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OPINION | COMMENTARY

The Patriot Act Wasn't Meant to Target Parents

The Biden administration is abusing federal laws and agencies as instruments of political repression.

By F. James Sensenbrenner

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A school-board meeting in McCandless, Pa., Aug. 25.

PHOTO: ALEXANDRA WIMLEY/ASSOCIATED PRESS

As principal author of the Patriot Act and chairman of the House Judiciary Committee during its consideration, I find it necessary to remind the Biden administration that the Patriot Act doesn't apply to parents' behavior at school-board meetings.

In recent months, parents across the country have expressed their views on issues ranging from pronoun selection and Critical Race Theory to the medical basis of certain Covid restrictions and age-inappropriate, sexually explicit curricular materials. Parents have a right—indeed an obligation—to participate actively at school-board meetings to ensure the safety and well-being of their children. In Virginia's Loudoun and Fairfax counties, moms, dads, and teachers shocked by X-rated reading lists, race-based indoctrination, and anti-Christian instruction have made their voices heard.

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Rather than embracing a renaissance of spirited and nonviolent civic engagement, Virginia gubernatorial candidate Terry McAuliffe recently said: “I don’t think parents should be telling schools what they should teach.” Democrats’ hostility toward parents seeking a voice in their children’s education is not new. Of greater concern is the recent attempt to weaponize our criminal laws to eliminate these voices.

When asked this week whether the Patriot Act should be used to monitor parents at school-board meetings, White House press secretary Jen Psaki responded: “The attorney general has put out a letter. They will take actions they take, and I would point you to them for more information.” Ms. Psaki’s nonresponse—and Attorney General Merrick Garland’s memorandum directing federal counterterrorism agents to monitor parents at local school-board meetings—is emblematic of the Biden administration’s unparalleled effort to transform federal laws and agencies into instruments of domestic political repression.

The Patriot Act was enacted into law following the mass terrorist attacks of Sept. 11, 2001. Its central purpose was to prevent additional foreign terrorist attacks on American soil by enhancing the collection and sharing of foreign intelligence information, restricting terrorist financing, and enhancing border security. The legislation defined terrorism as unlawful acts of violence or acts dangerous to human life intended to intimidate or coerce a civilian population or to affect the conduct of government by “mass destruction, assassination, or kidnapping.” Some provisions, particularly Section 215 and the issuance of National Security Letters, occasioned spirited and necessary debate to ensure against their misuse

by federal agencies.

When considering the Patriot Act, I sought a bipartisan consensus that was reflected in its unanimous committee approval. Aware of potential abuse—and over the objection of the Bush administration—I ensured the legislation contained sunset provisions and wrote a bill to amend and reauthorize the Patriot Act in 2005. In 2015, I was the author of the USA Freedom Act, which restored the original intent of the Patriot Act by reforming key federal surveillance authorities.

Freedom of expression is a touchstone of self-government. Our laws and jurisprudence draw a clear distinction between acts of terrorism calculated to influence a civilian population and the robust expression of views that sustains democratic self-government. This awareness has informed legislative consideration of the Patriot Act and subsequent revisions.

When debating the Patriot Act and other federal antiterrorism laws, nobody in either chamber of Congress could have imagined these laws would be turned against concerned parents at local school board meetings. Yet on Oct. 4, Mr. Garland issued the memorandum that will live in infamy. It directs the Federal Bureau of Investigation and U.S. attorneys to develop “strategies for addressing threats against school administrators, board members, teachers, and staff.” This memorandum followed a Sept. 29 National School Boards Association letter to President Biden urging the administration to use the Patriot Act to monitor parents at school board meetings.

Federal agencies lack roving jurisdiction to investigate and prosecute noncriminal conduct. They also lack authority to invoke federal antiterrorism laws to chill protected expressive conduct. The Justice Department’s school-board memorandum violates the letter and spirit of federal law approved by bipartisan, bicameral congressional majorities. Unless it is immediately withdrawn, the memorandum will chill free speech, undermine civil liberties, erode public confidence in federal law enforcement, divert resources from actual terrorist threats, and weaken congressional support for key antiterrorism laws. All of these developments would make Americans less free, less secure and less safe.

Ours is a government of limited and enumerated powers. The attorney general is America’s top law-enforcement officer; his words have consequences. The press

secretary speaks on behalf of the White House. Mr. Garland's memorandum and Ms. Psaki's silence speak volumes about this administration's approach to the constitutional rights of all Americans. Mr. McAuliffe's hostility toward Virginia's parents must not be backed by oppressive and unlawful federal mandates calculated to stifle free speech throughout the country.

Members of Congress have an obligation to ensure laws they write are faithfully applied, not intentionally subverted. Congress should demand the immediate withdrawal of the school-board memorandum, bar the appropriation of funds to implement it, and directly challenge the administration's efforts to misuse federal laws to silence political opposition. Respect for our laws, Constitution and citizens demands no less.

Mr. Sensenbrenner, a Republican, served as a U.S. representative from Wisconsin, 1979-2021, and chairman of the House Judiciary Committee, 2001-07.

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