

July 8, 2004

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13 Remaining Amendments made in order to the FY 2005 Commerce, Justice, State Appropriations Act (H.R. 4754)

Rep. Otter. According to the sponsor's description, the amendment would impose "reasonable limits on the government's ability to obtain sneak and peek warrants for physical evidence by narrowing the circumstances under which notice of the execution of a search warrant is delayed and requiring notification of a covert search within seven days. The amendment authorizes unlimited additional seven-day delays if the court found that notice of the warrant would continue to endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant. It also requires the Attorney General to report to Congress on the requests made for delays of notice and extensions of delays of notice." The text of the amendment is pasted below:

TITLE VIII--NOTICE OF SEARCH WARRANTS

SEC. 801. Section 3103a of title 18, United States Code, is amended--

(1) in subsection (b)--

(A) in paragraph (1), by striking "may have an adverse result (as defined in section 2705)" and inserting "will endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant"; and

(B) in paragraph (3), by striking "a reasonable period" and all that follows and inserting "seven calendar days, which period, upon application of the Attorney General, the Deputy Attorney General, or an Associate Attorney General, may thereafter be extended by the court for additional periods of up to seven calendar days each if the court finds, for each application, reasonable cause to believe that notice of the execution of the warrant will endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant."; and

(2) by adding at the end the following new subsection:

"(c) *Reports.*--(1) On a semiannual basis, the Attorney General shall transmit to Congress and make public a report concerning all requests for delays of notice, and for extensions of delays of notice, with respect to warrants under subsection (b).

(2) Each report under paragraph (1) shall include, with respect to the preceding six-month period--

(A) the total number of requests for delays of notice with respect to warrants under subsection (b);

(B) the total number of such requests granted or denied; and

(C) for each request for delayed notice that was granted, the total number of applications for extensions of the delay of notice and the total number of such extensions granted or denied."

According to the White House Statement of Administration Policy, issued July 7, 2004: “If legislation were presented to the President that includes any provision that forces the courts to allow notice to criminal suspects before a search warrant is executed, the President’s senior advisors would recommend that the President veto the bill.

Rep. Akin. Inserts at the end of the bill the following new section:

SEC. 801. None of the funds made available in this Act may be used in contravention of the provisions of subsections (e) and (f) of section 301 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108-25; 22 U.S.C. 7631(e) and (f)).

This amendment ensures that no taxpayer funds designated for HIV/AIDS prevention may be used to promote or advocate the legalization of prostitution or sex trafficking, and that no funds may be given to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking. The amendment does this by reaffirming the following two provisions in Public Law 108-25:

SEC. 301. ASSISTANCE TO COMBAT HIV/AIDS. ...

(e) Limitation.--No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(f) Limitation.--No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.

Rep. Sanders. Inserts at the end of the bill the following new section:

SEC.801. None of the funds made available in this Act may be used to make an application under section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) for an order requiring the production of library circulation records, library patron lists, library Internet records, book sales records, or book customer lists.

According to the White House Statement of Administration Policy , issued July 7, 2004: “If any other amendment that would weaken the USA PATRIOT Act were adopted and presented to the President for his signature, the President’s senior advisors would recommend a veto.”

Rep. Baca. The sponsor’s office indicated the Member is likely to withdraw the amendment, which reads as follows:

SEC. 801. (a) Part 1 of title 18, United States Code, is amended by adding at the end the following new chapter:

“CHAPTER 124—PROHIBITION ON SALE OR RENTAL OF ADULT VIDEO GAMES TO MINORS

“§ 2731. Definitions

“As used in this Act, the following definitions apply:

“(1) The term ‘graphic violence’ means the visual depiction of serious injury to human beings, actual or virtual, including but not limited to aggravated assault, decapitation, dismemberment, or death.

“(2) The term ‘harmful to minors’ means a video game that predominantly appeals to minors’ morbid interest in violence or minors’ prurient interest in sex, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and lacks serious literary, artistic, political or scientific value for minors, and contains—

“(A) graphic violence;

“(B) sexual violence; or

“(C) strong sexual content.

“(3) The term ‘minor’ means a person age 17 and younger.

“(4) The term ‘nudity’ means the visual depiction, actual or virtual, of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, of a female breast with less than a fully opaque covering of any part of the nipple or of any portion of the breast below the nipple, or the depiction of covered male genitals in a discernibly turgid state.

“(5) The term ‘sexual conduct’ means acts, actual or virtual, of masturbation, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, a breast.

“(6) The term ‘strong sexual content’ means the visual depiction, actual or virtual, of human nudity or explicit human sexual behavior, including but not limited to acts of masturbation, deviate sexual conduct, sexual intercourse, or fondling of genitals.

“(7) The term ‘sexual violence’ means the visual depiction, actual or virtual, of rape or other sexual assault.

“(8) The term ‘video game’ means any copy of an electronic game that may be played using a portable electronic device or with a hand-held gaming device using a television or computer.

§ 2732. Prohibition on sale or rental of adult video games to minors

““Whoever sells at retail or rents, or attempts to sell at retail or rent, to a minor any video game that depicts nudity, sexual conduct or other content that is harmful to minors, shall be fined under this chapter.

§ 2733. Penalties

“(a) FIRST VIOLATION.—Whoever knowingly violates section 2732 shall be fined not more than \$1,000.

“(b) SECOND VIOLATION.—Whoever knowingly violates section 2732, having previously been fined under subsection (a), shall be fined not less than \$1,000 and not more than \$5,000.

“(c) SUBSEQUENT VIOLATIONS.—Whoever knowingly violates section 2732, having previously been fined under subsection (b), shall be fined not less than \$5,000 or be imprisoned for not more than 90 days, or both.”.

(b) The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following new item:

Rep. Hefley. The amendment reduces the CJS Appropriations bill by 1%, with an across-the-board cut.

Rep. Hefley. The amendment reduces the CJS Appropriations bill by 1%, with an across-the-board cut, of items appropriated in the bill but not required by law to be appropriated.

Rep. Hefley. The amendment reduces the funding for the U.S. Court of Federal Claims by 50% (limits salaries and expenses to not more than \$7,500,000).

Rep. Weiner. Inserts at the end of the bill the following new section:

SEC. 801. None of the funds made available in this Act may be used in contravention of the provisions of section 214(d) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228).

The amendment will reaffirm the following provision of current law, and ensure that no funds in the bill may be used in contravention of this law:

(Public Law 107-228)

“SEC. 214. UNITED STATES POLICY WITH RESPECT TO JERUSALEM AS THE CAPITAL OF ISRAEL.

...

“(d) Record of Place of Birth as Israel for Passport Purposes.--For purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary shall, upon the request of the citizen or the citizen's legal guardian, record the place of birth as Israel.”

According to the sponsor, when issuing a passport or official document listing a person’s place of birth, the State Department currently does not list a country if someone is born in Jerusalem, despite the law passed by Congress last session. Despite the presence of the word “shall” in the bill, the president, when signing the bill, announced that he would consider this language “advisory.” There are currently two lawsuits pending in federal court brought by individuals seeking to compel the Secretary of State to honor the provision and according to the sponsor, the amendment would preclude the executive branch from contesting these suits.

Rep. Inslee. The amendment is regarding Justice Department detention of individuals. **Text is not available and the sponsor’s office indicated this amendment will not be offered.**

Rep. King (IA): The amendment reduces by \$1 million the funding for the administration of the Department of Justice (which is funded in the bill at \$124.906 million), and increases by \$1 million the funds for enforcement of Section 642(a) and (b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. These provisions of immigration law allow federal immigration authorities to take steps to remove criminal illegal aliens from the country.

Rep. Sherman: Inserts at the end of the bill the following new section:

SEC. 801. None of the funds made available in this Act may be used to detain for more than 30 days a person, apprehended on United States territory, solely because that person is classified as an enemy combatant.

SEC. 802. None of the funds made available in this Act may be used to defend in court the detention for more than 30 days of a person, apprehended on United States territory, solely because that person is classified as an enemy combatant.

SEC. 803. None of the funds made available in this Act may be used to classify any person as an enemy combatant if that person is apprehended on United States territory.

Rep. Smith (MI). The amendment increases funding for the National Institute of Standards and Technology (NIST) by \$20 million (from the \$375.838 million currently in the bill), and funds the increase with a reduction of \$20 million in the funds for international organizations (IO)(which currently is funded at \$1.194 billion in the bill).

The text of the amendment reads:

Page 53, line 4, after the dollar amount insert “(increased by \$20,000,000)”.

Page 72, line 17, after the dollar amount insert “(reduced by 20,000,000)”.

According to the sponsor, the amendment would increase the NIST appropriation to the President’s request, and “reclaim a small amount of the money UN bureaucrats diverted from the Oil for Food program.” Also according to the sponsor, the NIST increase would be used as follows: \$6 million for initiatives in nanoelectronics and nanomanufacturing; \$3 million for NIST’s standards development activities for voting equipment under the Help American Vote Act; \$3 million for the NIST Physics Laboratory, to be used for research related to the neutron; Spallation source and proposed FY 2005 initiative in quantum information science; \$6 million for cybersecurity; and \$2 million for measurements and standards for international trade.

IO contributions were increased 19.4% over last year, and according to the sponsor, “even with this amendment, there is still a 17.4% increase. On April 21, 2004, the Wall Street Journal reported that the UN kept \$100 million of Oil for Food money to pay for its own expenses. This money was intended to rebuild Iraq, but instead the American taxpayer is currently paying the tab. The UN also collected 0.8% of Oil for Food transactions to pay for weapons inspections. Between 1999 and 2002, the UN collected \$400 million for weapons inspections, even though no inspections took place.”

Rep. Sherman. Inserts at the end of the bill the following new section:

SEC. 801. None of the funds made available in this Act to the Department of Justice may be used to implement, litigate or defend the legality of, or enforce the regulations prescribed by the Comptroller of the Currency and published in the Federal Register on January 13, 2004, at 69 Fed. Reg. 1895—1904 (relating to the scope of visitorial powers of the Comptroller of the Currency) and at 69 Fed. Reg. 1904—1917 (relating to applicability and preemption of State law with respect to national bank operations).”

According to the sponsor, the amendment “would prevent the Department of Justice from implementing, litigating or defending the legality of, or enforcing the OCC ‘preemption’ regulation. These regulations were issued in January and essentially exempt national banks from all state laws — including state predatory lending and consumer protection laws.”

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