent voters were split completely down the middle. Forty-nine percent responded with the government should have the power to monitor electronic communications of suspected terrorists without getting warrants and forty-eight said that the federal government should not have this power (Fox News/Opinion Dynamics Poll 2006). These percentages, once again, align themselves with the presented hypothesis, which also lines up with the data for this set of legislation. In the period of 2008 to present, in terms of the sixteen states that passed laws dealing with wiretapping and eavesdropping, for the most part, the Democratic states passed the anti-wiretapping laws, while the Republican states passed the pro-wiretapping legislation.

There is no definite answer to why the hypothesis did not work in the first wave of legislation, but did appear to be almost completely correct in the second wave. There are many potential answers and there are, most definitely, many factors to not only examine but also that must be included. The more important aspect is the relationship between individual states and the federal government. The relationship between the two is always changing and a constant battle, especially with controversial issues like the USA Patriot Act and wiretapping/eavesdropping. It is crucial to look at both the federal government and the state governments. It is essential to criticize their decisions and pick

apart their actions. From the explosion of legislation on the state level, it is clear that the states can make a difference and are willing to go against the federal government. The states will stand up for their beliefs and therefore, it is just as important to examine the individual states, as it is to watch the federal governments and its decisions.

Appendix

Percentages of Liberals from 2001 to 2003

	% of L 2001	% of L 2002	% of L 2003
Alabama	16.1	16.1	12.7
Alaska			
Arizona	19.7	23.1	21.6
Arkansas	12.6	16.8	18.2
California	30.6	25	24.6
Colorado	24.1	27.2	26.2
Connecticut	32	29.7	17.9
Delaware	29.7	35.2	11.3
DC	27.5	38	42.9
Florida	20.2	20.2	20
Georgia	26.4	23.2	18.5
Hawaii			
Idaho	16.3	18.2	16.3
Illinois	20.3	23.8	19
Indiana	18.6	20.3	24.8
Iowa	19.9	22.6	16.7
Kansas	11.3	17	15.8
Kentucky	17.5	17.7	15.9
Louisiana	21	15.2	17.1
Maine	27.4	22.2	20.3
Maryland	25.8	24.3	19.8
Massachusetts	31.7	24.2	27.6
Michigan	20.2	24.3	20.5
Minnesota	18.1	17.1	20
Mississippi	17.1	20.1	14.8

Missouri	19.6	19.2	18.8
Montana	11.5	27.2	14.8
Nebraska	10	18.2	20.3
Nevada	15	17.9	13.6
New Hampshire	17.8	13.9	18.7
New Jersey	26.5	22.7	20.6
New Mexico	16.7	36.9	21.2
New York	23.6	27.2	28.9
North Carolina	18.4	19.9	20
North Dakota	16.1	16.2	11.8
Ohio	24.7	21	20
Oklahoma	14.6	12.1	15.6
Oregon	25.2	32.2	15.2
Pennsylvania	23.2	26.7	20.3
Rhode Island	16.7	30.2	21.2
South Carolina	16.3	22.3	12.5
South Dakota	14	12.9	15.6
Tennessee	22.6	21.1	13.1
Texas	18.2	18.3	19.1
Utah	15.5	18.8	14.1
Vermont	29.7	30.1	39
Virginia	15.4	21.1	19.7
Washington	23.7	20.7	20.2
West Virginia	16.4	18.4	17.9
Wisconsin	18.8	19.7	20.9
Wyoming	16.2	40.4	26.1

Percentage of Moderates from 2001 to 2003

	% of M 2001	% of M 2002	% of M 2003
Alabama	43.5	46	50.3
Alaska			
Arizona	51.1	36.9	35.9
Arkansas	47.9	43.6	28.7
California	43	46.3	47.9
Colorado	44	44.4	47.3
Connecticut	41	48.1	52.5
Delaware	49.6	54.5	36.2
DC	50.9	57.8	36.5
Florida	44.7	49.6	44.3
Georgia	35.7	39.9	39.6
Hawaii			
Idaho	39.2	41.2	40.7
Illinois	47.8	48.4	49.3
Indiana	45.4	38.2	41.4
Iowa	44.9	45.4	43.7
Kansas	43.6	52.7	49.6
Kentucky	53.6	44.4	40.8
Louisiana	37.4	41.9	43.5
Maine	49.3	46.3	43.8
Maryland	48.1	47.8	39.3
Massachusetts	40.2	48.1	43.3
Michigan	45.5	48.4	46.7
Minnesota	53.8	47.4	50.9
Mississippi	43.7	30.5	40.6

Missouri	50.1	41.8	44.6
Montana	64.4	35.8	53.3
Nebraska	46.5	41.7	41.4
Nevada	38	47.9	52.6
New Hampshire	40.9	53.4	45
New Jersey	45.7	51.1	46
New Mexico	42.6	28	35.8
New York	45.5	39.8	42.6
North Carolina	45.5	46.9	44.3
North Dakota	33.1	44.7	55.6
Ohio	40.5	42.6	43
Oklahoma	39.3	46.1	46.7
Oregon	38.8	40.2	40.8
Pennsylvania	45.1	43.3	46.6
Rhode Island	52.8	41.3	55.1
South Carolina	42.5	39.1	43.2
South Dakota	51.1	46.8	26.1
Tennessee	36.5	47.6	42.4
Texas	39.1	39.9	43
Utah	45.4	44	36.3
Vermont	44.6	59	33.7
Virginia	49.7	44.8	41.8
Washington	45	48.3	48.9
West Virginia	53.1	44.3	44.8
Wisconsin	46.6	45.4	39.7
Wyoming	60.4	30.5	50.3

Percentage of Conservatives from 2001 to 2003

	% of C 2001	% of C 2002	% of C 2003
Alabama	40.4	38	37
Alaska			
Arizona	29.2	40.1	42.4
Arkansas	39.6	39.5	53.1
California	26.4	28.7	27.5
Colorado	31.9	28.4	26.5
Connecticut	27.1	22.2	29.6
Delaware	20.7	10.4	52.5
DC	21.6	4.2	20.6
Florida	35.2	30.2	35.7
Georgia	37.9	36.9	41.9
Hawaii			
Idaho	44.5	40.6	43
Illinois	31.9	27.8	31.7
Indiana	36	41.6	33.8
Iowa	35.2	32	39.7
Kansas	45.1	30.3	34.6
Kentucky	28.9	37.9	43.3
Louisiana	41.7	42.9	39.4
Maine	23.3	31.5	35.8
Maryland	26	27.9	40.9
Massachusetts	28	27.7	29.1
Michigan	34.2	27.4	32.8
Minnesota	28.2	35.5	29.1
Mississippi	39.2	49.4	44.6
Missouri	30.2	39.1	36.5

Montana	24.1	36.9	31.9
Nebraska	43.5	40.1	38.3
Nevada	47	34.2	33.8
New Hampshire	41.4	32.7	36.3
New Jersey	27.8	26.2	33.4
New Mexico	40.7	35.1	43.1
New York	30.9	33	28.5
North Carolina	36.1	33.2	35.8
North Dakota	50.8	39	32.6
Ohio	34.8	36.4	37
Oklahoma	46.1	41.8	37.7
Oregon	36	27.6	44
Pennsylvania	31.7	30	33.1
Rhode Island	30.5	28.5	23.7
South Carolina	41.2	38.6	44.3
South Dakota	34.9	40.3	58.3
Tennessee	40.9	31.4	44.5
Texas	42.8	41.8	37.8
Utah	39.2	37.2	49.6
Vermont	25.7	10.9	27.2
Virginia	34.8	34.1	38.4
Washington	37.2	31	30.9
West Virginia	30.4	37.3	37.2
Wisconsin	34.6	34.9	39.4
Wyoming	23.5	29.2	23.6

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