

**PROTECTING THE RIGHTS OF INDIVIDUALS ACT (S. 1552)**  
**Sen. Murkowski (R-AK) and Sen. Wyden (D-OR)**

Supported by organizations from across the political spectrum, the Protecting the Rights of Individuals Act (PRI) seeks to place reasonable limits on the powers granted to law enforcement and intelligence agencies under the USA PATRIOT Act. PRI would amend many of PATRIOT's most troublesome provisions, reasserting traditional checks and balances on the Executive Branch to ensure the proper balance between law enforcement authority and Americans' fundamental liberties. Specifically, PRI:

- **Limits the use of secret “sneak and peek” searches to terrorism investigations.** PRI § 2 amends 18 U.S.C. 3103a to ensure that delayed notice of a prior secret government search is allowed only when officials are investigating terrorism and only when such delays are absolutely necessary. The amendment also strictly limits the length of the delay.
- **Protects 1<sup>st</sup> Amendment rights by narrowing the definition of “domestic terrorism.”** PRI § 3 amends 18 U.S.C. 2331 to narrow PATRIOT's overly broad definition of “domestic terrorism.” By doing so, PRI guarantees that political protestors will not be prosecuted as terrorists simply for exercising their 1<sup>st</sup> Amendment rights.
- **Shields Americans' sensitive, personal information from government access without some specific suspicion.** PRI § 4 amends the Foreign Intelligence Surveillance Act (FISA) to protect private records, requiring that the government submit some minimal evidence that the party whose records are sought is a foreign power or an agent of a foreign power, such as a spy or an international terrorist, before it can get the necessary court order.

Rather than merely certify that the personal records sought are for a terrorism or intelligence investigation, the government must justify its request with a statement of the facts and circumstances it is relying upon. In the case of medical records, library records, records involving the purchase or rental of books, video, or music, or records regarding access to Internet materials, the government must meet the Constitution's “probable cause” standard.

- **Prevents the government from accessing library records without judicial approval.** PRI § 4 also amends 18 U.S.C. 2709 to prevent the use of “National Security Letters” to obtain library records. National Security Letters are administrative subpoenas that are issued directly by the Justice Department without any judicial oversight.
- **Limits the use of “John Doe roving” wiretaps.** PRI § 5 amends 50 U.S.C. 1805 to ensure that FISA wiretap orders meet the 4<sup>th</sup> Amendment's “particularity” requirement and clearly limit the scope of the wiretap. “Roving” wiretap orders that do not specify the facility or location to be tapped must at least identify the person whose communications are targeted, while “John Doe” wiretap orders that

do not specify the targeted person must at least identify the facility or location to be tapped.

- **Ensures that the government cannot monitor what Americans read on the Internet without probable cause.** PATRIOT extended “pen register/trap and trace” wiretap authority to the Internet, allowing surveillance of Americans’ Internet activities based merely on the government’s certification that they may be relevant to a criminal investigation. PRI § 6 amends 18 U.S.C. §§ 3121-3123 to require a showing of probable cause before the government can intercept Internet web addresses and email subject lines.
- **Forbids government data mining without prior congressional approval.** PRI § 7 prevents the government from implementing any “data mining” program, such as the Terrorism (previously “Total”) Information Awareness program, unless authorized by Congress. It further requires extensive reporting to Congress on any government development or use of data-mining technology.
- **Requires that the Attorney General provide Congress with basic information about foreign intelligence surveillance.** PRI § 8 amends FISA to ensure that Congress has information necessary for effective oversight of the Foreign Intelligence Surveillance process, requiring the Justice Department to submit annual reports on the number of orders for electronic surveillance, physical searches, and pen register/trap & trace taps, the number of times personal records have been accessed, and the number of U.S. persons placed under surveillance.
- **Reinstates longstanding discovery procedures for the use of foreign intelligence evidence in criminal proceedings.** PRI § 9 amends FISA to allow a court to disclose foreign intelligence evidence to the criminal defendant against whom the evidence is used, to the extent that such disclosure will not harm national security.
- **Restores the requirement that foreign intelligence must be the primary purpose of surveillance conducted under FISA.** PRI § 10 prevents law enforcement from using the lower standards of proof necessary for FISA surveillance in the investigation of ordinary crimes by requiring that the collection of foreign intelligence be the “primary purpose” of such surveillance.
- **Prevents government access to education records without specific facts showing why those records are needed.** PRI § 11 amends 20 U.S.C. 1232g so that in order to get a court order for education records, the government must actually present facts giving reason to believe that the records sought are relevant to a terrorism investigation, rather than merely certify that such facts exist.

The Electronic Frontier Foundation respectfully urges swift passage of the Protecting the Rights of Individuals Act.