

Congressional proposals addressing library problems with the USA PATRIOT Act

There are many types of advocacy activities that academic librarians and their campus colleagues can be involved in over the summer. One of the main areas of concern is seeking cosponsors for four different bills before Congress that address the library community's concerns with the USA PATRIOT ACT and its implementation by the FBI. Two bills are in the House, two are in the Senate, and each is slightly different.

Introduced by Rep. Bernie Sanders (I-VT) in March 2003, H.R. 1157, the Freedom to Read Protection Act, has over 114 cosponsors, including several key Republicans. H.R. 1157 would return the standards for the FBI to get a court order for business records from libraries and booksellers under the Foreign Intelligence Surveillance Act (FISA) to those in place prior to passage of Section 215 of the USA PATRIOT Act. The FBI would be required to provide "specific and articulable facts" giving reason to believe that the person to whom the records pertained is a foreign power or an agent of a foreign power and required to specify that the records sought are being sought for "an investigation to gather foreign intelligence information or an investigation concerning international terrorism."

The USA PATRIOT Act lowered the legal standard for the FBI to secure a FISA court order to obtain any tangible thing pertaining to anyone (not just foreign powers and foreign agents), and the FBI has only to specify that the records are sought for an investigation "to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities." While the Act says that no American citizen or permanent resident may be investigated "solely" upon the basis of activities protected by the First Amendment, the Act allows the FBI to sweep up records and information broadly and these may include records of activities protected by the First Amendment. H.R. 1157 also calls for public reporting to determine how provisions of the USA PATRIOT Act are being implemented in order to better assess civil liberties implications.

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In May, Senator Barbara Boxer (D-CA) introduced S.1158, the "Library and Bookseller Protection Act." The purpose of this bill is to ensure that libraries and bookstores are subjected only to the regular system of court-ordered warrants. The bill would: 1) exempt bookstores and libraries from FISA court orders requiring the production of tangible things for foreign intelligence investigations (Section 215 of the USA PATRIOT Act); and 2) exempt libraries from being considered "wire or electronic communication service providers" under Section 2709 of Title 18 of the US Code, relating to "National Security letters," which provides for counterintelligence access to certain records. These administrative letters are used by the FBI to obtain information and evidence, and are issued internally, without prior judicial review. The bill has been referred to the Judiciary Committee and has yet to be cosponsored.

In June, Representatives Joseph M. Hoeffel (D-PA), Sam Farr (D-CA), and House Judiciary Committee Ranking Member John Conyers (D-MI) introduced H.R. 2429, the Surveillance Oversight and Disclosure Act. This bill would require greater reporting by the Justice Department on USA PATRIOT Act activities, including special reports about how library records are obtained and used. As the main author of the bill, Hoeffel was concerned about how the new authorities granted to the Justice Department by the USA PATRIOT Act were being used. This bill answers congressional representatives complaints about the lack of information from Attorney General John Ashcroft.

Finally, Senators Grassley (R-IA), Leahy (D-VT), and Specter (R-PA) introduced S. 436, the Foreign Intelligence Surveillance Act (FISA) Oversight Bill, a parallel bill to H.R. 2429 in terms of oversight and reporting requirements. This legislation would ensure that our elected officials could provide appropriate oversight of the secret FISA court. S. 436 would simply require the public accounting of basic information without hindering law enforcement.

For background on this and other legislative issues, use the search engine on the ALA Web site at www.ala.org or contact Lynne Bradley or Patrice McDermott at (800) 941-8478. ACLU materials are at: <http://www.aclu.org/NationalSecurity/NationalSecurity.cfm?ID=12219&c=110>. ■