

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20031327

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Take under advisement and consider the Board's adoption of a proposed Resolution sponsored by certain local and state political action groups relating to P.L. 107-56, the "USA Patriot Act".

**WHY ACTION IS NECESSARY:** Prior citizen request and Board direction from the Board's October 14, 2003 regular meeting.

**WHAT ACTION ACCOMPLISHES:** Provides a formal Board response to a citizen request.

**2. DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT # CW

*A12C*

**3. MEETING DATE:**

*11-18-2003*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**

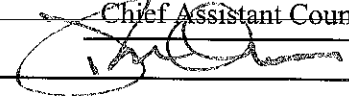
(Specify)

- STATUTE 115 Stat. 272
- ORDINANCE
- ADMIN. CODE
- OTHER P.L. 107-56

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER Chairman Ray Judah
- B. DEPARTMENT County Attorney
- C. DIVISION General Services

BY: David M. Owen  
Chief Assistant County Attorney



**7. BACKGROUND:**

At the "Public Presentation of Matters by Citizens" portion of the Board's public hearings on Tuesday, October 14, 2003, the Board was requested to consider the adoption of a proposed Resolution as advanced by certain citizens and their respective organizations, relating to P.L. 107-56, the "USA Patriot Act", adopted by Congress on October 26, 2001.

(BACKGROUND CONTINUED - NEXT PAGE)

**8. MANAGEMENT RECOMMENDATIONS:**

The Board of County Commissioners should address "USA Patriot Act" issues on an individual, rather than a collegial, official basis.

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>11/5/03</i>	OA	OM	RISK	GC	<i>11-5-03</i>
					<i>11/5/03</i>	<i>11/5/03</i>	<i>11/5/03</i>	<i>11/5/03</i>	

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY COUNTY ADMIN: *11/5/03*  
FORWARDED TO: *11/5/03*

CO. ATTY. *11/5/03*  
FORWARDED TO CO. ADMIN.  
*11/5/03*

**BACKGROUND (Continued)**

The "USA Patriot Act" was adopted in response to the events of September 11, 2001, and is a compilation of amendments to a number of existing Federal laws relating to domestic security at the Federal level; to include enhanced surveillance, money laundering abatement, enhanced U.S. Border protection, removal of obstacles to terrorism investigations, increased information sharing for infrastructure protection, and improved anti-terrorist intelligence gathering.

Due to its breadth in scope and approaches with respect to countering terrorism, the Act has become controversial with certain political organizations and concerned citizens.

The concepts and aspects of the Act have not been either employed or utilized in the U.S. for the past fifty years, when laws and actions were taken by the Federal Government in response to the Japanese attack at Pearl Harbor in 1941.

Without going into any great detail about the need for such Federal legislation in response to an attack on U.S. soil, and the Federal authority to enhance Federal laws to increase the security of U.S. persons and property within the contiguous United States, its possessions and holdings abroad, it can best be stated from the legal position that until found to be unconstitutional by a court of competent jurisdiction, P.L. 107-56 is the law of the land, and should be followed.

Certain political organizations and citizens contend that P.L. 107-56 contains unconstitutional provisions that violate personal and institutional civil liberties. This may or may not be the case. There are constitutionally available processes available to address these concerns at the Federal level; some of which have been taken to date (A.C.L.U. lawsuit).

At this time, Congress is addressing certain portions of the Act with respect to predicates (specific articulable facts) being necessary for the purpose of invoking portions of the Act, which may address some of the articulated concerns. Additionally, certain titles of the Act are scheduled to "sunset" in 2005, or be reviewed by Congress prior to their continuation in effect (e.g., Title II, Section 224, "Sunset" in 2005; Title III, Section 303, Four-Year Congressional Review).

Each citizen may have his or her own personal views concerning the "USA Patriot Act", and is free to express same to those who have placed the law into effect.

Each Board of County Commission member may have his own personal views concerning the "USA Patriot Act", and like any citizen, has the right to express those views to the public and to those who have placed the law into effect. However, official, collegial actions by the Board concerning P.L. 107-56 may not be uniform with respect to each other's positions, and may not be that of a majority of the Board members' District constituents, unless polled in a meaningful manner.

**STAFF RECOMMENDATION:** The Board members should address issues relating to the "USA Patriot Act" on an individual, rather than a formal, collegial basis. No formal position need be taken by the Board with respect to the "USA Patriot Act" by Resolution or otherwise to affirm the County's commitment to the fair and impartial application of the constitutions and laws of the United States and the State of Florida. Each of you has previously taken an oath of office to do this during your respective terms of office.

However, and in the alternative, if it is the Board's collegial judgment that it is in the best interests of the County and its citizens, and that such action reflects the majority opinion of the citizenry of the County; the Board as a policy matter, may consider the adoption of the "USA Patriot Act Resolution" as proposed by members of the Lee County Libertarian Party and the Florida A.C.L.U. on October 14, 2003 (attached), with revisions, due to the issues of whether the statements in the preamble are factually accurate, and the appropriateness of directing County employees not to cooperate with Federal officials conducting investigations under the auspices of the "Patriot Act". If the Board desires such a Resolution of "Affirmation of Civil Liberties", one should be drafted for subsequent Board approval.

**Diana Delgiacco - Revised Resolution**

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**From:** Tom Clark <tomclark@myexcel.com>  
**To:** <dist1@leegov.com>  
**Date:** 10/13/2003 11:56 AM  
**Subject:** Revised Resolution

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**USA PATRIOT ACT RESOLUTION**

"They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

Franklin

"A society that will trade a little liberty for a little order will deserve neither and lose both."

Thomas Jefferson

**PREAMBLE**

The citizens of Lee County are concerned that actions of the Attorney General of the United States and the U.S. Justice Department since the September 11, 2001 attacks pose significant threats to Constitutional protections in the name of fighting terrorism. Such undermining of basic civil rights and liberties runs the serious risk of destroying freedom in order to save it.

The Attorney General asserted before the Senate Judiciary Committee that civil libertarians who criticized the Department's policies "aid terrorists...erode our national unity and diminish our resolve." We disagree. We believe that respect for Constitutional rights is essential for the preservation of a democratic society.

Among the actions to date that have raised our concern are the following:

- More than 1,000 people were detained in the weeks following the September 11 attacks, most without being charged, some impeded in their ability to contact lawyers or their families.
- The Department has issued an order authorizing federal prison officials to listen in on the confidential attorney-client communications of persons in federal custody, without

court review.

- The Justice Department has announced a nationwide effort to locate and interview as many as 5,000 recent immigrants-all men ages 18 to 33, primarily from Middle Eastern nations. Guidelines for these interviews include inquiries into individual's political beliefs and the beliefs of families and friends, and whether or not an individual "supports" any cause that terrorists espouse.

- The USA PATRIOT Act, passed hurriedly in October 2001, creates a new crime, "domestic terrorism," so broadly defined that it could conceivably apply to acts of civil disobedience. Persons associated-through membership dues or legal activity- with organizations defined as terrorist are subject to surveillance and may themselves face prosecution.

The Act gives the FBI and the CIA greater rights to wiretap phones, monitor e-mail, survey medical, financial and student records, and break into homes and offices without prior notification.

The proposed Warrant Article places Lee County on record in support of Constitutional rights for all its residents, regardless of their citizenship, religion, ethnicity, or place of national origin. It calls upon all of its citizens to respect those rights. It also asks county employees not to cooperate with federal investigators seeking to interrogate people on the basis of their ethnicity, their religious beliefs, or the beliefs of their families and friends - following the example of police departments in Oregon, California, and Texas, among others, that have refused to carry out such interviews.

This Article is not intended to inhibit or prevent the apprehension, trial, or conviction of people who have carried out or planned attacks against the United States or any other country. We believe, however, that we are still a nation based on laws and that a threat to any one person's Constitutional rights is a threat to the rights of us all.

WHEREAS the Declaration of Independence of the United States holds as self-evident that all people are created equal and are endowed with the inalienable rights of life, liberty, and the pursuit of happiness;

WHEREAS the First Amendment of the United States Constitution specifies that no law be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances";

WHEREAS the Fourth Amendment declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized";

WHEREAS the Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself";

WHEREAS the Sixth Amendment guarantees defendants "the right to a speedy and public trial, by an impartial jury..., and to be informed of the nature and cause of the

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense";

WHEREAS the Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted";

WHEREAS the Fourteenth Amendment prohibits the government from denying "to any person within its jurisdiction the equal protection of the laws";

THEREFORE, BE IT RESOLVED that Lee County affirms the rights of all people-including United States citizens and citizens of other nations-within the County in accordance with the Bill of Rights and the Fourteenth Amendment of the U.S. Constitution; and

BE IT FURTHER RESOLVED that Lee County calls upon all County officials and employees to respect the civil rights and liberties of all members of this community, including those who are citizens of other nations; and

BE IT FURTHER RESOLVED that Lee County calls upon all private citizens-including residents, employers, educators, and business owners-to demonstrate similar respect for civil rights and civil liberties, especially but not limited to conditions of employment and cooperation with investigations; and

BE IT FURTHER RESOLVED that the County Clerk communicate this resolution to all County departments, the General Court, the Governor and Attorney General of the State of Florida, the Florida Congressional delegation, the United States Attorney General, and the President of the United States; and

BE IT FURTHER RESOLVED that the provisions of this Resolution shall be severable, and if any phrase, clause, sentence, or provision of this Resolution is declared by a court of competent jurisdiction to be contrary to the Constitution of the United States or of the State of Florida or the applicability thereof to any agency, person, or circumstances is held invalid, the validity of the remainder of this Resolution and the applicability thereof to any other agency, person or circumstances shall not be affected thereby.