**Letter To The Meeting**

**Of The Vermont Library Trustee Association Annual Conference**

**From Patrick Leahy, Chairman,**

**U.S. Senate Committee on the Judiciary**

**October 17, 2009**

Dear Friends,

I appreciate this opportunity to report the latest developments on the process to reauthorize several sunsetted portions of the Patriot Act and to commend Vermont Library Association for all you do for Vermont.

On September 22, 2009, I introduced the USA PATRIOT Act Sunset Extension Act (S.1692) with Senators Benjamin Cardin and Ted Kaufman.  Senator Sanders soon joined as a cosponsor. As before, I wrote the bill with close attention to protecting constitutional rights and civil liberties. The bill expanded oversight of the use of surveillance authorities and increased transparency. The version of the bill that was reported favorably by the Judiciary Committee on October 8, after thorough debate in the markup process, remains a strong bill, both in protecting rights and liberties, and in requiring vigorous oversight of the use of government surveillance authority.

We all share the goal of safeguarding our First Amendment rights, personal privacy, and other core values that we treasure as Americans. We all want to ensure that Americans are safe and secure and protected from harm. These goals are not mutually exclusive, and I held both in mind as I developed legislation to reauthorize provisions of the Patriot Act and expand the protection of civil liberties. I appreciate the input I sought and received before drafting the bill and after the Judiciary Committee’s markup on the bill. I welcome that engagement, and especially the active participation of Vermonters in this conversation. I would like to address many of the points that have been expressed, and I continue to welcome your thoughtful feedback as this legislation is further considered by the Senate and the House. Please feel free to contact me by phone (toll-free at 1-800-642-3193) or by email at senator\_leahy@leahy.senate.gov.

*National Security Letters.* I share the concerns that I have heard from the librarian community about problems in the use of National Security Letters (NSLs), a request for records that is issued by the FBI without prior approval by a Federal court. The use of NSLs has risen dramatically since the standard for issuing an NSL was lowered in the 2001 Patriot Act. I agree that new protections are needed to safeguard against abuses of NSLs.

My bill includes a December 31, 2013, sunset on the use of National Security Letters and a comprehensive audit on the authority. It also directs the FBI to produce a statement of specific facts showing that the information the Bureau seeks is relevant before an NSL can be issued. I recognize that many in the librarian community support a higher standard for the issuance of an NSL. I am sympathetic to that position, but I also recognize there is not enough support for that proposal to prevail in the U.S. Senate. Therefore I have sought and secured progress in the Senate that would achieve significant improvements over current law.

While a sunset on NSLs has been proposed in the past, it has never before gained traction in Congress. I will fight for my NSL sunset provision to be part of any final bill that is signed into law. In fact, the sunsets I included in the 2001 Patriot Act are the reasons we have the opportunity to reexamine the Patriot Act today. The combination of an audit and a sunset in this bill would be a significant inducement for the FBI to exercise great care in its use of NSLs.

My bill also corrects the constitutional defects in the issuance of nondisclosure orders (or “gag orders”) on NSLs. The bill allows the recipient of an NSL with a gag order to notify the government at any time that it wishes to challenge the gag. The government then bears the burden to seek a court order to force the recipient to follow that gag order. Even if the government prevails in court, and the gag order stands, under the terms of my bill the government must notify that recipient when there is no longer a need for the gag.

Finally, the bill strengthens privacy protections by requiring that the government does not unnecessarily disseminate or retain personal information it collects via NSLs.

*Orders for Library Records, Business Records and Other Tangible Things.* The business records provision of the 2001 Patriot Act (often referred by its section number in that bill, “section 215”) has generated enormous controversy, in part because it allows the government to obtain library records and other sensitive records. In 2006 I voted against the final version of the Patriot Act reauthorization bill because it contained two provisions that I could not support. One was a year-long delay to challenge a section 215 gag order in court. The other was a conclusive presumption in favor of the government that courts would have to apply when gag orders were challenged. My bill strikes both the one-year waiting period and the conclusive presumption.

My bill also modifies the standard for obtaining a court order for business records or other tangible things. Current law requires the government to show reasonable grounds that the records sought are relevant to an authorized investigation. However, current law also states that the records are *presumptively relevant* if the Government shows that they pertain to a foreign power, however attenuated that link may be. My bill repeals the presumption of relevance and requires the Government to show what it relied upon to assert that the records are relevant.

My bill also raises the standard the government must meet before it can obtain library circulation records and patron lists. I fought for a higher standard on a wider set of sensitive records — including book seller, firearm sales, medical, education, and tax records — but was not able to prevail on that proposal as the Committee considered the bill. I will continue to press for this improvement as the bill moves through the Senate and the House.

*Oversight and Public Reporting.* In 2005, I included audits in the Patriot Act reauthorization package over stiff opposition from the Bush administration. The audits that were produced by the Inspector General proved that certain authorities, especially NSLs, had been misused, and in some cases, abused. Internal reforms followed, but we all agree that more needs to be done. Oversight and audits are critically important to protecting our privacy and preventing abuses. My bill includes new audits of NSLs, section 215 orders, and the use of pen register and trap and trace devices. The bill also requires new public reporting on the use of both NSLs and section 215 orders. Finally, in addition to the sunset on NSLs, my bill includes sunsets on section 215 orders, and two other controversial provisions.

The bill contains additional provisions that are explained on my website.

I am grateful for the thoughtful interest of the librarian community on this and so many other issues, and I welcome your continued feedback.

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