

City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 6, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: RESOLUTION ON USA PATRIOT ACT

ISSUE: City Council consideration of a resolution related to the USA PATRIOT Act.

RECOMMENDATION: That City Council receive the resolution and determine whether it wishes to set the matter for public hearing on Saturday, November 15 or Tuesday, December 16.

DISCUSSION: Attached is a resolution, drafted by Councilwoman Woodson and Councilman Krupicka, urging the U.S. Congress to review the USA PATRIOT Act of 2001 and modify any provisions that threaten individual liberties and civil rights (Attachment 1). The Act was passed "to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes" (Public Law 107-56, 115 STAT. 272, Oct. 26, 2001), and is comprised of a series of amendments to existing statutes.

The letters of the name of the federal act, "USA PATRIOT," stand for "United Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism." The Bush Administration, which calls the Act perhaps its most essential tool in fighting terrorists, has begun using the law with increasing frequency in many criminal investigations that, some believe, have little or no connection to terrorism. Many members of Congress from both parties have expressed the view that sections of the USA PATRIOT Act should be revisited. Many believe that the legislation, although well-intentioned during a time of uncertainty and panic, needs serious re-evaluation. Localities are required under the Act to enforce federal immigration laws. Also, in certain circumstances, individuals may be detained and incarcerated without due process; government may conduct surveillance of public meetings and may have broad access to personal medical, financial, library and education records without judicial oversight. As of November 5, 2003, 207 communities and 3 states (Alaska, Hawaii and Vermont) had passed similar resolutions (Attachment 2).

A excerpt from an ACLU report describing Section 215 of the Act is attached (Attachment 3). A detailed explanation of the civil liberties concerns related to the USA PATRIOT Act may be found at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12126&c=207>. The U.S. Justice Department's defense of the USA PATRIOT Act may be found at www.lifeandliberty.gov.

ATTACHMENTS:

Attachment 1. Draft Resolution Reaffirming the Commitment of the City of Alexandria, Virginia, to Civil Liberties and the Bill of Rights

Attachment 2. List of communities and states that passed related resolutions, as of November 5

Attachment 3. Excerpt from ACLU report describing Section 215 of the Act

STAFF:

Michele Evans, Assistant City Manager

Jean Kelleher Niebauer, Director, Office of Human Rights

RESOLUTION NO.

WHEREAS, the Alexandria City Council is committed to upholding the United States Constitution and its Bill of Rights;

WHEREAS, the City of Alexandria has a long history of working to obtain and preserve the civil rights and liberties of its residents;

WHEREAS, the City has a diverse and multi-ethnic population, and everyday embraces the richness of community that includes immigrants, whose contributions to the City are vital to its economy, culture and civic character;

WHEREAS, the City has among its residents many who were affected directly, and many more who were affected indirectly, by the tragic events of September 11, 2001, both in New York City and at the Pentagon only a short distance from this Chamber as well as in Somerset County, Pennsylvania;

WHEREAS, this nation's need to respond to those terrible events, and to protect itself from future acts of terrorism, does not diminish the commitment of the City or of its residents, regardless of their personal circumstances, to the Constitutional rights and liberties that are the precious entitlement of all;

WHEREAS, the Alexandria City Council believes there is no inherent conflict between national security and the preservation of liberty -- that Americans can be both safe and free;

WHEREAS, the Alexandria City Council is proud of the cooperative work among federal, state and local law enforcement officials to protect the safety of Alexandrians;

WHEREAS, federal, state and local government actions designed to protect the public from terrorist attacks, such as those that occurred on September 11, 2001, must be taken in a rational and deliberative fashion to ensure that any new security measure intended to enhance public safety does not impair constitutional rights or infringe on civil liberties;

WHEREAS, federal laws, regulations, policies, and practices adopted since September 11, 2001, including provisions of Public Law 107-56 (the "USA PATRIOT" Act), and related Executive Orders, regulations and actions:

(a) authorize the indefinite incarceration of non-citizens to solitary confinement, based upon mere suspicion, without being charged with any crime, without counsel, and without a right to be heard;

(b) authorize the indefinite incarceration of citizens designated by the President based upon unspecified standards as "enemy combatants" to solitary confinement, without being charged with a crime, without counsel, and without a right to be heard;

(c) authorize the indefinite detention of citizens and non-citizens in solitary confinement as “material witnesses,” without counsel, and without a right to be heard;

(d) limit the traditional authority of the federal courts to curb law enforcement abuses including electronic surveillance;

(e) limit judicial oversight of federal “sneak and peek” searches and eliminate timely notice to the person who is the subject of the search that his or her property has been searched ;

(f) grant broad governmental access to personal medical, financial, library, and educational records without judicial oversight;

(g) inhibit free speech and free association by defining any person or group as a terrorist, or an act as terrorism, without articulating the basis for the characterization or giving the person or group so characterized a right to be heard;

(h) encourage local and state law enforcement personnel to enforce federal immigration laws, and to use those laws as a pretext for detention of, and denial of due process to, persons who are not reasonably suspected of criminal behavior;

(i) permit government surveillance of public meetings, including religious services, Internet chat rooms, holiday gatherings, and political rallies without judicial oversight;

WHEREAS, draft federal legislation, known as the Domestic Security Enhancement Act (“DSEA” or “Patriot II”), contains many new and sweeping provisions that further expand government surveillance authority, increase government secrecy, reduce governmental accountability, erode the separation of powers essential for Constitutional checks and balances, and diminish the right of all persons to the due process of law guaranteed by the Constitution;

THEREFORE, BE IT RESOLVED, that the Alexandria City Council:

1. AFFIRMS its strong support for fundamental constitutional rights and its opposition to federal measures that infringe on civil liberties;

2. AFFIRMS its strong support for the rights of immigrants and opposes measures that single out individuals for legal scrutiny or enforcement activity based solely on their country of origin;

3. DIRECTS the Police Department of the City of Alexandria to ensure that it protects the constitutional rights of Alexandria residents, that it maintains a relationship of trust with those it is sworn to serve and protect, and that it continues to abide by the Alexandria Police Department directives that prohibit racial profiling or collecting information not reasonably related to suspicion of criminal behavior;

4. DIRECTS public libraries in the City to promote unfettered access to information,

which is the collective heritage of humanity and which is a fundamental human right, and to protect freedom of inquiry, universally recognized as a driving force for the progression of civilization itself, by:

(a) posting this notice to library users “WARNING: Under Section 215 of the federal “USA PATRIOT” Act (Public Law 107-56), records of the books and other materials you borrow may be obtained by federal agents. That federal law prohibits librarians from informing you if records about you have been requested or obtained by federal agents. Questions about this policy should be directed to: Attorney General John Ashcroft, U.S. Department of Justice, Washington, DC 20530; ”

(b) ensuring there is regular destruction of records that identify a book borrower after the book is returned, or that identify the name of an Internet user after use;

5. RECOMMENDS that local businesses and institutions in the City, and in particular booksellers, notify consumers that purchase records are subject to disclosure to federal law enforcement agencies;

6. DIRECTS the City Manager to ensure that, to the extent legally possible, no City resources -- including law enforcement funds and educational administrative resources -- may be used for unconstitutional activities, including but not limited to monitoring the exercise by political or religious groups of their First Amendment rights of expression, association, assembly or petition, or obtaining library, bookstore or website activity records without proper authorization and without notice to the subjects of the records;

7. DIRECTS the Clerk of Council to:

(a) send a copy of this Resolution to Governor Warner with a letter urging him to ensure that state anti-terrorism laws and policies be implemented in a manner that does not infringe on personal rights, liberties and due process; and

(b) send a copy of this Resolution to Senators Warner and Allen, and Congressman Moran, accompanied by a letter asking that the resolution be read into the record, on the floor, and urging Congress to assess the impact of the “USA PATRIOT” Act and federal anti-terrorism efforts; to work to repeal provisions of the “USA PATRIOT” Act and other laws, regulations, policies and practices that infringe on personal rights, liberties and due process; and to ensure that no provision of the “USA PATRIOT” Act originally intended to expire remains in effect past its sunset date.

AND BE IT FURTHER RESOLVED, that the provisions of this Resolution shall be severable, and that if any phrase, clause, sentence, or provision of this Resolution is declared by a court of competent jurisdiction to be contrary to the Constitutions of the United States or of the Commonwealth of Virginia, the validity of the remainder of this Resolution shall not be affected thereby.

ADOPTED: _____
DATE

WILLIAM D. EUILLE

MAYOR

ATTEST:

JACQUELINE M. HENDERSON, CMC CITY CLERK



American Civil Liberties Union

www.aclu.org

URL: <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11294&c=207>

List of Communities that have Passed Resolutions

[Pass a Resolution in your Community - Click Here to Learn How!](#)

Resolutions have been passed in 207 communities in 34 states including three state-wide resolutions. These communities represent approximately 26.2 million people who oppose sections of the USA PATRIOT Act.

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| <u>Middletown, RI</u> | November 4, 2003 |
| <u>Yellow Springs, OH</u> | November 3, 2003 |
| <u>Portland, OR</u> | October 29, 2003 |
| <u>Pittsfield, MA</u> | October 28, 2003 |
| <u>Greenbelt, MD</u> | October 28, 2003 |
| <u>Silver City, NM</u> | October 28, 2003 |
| <u>Olympia, WA</u> | October 28, 2003 |
| <u>Taos, NM</u> | October 21, 2003 |
| <u>Bisbee, AZ</u> | October 21, 2003 |
| <u>Robbinsdale, MN</u> | October 21, 2003 |
| <u>Urbana, NY</u> | October 21, 2003 |
| <u>Bayard, NM</u> | October 20, 2003 |
| <u>Durham, NC</u> | October 20, 2003 |
| <u>Sarasota, FL</u> | October 20, 2003 |
| <u>San Ramon, CA</u> | October 14, 2003 |
| <u>Los Alamos County, NM</u> | October 14, 2003 |
| <u>Danby, NY</u> | October 13, 2003 |
| <u>Huntington, WV*</u> | October 13, 2003 |
| <u>Grant County, NM</u> | October 9, 2003 |
| <u>Chapel Hill, NC</u> | October 8, 2003 |
| <u>Princeton, NJ</u> | October 7, 2003 |
| <u>Pima County, AZ</u> | October 7, 2003 |
| <u>Kalamazoo, MI</u> | October 6, 2003 |
| <u>Chicago, IL</u> | October, 1, 2003 |
| <u>Boise, ID</u> | September 30, 2003 |
| <u>Montgomery County, MD</u> | September 30, 2003 |
| <u>Austin, TX</u> | September 25, 2003 |
| <u>Sitka, AK</u> | September 23, 2003 |
| <u>San Jose, CA</u> | September 23, 2003 |

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| <u>Idaho County, ID*</u> | September 22, 2003 |
| <u>Durham County, NC</u> | September 22, 2003 |
| <u>Wilmington, DE</u> | September 22, 2003 |
| <u>Bethany, CT</u> | September 18, 2003 |
| <u>New Shoreham, RI</u> | September 17, 2003 |
| <u>Las Vegas, NM</u> | September 17, 2003 |
| <u>Mountain View, CA</u> | September 16, 2003 |
| <u>Meridian Township, MI</u> | September 16, 2003 |
| <u>Albuquerque, NM</u> | September 15, 2003 |
| <u>San Rafael, CA</u> | September 15, 2003 |
| <u>Oberlin, OH</u> | September 15, 2003 |
| <u>Willingboro, NJ</u> | September 9, 2003 |
| <u>St. Lawrence County, NY</u> | September 8, 2003 |
| <u>Snoqualmie, WA</u> | September 8, 2003 |
| <u>Syracuse, NY</u> | September 8, 2003 |
| <u>Saratoga, CA</u> | September 3, 2003 |
| <u>Sunset Valley, TX</u> | September 2, 2003 |
| <u>Porterville, CA</u> | September 2, 2003 |
| <u>Bozeman, MT</u> | September 2, 2003 |
| <u>Santa Barbara, CA</u> | August 26, 2003 |
| <u>Pacific Grove, CA</u> | August 20, 2003 |
| <u>Farmingon, NM</u> | August 20, 2003 |
| <u>Oxford, OH</u> | August 20, 2003 |
| <u>Santa Clara County, CA</u> | August 19, 2003 |
| <u>Astoria, OR</u> | August 18, 2003 |
| <u>Schenectady City, NY</u> | August 11, 2003 |
| <u>Newton, MA</u> | August 11, 2003 |
| <u>Pleasanton, CA</u> | August 5, 2003 |
| <u>Livermore, CA</u> | July 28, 2003 |
| <u>Hayward, CA</u> | July 23, 2003 |
| <u>Charlottesville, VA</u> | July 21, 2003 |
| <u>South Pasadena, CA</u> | July 16, 2003 |
| <u>Anchorage, AK</u> | July 15, 2003 |
| <u>Duluth, MN</u> | July 14, 2003 |
| <u>Lake County, CA</u> | July 8, 2003 |
| <u>Ann Arbor, MI</u> | July 7, 2003 |
| <u>Honolulu, HI</u> | July 2, 2003 |
| <u>Lane County, OR</u> | July 1, 2003 |
| <u>Durango, CO</u> | July 1, 2003 |
| <u>Bloomington, IN</u> | June 26, 2003 |
| <u>Soldotna, AK</u> | June 25, 2003 |
| <u>Tehama County, CA</u> | June 17, 2003 |
| <u>Taos, NM</u> | June 17, 2003 |
| <u>Aztec, NM</u> | June 17, 2003 |
| <u>Monte Sereno, CA</u> | June 17, 2003 |
| <u>Port Townsend, WA</u> | June 16, 2003 |
| <u>San Juan County, WA</u> | June 11, 2003 |
| <u>Riverside, WA</u> | June 10, 2003 |

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| <u>Arlington, MA</u> | June 11, 2003 |
| <u>Palo Alto, CA</u> | June 9, 2003 |
| <u>Jefferson County, WA</u> | June 9, 2003 |
| <u>Skagway, AK</u> | June 5, 2003 |
| <u>Contra Costa County, CA</u> | June 3, 2003 |
| <u>Brookline, MA</u> | May 30, 2003 |
| <u>Philadelphia, PA</u> | May 29, 2003 |
| <u>Wendell, MA</u> | May 29, 2003 |
| <u>State of Vermont</u> | May 28, 2003 |
| <u>Bainbridge Island, WA</u> | May 28, 2003 |
| <u>Shutesbery, MA</u> | May 27, 2003 |
| <u>State of Alaska</u> | May 21, 2003 |
| <u>Lansdowne, PA</u> | May 21, 2003 |
| <u>Oroville, WA</u> | May 20, 2003 |
| <u>Kenai, AK</u> | May 20, 2003 |
| <u>Greensboro, NC</u> | May 20, 2003 |
| <u>Orange County, NC</u> | May 20, 2003 |
| <u>Evanston, IL</u> | May 19, 2003 |
| <u>Albany, NY</u> | May 19, 2003 |
| <u>Baltimore, MD</u> | May 19, 2003 |
| <u>Douglas County, WI</u> | May 15, 2003 |
| <u>Hartford, CT</u> | May 15, 2003 |
| <u>Salinas, CA</u> | May 13, 2003 |
| <u>Orleans, MA</u> | May 13, 2003 |
| <u>Homer, AK</u> | May 12, 2003 |
| <u>Emeryville, CA</u> | May 6, 2003 |
| <u>Sausalito, CA</u> | May 6, 2003 |
| <u>San Mateo County, CA</u> | May 6, 2003 |
| <u>Marin County, CA</u> | May 6, 2003 |
| <u>Broward County, FL</u> | May 6, 2003 |
| <u>Eastham, MA</u> | May 5, 2003 |
| <u>Tucson, AZ</u> | May 5, 2003 |
| <u>Santa Cruz County, CA</u> | April 30, 2003 |
| <u>Wellfleet, MA</u> | April 29, 2003 |
| <u>Beaverhead County, MT</u> | April 28, 2003 |
| <u>Reading, PA</u> | April 28, 2003 |
| <u>Juneau, AK</u> | April 28, 2003 |
| <u>State of Hawaii</u> | April 25, 2003 |
| <u>Mendocino County, CA</u> | April 22, 2003 |
| <u>North Pole, AK</u> | April 21, 2003 |
| <u>Albany, CA</u> | April 21, 2003 |
| <u>Corvallis, OR</u> | April 21, 2003 |
| <u>Dublin, CA</u> | April 16, 2003 |
| <u>Dillon, MT</u> | April 16, 2003 |
| <u>Rio Arriba County, NM</u> | April 10, 2003 |
| <u>Provincetown, MA</u> | April 9, 2003 |
| <u>Gaston, OR</u> | April 9, 2003 |
| <u>Tonasket, WA</u> | April 8, 2003 |

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| <u>Mill Valley, CA</u> | April 7, 2003 |
| <u>Lincoln, MA</u> | April 5, 2003 |
| <u>Minneapolis, MN*</u> | April 4, 2003 |
| <u>Ukiah, CA</u> | April 2, 2003 |
| <u>Talent, OR</u> | April 2, 2003 |
| <u>Pinole, CA</u> | April 1, 2003 |
| <u>Fort Collins, CO</u> | March 26, 2003 |
| <u>Watsonville, CA</u> | March 25, 2003 |
| <u>Bellingham, WA</u> | March 24, 2003 |
| <u>Woodstock, NY</u> | March 18, 2003 |
| <u>Benton County, OR</u> | March 18, 2003 |
| <u>Los Gatos, CA</u> | March 17, 2003 |
| <u>El Cerrito, CA</u> | March 17, 2003 |
| <u>Socorro, NM</u> | March 17, 2003 |
| <u>Petersborough, NH</u> | March 15, 2003 |
| <u>Rosendale, NY</u> | March 12, 2003 |
| <u>Marlborough, NH</u> | March 11, 2003 |
| <u>Union City, CA</u> | March 11, 2003 |
| <u>Sonoma, CA</u> | March 5, 2003 |
| <u>Telluride, CO</u> | March 4, 2003 |
| <u>Waitsfield, VT</u> | March 4, 2003 |
| <u>Westminster, VT</u> | March 4, 2003 |
| <u>Windham, VT</u> | March 4, 2003 |
| <u>Putney, VT</u> | March 4, 2003 |
| <u>Newfane, VT</u> | March 4, 2003 |
| <u>Marlboro, VT</u> | March 4, 2003 |
| <u>Jamaica, VT</u> | March 4, 2003 |
| <u>Guilford, VT</u> | March 4, 2003 |
| <u>Dummerston, VT</u> | March 4, 2003 |
| <u>Athens, VT</u> | March 4, 2003 |
| <u>Warren, VT</u> | March 4, 2003 |
| <u>Blount County, TN</u> | February 27, 2003 |
| <u>Town of New Paltz, NY</u> | February 27, 2003 |
| <u>Cotati, CA</u> | February 26, 2003 |
| <u>Richmond, CA</u> | February 25, 2003 |
| <u>Crestone, CO</u> | February 24, 2003 |
| <u>Missoula, MT</u> | February 24, 2003 |
| <u>York, PA</u> | February 19, 2003 |
| <u>Castle Valley, UT</u> | February 19, 2003 |
| <u>Rockingham, VT</u> | February 18, 2003 |
| <u>Seattle, WA</u> | February 18, 2003 |
| <u>Ashland, OR</u> | February 18, 2003 |
| <u>Vashon-Maury Island, WA</u> | February 17, 2003 |
| <u>Gustavus, AK</u> | February 13, 2003 |
| <u>Ridgway, CO</u> | February 12, 2003 |
| <u>Davis, CA</u> | February 12, 2003 |
| <u>San Anselmo, CA</u> | February 12, 2003 |
| <u>Village of New Paltz, NY</u> | February 12, 2003 |

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| <u>Claremont, CA</u> | February 11, 2003 |
| <u>Santa Monica, CA</u> | February 11, 2003 |
| <u>University City, MO</u> | February 10, 2003 |
| <u>Ithaca, NY</u> | February 5, 2003 |
| <u>Brattleboro, VT</u> | February 4, 2003 |
| <u>Point Arena, CA</u> | January 28, 2003 |
| <u>Yolo County, CA</u> | January 28, 2003 |
| <u>West Hollywood, CA</u> | January 21, 2003 |
| <u>San Francisco, CA</u> | January 21, 2003 |
| <u>Arcata, CA*</u> | January 15, 2003 |
| <u>Mansfield, CT</u> | January 13, 2003 |
| <u>Montpelier, VT</u> | January 10, 2003 |
| <u>Fairfax, CA</u> | January 7, 2003 |
| <u>Fairbanks, AK</u> | January 6, 2003 |
| <u>Flagstaff, AZ</u> | December 17, 2002 |
| <u>Oakland, CA</u> | December 17, 2002 |
| <u>Detroit, MI</u> | December 6, 2002 |
| <u>Sebastapol, CA</u> | December 3, 2002 |
| <u>Burlington, VT</u> | December 2, 2002 |
| <u>New Haven, CT</u> | December 2, 2002 |
| <u>Eugene, OR</u> | November 25, 2002 |
| <u>Santa Cruz, CA</u> | November 12, 2002 |
| <u>Santa Fe, NM</u> | October 30, 2002 |
| <u>Takoma Park, MD</u> | October 28, 2002 |
| <u>Alachua County, FL</u> | October 22, 2002 |
| <u>Berkeley, CA</u> | October 22, 2002 |
| <u>Madison, WI</u> | October 15, 2002 |
| <u>Boulder, CO</u> | July 23, 2002 |
| <u>Carrboro, NC</u> | June 25, 2002 |
| <u>Cambridge, MA</u> | June 17, 2002 |
| <u>San Miguel County, CO</u> | May 20, 2002 |
| <u>Northampton, MA</u> | May 2, 2002 |
| <u>Leverett, MA</u> | April 27, 2002 |
| <u>Amherst, MA</u> | April 24, 2002 |
| <u>Denver, CO</u> | March 18, 2002 |
| <u>Ann Arbor, MI</u> | January 7, 2002 |

* These communities have passed ordinances here is the text of the Arcata Ordinance, the Minneapolis Ordinance, the Idaho County Ordinance, and the Huntington Ordinance.

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Privacy Statement

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“probable cause” – or any reason – to believe that you have done anything wrong. It does not need to show that you are involved in terrorism, directly or indirectly, or that you work for a country that sponsors terrorism. If you are a United States citizen or permanent resident, the FBI can obtain a Section 215 order against you based in part on your First Amendment activity – based, for example, on the books that you borrowed from the library, the Web sites you visited, the religious services you attended, or the political organizations that you joined. If you are not a citizen or permanent resident, the FBI can obtain a Section 215 order against you based *solely* on your First Amendment activity.

In fact, Section 215 authorizes federal officials to fish through personal records and belongings even if they are not investigating any person in particular. Under Section 215, the FBI could demand a list of every person who has checked out a particular book on Islamic fundamentalism. It could demand a list of people who had visited a particular Web site. It could demand a client list from a charity that offers social services to immigrants.

A gag order in the law prevents anyone served with a Section 215 order from telling anyone else that the FBI demanded information. Because the gag order remains in effect forever, surveillance targets – even wholly innocent ones – are *never* notified that their privacy has been compromised. If the government uses Section 215 to keep track of the books you read, the Web sites you visit, or the political events you attend, you will simply never know.

The Foreign Intelligence Surveillance Court

Congress created the Foreign Intelligence Surveillance Court (FISC) in 1978 to oversee FBI surveillance in foreign-intelligence investigations. The FISC hears FBI applications for foreign-intelligence surveillance orders and warrants, including Section 215 orders. It is comprised of 11 district court judges who are appointed by the Chief Justice of the United States Supreme Court for terms of up to seven years. Since 1978, the FISC has heard approximately 15,000 FBI wiretap and electronic surveillance applications. (This number does not include Section 215 orders, which the FBI is not required to report.) Of these applications, the FISC summarily approved without modification all but five, and it did not reject even one.

While the FISC has traditionally granted FBI surveillance applications, in May 2002 its judges issued an extraordinary, unanimous opinion rejecting the Attorney General’s bid for more power to conduct electronic surveillance under the PATRIOT Act. Unfortunately, that historic opinion was overturned by the Foreign Intelligence Surveillance Court of Review (FISCR), an appeals court that had never convened before. (The ACLU filed a friend-of-the-court brief but was not permitted to argue before the Court. More information about the extraordinary litigation before the Foreign Intelligence Surveillance Court of Review is posted at <http://www.aclu.org/SafeandFree>.) After the FISCR opinion, it is less likely that the FISC will again attempt to serve as a meaningful check on FBI surveillance.

UNPATRIOTIC ACTS

Before the PATRIOT Act, the FBI could only obtain records. Now the FBI has the authority to obtain "any tangible thing."

People who are not U.S. citizens or permanent residents can be investigated solely because of their First Amendment activity - e.g., because they wrote a letter to the editor criticizing government policy, or because they participated in a particular political rally. U.S. citizens and permanent residents can be investigated in part on the basis of their First Amendment activity.

Applications for Section 215 orders are ordinarily heard by judges of the Foreign Intelligence Surveillance Court.

Section 215

Section 215 amended the Foreign Intelligence Surveillance Act so that the relevant provision of that act now reads:

Access to certain business records for foreign intelligence and international terrorism investigations

(a) (1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall

- (A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and
- (B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Each application under this section

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of Title 28, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) of this section to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

(c) (1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

(d) No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

Judges of the Foreign Intelligence Surveillance Court have little authority to scrutinize or reject FBI surveillance applications. If the FBI specifies that – in its own opinion – Section 215’s requirements are met, the judge must grant the surveillance order.

The FBI need not show “probable cause” or any reason at all to believe that the target of the surveillance order is engaged in criminal or terrorist activity. All the FBI needs to do is “specify” that the records are “sought for” an authorized investigation. The surveillance target may be completely innocent.

Those who are ordered to turn over their records (or “tangible things”) are prohibited from mentioning to anyone else that the FBI made the demand.

REVISED (11/11/03) - SEE BOLD

RESOLUTION NO.

WHEREAS, the Alexandria City Council is committed to upholding the United States Constitution and its Bill of Rights;

WHEREAS, the City of Alexandria has a long history of working to obtain and preserve the civil rights and liberties of its residents;

WHEREAS, the City has a diverse and multi-ethnic population, and everyday embraces the richness of community that includes immigrants, whose contributions to the City are vital to its economy, culture and civic character;

WHEREAS, the City has among its residents many who were affected directly, and many more who were affected indirectly, by the tragic events of September 11, 2001, both in New York City and at the Pentagon only a short distance from this Chamber as well as in Somerset County, Pennsylvania;

WHEREAS, this nation's need to respond to those terrible events, and to protect itself from future acts of terrorism, does not diminish the commitment of the City or of its residents, regardless of their personal circumstances, to the Constitutional rights and liberties that are the precious entitlement of all;

WHEREAS, the Alexandria City Council believes there is no inherent conflict between national security and the preservation of liberty -- that Americans can be both safe and free;

WHEREAS, the Alexandria City Council is proud of the cooperative work among federal, state and local law enforcement officials to protect the safety of Alexandrians;

WHEREAS, federal, state and local government actions designed to protect the public from terrorist attacks, such as those that occurred on September 11, 2001, must be taken in a rational and deliberative fashion to ensure that any new security measure intended to enhance public safety does not impair constitutional rights or infringe on civil liberties;

WHEREAS, federal laws, regulations, policies, and practices adopted since September 11, 2001, including provisions of Public Law 107-56 (^{Uniting and} **the United Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act or "USA PATRIOT" Act**), and related Executive Orders, regulations and actions:

(a) authorize the indefinite incarceration of non-citizens to solitary confinement, based upon mere suspicion, without being charged with any crime, without counsel, and without a right to be heard;

- (b) authorize the indefinite incarceration of citizens designated by the President based upon unspecified standards as “enemy combatants” to solitary confinement, without being charged with a crime, without counsel, and without a right to be heard;

- (c) authorize the indefinite detention of citizens and non-citizens in solitary confinement as “material witnesses,” without counsel, and without a right to be heard;

- (d) limit the traditional authority of the federal courts to curb law enforcement abuses including electronic surveillance;

- (e) limit judicial oversight of federal “sneak and peek” searches and eliminate timely notice to the person who is the subject of the search that his or her property has been searched ;

- (f) grant broad governmental access to personal medical, financial, library, and educational records without judicial oversight;

- (g) inhibit free speech and free association by defining any person or group as a terrorist, or an act as terrorism, without articulating the basis for the characterization or giving the person or group so characterized a right to be heard;

- (h) encourage local and state law enforcement personnel to enforce federal immigration laws, and to use those laws as a pretext for detention of, and denial of due process to, persons who are not reasonably suspected of criminal behavior;

- (i) permit government surveillance of public meetings, including religious services, Internet chat rooms, holiday gatherings, and political rallies without judicial oversight;

- WHEREAS, draft federal legislation, known as the Domestic Security Enhancement Act (“DSEA” or “Patriot II”), contains many new and sweeping provisions that further expand government surveillance authority, increase government secrecy, reduce governmental accountability, erode the separation of powers essential for Constitutional checks and balances, and diminish the right of all persons to the due process of law guaranteed by the Constitution;

THEREFORE, BE IT RESOLVED, that the Alexandria City Council:

1. AFFIRMS its strong support for fundamental constitutional rights and its opposition to federal measures that infringe on civil liberties;
2. AFFIRMS its strong support for the rights of immigrants and opposes measures that single out individuals for legal scrutiny or enforcement activity based solely on their country of origin;
3. DIRECTS the Police Department of the City of Alexandria to ensure that it protects the constitutional rights of Alexandria residents, that it maintains a relationship of trust with those it is sworn to serve and protect, and that it continues to abide by the Alexandria Police Department directives that prohibit

racial profiling or collecting information not reasonably related to suspicion of criminal behavior;

4. DIRECTS public libraries in the City to promote unfettered access to information, which is the collective heritage of humanity and which is a fundamental human right, and to protect freedom of inquiry, universally recognized as a driving force for the progression of civilization itself, by:

(a) posting this notice to library users "WARNING: Under Section 215 of the federal "USA PATRIOT" Act (Public Law 107-56), records of the books and other materials you borrow may be obtained by federal agents. That federal law prohibits librarians from informing you if records about you have been requested or obtained by federal agents. Questions about this policy should be directed to: Attorney General John Ashcroft, U.S. Department of Justice, Washington, DC 20530; "

(b) ensuring there is regular destruction of records that identify a book borrower after the book is returned, or that identify the name of an Internet user after use;

5. RECOMMENDS that local businesses and institutions in the City, and in particular booksellers, notify consumers that purchase records are subject to disclosure to federal law enforcement agencies;

6. DIRECTS the City Manager to ensure that, to the extent legally possible, no City resources -- including law enforcement funds and educational administrative resources -- may be used for unconstitutional activities, including but not limited to monitoring the exercise by political or religious groups of their First Amendment rights of expression, association, assembly or petition, or obtaining library, bookstore or website activity records without proper authorization and without notice to the subjects of the records;

7. DIRECTS the Clerk of Council to:

(a) send a copy of this Resolution to Governor Warner with a letter urging him to ensure that state anti-terrorism laws and policies be implemented in a manner that does not infringe on personal rights, liberties and due process; and

(b) send a copy of this Resolution to Senators Warner and Allen, and Congressman Moran, accompanied by a letter asking that the resolution be read into the record, on the floor, and urging Congress to assess the impact of the "USA PATRIOT" Act and federal anti-terrorism efforts; to work to repeal provisions of the "USA PATRIOT" Act and other laws, regulations, policies and practices that infringe on personal rights, liberties and due process; and to ensure that no provision of the "USA PATRIOT" Act originally intended to expire remains in effect past its sunset date.

AND BE IT FURTHER RESOLVED, that the provisions of this Resolution shall be severable, and that if any phrase, clause, sentence, or provision of this Resolution is declared by a court of competent jurisdiction to be contrary to the Constitutions of the United States or of the Commonwealth of Virginia, the validity of the remainder of this Resolution shall not be affected thereby.

ADOPTED: _____
DATE

WILLIAM D. EUILLE

MAYOR

ATTEST:

JACQUELINE M. HENDERSON, CMC CITY CLERK

RESOLUTION NO. 2086

WHEREAS, the Alexandria City Council is committed to upholding the United States Constitution and its Bill of Rights;

WHEREAS, the City of Alexandria has a long history of working to obtain and preserve the civil rights and liberties of its residents;

WHEREAS, the City has a diverse and multi-ethnic population, and everyday embraces the richness of community that includes immigrants, whose contributions to the City are vital to its economy, culture and civic character;

WHEREAS, the City has among its residents many who were affected directly and many more who were affected indirectly, by the tragic events of September 11, 2001, both in New York City and at the Pentagon, only a short distance from this Chamber as well as in Somerset County, Pennsylvania;

WHEREAS, this nation's need to respond to those terrible events, and to protect itself from future acts of terrorism, does not diminish the commitment of the City or of its residents, regardless of their of their personal circumstances, to the Constitutional rights and liberties that are the precious entitlement of all;

WHEREAS, the Alexandria City Council believes there is no inherent conflict between national security and the preservation of liberty – that Americans can be both safe and free;

WHEREAS, the Alexandria City Council is proud of the cooperative work among federal, state and local law enforcement officials to protect the safety of Alexandrians;

WHEREAS, federal, state and local government actions designed to protect the public from terrorist attacks, such as those that occurred on September 11, 2001, must be taken in a rational and deliberative fashion to ensure that any new security measure intended to enhance public safety does not impair constitutional rights or infringe on civil liberties;

WHEREAS, federal laws, regulations, policies, and practices adopted since September 11, 2001, including provisions of Public Law 107-56 (the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act or "USA PATRIOT" Act), and related Executive Orders, regulations and actions:

(a) authorize the indefinite incarceration of non-citizens to solitary confinement, based upon mere suspicion, without being charged with any crime, without counsel, and without a right to be heard;

(b) authorize the indefinite incarceration of citizens designated by the President based unspecified standards as "enemy combatants" to solitary confinement, without being charged with a crime, without counsel, and without a right to be heard;

(c) limit the traditional authority of the federal courts to curb law enforcement abuses including electronic surveillance;

(d) limit judicial oversight of federal "sneak and peek" searches and eliminate timely notice to the person who is the subject of the search that his or her property has been searched;

(e) grant broad governmental access to personal medical, financial, library, and educational records without judicial oversight;

(f) inhibit free speech and free association by defining any person or group as a terrorist, or an act as terrorism, without articulating the basis for the characterization or giving the person or group so characterized a right to be heard;

(g) encourage local and state law enforcement personnel to enforce federal immigration laws, and to use those laws as a pretext for detention of, and denial of due process to, persons who are not reasonably suspected of criminal behavior;

(h) permit government surveillance of public meetings, including religious services, Internet chat rooms, holiday gatherings, and political rallies without judicial oversight;

WHEREAS, draft federal legislation, known as the Domestic Security Enhancement Act (“DSEA” or “Patriot II”), contains many new and sweeping provisions that further expand government surveillance authority, increase government secrecy, reduce governmental accountability, erode the separation of powers essential for Constitutional checks and balances, and diminish the right of all persons to the due process of law guaranteed by the Constitution;

THEREFORE, BE IT RESOLVED, that the Alexandria City Council:

1. AFFIRMS its strong support for fundamental constitutional rights and its opposition to federal measures that infringe on civil liberties;

2. AFFIRMS its strong support for the rights of immigrants and opposes measures that single out individuals for legal scrutiny or enforcement activity based solely on their country of origin;

3. DIRECTS the Police Department of the City of Alexandria to ensure that it protects the constitutional rights of Alexandria residents, that it maintains a relationship of trust with those it is sworn to serve and protect, and that it continues to abide by the Alexandria Police Department directives that prohibit racial profiling or collecting information not reasonably related to suspicion of criminal behavior;

4. DIRECTS public libraries in the City to promote unfettered access to information, which is the collective heritage of humanity and which is a fundamental human right, and to protect freedom of inquiry, universally recognized as a driving force for the progression of civilization itself, by:

(a) posting this notice to library users “WARNING: Under Section 215 of the Federal “USA PATRIOT” Act (Public Law 107-56), records of the books and other materials you borrow may be obtained by federal agents. That federal law prohibits librarians from informing you if records about you have been requested or obtained by federal agents. Questions about this policy should be directed to: Attorney General John Ashcroft, U.S. Department of Justice, Washington, DC 20530,”

(b) ensuring there is regular destruction of records that identify a book borrower after the book is returned, or that identify the name of an Internet user after use;

5. RECOMMENDS that local businesses and institutions in the City, and in particular booksellers, notify consumers that purchase records are subject to disclosure to federal law enforcement agencies;

6. DIRECTS the City Manager to ensure that, to the extent legally possible, no City resources – including law enforcement funds and educational administrative resources – may be used for unconstitutional activities, including but not limited to monitoring the exercise by political and religious groups of their First Amendment rights of expression, association assembly or petition, or obtaining library, bookstore or website activity records without proper authorization and without notice to the subjects of the records;

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(b) send a copy of this Resolution to Senators Warner and Allen, and Congressman Moran, accompanied by a letter asking that the resolution be read into the record, on the floor, and urging Congress to assess the impact of the "USA PATRIOT" Act and federal anti-terrorism efforts; to work to repeal provisions of the "USA PATRIOT" Act and other laws, regulations, policies and practices that infringe on personal rights, liberties and due process; and to ensure that no provision of the "USA PATRIOT" Act originally intended to expire remains in effect past its sunset date.

AND BE IT FURTHER RESOLVED, that the provisions of this Resolution shall be severable, and that if any phrase, clause, sentence, or provision of this Resolution is declared by a court of competent jurisdiction to be contrary to the Constitutions of the United States or of the Commonwealth of Virginia, the validity of the remainder of this Resolution shall not be affected thereby.

ADOPTED: November 11, 2003

WILLIAM D. EUILLE

MAYOR

ATTEST:

JACQUELINE M. HENDERSON, CMC CITY CLERK

MEMORANDUM

10
11-11-03

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA *IBP*
CITY ATTORNEY

DATE: NOVEMBER 11, 2003

SUBJECT: LETTER FROM U.S. ATTORNEY PAUL J. MCNULTY

Attached is a letter from the United States Attorney for the Eastern District of Virginia, Paul. McNulty, addressed to the Mayor and Council members, concerning the proposed Patriot Act Resolution. This letter was delivered to me this evening by e-mail.

Attachments: Letter

November 11, 2003

Dear Mr. Mayor and Members of City Council:

As the United States Attorney for the Eastern District of Virginia, I represent many of your constituents who live and work in the federal courthouse here in Alexandria. These dedicated men and women work tirelessly to fight crime and terrorism and to keep our community safe. I write now to express my disappointment that I was not even given the opportunity to appear and be heard before you vote on the resolution regarding the USA PATRIOT Act. I must say that I find it ironic that you would deny me the opportunity to be heard before you vote on a resolution accusing the federal government of denying individuals the right to be heard.

Allowing a public hearing would permit the Council to correct the many factual errors contained in the resolution. For example, the resolution incorrectly alleges that material witnesses are held without the right to counsel and without the right to be heard. This is factually incorrect. The practice of detaining material witnesses predates the USA PATRIOT Act and is authorized under a federal statute passed some time ago. In fact, the USA PATRIOT Act does not address this authority at all. Before a material witness is arrested, a federal judge must issue an arrest warrant based on a finding of probable cause. Upon arrest, the material witness is permitted to have counsel and does have an opportunity to be heard at a hearing in which a federal judge again determines whether the witness should be held and for how long. Thus, the resolution is simply incorrect regarding material witnesses and many other facts, which I would like to have the opportunity to address in detail.

While it is true that other communities have passed resolutions of this sort, Alexandria is not just another community. This neighborhood was brutally attacked on September 11, and so many lives were devastated by these diabolical attacks. It is disappointing that you would not allow constituents who were victimized by terrorism to be heard by the Council before voting. Passing this resolution without allowing victims and law enforcement an opportunity to be heard does a great disservice to your community. I urge you to have a public hearing on this resolution before voting. Thank you.

Sincerely,

Paul J. McNulty
United States Attorney

RESOLUTION NO. 2086

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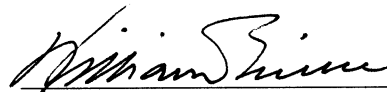
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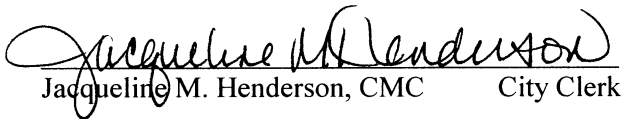
ADOPTED: November 11, 2003



WILLIAM D. EULLE

MAYOR

ATTEST:



Jacqueline M. Henderson, CMC City Clerk