

October 29, 2009

Chairman John Conyers
Hon. Jerrold Nadler
Hon. Bobby Scott
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Re: USA Patriot Amendments Act, H.R. 3845

Dear Chairman Conyers and Reps. Nadler and Scott:

We are a broad group of public interest organizations concerned about both national security and civil liberties. We write to express our support for H.R. 3845, the USA Patriot Amendments Act of 2009. We commend you for introducing legislation that seeks to limit overly broad provisions of law that have unacceptably diminished Americans' privacy over the last eight years. However, we urge the Judiciary Committee to amend the bill to make critically important improvements to Section 215 of the Patriot Act and to the material support statute. We also urge members of the Committee to reject efforts to weaken the bill and to report it expeditiously to the full House of Representatives.

Passed in 2001, the Patriot Act and its reauthorizing legislation diminished checks and balances on domestic surveillance and vastly expanded the government's ability to collect information on Americans. Your legislation recognizes that addressing the three expiring provisions of the Patriot Act is only the first step towards restoring Americans' privacy.

While your legislation marks a significant improvement to existing surveillance authority, we urge you and other members of the Judiciary Committee to improve it further by raising the standard for issuing orders under Section 215 of the Patriot Act for business records and for other tangible things. Currently, the FISA court issues these orders when the government provides a statement of facts showing reasonable grounds to believe that the tangible things sought are relevant to an investigation. Current law also establishes presumptions of relevance that, along with the weak relevance standard and the *ex parte* nature of the proceedings in which these orders are sought, inappropriately limit the scope of judicial scrutiny necessary for such sensitive information. We urge you to support efforts to tighten the Section 215 standard so that records and other tangible things sought with this power pertain to a terrorist, spy, or other agent of a foreign power, or to someone with ties to such person.

We also urge you to further improve your legislation by amending the material support for terrorism statute to expand the exemption for humanitarian aid.

Currently, charities and human rights organizations and their employees face severe legal sanctions, including prison time, for providing aid essential to saving lives. The humanitarian exemption for medicine and religious materials should be expanded to include items such as food, water medical services and equipment, clothing and shelter, civil public services and educational materials and activities.

In conjunction with these changes, your legislation would help to restore checks and balances without blunting surveillance tools that can help keep Americans safe.

Apart from these needed improvements, we support the USA Patriot Amendments Act because it would:

- Protect the privacy of Americans who have no ties to terrorists or spies by ensuring that national security letter authorities are used to obtain records about terrorists, spies, and other agents of foreign powers, instead of records about everyone else;
- Bring procedures for challenging the gag order that often accompanies NSLs into line with the First Amendment, consistent with the December, 2008 *Doe v. Mukasey* decision of the 2nd Circuit;
- Raise the standard for issuing pen register and trap and trace orders in criminal and intelligence investigations to ensure that the government can access telephone and email to/from information in real time only when specific and articulable facts indicate that the records sought are relevant to an investigation;
- Ensure that Americans receive timely notice that their home or office has been searched for evidence of crime, except when contemporaneous notice would threaten personal safety or result in flight, evidence tampering or witness intimidation;
- Focus FISA surveillance on terrorists, spies and other agents of foreign powers by allowing the “lone wolf” surveillance authority, which has never been used, to expire; and
- Require that FISA surveillance orders that do not name the target of surveillance describe the target with sufficient particularity to allow a court to determine that the target is a particular individual.

We also urge you to take up the FISA Amendments Act of 2009, H.R. 3846. This legislation would address the most significant privacy problems in the 2008 FISA Amendments Act and would ensure that telecommunications carriers that assisted with unlawful warrantless surveillance are not given immunity for doing so.

Thank you for considering our views. We look forward to working with you as the legislative process unfolds.

Sincerely,

American-Arab Anti-Discrimination Committee
American Civil Liberties Union
American Library Association
Association of Research Libraries
Bill of Rights Defense Committee
Brennan Center for Justice
Center for Democracy & Technology
Center for Media and Democracy
Constitution Project
Council on American-Islamic Relations (CAIR)
Defending Dissent Foundation
Electronic Frontier Foundation
Government Accountability Project
Muslim Advocates
Muslim Public Affairs Council
National Association of Criminal Defense Lawyers
National Lawyers Guild – National Office
OMB Watch
Open Society Policy Center
People For the American Way

cc: Members of the House Committee on the Judiciary