

## Civil Rights and Liberties

Our Nation was founded on the principles of the equality of all men and women and the inalienable rights of our citizens. Throughout our history Americans have strenuously fought for and defended these rights. The ongoing struggle against terrorism and disputes over cultural values have brought these issues to the forefront of political debate.

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### USA PATRIOT Act

The USA PATRIOT Act, originally passed in 2001, has been one of the most controversial laws enacted in recent memory. The most prudent thing Congress did in passing the original USA PATRIOT Act was to sunset certain provisions, thus ensuring that a future Congress would review and revise them.

Throughout its existence, the most contentious provision of the PATRIOT Act has been Section 215 (Access to Business Records). Prior to the enactment of the PATRIOT Act, federal investigators could obtain access to flight records, car rental receipts or hotel records under the Foreign Intelligence Surveillance Act (FISA) without obtaining a subpoena from a federal court. Section 215 expanded this ability to allow investigators to obtain any tangible business record, including library circulation records and bookstore receipts. Under this law, businesses who are requested to provide this information cannot divulge that they were requested to do so. This provision is an alarming invasion of privacy and since its inception, Rep. Eshoo has fought against it.

On June 15, 2005, Rep. Eshoo voted for an amendment offered by Rep. Sanders to H.R. 2862, the Science, State, Justice & Commerce Appropriations Act for FY 2006, that prohibited federal funds from being used to acquire library circulation records, library patron lists, or bookstore sales records without judicial approval. The amendment was adopted by the House by a vote of 238 to 187. Despite its support in both the House and Senate, this language was subsequently removed from the final Conference Report on H.R. 2862.

Because several provisions of the original USA PATRIOT Act were set to expire on December 31, 2005, H.R. 3199, the USA PATRIOT Act Reauthorization and Improvement Act, was introduced to permanently extend all provisions of the law except for Section 215, Section 206 (Roving Wiretaps) and the "Lone Wolf" terrorist provision.

Despite the controversy surrounding the PATRIOT Act, H.R. 3199 failed to address many of the serious civil liberties

concerns that have been raised since its original enactment. Most notably, H.R. 3199 failed to correct the problems caused by Section 215 and expanded the use of National Security Letters (see below). During consideration of H.R. 3199 by the House Permanent Select Committee on Intelligence, Rep. Eshoo offered an amendment that prohibited the FBI from obtaining library and bookstore records. Rep. Eshoo's amendment was defeated in Committee and she was not allowed to offer it during consideration of this bill by the full House. Because of these shortfalls, Rep. Eshoo voted against H.R. 3199, which ultimately passed the House on July 21, 2005 by a vote of 257 to 171.

After House passage, Rep. Eshoo joined her colleagues in sending a letter to House-Senate Conferees on H.R. 3199 urging them to adopt the Senate-passed language regarding Section 215. This language would have required the FBI to provide facts to prove the records sought were relevant to a terrorist investigation, require the Department of Justice to report to Congress annually about the number of times Section 215 was used and sunset the provision after four years. Because these protections were not included in the Conference Report on H.R. 3199, Rep. Eshoo also voted against it on December 14, 2005. Unfortunately, the Conference Report passed the House by a vote of 251 to 174.

In the Senate, a bipartisan group of Senators managed to block consideration of the Conference Report because of its failure to provide adequate protections for the rights of American citizens. S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act, was subsequently introduced to appease these concerns. Unfortunately, this legislation provided mostly cosmetic changes and failed to provide substantial changes to the underlying bill. Rep. Eshoo opposed S. 2271, which passed the House by a vote of 280-138.

Ultimately, the President signed H.R. 3199 and S. 2271 into law on March 9, 2006.

## National Security Letters

Another serious problem with the reauthorization of the PATRIOT Act was the expanded use of National Security Letters (NSLs). NSLs are requests for financial, telecommunications, credit, and other business records issued directly by government agencies in national security investigations without the approval of a judge. Before the PATRIOT Act, the FBI and other issuing agencies could issue an NSL only if there was a link to an agent of a foreign power or terrorist. Post-PATRIOT Act, the government only has to allege the request is relevant to an investigation. This has resulted in an explosion in the number of NSLs issued. Unfortunately, passage of H.R. 3199 did nothing to change this disturbing trend or enhance congressional or judicial oversight over NSLs.

Because of her concerns, Rep. Eshoo introduced H.R. 4570, the National Security Letter Judicial and Congressional Oversight Act, which establishes guidelines for issuing NSLs to protect American citizens from this overreaching authority. This legislation prohibits the issuance of a NSL unless a Foreign Intelligence Surveillance Court or a designated U.S. Magistrate Judge finds that the information being sought is relevant to an approved ongoing terrorism investigation; that the investigation is not being solely conducted on activities protected under the First Amendment; and that there are facts giving reason to believe that the information being sought pertains directly to a foreign power or its agent operating. Lastly this legislation would require the Attorney General to provide the House and Senate Committees on Intelligence with semiannual reports on the number of NSLs issued and a summary of how the information gathered assisted the intended investigation.

## Same-Sex Marriage

Rep. Eshoo believes that issues related to marriage should be handled by the individual states as they have been throughout our nation's history. In the 108th Congress she opposed H. J. Res. 106, the Marriage Protection Amendment, which would have amended the Constitution by taking this decision out of the hands of states and effectively banning

same-sex marriage.

Rep. Eshoo also voted against H.R. 3313, the Marriage Protection Act, which would have stripped federal courts (including the Supreme Court) of their jurisdiction to hear cases challenging the constitutionality of the Defense of Marriage Act or the Federal Marriage Statute. Rep. Eshoo believes this bill was discriminatory, singling out for the first time a minority to prevent their interests from being considered by the highest courts in the land. While the bill was passed by the House of Representatives, no further action was taken during the 108th Congress, effectively defeating the bill. No action has been taken in the 109th Congress.

#### Voting Rights Act

Rep. Eshoo believes strongly in the need to protect the voting rights of every American. Congress passed the Voting Rights Act (VRA) in 1965, in response to widespread disenfranchisement of minorities, particularly in the South. Since its enactment, the VRA has been reauthorized numerous times and expanded to address other issues that impact voting access and fair representation, including congressional districting, language requirements and election monitoring.

With some provisions of the VRA set to expire in 2007, Rep. Eshoo is proud to be a cosponsor of H.R. 9, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act. H.R. 9 reauthorizes the temporary provisions of the VRA for 25 years. These provisions are essential to ensuring that voters' rights are not stifled by unfair and unethical practices by:

- Requiring pre-approval of any changes to election practices that may restrict voting rights for States and voting precincts specifically outlined in the VRA (Section 5).
- Establishing guidelines for federal election monitors to be brought in to oversee elections (Sections 6 through 9).
- Mandating that jurisdictions with greater than 5 percent of the voting-age citizens (or 10,000 voting-age citizens) belonging to a single language minority with limited English proficiency be provided with bilingual voting materials (Section 203).