

The Honorable Arlen Specter  
Chairman  
Senate Judiciary Committee  
SD-224 Dirksen Senate Office Building  
Washington, DC 20510

November 8, 2005

Dear Senator Specter:

The revelation that the FBI is using National Security Letters (NSLs) to collect and retain information on thousands of innocent American citizens requires the Patriot Act conferees to revisit the NSL provisions in both the House and Senate bill. The NSL provisions should be amended by adding the Senate language in section 215 that requires that records sought by the government relate to a suspected agent of a foreign power or those in contact with him. Otherwise, NSLs can continue to be used to conduct fishing expeditions that threaten the civil liberties and privacy of the American people.

We recognize that the conferees are under significant time pressure. If there is insufficient time to reform the standard for the use of NSLs before the end of the year, Congress should take up the issue in the next session. Similarly, Congress should put off to the next session the complex issues of judicial enforcement of NSLs and NSL gag orders. The current provisions in the House and Senate bills do not provide for meaningful judicial review of NSL requests because there is no meaningful standard for the courts to apply. In addition, the provisions' limits on judicial review of gag orders are unconstitutional as is the criminal penalty for violating the gag rule. To assure that Congress does act promptly on NSLs, the conferees should provide for a short sunset.

It is unfortunate that the information about FBI use of NSLs was learned from the press at such a late juncture in the debate over reauthorization of key Patriot Act provisions. This information should have been made public by the FBI, just as comparable information about the use of FISA wiretaps and searches is made public. The new information throws into question whether the Senate's proposed reform of section 215, significant as it is, does as much to protect against indiscriminate searches of records as we had hoped. Unless Congress also reforms NSLs, the FBI will simply continue to bypass the judicial process of section 215 and rely on judicially unsupervised NSLs. Therefore, we urge you to either comprehensively reform NSLs to address the issues raised by recent press reports, or sunset them with no changes to allow for an in-depth review in the immediate future.

Sincerely,



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cc: Conferees to the Patriot Act Conference Committee