October 12, 2001

Mr. PAUL. Mr. Speaker, the shocking attacks on the World Trade Center and the Pentagon have reminded us all that the primary responsibility of the federal government is to protect the security and liberty of our nation's citizens. Therefore, we must do what we can to enhance the ability of law enforcement to prevent future terrorist attacks. For example, the federal government can allow enhanced data-sharing among federal agencies that deal with terrorism. The federal government should also forbid residents of countries which sponsor terrorism from receiving student visas as well as prohibit residents of terrorist countries from participating in programs which provide special privileges to immigrants. In fact, I have introduced my own anti-terrorism legislation, the Securing American Families Effectively (SAFE) Act, which strengthens the ability of law enforcement to track down and prosecute suspected terrorists as well as keep potential terrorists out of the country.

There is also much the federal government can do under current existing law to fight terrorism. The combined annual budgets of the FBI, the CIA and various other security programs amount to over $30 billion. Perhaps Congress should consider redirecting some of the money spent by intelligence agencies on matters of lower priority to counter-terrorism efforts. Since the tragic attacks, our officials have located and arrested hundreds of suspects, frozen millions of dollars of assets, and received authority to launch a military attack against the ring leaders in Afghanistan. It seems the war against terrorism has so far been carried our satisfactorily under current law.

Still, there are areas where our laws could be strengthened with no loss of liberties, and I am pleased that HR 3108 appears to contain many common sense provisions designed to strengthen the government's ability to prevent terrorist attacks while preserving constitutional liberty.

However, other provisions of this bill represent a major infringement of the American people's constitutional rights. I am afraid that if these provisions are signed into law, the American people will lose large parts of their liberty--maybe not today but over time, as agencies grow more comfortable exercising their new powers. My concerns are exacerbated by the fact that HR

3108 lacks many of the protections of civil liberties which the House Judiciary Committee worked to put into the version of the bill they considered. In fact, the process under which we are asked to consider this bill makes it nearly impossible to fulfill our constitutional responsibility to carefully consider measures which dramatically increase government's power.

Many of the most constitutionally offensive measures in this bill are not limited to terrorist offenses, but apply to any criminal activity. In fact, some of the new police powers granted the government could be applied even to those engaging in peaceful protest against government policies. The bill as written defines terrorism as acts intended ``to influence the policy of a government by intimidation or coercion." Under this broad definition, should a scuffle occur at an otherwise peaceful pro-life demonstration the sponsoring organization may become the target of a federal investigation for terrorism. We have seen abuses of law enforcement authority in the past to harass individuals or organizations with unpopular political views. I hope my colleagues consider that they may be handing a future administration tools to investigate pro-life or gun rights organizations on the grounds that fringe members of their movements advocate violence. It is an unfortunate reality that almost every political movement today, from gun rights to environmentalism, has a violent fringe.

I am very disturbed by the provisions centralizing the power to issue writs of habeas corpus to federal courts located in the District of Columbia. Habeas corpus is one of the most powerful checks on government and anything which burdens the ability to exercise this right expands the potential for government abuses of liberty. I ask my colleagues to remember that in the centuries of experience with habeas corpus there is no evidence that it interferes with legitimate interests of law enforcement. HR 3108 also codifies one of the most common abuses of civil liberties in recent years by expanding the government's ability to seize property from citizens who have not yet been convicted of a crime under the circumvention of the Bill of Rights known as ``asset forfeiture."

Among other disturbing proposals, H.R. 3108 grants the President the authority to seize all the property of any foreign national that the President determines is involved in hostilities against the United States. Giving the executive branch discretionary authority to seize private property without due process violates the spirit, if not the letter, of the fifth amendment to the Constitution. Furthermore, given that one of the (unspoken) reasons behind the shameful internment of Americans of Japanese ancestry in the 1940s was to reward favored interests with property forcibly taken from innocent landowners, how confident are we that future, less scrupulous executives will refrain from using this power to reward political allies with the property of alleged ``hostile nationals?"

H.R. 3108 waters down the fourth amendment by expanding the federal governments ability to use wiretaps free of judicial oversight. The fourth amendment's requirement of a search warrant and probable cause strikes a balance between effective law enforcement and civil liberties. Any attempt to water down the warrant requirement threatens innocent citizens with a loss of their liberty. This is particularly true of provisions which allow for nationwide issuance of search warrants, as these severely restrict judicial oversight of government wiretaps and searches.

Many of the questionable provisions in this bill, such as the expanded pen register authority and the expanded use of roving wiretaps, are items for which law enforcement has been lobbying for years. The utility of these items in catching terrorists is questionable to say the least. After all, terrorists have demonstrated they are smart enough not to reveal information about their plans when they know federal agents could be listening.

This legislation is also objectionable because it adopts a lower standard than probable cause for receiving e-mails and Internet communications. While it is claimed that this is the same standard used to discover numbers dialed by a phone, it is also true that even the headings on e-mails or the names of web sites one visits can reveal greater amounts of personal information than can a mere telephone number. I wonder how my colleagues would feel if all of their e-mail headings and the names of the web sites they visited were available to law enforcement upon a showing of mere ``relevance.'' I also doubt the relevance of this provision to terrorist investigation, as it seems unlikely that terrorists would rely on e-mail or the Internet to communicate among themselves.

Some defenders of individuals rights may point to the provisions establishing new penalties for violations of individual rights and the provisions ``sunsetting'' some of the government's new powers as justifying support for this bill. Those who feel that simply increasing the penalties for ``unauthorized'' disclosure of information collected under this act should consider that existing laws did not stop the ineffectiveness of such laws in preventing the abuse of personal information collected by the IRS or FBI by administrations of both parties. As for ``sunsetting,'' I would ask if these provisions are critical tools in the fight against terrorism, why remove the government's ability to use them after five years? Conversely, if these provisions violate American's constitutional rights why is it acceptable to suspend the Constitution at all?

As Jeffrey Rosen pointed out in the New Republic, this proposal makes even the most innocuous form of computer hacking a federal offense but does not even grant special emergency powers to perform searches in cases where police have reason to believe that a terrorist attack would be imminent. Thus, if this bill were law on April 24, 1995 and the FBI had

information that someone in a yellow Ryder Truck was going to be involved in a terrorist attack, the government could not conduct an emergency search of all yellow Ryder Trucks in Oklahoma City. This failure to address so obvious a need in the anti-terrorism effort suggests this bill is a more hastily cobbled together wish list by the federal bureaucracy than a serious attempt to grant law enforcement the actual tools needed to combat terrorism.

H.R. 3108 may actually reduce security as private cities may not take necessary measures to protect their safety because ``the government is taking care of our security.'' In a free market, private owners have great incentives to protect their private property and the lives of their customers. That is why industrial plants in the United States enjoy reasonably good security. They are protected not by the local police but by owners putting up barbed wire fences, hiring guards with guns, and requiring identification cards to enter. All this, without any violation of anyone's civil liberties. In a free society private owners have a right, if not an obligation, to ``profile'' if it enhances security.

The reason this provision did not work in the case of the airlines is because the airlines followed federal regulations and assumed they were sufficient. This is often the case when the government assumes new powers or imposes new regulations. Therefore, in the future, once the horror of the events of September 11 fade from memory, people will relax their guard, figuring that the federal government is using its new powers to protect them and thus they do not need to invest their own time or money in security measures.

In conclusion, I reiterate my commitment to effective ways of enhancing the government's powers to combat terrorism. However, H.R. 3108 sacrifices too many of our constitutional liberties and will not even effectively address the terrorist menace. I, therefore, urge my colleagues to oppose this bill and instead support reasonable common-sense measures that are aimed at terrorism such as those contained in my SAFE Act.