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**HOUSE JOINT MEMORIAL 40**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Max Coll

**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**

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1 will enhance public safety without impairing constitutional  
2 rights or infringing on civil liberties; and

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

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

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

14 A. authorizing the indefinite incarceration of non-  
15 citizens based on mere suspicion and the indefinite  
16 incarceration of citizens designated by the president as "enemy  
17 combatants" without access to counsel or meaningful recourse to  
18 the federal courts;

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

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

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

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

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

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

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

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

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

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

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

8           C. direct the New Mexico state police to:

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

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

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

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1 constitution;

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

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

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

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

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1 customers;

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

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

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

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

25 F. direct the state official in charge of homeland

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1 security for New Mexico to seek periodically from federal  
2 authorities the following information in a form that  
3 facilitates an assessment of the effect of federal anti-  
4 terrorism efforts on the residents of the state of New Mexico  
5 and provide to the legislature and the interim corrections  
6 oversight and justice committee, no less than once every six  
7 months, a summary of the information obtained:

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

- 12 (a) the location of each detainee;  
13 (b) the circumstances that led to each  
14 detention;  
15 (c) the charges, if any, lodged against  
16 each detainee; and  
17 (d) the name of counsel, if any,  
18 representing each detainee;

19 (2) the number of search warrants that have  
20 been executed in New Mexico without notice to the subject of  
21 the warrant pursuant to Section 213 of the USA Patriot Act;

22 (3) the extent of electronic surveillance  
23 carried out in the state pursuant to powers granted in the USA  
24 Patriot Act;

25 (4) the extent to which federal authorities

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1 are monitoring political meetings, religious gatherings or  
2 other activities within New Mexico that are protected by the  
3 first Amendment of the United States constitution;

4 (5) the number of times education records have  
5 been obtained from public schools and institutions of higher  
6 learning in New Mexico pursuant to Section 507 of the USA  
7 Patriot Act;

8 (6) the number of times library records have  
9 been obtained from libraries in New Mexico pursuant to Section  
10 215 of the USA Patriot Act; and

11 (7) the number of times records of books  
12 purchased by store patrons have been obtained from bookstores  
13 in New Mexico pursuant to Section 215 of the USA Patriot Act;  
14 and

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

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

25 BE IT FURTHER RESOLVED that a copy of this memorial be

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1 transmitted to the state official in charge of homeland  
2 security for New Mexico; and

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

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