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Financial Privacy in Peril

By RICHARD W. RAHN

What cause unites Christian conservatives, free-trade Democrats, small-business people, the American Civil Liberties Union and tax reformers? Financial freedom and privacy.

The cause is being advanced in a series of legislative battles against big-government activists from both parties over the issues of encryption restrictions, asset forfeiture and, of most immediate concern, requirements that banks serve as agents of the state by monitoring the activities of their customers. The cornerstone of this last activity is the Bank Secrecy Act of 1970.

The BSA is, in fact, an *antisecrecy* act, because it requires bankers to spy on their customers by monitoring accounts for "suspicious activities." Bankers who fail to comply with this requirement are subject to prosecution and fines. Since Congress enacted the BSA, the scope of the law and of the bureaucracy to enforce it has steadily grown, a textbook illustration of how failed government policies beget more failed policies and ever more government.

The latest attempt to enlarge the reach of the BSA occurred in December, when the Federal Deposit Insurance Corp. and the Treasury proposed "Know Your Customer" regulations that would have required banks to create customer profiles and report all activities that fell outside the "normal" transactions according to that profile. Originally, the BSA required only that banks monitor transactions above \$10,000—which was lowered to \$5,000 when the higher number proved to be ineffective in preventing money laundering and other financial crimes—and to report activities that the bankers themselves deemed suspicious. The proposed new regulations would

have required all transactions to be monitored, no matter how small.

News of the Know Your Customer proposal circulated on the Internet and in print; e-mail comments, which the FDIC had solicited, came pouring in. The result: Some 254,000 people came out against the regulations, while only 72 people favored them. The planned regulations were quickly withdrawn, but the administration plans to issue new ones.

For years the BSA has had strong support in Congress. But now it seems that's changing. Reps. Ron Paul (R., Texas) and Tom Campbell (R., Calif.) have introduced legislation that would repeal the BSA and give people the right to check and challenge government records. The legislation is rapidly gaining cosponsors on both sides of the aisle.

Just as important, a growing number of law-enforcement organizations have recognized that the BSA has not been effective. Between 1987 and 1996, banks filed more than 77 million Currency Transaction Reports with the Treasury. This deluge of paperwork resulted in a mere 580 convictions. As Rep. Paul noted, "More than 99.999% of those [who] had their privacy invaded were law-abiding citizens going about their own personal financial business." The total private- and public-sector costs have been tens of millions of dollars per conviction, many times what Independent Counsel Kenneth Starr has spent per conviction in his allegedly extravagant investigation.

Moreover, the new digital technologies now coming into widespread use mean that no matter how assiduously the BSA and related provisions are enforced, money laundering and other financial crimes will be even more difficult to detect. Law-enforce-

ment officials are nervously surveying a host of devices that will make their jobs more difficult, particularly easy-to-use, practically unbreakable encryption systems. These technologies are coming together in ways that will allow people to move money and financial assets instantaneously to almost any point on the globe without the knowledge of any government.

Many in government wish to squelch these developments, either because they fear the loss of their own roles as economic gatekeepers, or because they genuinely believe that the new technologies will make life easier for drug dealers, money launderers and other assorted criminals. To be sure, these technologies do make a criminal's life easier—as do the telephone and automobile. Yet it is also true that the digital age has given law enforcement many more tools to observe and detect criminal activity. Law-enforcement officials must learn to adapt new technologies to their purposes, rather than outlaw them in the futile hope that they will simply go away.

As the digital revolution takes hold, laws that were written for another era will become increasingly difficult to enforce. Americans can choose either to jettison these laws and take advantage of new technologies and the opportunities they create, or keep the laws and pay the price in economic inefficiency, technological backwardness and government intrusiveness. The immediate fate of the BSA will be a good indication of the direction we eventually take.

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