



**Testimony of Grover Norquist before the Senate Judiciary Committee
Subcommittee on the Constitution, Federalism, and Property Rights
October 3, 2001**

Thank you for the opportunity to present my thoughts on pending legislation to increase the police powers of the federal government.

My name is Grover Glenn Norquist and I serve as president of Americans for Tax Reform.

I am also a member of the large coalition of conservative and liberal civic groups entitled "In Defense of Freedom" that has come together in response to the Justice Department's recent requests for expanded police powers (see addendum).

Americans for Tax Reform has had one primary concern throughout: that the legislation cobbled together as a Justice Department wish list of powers not be pushed through Congress without the time and effort to look at what is in the legislation. I wrote a letter to all members of the House and Senate urging them to promise not to vote for any legislation on civil liberties restrictions that they had not actually read.

I did receive one fax from the Hill asking if I was kidding.

I was not.

I am delighted that leaders in the House and Senate have demanded that this legislation be read, examined, debated and the good parts enacted in a deliberative fashion, without reacting in panic.

I am also very pleased that the proponents of massive new powers for the federal government refrained from calling those of us who wanted the legislation actually read silly names. Those of us who feel strongly that the Constitution—and every little jot and tittle of the Constitution—was written on purpose, that the Second and Fourth Amendments were not mistakes, that the Fifth Amendment is not a loophole, have been able to make our voices heard in this time of national concern without people questioning our patriotism, seriousness or opposition to bad guys.

As we now consider the House of Representatives compromise legislation that has the support of serious men such as Congressmen Sensenbrenner and Conyers, as well as the legislation proposed by the Justice Department, I would urge you to keep the following principles in mind.

1—If we are passing new powers for the federal government in response to the murders of September 11, then any change in law should be asked to show how it would have stopped that terrorist act. If a new law would not have stopped the murders or helped us to catch and punish those responsible, then why are we changing the law?

2—If this is a response to terror, then the word terrorism should appear not just in the title of the bill, but the new powers should be limited to cases of terror. For example, Congress passed the RICO statutes with the promise that it would be used against mobsters and then prosecutors have turned it against pro-life organizations. Congress gave the government powers to seize people's property—asset forfeiture—promising that it would be used against drug peddlers, and property seizures have swept the nation to the point that Congress had to revisit the statutes and reduce those powers that were being abused to the detriment of citizens.

Now we are told the government just wants to fight against terrorists. Okay, then put limits in the use of these powers to terrorist cases and terrorist cases alone.

3—Consider sunseting all or part of the changes in law you propose. A bad law that lasts two years is less damaging than a bad law that lasts forever.

4—Along with consideration of new powers, please consider reforming the institutions that have been using the powers you have granted in the past. The Pentagon has great credibility in asking for more money for the Defense Department because Secretary Rumsfeld has led the fight for a base closings commission and to end the production of old weapons to afford the production of new weapons. An institution looking to cut away old waste and to end destructive or wasteful programs can be more seriously entrusted with new monies.

I do not to date see any effort by the intelligence community for serious self-examination, self-criticism or willingness to reform. Something went wrong. Demands for more money and more power would be more credible if they were accompanied by retirements, firings, self-criticism and a public recognition that the present intelligence agencies and their procedures are by definition flawed. If serious self-examination is going on in private, that is only a first step. A democracy must see its government reforming itself before it can be asked to grant more powers and more money.

5—If changes in the laws are needed, then what laws do you intend to remove? Is it believable that all the laws and powers passed to date are useful and productive and conducive to human liberty and security? That the only problems were too few laws? That isn't believable. The congressmen who passed the present set of powers that you now say are flawed made only one mistake: too few powers. Never too many.

The In Defense of Freedom coalition is a broad cross section of American thought. I would like to speak now for many conservative groups such as the Eagle Forum and the Free Congress Foundation about some of the proposals contained in the several bills that cause us the most apprehension.

- The use of wiretap information from foreign governments opens the door to introducing evidence against a US citizen in a US court of law that was gathered in a manner that violates the Fourth Amendment. It is disturbing that this vital protection against unreasonable searches and seizures could be waived.
- Deleting the requirement under the Foreign Intelligence Surveillance Act for a formal pleading to a court of law and the signature of a FISA judge or magistrate to secure business documents and records and replacing it with an administrative subpoena cuts the judiciary out of the equation completely. The judicial branch was established as a check on the other two. Not allowing for judicial oversight in this instance creates an imbalance of power wholly inconsistent with our constitutional principles.
- Allowing for the compelled disclosure of educational records is substantively unrelated to the effective pursuit and prosecution of terrorists, and would infringe on the privacy rights of all students throughout the nation. The National Statistics Act prohibited the disclosure of this information for reasons far better than any argument in favor of letting the government break open the seals.
- Applying a uniform standard for eliminating the mandatory notice of the issuance of search warrants when there is showing to a court that such notice would jeopardize an investigation has been appropriately derided as “sneak and peek”. Such a standard would unacceptably hamper judicial discretion in conferring or denying authority for conducting “sneak and peek” searches.
- Expanding the authority for pre-trial asset restraint so that the government can take a defendant’s property—even when the government cannot prove it

is traceable to any offense—is sufficiently outrageous to not require further comment.

- Unleashing the “Know Your Customer” rules on the population would be a most unforgivable action. This idea, which has been rejected every time it has surfaced, would deputize bank employees by obligating them to monitor their customers’ transaction activities, and requiring them to report to the federal government any transaction that fell conspicuously outside of a particular customer’s “normal” practice.

Some observers have been surprised to see the American Civil Liberties Union join with the American Conservative Union and other center-right groups such as Phyllis Schlafly's Eagle Forum, Paul Weyrich's Free Congress Foundation and Americans for Tax Reform.

I am not surprised.

While we may differ on many issues we are all Americans. America is a nation not of a single people or race, native tongue or religion. We are united by our dedication to the idea that men and women are and should by nature be free to live their lives as they see fit in liberty. The Constitution unites us. Historians have said that Afghan factions feud unless the British or Soviets invade and they unite in defense of the territory of Afghanistan.

We are Americans and we unite in defense of the Constitution and ordered liberty.

As Senators you have all sworn an oath to oppose all enemies of the Constitution—both foreign and domestic. Please, as this debate advances, keep an eye on the domestic enemies of the Constitution. They are the only ones who can do permanent damage to America.

Addendum

IN DEFENSE OF FREEDOM

1. On September 11, 2001 thousands of people lost their lives in a brutal assault on the American people and the American form of government. We mourn the loss of these innocent lives and insist that those who perpetrated these acts be held accountable.
2. This tragedy requires all Americans to examine carefully the steps our country may now take to reduce the risk of future terrorist attacks.
3. We need to consider proposals calmly and deliberately with a determination not to erode the liberties and freedoms that are at the core of the American way of life.
4. We need to ensure that actions by our government uphold the principles of a democratic society, accountable government and international law, and that all decisions are taken in a manner consistent with the Constitution.
5. We can, as we have in the past, in times of war and of peace, reconcile the requirements of security with the demands of liberty.
6. We should resist the temptation to enact proposals in the mistaken belief that anything that may be called anti-terrorist will necessarily provide greater security.
7. We should resist efforts to target people because of their race, religion, ethnic background or appearance, including immigrants in general, Arab Americans and Muslims.
8. We affirm the right of peaceful dissent, protected by the First Amendment, now, when it is most at risk.
9. We should applaud our political leaders in the days ahead who have the courage to say that our freedoms should not be limited.
10. We must have faith in our democratic system and our Constitution, and in our ability to protect at the same time both the freedom and the security of all Americans.