
HOUSE CONCURRENT RESOLUTION

CALLING FOR AN INVESTIGATION OF WARRANTLESS WIRETAPPING OF
AMERICAN CITIZENS BY THE NATIONAL SECURITY AGENCY.

1 WHEREAS, Hawaii has a long and distinguished history of
2 protecting and expanding human rights, civil liberties, and
3 constitutional protections, often serving as a beacon for our
4 country's citizens when their rights, liberties, and protections
5 are threatened; and

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7 WHEREAS, in addition to the Fourth Amendment to the United
8 States Constitution which protects American citizens against
9 unreasonable searches and seizures, the Hawaii Constitution in
10 Article I, Section 7, protects the right of the people to be
11 secure in their persons, houses, papers, and effects against
12 unreasonable searches, seizures, and invasions of privacy and in
13 Article I, Section 6, recognizes the right of the people to
14 privacy and prohibits infringement of that right without the
15 showing of a compelling state interest; and

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17 WHEREAS, the people of this State are in a unique position
18 to understand the gravity and horror of a massive, lethal
19 attack, as the December 7, 1941 attack on Pearl Harbor was the
20 last time American territory was attacked by foreign forces
21 prior to the events of September 11, 2001; and

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23 WHEREAS, after the tragic events of September 11, 2001,
24 hasty reaction led to the adoption of the Uniting and
25 Strengthening America by Providing Appropriate Tools Required to
26 Intercept and Obstruct Terrorism (or "USA Patriot Act") and
27 Homeland Security Act, and the promulgation of several executive
28 orders and departmental rules and regulations has led the
29 federal government to sacrifice fundamental human rights and
30 civil liberties; and

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32 WHEREAS, the USA Patriot Act, even in its recently amended
33 and renewed form, defines "domestic terrorism" so broadly as to



1 potentially apply to certain acts of civil disobedience by
2 lawful advocacy groups, which may be labeled as terrorist
3 organizations and subjected to invasive surveillance, signal and
4 electronic intelligence gathering, harassment, and criminal
5 penalties for protected political advocacy; and
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7 WHEREAS, the USA Patriot Act grants unchecked power to the
8 Secretary of State to designate domestic groups as "terrorist"
9 organizations and greatly expands the government's ability to
10 conduct secret searches without warrants; and
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12 WHEREAS, the Justice Department has issued a directive
13 limiting compliance with the Freedom of Information Act, citing
14 the threat of terrorism as justification, and thereby limiting
15 disclosure of public documents and records covering all
16 government information, much of which has no connection to
17 national security or law enforcement; and
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19 WHEREAS, the former United States Attorney General
20 unilaterally, without consulting Congress, eased long-standing
21 intelligence guidelines which were put in place in 1976 as a
22 result of gross intelligence abuses by the Federal Bureau of
23 Investigation and issues surrounding the Watergate Hotel break-
24 in by operatives linked to the Nixon White House; and
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26 WHEREAS, guidelines now allow Federal Bureau of
27 Investigation agents to spy on religious groups, political
28 rallies, and organized meetings without any suspicion that the
29 organization is involved in terrorism or any other criminal
30 activity; and
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32 WHEREAS, in December 2005, the New York Times disclosed
33 that, in late 2001, President George W. Bush, relying on a
34 Congressional resolution authorizing him to use force to
35 prosecute the "war on terrorism," authorized the National
36 Security Agency to intercept messages if one of its supervisors
37 believed there was a link to al-Qaida; and
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39 WHEREAS, in authorizing such surveillance by the National
40 Security Agency, the President has circumvented the Foreign
41 Intelligence Surveillance Act of 1978 by which Congress created
42 a special court for issuance of warrants for this type of
43 surveillance; and
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1 WHEREAS, the Foreign Intelligence Surveillance court has
2 reviewed more than 10,000 warrant applications since its
3 creation, has denied the application in only fifteen cases, and
4 has exercised its powers to retroactively approve warrant
5 applications after the surveillance has begun or been completed;
6 and

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8 WHEREAS, President Bush has attempted to justify his use of
9 warrantless surveillance by arguing that his constitutional
10 power to make war supersedes the limitations imposed by the
11 Foreign Intelligence Surveillance Act; and

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13 WHEREAS, President Bush has made no attempt to explain how
14 the Foreign Intelligence Surveillance Act impedes his ability to
15 prosecute the "war on terror" or what safeguards exist to
16 prevent him from using the power he claims to be
17 constitutionally superior to infringe on the constitutionally
18 guaranteed civil liberties of American citizens; and

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20 WHEREAS, the Republican-controlled Congress has refused to
21 conduct an inquiry into the facts underlying the President's
22 surveillance order, including the likely cooperation of some of
23 America's leading telecommunications providers such as AT&T and
24 MCI, or the legality of the order or the cooperation of the
25 telecommunication firms; and

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27 WHEREAS, the United States Attorney General has so far
28 declined to appoint a special prosecutor to investigate the
29 National Security Agency surveillance program; and

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31 WHEREAS, in Federalist No. 10, dated November 22, 1787,
32 James Madison wrote that "No man is allowed to be a judge in his
33 own cause, because his interest would certainly bias his
34 judgment, and, not improbably, corrupt his integrity"; and

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36 WHEREAS, a president does have an obligation to assess the
37 constitutionality of statutes, but when that president secretly
38 decides a measure is unconstitutional and neglects to say so,
39 much less why, that president undermines the very system of
40 public consent for which we are fighting; now, therefore,

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42 BE IT RESOLVED by the House of Representatives of the
43 Twenty-third Legislature of the State of Hawaii, Regular Session
44 of 2006, the Senate concurring, that:

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2 (1) The President be asked to explain why the National
3 Security Agency has not been directed to seek warrants
4 pursuant to the Foreign Intelligence Surveillance Act
5 given that the warrant applications are almost always
6 granted, can be granted retroactively, and are clearly
7 constitutional, unlike the warrantless surveillance
8 program which is, at best, of extremely dubious
9 constitutionality;
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11 (2) The President be asked what protections for civil
12 liberties remain under the theory that the
13 Congressional resolution authorizing the use of force
14 in the "war on terror" supersedes any constitutional,
15 legal, or other limitation on the President's power;
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17 (3) The Director of the National Security Agency be asked
18 to explain how surveillance targets are identified and
19 what precautions are taken to ensure that the
20 constitutional privacy and other rights and civil
21 liberties of innocent American citizens are not
22 violated by surveillance that mistakenly intrudes into
23 their conversations, activities, and very lives;
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25 (4) The United States Attorney General be asked to appoint
26 a special prosecutor to investigate the facts
27 underlying the warrantless surveillance program and
28 what constitutional or legal authority exists for the
29 program;
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31 (5) Congress be requested to investigate, through its
32 appropriate committees, whether the President has
33 exceeded his powers by ordering warrantless
34 surveillance and whether the Foreign Intelligence
35 Surveillance Act should be modified to prevent the
36 President from ignoring with impunity the directives
37 of a co-equal branch of the federal government; and
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39 (6) Hawaii's Congressional delegation be asked to continue
40 their efforts to repeal the USA Patriot Act, to assert
41 Congress' power with regard to the Foreign
42 Intelligence Surveillance Act, and to stop the
43 President from further ordering the National Security



1 Agency to engage in the warrantless surveillance of
2 innocent American citizens; and
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4 BE IT FURTHER RESOLVED that certified copies of this
5 Concurrent Resolution be transmitted to the President of the
6 United States, the Director of the National Security Agency, the
7 United States Attorney General, the President of the United
8 States Senate, the Speaker of the United States House of
9 Representatives, and to each member of Hawaii's congressional
10 delegation.
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