



HOUSE JOINT MEMORIAL 40
46th legislature - STATE OF NEW MEXICO - first ses-
sion, 2003
INTRODUCED BY
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**A JOINT MEMORIAL
AFFIRMING CIVIL RIGHTS AND
LIBERTIES; DECLARING OPPOSITION
TO FEDERAL MEASURES THAT
INFRINGE ON CIVIL LIBERTIES.**

WHEREAS, the state of New Mexico is proud of its long and distinguished tradition of protecting the civil rights and liberties of its residents; and

WHEREAS, New Mexico has a diverse population, including immigrants and students, whose contributions to the community are vital to its economy, culture and civic character; and

WHEREAS, the preservation of civil rights and liberties is essential to the well-being of a democratic society; and

WHEREAS, federal, state and local governments should protect the public from terrorist attacks such as those that occurred on September 11, 2001 and should do so in a rational and deliberative fashion to ensure that a new security measure will enhance public safety without impairing constitutional rights or infringing on civil liberties; and

WHEREAS, government security measures that undermine fundamental rights do damage to American institutions and values that the residents of New Mexico hold dear, and

WHEREAS, the house of representatives believes that there is no inherent conflict between national security and the preservation of liberty and that Americans can be both safe and free, and

WHEREAS, federal policies adopted since September 11, 2001, including provisions in Public Law 107-56, known as the USA Patriot Act, and related executive orders, regulations and actions threaten fundamental rights and liberties by:

- A. authorizing the indefinite incarceration of non-citizens based on mere suspicion and the indefinite incarceration of citizens designated



by the president as "enemy combatants" without access to counsel or meaningful recourse to the federal courts;

B. limiting the authority of federal courts to curb law enforcement abuse of electronic surveillance in anti-terrorism and ordinary criminal investigations;

C. expanding the authority of federal agents to conduct so-called "sneak and peek" or "black bag" searches, in which the subject of the search warrant has not been notified that his or her property has been searched;

D. granting federal law enforcement and intelligence agencies broad access to personal, medical, financial, library and educational records with little, if any, judicial oversight;

E. chilling constitutionally protected speech through overly broad definitions of "terrorism";

F. driving a wedge between immigrant communities and the police that protect them by encouraging involvement of state and local police in the enforcement of federal immigration law; and

G. permitting the federal bureau of investigation to conduct surveillance of religious services, internet chat rooms, political demonstrations and public meetings of any kind without evidence that a crime has been or may be committed; and

WHEREAS, these new powers pose a particular threat to the civil rights and liberties of the residents of New Mexico state who are or who are assumed to be Arab, Muslim or of South Asian descent; and

WHEREAS, other communities throughout the country have enacted resolutions reaffirming support for civil rights and civil liberties in the face of government policies that threaten these values and have demanded accountability from law enforcement agencies regarding their use of these new powers;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that it:

A. affirm its strong support for fundamental constitutional rights and its opposition to federal measures that infringe on these rights and liberties;

B. affirm its strong support for the rights of immigrants and oppose measures that single out individuals for legal scrutiny or enforcement activity based on their country of origin;

C. direct the New Mexico state police to:

(1) refrain from participating in the enforcement of federal immigration laws;

(2) seek adequate written assurances from federal authorities that residents of the state of New Mexico and individuals in the custody of the state who are placed in federal custody will not be subjected to military or secret detention or secret immigration proceedings without access to counsel and, absent such written assurances, refrain from assisting federal authorities to obtain custody of these individuals;

(3) refrain from engaging in the surveillance of individuals or groups of individuals based on their participation in activities protected by the First Amendment to the United States constitution, such as political advocacy or the practice of a religion, without reasonable and particularized suspicion of criminal conduct unrelated to the activity protected by the First Amendment to the United States constitution;

(4) refrain from using race, religion, ethnicity or national origin as a factor in selecting who is subject to investigatory activities unless race, religion, ethnicity or national origin is part of the description of a specific suspect to be apprehended;

(5) refrain, whether acting alone or with federal law enforcement officers, from collecting or maintaining information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activity and there are reasonable grounds to believe that the subject of the information is or may be involved in criminal conduct;

(6) provide advance or simultaneous notice of the execution of a search warrant to any resident of the state of New Mexico whose property is the subject of the search and refrain from participating in a joint search with any law enforcement agency absent assurances that such a notice will be provided;

(7) refrain from undertaking or participating in any initiative, such as the terrorist information and prevention system, also known as TIPS, that encourages members of the general public to spy on their neighbors, colleagues or customers;

(8) refrain from the practice of stopping drivers or pedestrians for the purpose of scrutinizing their identification documents without reasonable and particularized suspicion of criminal activity; and

(9) report to the legislature and the interim corrections oversight and justice committee, any request by federal authorities that, if granted, would cause agencies of the state to exercise powers or cooperate in the exercise of powers in apparent violation of a city ordinance or the laws or constitution of this state or of the United States;

D. direct public schools and institutions of higher education to provide notice to individuals whose education records have been obtained by law enforcement agents pursuant to Section 507 of the USA Patriot Act;

E. direct public libraries to post in a prominent place within the library a notice as follows: "WARNING: Under Section 215 of the federal USA Patriot Act (Public Law 107-56), records of books and other materials you borrow from this library may be obtained by federal agents. This law also prohibits librarians from informing you if records about you have been obtained by federal agents. Questions about this policy should be directed to Attorney General John Ashcroft, Department of Justice, Washington, DC 20530."; and

F. direct the state official in charge of homeland security for New Mexico to seek periodically from federal authorities the following information in a form that facilitates an assessment of the effect of federal anti-terrorism efforts on the residents of the state of New Mexico and provide to the legislature and the interim corrections oversight and justice committee, no less than once every six months, a summary of the information obtained:

(1) the names of all residents of New Mexico who have been arrested or otherwise detained by federal authorities as a result of terrorism investigations since September 11, 2001, and:

(a) the location of each detainee;

(b) the circumstances that led to each detention;

- (c) the charges, if any, lodged against each detainee; and
- (d) the name of counsel, if any, representing each detainee;
- (2) the number of search warrants that have been executed in New Mexico without notice to the subject of the warrant pursuant to Section 213 of the USA Patriot Act;
- (3) the extent of electronic surveillance carried out in the state pursuant to powers granted in the USA Patriot Act;
- (4) the extent to which federal authorities are monitoring political meetings, religious gatherings or other activities within New Mexico that are protected by the first Amendment of the United States constitution;
- (5) the number of times education records have been obtained from public schools and institutions of higher learning in New Mexico pursuant to Section 507 of the USA Patriot Act;
- (6) the number of times library records have been obtained from libraries in New Mexico pursuant to Section 215 of the USA Patriot Act; and
- (7) the number of times records of books purchased by store patrons have been obtained from bookstores in New Mexico pursuant to Section 215 of the USA Patriot Act; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to Senators Jeff Bingaman and Pete Domenici and Representatives Tom Udall, Heather Wilson and Steve Pearce, with a letter urging them to monitor federal anti-terrorism tactics and to work to repeal provisions of the USA Patriot Act and other laws and regulations that infringe on civil rights and liberties; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to President George W. Bush and Attorney General John Ashcroft; and

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the state official in charge of homeland security for New Mexico; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the New Mexico state police and to all public schools, institutions of higher education and public libraries within the state of New Mexico.

The NM House Judiciary Committee reported out a "Don't Pass" on this bill, but also produced a somewhat less sweeping but similarly-themed substitute with a "Do Pass"; this has now (as of 3/22/02) also been reported out of the Senate Judiciary Committee with a "Do Pass"

On a related note, while checking on this, i found the following:

In October, 2002, the city of Santa Fe passed a resolution supporting the Bill of Rights and civil liberties for residents of Santa Fe, resolving that local law enforcement uphold residents' rights and liberties and petitioning the state's federal legislative delegation to actively monitor the implementation of the Patriot Act, related executive orders and policy changes.

New Mexico State Representative
Max Coll

