



February 25, 2010

Dear Representative,

On behalf of the American Civil Liberties Union, a non-partisan organization with over half a million members, countless additional activists and supporters, and 53 affiliates nationwide, we urge you to vote 'NO' on H.R. 3961, a bill that reauthorizes expiring provisions of the USA Patriot Act and the Intelligence Reform and Terrorism Prevention Act until February 28, 2011. This bill reauthorizes these sections without making common sense amendments to protect Americans' privacy, despite documentation of past abuses of Patriot Act authorities. Because of the importance of this vote to civil liberties principles, we will be scoring this vote.

While there are many Patriot Act reforms that could have been incorporated into a reauthorization, a few stand out.

- The Inspector General has fully documented widespread abuse of the National Security Letter (NSL) provisions of the Patriot Act, yet this bill fails to rein in that authority. The Patriot Act made it possible for the government to collect communication, financial and credit records with NSLs even if there is no reason to believe that those records belong to a suspected terrorist. The Justice Department's Inspector General has found that this tool is being widely used to collect information on wholly innocent people two and three times removed from an actual suspect. Congress must limit this tool so that sensitive records may only be obtained if they relate to terrorists.
- Under the Patriot Act, a recipient of an NSL is prohibited from publicly discussing receipt of the letter. However, the Second Circuit in *Doe v. Mukasey* struck down such automatic gag provisions because they prevent judges from conducting an independent review of the justification for the gag to make sure the government can demonstrate that national security is truly at risk. Congress must ensure that NSL gag orders are constitutional by ensuring that NSL recipients are entitled to meaningful judicial review.
- Litigation, Department of Justice Inspector General reports and correspondence by members of the House and Senate Judiciary Committees have documented numerous Patriot Act abuses. This bill fails to recommend any additional oversight – thereby suggesting

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Congress turn a blind eye to known infringements on the privacy of Americans.

In addition, the three expiring provisions have themselves been abused:

- Section 215 of the Patriot Act authorizes the government to obtain “any tangible thing” relevant to a terrorism investigation, even if there is no showing that the “thing” pertains to suspected terrorists or terrorist activities. Congress must ensure that things collected with this power have a meaningful nexus to suspected terrorist activity or it should be allowed to expire.
- Section 206 of the Patriot Act, also known as “roving John Doe wiretap” provision, permits the government to obtain intelligence surveillance orders that identify neither the person nor the facility to be tapped. Section 206 should be amended to mirror similar and longstanding criminal laws that permit roving wiretaps, but require the naming of a specific target. Otherwise, it should expire.
- Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004, or the so-called “Lone Wolf” provision, permits secret intelligence surveillance of non-US persons who are not affiliated with a foreign organization. This provision has never been used and should be allowed to expire outright.

We urge Congress to spend the next year conducting a public, top to bottom review of all surveillance authorities and amending them to ensure that Americans’ privacy and constitutional rights are protected. For more information about problems with the Patriot Act, please see our report *Reclaiming Patriotism: A Call to Reconsider the Patriot Act* at www.reformthepatriotact.org.

Because this bill reauthorizes these sections without making amendments to ensure that Americans’ privacy is protected, we will be scoring this vote IF IT IS SUBJECT TO A ROLL CALL VOTE.

Sincerely,



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