

2003

Chicago City Council Opposes Patriot Act

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Recommended Citation

Andrew Dougherty, *Chicago City Council Opposes Patriot Act*, 8 Pub. Interest L. Rptr. 15 (2003).
Available at: <http://lawcommons.luc.edu/pilr/vol8/iss3/6>

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access to higher education for undocumented immigrants is through federal law. Neither bill is yet scheduled for a full vote, but the Student Adjustment Act and DREAM Act are sure to draw more attention from immigrant advocates and immigration reformers alike.²⁰

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Chicago City Council Opposes Patriot Act

Andrew Dougherty

On October 1, 2003, the city of Chicago became the largest city in the country to pass a resolution condemning certain portions of the USA Patriot Act. Passed shortly after the attacks of September 11, 2001, the Patriot Act expanded the power of law enforcement agencies in an effort to help them respond to future threats of terrorist action and to shore up homeland security.¹

The Patriot Act has come under sharp criticism for its potential to violate the civil liberties of both

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U.S. citizens and the citizens of other nations residing in the United States. Since the Patriot Act's inception into law in October 2001, 190 cities, towns, and communities across the United States have passed resolutions stating an open and formal opposition to the Patriot Act.² They are joined by Alaska, Hawaii, and Vermont, all of which have passed statewide resolutions opposing certain sections of the

Patriot Act.

The city of Chicago's resolution was co-sponsored by Aldermen Joe Moore (49th Ward), Helen Schiller (46th Ward), Freddrenna Lyle (6th Ward), and Ricardo Munoz (22nd Ward). The resolution stated that certain provisions of the Patriot Act "fundamentally alter our civil liberties without increasing our security."³ The resolution specifically condemned, among others, the provisions of the Act which allow law enforcement agencies to: obtain 'sneak and peak' search warrants with greater ease; detain citizens of foreign states indefinitely; deport citizens of foreign states even if they have not been found to have committed a crime; view an individual's health, medical, financial, and library records; and the power of law enforcement agencies to listen to otherwise confidential conversations between lawyers and their clients in federal custody.

The resolution was met with heavy criticism by Patrick J. Fitzgerald, the United States attorney for the Northern District of Illinois. In an open letter published in the Chicago Tribune the day before the City Council meeting, Fitzgerald decried that the current opposition to the Patriot Act was largely based on misinformation.⁴ Fitzgerald argued that the fundamental point of the Patriot Act was to allow various law enforcement agencies to share information pertaining to terrorist investigations. He further argued that the

FEATURES

provisions of the Patriot Act constitute only modest changes, and that in many cases the Act serves only to codify what has become common practice in the field of law enforcement. For example, 'sneak and peak' search warrants—where law enforcement agencies search a home without the suspect's knowledge of the search—have frequently been authorized for investigations dealing with other areas of crime. The Patriot Act, however, now gives law enforcement agencies a chance to employ this type of search warrant when investigating suspected terrorist activity. As Fitzgerald argues, "The Patriot Act no more invented the sneak-and-peek warrant than it invented the 'arrest.'"⁵

Despite the U.S. Attorney's arguments, the City Council overwhelmingly voted in favor of the resolution by a vote of 37-7. The final version of the resolution, which softened some of the language from the original proposal, called for Congress to "monitor the implementation" of the Patriot Act and to repeal any provisions that "violate fundamental rights and liberties."⁶

The passing of the resolution is a largely symbolic victory for those opposed to the Patriot Act, in that it has no practical effect on the current operation of the Act. This point was emphasized by Alderman Brian Doherty (41st Ward), who characterized the resolution as nothing more than "innocuous rhetoric, politically motivated . . . to embarrass the Bush Administration."⁷ In his letter to the Chicago Tribune, U.S. attorney Fitzgerald equated the potency of the resolution to that of a bumper sticker.⁸

Responding to these charges, Alderman Manuel Flores argued that the point of the resolution was to initiate a discussion of the Patriot Act into the public discourse.⁹ Flores said, "We had a moral and ethical obligation to voice our opinions on the Act. We wouldn't be doing our job if we didn't take a stand." While acknowl-

edging that certain provisions of the Patriot Act are legitimate and useful measures to help prevent future acts of terrorism, Flores stated that "certain provisions cross the line, are overreaching, and are just wrong. We can't just throw our fundamental rights and liberties out of the window for the sake of homeland security."

Aside from the city and state resolutions, there are other indications that the Patriot Act may be losing support. In response to the sneak-and-peek provision, the U.S. House of Representatives passed an amendment in July 2003 that would prohibit the Department of Justice from utilizing appropriated funds to support the sneak-and-peek provision.¹⁰ Perhaps most notable about the amendment, which the Department of Justice has deridingly labeled as the "terrorist tip-off amendment," was the amount of support it received from Republican members of the House. The amendment was co-sponsored by Representative C.L. Butch Otter, a Republican from Idaho, and the 309-118 vote included 111 Republican representatives voting in favor of the amendment.

Joining the ranks of dissent is Bob Barr, a former Republican representative from Georgia. Barr is now the chairman of the American Conservative Union Foundation's 21st Century Center for Privacy and Freedom. Barr has been a leading critic of the Patriot Act, deriding it for giving the Attorney General unprecedented law enforcement powers.¹¹ Turning to the issue of sneak-and-peak searches, Barr concedes that in his experience as an attorney, federal judges routinely authorized such searches upon a showing of endangered national security or emergency. However, Barr contends that not only does the Patriot Act provide for these types of searches in terrorism investigations, but the Act expands the availability of sneak-and-peak search warrants to all types criminal investiga-

tions.

In August, Attorney General John Ashcroft began a month-long speaking tour in which he trumpeted the accomplishments and necessity of the Patriot Act in sixteen cities across the United States. In a transcript of Ashcroft's speech in Boise, Idaho, he lauds the Patriot Act as providing "critical tools to law enforcement" and specifically stated that those who oppose the sneak-and-peek provision are "endangering American lives."¹²

Bolstering the Attorney General's position are recent opinion polls which indicate that a majority of people still support the Act, thus casting some doubt on claims that opposition to Patriot Act is a grass-roots movement. For example, in a Fox News/Opinion Dynamics poll, 91% of those responding stated that the Patriot Act has not affected their own civil rights or the rights of any member of their families.¹³ When asked about the Act's restrictions of civil rights for the purpose of combating terrorism, only 22% responded that the Act had gone too far in this respect.¹⁴ In contrast, 69% of the respondents felt that the Patriot Act's restrictions were either just about right or that the Act had not gone far enough in this area.¹⁵

The speaking tour enraged many opponents to the Patriot Act, and although the engagements were announced only days in advance, protestors gathered at each stop and derided the Patriot Act and the Attorney General. The largest protest occurred in New York City, where an estimated 1,000 people gathered around the Federal Hall to voice their opposition.¹⁶

The protestors and opponents of the Patriot Act voiced a number of objections to the Attorney General's speaking tour.¹⁷ First, only invited guests could attend the speaking engagements and the invitees consisted almost exclusively of law enforcement personnel. Second, Ashcroft

refused to allow most print journalists into the meetings, and granted only select television interviews. Finally, critics charge that the speaking tour violates the restriction placed on government officials to participate in political activities.¹⁸

Ashcroft's speaking tour, however, seems to have had little effect on the opposition efforts against the Patriot Act. During the speaking tour, resolutions opposing the Act were passed in fifteen cities and communities and a statewide resolution passed in Oregon's state Senate.¹⁹ These city and statewide resolutions represent a population of approximately of 2.7 million Americans. These efforts, along with Chicago's own resolution, indicate the desire, at least among public officials, to reexamine the Patriot Act in an open format. In the words of Chicago Alderman Manuel Flores: "If the Patriot Act has merit, why not argue the merits to the open public?"²⁰

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National Do-Not-Call Registry to Stay: Opt-in Feature May Be Its Saving Grace

Amanda Strainis-Walker

The national Do-Not-Call Registry got off to a tenuous start. In the week before the widely anticipated Registry was to take effect, a round of judicial decisions impeded the implementation of the most popular consumer-protection initiative in some time. Despite the legal hurdles, the Registry is currently in effect, and its permanence is looking hopeful. "The FTC is very pleased with the 10th Circuit's decision, which effectively allows the Registry to operate as it was intended until a final decision is handed down in the case," says Asheesh Agarwal, Assistant Director of the Office of Policy Planning, Federal Trade Commission. "We look forward to the court's final decision on the constitutionality of the Registry."

The U.S. Court of Appeals for the 10th Circuit's decision is the most recent opinion in telemarketers' legal attempt to thwart the implementation of the Registry.¹ Their attempts were initially met with success in several district courts the week before the Registry was to take effect, with rulings finding that the FTC exceeded its delegated authority with the promulgation of the Registry and the unconstitutionality of the restrictions on commercial speech.² Congress passed a bill that explicitly stated that the FTC had the authority to promulgate the Registry, thus remedying the

first issue. The second issue of constitutionality, however, was not so easily remedied, and depended on the 10th Circuit's interpretation of legal precedent, which initially appeared to favor the FTC.

The Registry was established to offer consumers relief from telemarketers, notorious for phoning households when the calls are least welcome, including dinner time and late evening. The Registry follows in a line of government actions seeking to limit commercial solicitor calls to residences, and developed into its current form in 2003, through a joint effort of the Federal Trade Commission and the Federal Communications Commission. The rules establishing the Registry prohibit telemarketers from calling consumers who have placed their names in the government-maintained database, and impose fines up to \$11,000 for each registered phone number telemarketers dial.

The 10th Circuit's decision overturned the district court denial to stay its order enjoining the FTC from enforcing the telemarketing sales rules.³ The telemarketers were able to persuade the district judge that the Registry was unconstitutional because it infringed upon their First Amendment protections, resulting in an order enjoining the FTC from enforcing the rules. The district court