

Ron Paul's FREEDOM REPORT

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Editor's note: this issue features important statements by Dr. Paul on government's violation of our medical privacy and on restoring parental control of education. Also reprinted here are questions about the International Criminal Court and the exercise of war powers that Dr. Paul was not able to ask Secretary Powell when hearings before the International Relations Committee were cut short.



THURS., MARCH 15, 2001

Dr. Paul introduces:

The Medical Privacy Protection Resolution

(H.J.Res. 38)

I rise to introduce the *Medical Privacy Protection Resolution*, which uses the *Congressional Review Act* to repeal the so-called *Medical Privacy* regulation. **Many things in Washington are misnamed; however, this [medical-privacy] regulation may be the most blatant case of false advertising I have come across in all my years in Congress.**

Rather than protect an individual's right to medical privacy, these regulations empower government officials to determine how much medical privacy an individual "needs." This "one-size-fits-all" approach ignores the fact that different people may prefer different levels of privacy. Certain individuals may be willing to exchange a great deal of their personal medical information in order to obtain certain benefits, such as lower-priced care or having information targeted to their medical needs sent to them in a timely manner. Others may forgo those benefits in order to limit the number of people who have access to their medical history. Federal bureaucrats cannot possibly know, much less meet, the optimal level of privacy for each individual. In contrast, the free market allows individuals to obtain the level of privacy protection they desire.

The so-called "medical privacy" regulations not only reduce an individual's ability to determine who has access to their personal medical information, they actually threaten medical privacy and constitutionally-protected liberties. For example,

these regulations give law enforcement and other government officials access to a citizen's private medical record without having to obtain a search warrant.

Allowing government officials to access a private person's medical records without a warrant is a violation of the Fourth Amendment to the United States Constitution, which protects American citizens from warrantless searches by government officials. The requirement that law enforcement officials obtain a warrant from a judge before searching private documents is one of the fundamental protections against abuse of the government's power to seize an individual's private documents. While the Fourth Amendment has been interpreted to allow warrantless searches in emergency situations, it is hard to conceive of a situation where law-enforcement officials would be unable to obtain a warrant before electronic medical records would be destroyed.

These regulations also require health-care providers to give medical records to the federal government for inclusion in a federal health-care-data system. Such a system would contain all citizens' personal health-care information. History shows that when the government collects this type of personal information, the inevitable result is the abuse of citizens' privacy and liberty by unscrupulous government officials. The only fail-safe privacy protection is for the government not to collect and store this type of personal information.

In addition to law enforcement, these so-called "privacy-protection" regulations create a privileged class of people with a federally guaranteed right to see an individual's medical records without the individual's consent. For example, medical researchers may access a person's private medical records, even if an individual does not want their private medical records used for medical research. Although individuals will be told that their identity will be protected, the fact is that no system is fail-safe. I am aware of at

least one incident where a man had his medical records used without his consent, and the records inadvertently revealed his identity. As a result, many people in his community discovered details of his medical history that he wished to keep private!

Forcing individuals to divulge medical information without their consent also runs afoul of the Fifth Amendment's prohibition on taking private property for public use without just compensation. After all, people do have a legitimate property interest in their private information. Therefore, restrictions on an individual's ability to control the dissemination of their private information represents a massive regulatory taking. The takings clause is designed to prevent this type of sacrifice of individual property rights for the "greater good."

In a free society such as the one envisioned by those who drafted the Constitution, the federal government should never force a citizen to divulge personal information to advance "important social goals." Rather, it should be up to the individuals, not the government, to determine what social goals are important enough to warrant allowing others access to their personal property, including their personal information. To the extent these regulations sacrifice individual rights in the name of a bureaucratically determined "common good," they are incompatible with a free society and a constitutional government.

The collection and storage of personal medical information "authorized" by these regulations may also revive an effort to establish a *unique health identifier* for all Americans. The same legislation which authorized these privacy rules also authorized the creation of a *unique health-care identifier* for every American. However, Congress, in response to a massive public outcry, has included a moratorium on funds for developing such an identifier in Health and Human Services' (HHS) budgets for the last three fiscal years.

By now, it should be clear to every member of Congress that the American people do not want their health information recorded on a database, and they do not wish to be assigned a unique health identifier. According to a survey by the respected Gallup Company, 91 percent of Americans oppose assigning Americans a "unique health care identifier," while 92 percent of the people oppose giving government agencies the unrestrained power to view private medical records, and 88 percent of Americans oppose placing private health-care information in a national database. Congress must heed the wishes of the American people and repeal these HHS regulations before they go into effect and become a back-door means of numbering each American and recording their information in a massive health-care database.

The Loss of Doctor-Patient Trust

The American public is right to oppose these regulations, for they not only endanger privacy but could even endanger health!

As an OB-GYN with more than 30 years experience in private practice, I am very concerned by the threat to medical practice posed by these regulations. The confidential physician-patient relationship is the basis of good health care. Oftentimes, effective treatment depends on the patient's ability to place absolute trust in his or her doctor. The legal system has acknowledged the importance of maintaining physician-patient confidentiality by granting physicians a privilege not to divulge confidential patient information.

I ask my colleagues to consider what will happen to that trust between patients and physicians when patients know that any and all information given their doctor may be placed in a government database or seen by medical researchers or handed over to government agents without so much as a simple warrant.

I am sure my colleagues agree that questions regarding who should or should not have access to one's medical privacy are best settled by way of contract between a patient and a provider. However, the government insurance-company complex that governs today's health-care industry has deprived individual patients of control over their health-care records, as well as over numerous other aspects of their health care. **Rather than put the individual back in charge of his or her medical records, the Department of Health and Human Services' privacy regulations give the federal government the authority to decide who will have access to individual medical records.** These regulations thus reduce individuals' ability to protect their own medical privacy.

These regulations violate the fundamental principles of a free society by placing the perceived "societal" need to advance medical research over the individual's right to privacy. They also violate the Fourth and Fifth Amendments by allowing law-enforcement officials and government-favored special interests to seize medical records without an individual's consent or a warrant and could facilitate the creation of a federal database containing the health-care data of every American citizen. These developments could undermine the doctor-patient relationship and thus worsen the health care of millions of Americans. I, therefore, call on my colleagues to join me in repealing this latest threat to privacy and quality health care by cosponsoring the Medical Privacy Protection Resolution.

[H.J.Res. 38 was introduced and referred to three committees: Energy and Commerce, Ways and Means, Education and the Workforce.]

WEDNESDAY, MARCH 7, 2001

Editor's note: On March 7, Secretary Colin Powell appeared before the House International Relations Committee to present

justifications for the Department of State's budget and answer questions from committee members. About 40 members of the 49-member committee were present and each member, in order of seniority, was allotted five minutes. However, the session was adjourned just before Congressman Paul had his turn to question Secretary Powell. Because the hearings were carried live over the C-SPAN television and radio networks, interest has been expressed in what constitutional issues Dr. Paul would have raised in that public forum. Those questions appear below.

Questions for Secretary of State Colin Powell before the House Committee on International Relations

Secretary Powell, thank you for your time and please answer the following questions:

1. On the topic of the International Criminal Court, I have two questions. I am pleased that the administration, as well as the Chairman of this Committee [Rep. Henry Hyde], have spoken against the ICC treaty as an infringement upon U.S. sovereignty. As a policy matter, can you explain why the administration has not spoken similarly against the WTO, the International War Crimes Tribunal, or the idea of fighting wars based on UN or NATO resolutions, and why these instrumentalities are any less threatening to our sovereignty?

Also on the ICC topic, if the administration is not going to pursue ratification of the treaty, will you support my resolution, **H. Con. Res. 23**, calling on the President to declare to all nations that the United States does not assent to the treaty and that the signature of former President Clinton should not be construed to mean otherwise?

2. Since World War II, each of our Presidents has engaged in wars — both big and small, from Korea to the continued bombing of Iraq — without an explicit declaration of war from Congress. Yet, the Constitution clearly vests the decision to go to war (as opposed to its execution by the commander-in chief, once declared), with the Congress. If, however, the "war decision" is allowed to come from Presidential directives or UN resolutions, of what value to the American people is the constitutional constraint upon a president who would otherwise wage war without Congressional approval? Do you believe the *War Powers Resolution* is unconstitutional? If so, why? If not, why not?

3. Is it not clear that a U.S. treaty, although it is called the law of the land, was never intended to be used to amend our Constitution?

4. Why do we trade with and subsidize a country like China, pursue talks with Iran and North Korea, and act as a conduit for peace in the Middle East while all we seem to know to do with Iraq is bomb, kill, and impose sanctions? Surely we are not expected to believe Saddam Hussein is the only totalitarian in power today?

5. Is not the continued bombing of Iraq an act of war?

Where does the administration get its authority to pursue this war? Is this policy not in violation of our Constitution that says only Congress can declare war? There is not even a UN resolution calling for the US-British imposed no-fly zone over Iraq. Our allies have almost all deserted us on our policy toward Iraq. Is it not time to talk to the Iraqis? We talked to the Soviets at the height of the Cold War; surely we can do the same with Iraq today. We trade with and subsidize China and we talk to the Iranians. Surely we can trade with Iraq . . . ?

6. If investors of a foreign nation had a stake in oil production in the Gulf of Mexico, and their country was dependent on oil imports for subsistence, is that country justified in militarily dominating the Gulf and using U.S. soil for basing operations? My guess is Americans would be furious, even if done with our government official's approval. Yet we expect the Arab world — a world quite different from ours — to accept our presence and domination. Is it not possible for our policy in the region to show more "humility" rather than pursue a policy that incites Islamic fundamentalists against us — leading to what they see as acts of self defense and we see as acts of terrorism?

7. How would you, the U.S. government, and the American people respond if a foreign power subsidized subversive groups whose goal it was to overthrow our government as we are doing with the Iraqi National Congress?

8. In your earlier remarks before this committee, you said that you regard the military as a vital component of U.S. foreign policy. I am wondering if you, as a former military officer, would comment on the antiquated idea of a military draft and selective service registration. I believe you have spoken against the draft in the past. Do you still hold that a draft is unwarranted? Would you support ending draft registration?

WEDNESDAY, JANUARY 31, 2001

Introduction of the Family Education Freedom Act (H.R. 368)

Dr. Paul addresses the House

I rise today to introduce the **Family Education Freedom Act**, a bill to empower millions of working and middle-class Americans to choose a non-public education for their children, as well as make it easier for parents to actively participate in improving public schools. **The Family Education Freedom Act accomplishes its goals by allowing American parents a tax credit of up to \$3,000 for the expenses incurred in sending their child to private, public,**

parochial, other religious school, or for home schooling their children.

The *Family Education Freedom Act* returns the fundamental principal of a truly free economy to America's education system: what the great economist *Ludwig von Mises* called *consumer sovereignty*. *Consumer sovereignty* simply means consumers decide who succeeds or fails in the market. Businesses that best satisfy consumer demand will be the most successful. *Consumer sovereignty* is the means by which the free market maximizes human happiness.

Currently...[f]unding decisions are increasingly controlled by the federal government. Because "he who pays the piper calls the tune," public, and even private schools, are paying greater attention to the dictates of federal "educrats" and ignoring the wishes of the parents to an ever-greater degree. As such, the lack of *consumer sovereignty* in education is destroying parental control of education and replacing it with state control.

Loss of control is a key reason why so many of America's parents express dissatisfaction with the educational system. According to a study by *The Polling Company*, **over 70% of all Americans support education tax credits!** This is just one of numerous studies and public opinion polls showing that Americans want Congress to get the federal bureaucracy out of the schoolroom and give parents more control over their children's education.

The \$3,000 tax credit will make a better education affordable for millions of parents. Many parents who would choose to send their children to private, religious, or parochial schools are unable to afford the tuition, in large part because of the enormous tax burden imposed on the American family by Washington.

The *Family Education Freedom Act* also benefits parents who choose to send their children to *public schools*. Parents of children in public schools may use this credit to improve their local schools by helping finance the purchase of educational tools such as computers or to ensure their local schools can offer enriching extracurricular activities such as music programs. ...[They] may also wish to use the credit to pay for special services, such as tutoring, for their children.

Increasing parental control of education is superior to funneling more federal tax dollars, followed by greater federal control, into the schools. According to a recent *Manhattan Institute* study of the effects of state policies promoting parental control over education, a minimal *increase in parental control boosts students' average SAT verbal scores by 21 points and students' SAT math scores by 22 points!* **The Manhattan Institute study also found that increasing parental control of education is the best way to improve student performance on the National Assessment of Education Progress (NAEP) tests.**

...[A] greater reliance on parental expenditures rather than government tax dollars will help make the public schools into true community schools that reflect the wishes of parents

and the interests of the students.

The *Family Education Freedom Act* will also aid those parents who choose to educate their children at home. *Home schooled children out-perform their public school peers by 30 to 37 percentile points across all subjects on nationally standardized achievement exams.* Home schooling parents spend *thousands of dollars annually*, in addition to the wages forgone by the spouse who forgoes outside employment, in order to educate their children in the loving environment of the home.

Ultimately, this bill is about freedom. Parental control of child rearing, especially education, is one of the bulwarks of liberty. **No nation can remain free when the state has greater influence over the knowledge and values transmitted to children than the family.**

By moving to restore the primacy of parents to education, the *Family Education Freedom Act* will not only improve America's education, it will restore a parent's right to choose how best to educate one's own child, a fundamental freedom that has been eroded by the increase in federal education expenditures and the corresponding decrease in the ability of parents to provide for their children's education out of their own pockets.

[H.R. 368 was referred to the House Committee on Ways and Means.]

Editor's Note: On this day Dr. Paul also introduced a companion bill, The Education Improvement Tax Cut Act (H.R. 370), which provides a \$3,000 tax credit for donations to scholarship funds to enable low-income children to attend private schools. It also encourages private citizens to devote more of their resources to helping public schools by providing a \$3,000 tax credit for cash or in-kind donations to public schools to support academic or extra-curricular activities.

[H.R. 370 was referred to the House Committee on Ways and Means.]

Nothing in this publication is intended to aid or hinder the passage of legislation before Congress.

About the F.R.E.E. Foundation

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