

## Debating the USA Patriot Act. Also: The Proposed Marriage Amendment To The Constitution

by {ga=ahumm}

Tuesday, January 06, 2004 12:00 AM - Last Updated Tuesday, August 26, 2014 01:14 PM

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When the United States Justice Department proposed radical changes to the way intelligence was gathered in the wake of the September 11, 2001 terrorist attacks, most of New York City's delegation to Congress agreed to the "[USA Patriot Act](#)" (In PDF format) in October 2002. The vote was 98-1 in the Senate, with Senator Russell Feingold (D-WI) dissenting and New York's Senators Chuck Schumer and Hillary Clinton enthusiastically supporting it. Among New York City's fourteen House members, only four voted nay: Democrats Jerry Nadler (West Side), Jose Serrano (Bronx), Nydia Velazquez (Queens) and Major Owens (Brooklyn). Even such notable liberals as Carolyn Maloney (East Side), Anthony Weiner (Brooklyn), Charles Rangel (Harlem), Eliot Engel (Bronx), and Gregory Meeks (Queens) went along with the legislation.

A debate has raged ever since, particularly in New York, about whether civil liberties were deeply and unnecessarily compromised by the Patriot Act or whether the government needs still more extraordinary powers in order to thwart terrorists. Indeed, a more far-reaching Patriot Act II ("the Homeland Security Act") is before Congress now. But Nadler, whose district includes Ground Zero, is working on legislation to modify what he sees as the excesses of the first Patriot Act.

"The Justice Department," Nadler wrote in his most recent newsletter, "changed its rules to allow for listening to attorney-client conversations, undercover surveillance of religious institutions, military tribunals, and the designation of United States citizens as enemy combatants." He also complained about the lack of cooperation from the Department of Justice in answering questions from the House Judiciary Committee and cited a [report](#) from the department's Inspector General that found a "'pattern of physical and verbal abuse' of detainees rounded up after September 11th." He not only attacked provisions in the law for "sneak and peak" searches ("of people's homes without notifying them afterwards"), but he voted for an amendment to deny federal funds to be used for such a purpose. It passed this summer 309-111.

The New York Library Association this year passed the [Patriot Act Resolution](#) opposing "the use of governmental authority to infringe upon constitutionally protected privacy by data mining vast amounts of information on people not suspected of any crime, to suppress the free and open exchange of recorded information and knowledge." Their resolution "encourages all librarians, library administrators, and library advocates to inform their communities, staff, and patrons about the ramifications and the dangers of current legislation, including the provisions of

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the USA Patriot Act, the Homeland Security Act, and other current legislation that threaten patron privacy and the confidentiality of library records."

The post-9/11 legislation has its defenders in New York. "Stop the Cheap Shots at the Patriot Act," [wrote](#) former Mayor Ed Koch and Long Island Republican Congressman Peter King in a New York Post op-ed. Terrorism, they said, "threatens our national survival. Yet, listening to an increasingly shrill chorus of political voices, Americans could almost conclude that the real threat to our country comes not from bin Laden and al Qaeda but John Ashcroft and the Patriot Act." They assert the law is not being abused and quote Democratic Senator Joe Biden as saying that the Department of Justice has "done a pretty good job in terms of implementing" the law. And while they say that the provisions of the law that allow investigators to search library records "has not been used even once," it is "a weapon that must remain in the prosecutor's arsenal." They commend President Bush, whom Koch has endorsed for re-election, and Attorney General Ashcroft "for the superb job they've done over the last two years. Our liberties have been protected and our country has not been attacked."

In December, Judge Emily Jane Goodman wrote in Gotham Gazette's "[Law](#)" topic page about the

[Defense Campaign](#)

[Bill of Rights](#)

that began this year in New York, mainly sponsored by the New York Civil Liberties Union. On December 2, about 300 stalwarts demonstrated outside City Hall in bitterly cold weather pushing for passage of City Council Resolution 909 from Council Member Bill Perkins (D-Harlem) "calling upon federal, state, and local officials, and upon New York City agencies and institutions to affirm and uphold civil rights and civil liberties." Already passed in three states and 215 communities, it specifically targets the Patriot Act for allowing "the indefinite incarceration of citizens as 'enemy combatants' without access to counsel," opening the door to abuse of electronic surveillance in "ordinary" investigations, giving law enforcement access to medical and financial records with "little if any judicial oversight," instituting an "overbroad" definition of terrorism, and more.

This City Council resolution calls for a lot of changes such as asking the police department to "refrain" from certain practices such as ethnic profiling, but it does not require anything. It was supposed to have been passed in the Council on December 15 after a 7-2 vote of approval in the Government Operations Committee, but Speaker Gifford Miller (D-East Side), who had spoken at the rally in favor of it earlier in the month, did not want the Council's actions to be interpreted as raining on the celebration of the capture of Saddam Hussein the day before in Iraq. Miller and Perkins wrote to the Bill of Rights Campaign promising a full Council vote at the "earliest possible date in the next legislative session."

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The question is, why doesn't the council use its powers to make laws to require the kinds of things of the police and others that it is calling for in this resolution? Perkins said that once the resolution passes, "we'll see what we can do legislatively." Also on the substantive front, the New York Library Association is bringing suit against provisions of the Patriot Act that they deem unconstitutional.

The Justice Department is not ready to back down on any of the Patriot Act provisions. Their director of public affairs, Mark Corralo, [said](#) in October, "Those who would seek to repeal or water down the important tools in the Patriot Act would return America to the level of vulnerability to terrorist attack that existed prior September 11, 2001." Nadler said that the Bush administration is now trying to get the things it wants in Patriot Act II into appropriations bills "without having any chance to debate it." He believes that one day, this country will look back in shame over the Patriot Act the way it does at the Espionage Act of 1917, the internment of the Japanese during World War II, and the McCarthy Era during the Cold War.

When those civil liberties restrictions were enacted, there certainly were protests, but not the mass kind that get things reversed. Hundreds of thousands in New York protested the war in Iraq back in February and March, but only a tiny fraction of that number has been on the government's case over the rollback in civil liberties. The New Yorkers most affected by the Patriot Act are immigrants, legal and illegal, many of whom have gotten swept up in the government's use of its new powers and are the least likely to protest their mistreatment.

[Jason Helperin](#) of Doctors without Borders wrote in April on Alternet.org of dining in a midtown Indian restaurant with his roommate, Asher, who is of South Asian descent, prior to going to a Broadway show when "all of a sudden, there was a terrible commotion and five NYPD in bulletproof vests stormed down the stairs. They had their guns drawn and were pointing them indiscriminately at the restaurant staff and at us." They were detained by agents of the Immigration and Naturalization Service as well as Homeland Security, denied legal counsel, and told repeatedly, "We are at war." After several hours, they were released and received an apology. Helperin later learned the whole raid had been a "mistake."

[Nat Hentoff](#) of the Village Voice, our resident First Amendment absolutist, writes regularly about the ongoing battles over the Patriot Act and the proposals to strengthen it.

The next time these issues are likely to be debated intensely in the mainstream will be when the Republican National Convention comes to town in late August. Many groups have already filed

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for places to march and rally against the Bush administration. As the president insists that terrorists hate us because they hate our "freedom," it will be a test for the government, right down to the level of the New York Police Department, as to how much freedom will be sustained when security concerns are so heightened.

### The Federal Marriage Amendment

This February, Congress will take up the Federal Marriage Amendment to the United States Constitution that proposes to limit marriage and its benefits to man-woman couples. No state currently issues marriage licenses to same-sex couples. When Hawaii looked as if it were going to in 1996, the Congress passed the Defense of Marriage Act barring the federal government from recognizing such unions and allowing the states not to give full faith and credit to such contracts in other states. But the recent ruling from the Massachusetts high court that gay couples are entitled to marry has set off this current push for a constitutional amendment, one that President Bush said he will support "if necessary," which has been interpreted to mean if the courts try to force states outside Massachusetts from recognizing gay marriages performed there.

The Federal Marriage Amendment reads: "Marriage in the United States shall consist only of the union of a man and a woman. Neither this constitution or the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups." It's main backers, the [Alliance for Marriage](#), say that it will not prohibit states from recognizing civil unions or the domestic partnerships that gay and straight couples can register for in New York City. But opponents take the phrase "legal incidents thereof" to mean just what it says and warn that passage could overturn the City's law among others. There is also a more conservative coalition of representatives of the religious rights called the [Arlington Group](#) which is explicit about pushing an amendment that would ban civil unions and domestic partnerships.

The Massachusetts legislature, for its part, is trying to see if a Vermont-style civil union scheme (all the rights of marriage but not the name) will satisfy the court.

Almost 40 states have passed laws or constitutional amendments prohibiting recognition of gay

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nuptials. New York has not passed a state version of the Defense of Marriage Act, but its marriage law has been interpreted by the State Department of Health to only permit marriages for heterosexual couples.

For the federal constitutional amendment to be enacted, it must be passed by two-thirds of both houses of Congress and then win votes in three-quarters of the state legislatures. Even many opponents of same-sex marriage such as New York's Senators Hillary Clinton and Chuck Schumer have come out against amending the constitution for this purpose. While the [New York Times](#) trumpeted a story on its front page that support for the amendment is "strong" at 55 percent of the American people, amendments banning flag burning and requiring a balanced budget polled favorably at upwards of 80 percent and have not even gotten past Congress. Lobbyists against the amendment say they can count on 34 Senators to oppose it, but that number could change if it is rewritten to just ban same-sex marriage and not the benefits of marriage to gay couples.

While New Jersey's legislature is enacting limited domestic partners legislation, in part because a same-sex marriage lawsuit is working its way through their courts, the New York legislature is avoiding the issue thus far. Democratic Assembly Speaker Sheldon Silver won't take a stand on the issue. Republic Senate Majority Leader Joe Bruno said gay people don't "need" to get married. And Governor George Pataki reiterated his stand that the state's marriage laws are "fine the way they are." With New York surrounded by states grappling with the issue very intensely, it is not likely that Albany will be able to keep avoiding it for long.

Rep. Jerry Nadler (D-West Side) is sponsoring a piece of legislation that would grant some recognition to gay couples. His [Permanent Partners Immigration Act](#) (HR 832) has 119 sponsors. It lets "United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes." It is a long way from passing a Republican Congress, but recognition like this is often the first kind accorded to gay couples in places ranging from Brazil to the United Kingdom.

Andy Humm is a former member of the City Commission on Human Rights. He is co-host of the weekly "Gay USA" on Manhattan Neighborhood Network (34 on Time-Warner; 107 on RCN) on Thursdays at 11 PM.

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