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Judge strikes down part of Patriot Act

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By Edith Honan

NEW YORK (Reuters) - A provision of the Patriot Act that requires people who are formally contacted by the FBI for information to keep it a secret is unconstitutional, a federal judge ruled on Thursday.

U.S. District Judge Victor Marrero sided with the American Civil Liberties Union, which brought the lawsuit and argued that an FBI letter requesting information -- called a National Security Letter -- is effectively a gag order but without the authorization of a judge.

The FBI tells people who receive the letters to keep them secret, but recipients can challenge the secrecy order in court under a 2006 congressional amendment to the NSL law.

The law says judges must defer to the FBI's view that secrecy is necessary, undermining the judiciary's check on the power of the executive branch, the ACLU said.

In a written ruling issued on Thursday, Marrero said the gag order violated the First Amendment guarantee of free speech and was unconstitutional.

Marrero based his ruling on the seriousness of the potential intrusion on privacy and on "the significant possibility of a chilling effect on speech and association -- particularly of expression that is critical of the government or its policies."

The U.S. Attorney's office in Manhattan is considering an appeal, a spokeswoman said.

Government lawyers had argued that the FBI's need to ensure that targets remained unaware of an investigation outweighed the free speech rights of NSL recipients.

The ACLU brought the lawsuit on behalf of an unidentified Internet access company that received an NSL.

The company filed suit in April 2004. In September 2004 Marrero found the NSL gag violated free speech rights and struck it down as unconstitutional.

The government appealed the ruling, but Congress amended the NSL provision in its reauthorization of the Patriot Act last year before an appeals court could hear the case.

The revised NSL provision -- allowing the gag to be challenged in court -- was then sent back to Marrero.

APPEAL EXPECTED

The FBI dropped its demand for information from the Internet company a year ago, but the gag remained in place.

"The decision reaffirms that the courts have an important and constitutionally mandated role to play when national security policies infringe on First Amendment rights," said Jameel Jaffer, an ACLU lawyer who argued the case.

Marrero prohibited the Justice Department and the FBI from issuing NSLs but delayed enforcement for 90 days pending an expected appeal by the government or congressional action.

The ACLU says more than 143,000 NSLs were issued between 2003 and 2005.

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