

STATEMENT ON THE LIBRARY, BOOKSELLER, AND
PERSONAL RECORDS PRIVACY ACT

July 31, 2003

Mr. FEINGOLD. Mr. President, today I introduce the Library, Bookseller, and Personal Records Privacy Act.

This bill would amend the Patriot Act to protect the privacy of law-abiding Americans. It would set reasonable limits on the federal government's access to library, bookseller, medical, and other sensitive, personal information under the Foreign Intelligence Surveillance Act and related foreign intelligence authority.

I am pleased that several of my distinguished colleagues -- Senators Bingaman, Kennedy, Cantwell, Durbin, Wyden, Corzine, Akaka, and Jeffords -- have joined me as original cosponsors of this important legislation.

Mr. President, I and millions of other patriotic Americans love our country and support our military men and women in their difficult missions abroad, but worry about the fate of our Constitution here at home.

Much of our nation's strength comes from our constitutional liberties and respect for the rule of law. That is what has kept us free for our two and a quarter century history. Our constitutional freedoms, our American values, are what make our country worth fighting for in the fight against terrorism.

Mr. President, here at home, there is no question that the FBI needs ample resources and legal authority to prevent future acts of terrorism. But the Patriot Act went too far when it comes to the government's access to personal information about law-abiding Americans.

Even though in the end I opposed the Patriot Act, there were several provisions that I did support. For example, Congress was right to expand the category of business records that the FBI could obtain by subpoena pursuant to the Foreign Intelligence Surveillance Act. Prior to the Patriot Act, the FBI could seek a court order to obtain only travel records -- such as airline, hotel, and car rental records -- and records maintained by storage facilities. The Patriot Act allows any business records to be subpoenaed. I don't quibble with that change.

But what my colleagues and I do find problematic -- and an increasing number of Americans who value their privacy and First Amendment rights agree with us -- is that the current law allows the FBI broad, almost unfettered access to personal information about law-abiding Americans who have no connection to terrorism or spying.

Section 215 of the Patriot Act requires the FBI to show in an application to the court for a subpoena that the documents are “sought for” an international terrorism or foreign intelligence investigation. There is no requirement that the FBI make a showing of individualized suspicion that the documents relate to a suspected terrorist or spy.

In other words, under current law, the FBI could serve a subpoena on a library for all the borrowing records of its patrons or on a bookseller for the purchasing records of its customers simply by asserting that they want the records for a terrorism investigation.

During the last year, librarians and booksellers have become increasingly concerned by the potential for abuse of this law. I was pleased to stand with the American Booksellers Association and the Free Expression Network a little over a year ago when we first started to raise these concerns.

Librarians and booksellers are concerned that under the Patriot Act, the FBI could seize records from libraries and booksellers in order to monitor what books Americans have purchased or borrowed, or who has used a library’s or bookstore’s internet computer stations, even if there is no evidence that the person is a terrorist or spy, or has any connection to a terrorist or spy.

These concerns are so strong, Mr. President, that some librarians across the country have taken the unusual step of destroying records of patrons’ book and computer use, as well as posting signs on computer stations warning patrons that whatever they read or access on the internet could be monitored by the federal government.

As a librarian in California said, “We felt strongly that this had to be done. . . . The government has never had this kind of power before. It feels like Big Brother.”

And as the executive director of the American Library Association said, “This law is dangerous. . . . I read murder mysteries – does that make me a murderer? I read spy stories – does that mean I’m a spy? There’s no clear link between a person’s intellectual pursuits and their actions.”

Mr. President, the American people do not know how many or what kind of requests federal agents have made for library records under the Patriot Act. The Justice Department refuses to release that information to the public.

But in a survey released by the University of Illinois at Urbana-Champaign, about 550 libraries around the nation reported having received requests from federal or local law enforcement during the past year. About half of the libraries said they complied with the law enforcement request, and another half indicated that they had not.

Americans don't know much about these incidents, because the law also contains a provision that prohibits anyone who receives a subpoena from disclosing that fact to anyone.

David Schwartz, president of Harry W. Schwartz Bookshops, the oldest and largest independent bookseller in Milwaukee, summed up well the American values at stake when he said:

“The FBI already has significant subpoena powers to obtain records. There is no need for the government to invade a person's privacy in this way. This is a uniquely un-American tool, and it should be rejected. The books we read are a very private part of our lives. People could stop buying books, and they could be terrified into silence.”

Afraid to read books, terrified into silence, Mr. President. Is that the America we want? Is that the America where we'd like to live? I don't think so. And I hope my colleagues will agree.

Mr. President, it is time to reconsider those provisions of the Patriot Act that are un-American and, frankly, un-patriotic.

But my concerns with the Patriot Act go beyond library and bookseller records. Under section 215 of the Patriot Act, the FBI could seek any records maintained by a business. These business records could contain sensitive, personal information – for example, medical records maintained by a doctor or hospital or credit records maintained by a credit agency. All the FBI would have to do is simply assert that the records are “sought for” its terrorism or foreign intelligence investigation.

Mr. President, section 215 of the Patriot Act goes too far. Americans rightfully have a reasonable expectation of privacy in their library, bookstore, medical, financial, or other records containing personal information. Prudent safeguards are need to protect these legitimate privacy interests.

The Library, Bookseller, and Personal Records Privacy Act is a reasonable solution. It would restore a pre-Patriot Act requirement that the FBI make a

factual, individualized showing that the records sought pertain to a suspected terrorist or spy.

My bill will not prevent the FBI from doing its job. My bill recognizes that the post-September 11th world is a different world. There are circumstances when the FBI should legitimately have access to library, bookseller, or other personal information.

Mr. President, I'd like to take a moment to explain how the safeguard in my bill would be applied. Suppose the FBI is conducting an investigation of an international terrorist organization. It has information that suspected members of the group live in a particular neighborhood. The FBI would like to serve a subpoena on the library in the suspects' neighborhood. Under current law, the FBI could decide to ask the library for all records concerning anyone who has ever borrowed a book or used a computer, and what books were borrowed, simply by asserting that the documents are sought for a terrorism investigation. But under my bill, the FBI could not do so. The FBI would have to set forth specific and articulable facts giving reason to believe that the person to whom the records pertain is a suspected terrorist. The FBI could subpoena only those library records – such as borrowing records or computer sign-in logs -- that pertain to the suspected terrorists. The FBI could not obtain library records concerning individuals who are not suspected terrorists.

So, under my bill, the FBI can still obtain documents that it legitimately needs, but my bill would also protect the privacy of law-abiding Americans. I might add, Mr. President, that if, as the Justice Department says, the FBI is using its Patriot Act powers in a responsible manner, does not seek the records of law-abiding Americans, and only seeks the records of suspected terrorists or suspected spies, then there is no reason for the Department to object to my bill.

Mr. President, the second part of my bill would address privacy concerns with another federal law enforcement power expanded by the Patriot Act – the FBI's national security letter authority, or what is sometimes referred to as “administrative subpoena” authority because the FBI does not need court approval to use this power.

My bill would amend section 505 of the Patriot Act. Part of this section relates to the production of records maintained by electronic communications providers. Libraries or bookstores with internet access for customers could be deemed “electronic communication providers” and therefore be subject to a request by the FBI under its administrative subpoena authority.

As I mentioned earlier, some librarians are so concerned about the potential for abuse by the FBI that they have taken matters into their own hands before the FBI knocks on their door. Some librarians have begun shredding on a daily basis sign-in logs and other documents relating to the public's use of library computer terminals to access the Internet.

Again, Mr. President, safeguards are needed to ensure that any individual who accesses the internet at a library or bookstore does not automatically give up all expectations of privacy. Like the section 215 fix I've discussed, my bill would require an individualized showing by the FBI of how the records of internet usage maintained by a library or bookseller pertain to a suspected terrorist or spy.

Mr. President, yes, the American people want the FBI to be focused on preventing terrorism. And, yes, it may make sense to make some changes to the law to allow the FBI access to the information that it needs to prevent terrorism. But we do not need to change the values that constitute who we are as a nation in order to protect ourselves from terrorism. We can protect both our nation and our privacy and civil liberties.

An increasing number of Americans are beginning to understand that the Patriot Act went too far. Three states and over 130 cities and counties across the country have now passed resolutions expressing opposition to the Patriot Act. And it's not just the Berkeleys and Madisons of the nation, but other states and communities with strong libertarian values, such as Alaska and cities in Montana, have passed such resolutions.

Mr. President, I have many concerns with the Patriot Act. I am not seeking to repeal it, in whole or in part. My colleagues and I are only seeking to modify two provisions that pose serious potential for abuse.

Mr. President, the privacy of law-abiding Americans is at stake. Congress should act to protect our privacy. And my bill is a reasonable approach to do just that.

I urge my colleagues to join me and support the Library, Bookseller, and Personal Records Privacy Act.

I ask that the text of the bill be entered into the record following my remarks.

Thank you, Mr. President. I yield the floor.