



February 28, 2006

**Re: Vote "no" on S. 2271, amendments to the Patriot Act
Improvement and Reauthorization Act**

Dear Member of Congress:

On behalf of the American Civil Liberties Union, we write to urge you to vote "no" on S. 2271, which would amend the Patriot Act reauthorization conference report. The ACLU is a non-partisan organization with hundreds of thousands of activists and members and 53 affiliates nation-wide. Unfortunately, despite the best efforts of many Members of Congress to improve the Patriot Act, it remains deeply flawed. This add-on bill, although well intentioned by its authors, fails to fix the most fundamental flaws and makes some aspects of the Patriot Act worse.

The Patriot Act was passed six weeks after September 11, 2001 in an atmosphere that allowed for little debate about the sweeping powers it granted the Executive Branch. It included many provisions that expand secret surveillance under the Foreign Intelligence Surveillance Act (FISA)--the exclusive authority for electronic surveillance of Americans in foreign intelligence investigations to prevent terrorism. Given the administration's extraordinary assertions of presidential power to authorize the National Security Agency (NSA) to engage in intrusive surveillance of Americans outside of FISA, it is more vital than ever that Congress reassert its rightful role by correcting the flaws in the Patriot Act.

Unfortunately, the major flaws in the Patriot Act's most sweeping provisions remain uncorrected in the final conference report as amended by this bill. Most importantly, the conference report, even with the amendments in this bill, will:

- Continue to require no finding of individualized suspicion as a trigger to the secret record search powers that Sections 215 and 505 of the Patriot Act expanded. This means that the government secretly can obtain sensitive records about innocent Americans without showing that the American is an agent of a terrorist organization, or is scheming with a terrorist organization. Instead of correcting this fundamental flaw in the Patriot Act, the bill makes three lesser changes to the Patriot Act reauthorization conference report that are, on balance, a net negative for civil liberties.

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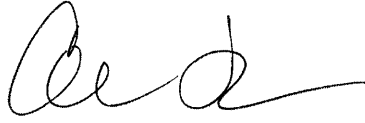
RICHARD ZACKS
TREASURER

- The bill clarifies that the recipient of a national security letter will be able to consult a lawyer without notifying the government of the attorney's identity. This change is merely cosmetic. While welcome, the administration has previously conceded the obvious point that recipients should be allowed to consult attorneys. The bill rebuffs an extraordinary eleventh hour effort by the government to chill that right to consult by saddling it with a duty to notify the FBI of attorneys with whom one has consulted or intends to consult.
- The bill also makes clear that the right to challenge a gag order applies to secret court orders under Section 215 as well as National Security Letters, which were expanded by Section 505 of the Patriot Act to allow the FBI to demand records about financial and Internet transactions without a court order. However, this provision actually makes current law worse. While the gag that accompanies a Section 215 order would no longer be automatically indefinite, it would last for an initial one-year period that can be renewed indefinitely at the government's discretion. Worse still, the bill includes language making "conclusive" the government's certification of harm to national security or diplomatic relations. The gag that accompanies a Section 215 order would remain in place for so long as a high-ranking government official continues to make this certification, and even if no evidence is provided to support that assertion. Current law does not make government certifications conclusive on the courts. Federal courts have, in fact, rejected certifications by such high-ranking officials where they fail to provide sufficient facts to meet the compelling interest standard demanded by the First Amendment for a prior restraint on speech. In this way, the bill would impose a plainly unconstitutional standard for challenging gag orders in exchange for making the right to challenge explicit. This makes the right to challenge the gag – which the government has already conceded under the pressure of litigation -- illusory in practice.
- While the bill reflects a desire to protect the privacy of library patrons it does not accomplish that with respect to their Internet transactions. It "clarifies" that libraries that provide access to the Internet can be treated as Internet Service Providers even though they are not commercial electronic communications service providers. This "clarification" could be interpreted to ratify the FBI's practice of issuing NSL's to libraries under Section 505 of the Patriot Act instead of protecting the privacy of library patrons.

None of the changes to the Patriot Reauthorization conference report that would be made by these amendments fixes the fundamental flaws of the Patriot Act – the flaws that led to the nationwide movement to correct it. Instead, they actually make matters worse for civil liberties than would the

Patriot Reauthorization conference report without these changes.
Accordingly, we urge you to vote "no" on this bill . Thank you for your
consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline', with a long horizontal flourish extending to the right.

Caroline Fredrickson
Director, Washington Legislative Office

A handwritten signature in black ink, appearing to read 'Lisa Graves', with a large, stylized 'L' and a flourish at the end.

Lisa Graves
Senior Counsel for Legislative Strategy