USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 2271 was agreed to, and the clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

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The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, at this moment, I wish to address the bill pending before the Senate, and that is S. 2271.

I commend Senator John Sununu of New Hampshire, who is here in the Chamber. Were it not for his hard work, we would not be here today. For weeks, while many of us were doing other things back home, Senator Sununu was working assiduously with the White House to find a way to address some very vexing and challenging issues when it came to modifying the PATRIOT Act. He has done an excellent job. I commend him and tell him that I have enjoyed working with him over the last 2 years, where we have crossed party lines and tried to find ways to keep the PATRIOT Act as a tool to make America safe but also at the same time to protect our basic liberties.

Every step of the way, as we considered changes to the PATRIOT Act, we have been supported by our Nation's librarians. These are wonderful men and women--professionals--who are dedicated to the libraries across America, which are such rich resources. I thank the librarians of America, especially for their heroic efforts to amend the PATRIOT Act in a responsible way and, equally as important, to defend our Constitution.

I understand that section 5 of Senator Sununu's bill, S. 2271, will help protect the privacy of Americans' library records. I ask the indulgence of the Chair that I might enter into a colloquy with Senator Sununu relative to section 5. I would like to ask Senator Sununu, through the Chair, if he could explain to me what section 5 will accomplish.

Mr. SUNUNU. Mr. President, I am pleased to be on the floor today and pleased to be able to see the light at the end of the tunnel on PATRIOT
reauthorization, thanks to the work of Senator Durbin and others. We have legislation before us that will make the adjustments to the PATRIOT Act reauthorization conference report mentioned by the Senator from Illinois. He specifically mentioned section 5 of our legislation. As he began to describe, section 5 is intended to clarify current law regarding the applicability of National Security Letters to libraries.

A National Security Letter is a type of administrative subpoena, a powerful tool available to law enforcement officials, to get access to documents. It is a document signed by an FBI agent that requires a business to provide certain kinds of personal records on their customers to the Government. These subpoenas are not approved by a judge before being issued.

What we did in this legislation is add clarifying language that states that libraries operating in their traditional functions: lending books, providing access to digital books or periodicals in digital format, and providing basic access to the Internet would not be subject to a national security letter. There is no National Security Letter statute existing in current law that permits the FBI explicitly to obtain library records. But, as was indicated by the Senator from Illinois, librarians have been concerned that existing National Security Letter authority is vague enough so that it could be used to allow the Government to treat libraries as they do communication service providers such as a telephone company or a traditional Internet service provider from whom consumers would go out and get their access to the Internet and send and receive e-mail.

Section 5 clarifies, as I indicated, that a library providing basic Internet access would not be subject to a national security letter, simply by virtue of making that access available to the public.

Mr. DURBIN. I thank the Senator from New Hampshire. It is my understanding that most public libraries, as he explained, offer Internet access to the public. Because of this, they are concerned that the Government might consider them to be communications service providers similar to the traditional providers, such as AT&T, Verizon, and AOL.

So if I understand it correctly, your bill clarifies that libraries, simply because they provide basic Internet access, are not communications service providers under the law and are not subject to national security letters as a result. I ask the Senator from New Hampshire, through the Chair, is that a correct conclusion?

Mr. SUNUNU. Mr. President, I absolutely believe that the conclusion of the Senator from Illinois is correct. A library providing basic Internet access would not be subject to a National Security Letter as a result of that particular service and other services that are very much in keeping with the traditional role of libraries.

Some have noted or may note that basic Internet access gives library patrons the ability to send and receive e-mail by, for example, accessing an Internet-based e-mail service. But in that case, it is the Web site operator who is providing the communication service—the Internet communication service provider itself—and not the library, which is simply making available a computer with access to the Internet.

So I certainly share the concerns of the Senator from Illinois and others who have worked very long and hard on this and other provisions. I think it does add clarity to the law as he described, in addition to providing other improvements to the PATRIOT Act as they relate to civil liberty protections. All along, this has been about providing law enforcement with the tools that they need in their terrorism
investigations while, at the same time, balancing those powers with the need to protect civil liberties. I think, in the legislation before us, we have added clarity to the law in giving access to the courts to object to section 215 gag orders and, of course, striking a very punitive provision dealing with counsel and not forcing the recipient of a National Security Letter to disclose the name of their attorney to the FBI.

All of these are improvements to the underlying legislation, and I recognize that we had a overwhelming, bipartisan vote today to move forward on this package. I anticipate that we will have similar bipartisan votes in the days ahead to conclude work on this legislation and get a much improved PATRIOT Act signed into law.

Mr. DURBIN. I thank the Senator from New Hampshire, as well, because that clarification is important. So if a library offers basic Internet access, and within that access a patron can, for example, send and receive e-mail by accessing an Internet-based e-mail service such as Hotmail, for example, that does not mean the library is a communications service provider and, therefore, it does not mean that a library could be subject to these national security letters of investigation.

By way of comparison, a gas station that has a pay phone isn't a telephone company. So a library that has Internet access, where a person can find an Internet e-mail service, is not a communications service provider; therefore, it would not fall under the purview of the NSL provision in 18 U.S.C. 2709. It is a critically important distinction. I thank the Senator from New Hampshire for making that clear and for all of his good work on this bill.

Libraries are fundamental to America. They symbolize our access to education. They are available to everyone, regardless of social or economic status.

When we first introduced the SAFE Act, I went to the Chicago Public Library to make the announcement. The library was established in 1873, and for over 130 years it has given the people of the City of Chicago the ability to read and learn and communicate. Here is what the mission statement says at that public library:

We welcome and support all people and their enjoyment of reading and pursuit of lifelong learning. We believe in the freedom to read, to learn, and to discover.

We have to ensure, in the Senate and in Congress, in the bills that we pass, including the PATRIOT Act, that this freedom to read, learn, and discover is preserved for our children and our grandchildren.

Mr. President, I yield the floor and I suggest the absence of a quorum.

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