

1 [Urging President Bush to stop the warrantless surveillance of Americans and to follow the  
Foreign Intelligence Surveillance Act.]

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3 **Resolution urging President Bush to stop the warrantless surveillance of Americans**  
4 **and to follow the Foreign Intelligence Surveillance Act.**

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6 WHEREAS, The safety and security of San Franciscans depends upon the  
7 maintenance of a vigorous democracy under law, in which the branches of government work  
8 effectively and cooperatively together; and

9 WHEREAS, The Fourth Amendment of the United States Constitution states: “The right  
10 of the people to be secure in their persons, houses, papers, and effects, against unreasonable  
11 searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable  
12 cause, supported by Oath or affirmation, and particularly describing the place to be searched,  
13 and the persons or things to be seized”; and,

14 WHEREAS, The Foreign Intelligence Surveillance Act of 1989 (FISA) comprehensively  
15 regulates electronic surveillance within the United States, with the goal of striking a proper  
16 constitutional balance between protection of civil liberties and safeguarding national security;  
17 and,

18 WHEREAS, FISA provides a legal mechanism for the United States government to  
19 engage in surveillance of a foreign power or of an agent of a foreign power in instances when  
20 it is likely that the surveillance will acquire the contents of a communication with a United  
21 States-based person; and,

22 WHEREAS, FISA and specified provisions of the federal criminal code are the  
23 exclusive means by which electronic surveillance may be conducted, and federal law makes  
24 criminal any electronic surveillance not authorized by statute; and,

1           WHEREAS, FISA provides specific exceptions that allow the President to authorize  
2 warrantless electronic surveillance for foreign intelligence purposes in emergency situations,  
3 provided an application for judicial approval from a FISA court is made within 72 hours and  
4 within 15 calendar days following a declaration of war by Congress; and,

5           WHEREAS, President Bush has directed the National Security Agency (NSA) to  
6 conduct secret and warrantless electronic surveillance of persons within the United States  
7 without any plausible legal authority for such surveillance, and is in direct violation of FISA  
8 and the Fourth Amendment to the United States Constitution; and,

9           WHEREAS, The actions diminish the rule of law and do not enhance national security;  
10 now, therefore, be it

11           RESOLVED, That the San Francisco Board of Supervisors supports the vigorous  
12 pursuit and prosecution of persons and organizations that plan terrorist acts anywhere in the  
13 world; and, be it

14           RESOLVED, That the San Francisco Board of Supervisors calls upon the President to  
15 abide by the limitations which the Constitution imposes on the executive branch under our  
16 system of checks and balances and respect the essential roles of the legislative branch and  
17 the judicial branch in ensuring that our national security is protected in a manner consistent  
18 with constitutional guarantees; and, be it

19           RESOLVED, That the San Francisco Board of Supervisors expresses deep concern  
20 over President Bush's order to the National Security Agency to intercept telephone and e-mail  
21 exchanges between the United States and overseas without court authorization, as required  
22 under FISA; and, be it

23           RESOLVED, That the San Francisco Board of Supervisors urges Congress to affirm  
24 that the Authorization for Use of Military Force of September 18, 2001, Pub. L. No 107-40,  
25 115 Stat. 224§ 2(a) (2001) (AUMF), did not provide a statutory exception to the FISA

1 requirements, and that any such exception can be authorized only through affirmative explicit  
2 congressional action; and, be it

3 RESOLVED, That the San Francisco Board of Supervisors requests the President to  
4 immediately direct the NSA to observe FISA's requirements, and urges the President, if he  
5 believes that FISA is inadequate to safeguard national security, to seek appropriate  
6 amendments or new legislation rather than acting without explicit statutory authorization; and,  
7 be it

8 RESOLVED, That the San Francisco Board of Supervisors urges Congress to reaffirm  
9 that their vote for the Authorization to Use Military Force (AUMF) in Afghanistan which  
10 President Bush relies on to justify the warrantless surveillance of U.S. residents was not a  
11 vote to authorize such warrantless surveillance; and, be it

12 RESOLVED, That the San Francisco Board of Supervisors urges all City and County of  
13 San Francisco government agencies and each person and business entity that receives a  
14 request to cooperate in the electronic surveillance of a person within the United States to  
15 obtain assurance from the state or federal government agency making the request that it is  
16 lawful under FISA or applicable provisions of the federal criminal code; and, be it

17 RESOLVED, That the San Francisco Board of Supervisors requests that the State  
18 Attorney General assist, and if needed, intervene on behalf of, any San Francisco resident  
19 who is asked to cooperate in the electronic surveillance of a person within the United States  
20 when such person did not receive an assurance that the request is lawful under FISA or  
21 applicable provisions of the federal criminal code law; and, be it

22 RESOLVED, That the San Francisco Board of Supervisors urges Congress to conduct  
23 a comprehensive investigation to determine: (a) the nature and extent of electronic  
24 surveillance of U.S. persons conducted by any U.S. government agency for foreign  
25 intelligence purposes that does not comply with FISA; (b) what basis or bases were advanced

1 for the legality of such surveillance; (c) whether Congress was properly informed of and  
2 consulted as to the surveillance; (d) the nature of the information obtained as a result of the  
3 surveillance; (e) whether the surveillance information collected was retained or shared with  
4 other agencies; and (e) whether this information was used in legal proceedings against any  
5 U.S. citizen or resident; and, be it

6 RESOLVED, That the San Francisco Board of Supervisors urges Congress to ensure  
7 that such proceedings are open to the public, conducted in a fashion that will provide a clear  
8 and credible account to the people of the United States, except to the extent the Congress  
9 determines that any portions of such proceedings must be closed to prevent the disclosure of  
10 classified or other protected information; and, be it

11 RESOLVED, That the San Francisco Board of Supervisors urges Congress to  
12 thoroughly review and make recommendations concerning the intelligence oversight process,  
13 and urges the President to ensure that the House and Senate are fully and currently informed  
14 of all intelligence operations as required by the National Security Act of 1947; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors directs the Clerk of the Board  
16 to send a copy of this resolution to President George Bush, U.S. Attorney General Alberto  
17 Gonzales, U.S. Senate Majority Leader Bill Frist, Senator Barbara Boxer, Senator Dianne  
18 Feinstein, Congresswoman Nancy Pelosi, members of the California Congressional  
19 Delegation, and to State Attorney General Bill Lockyer.

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