

Albany, NY Common Council Members Calsolaro, Bailey, Conti, Fahey, Konev, Sano, and Smith introduced the following (passed on April 5, 2010):

Resolution Number 39.41.10R (As Amended)

RESOLUTION URGING THE U.S. DEPARTMENT OF JUSTICE TO REVIEW THE CONVICTIONS OF MUSLIMS WHO WERE “PREEMPTIVELY PROSECUTED” TO ENSURE THEIR FAIR TREATMENT UNDER THE U.S. CONSTITUTION AND BILL OF RIGHTS

WHEREAS, the Declaration of Independence of the United States and the United States Constitution and the Bill of Rights are the cornerstone of our democracy; and

WHEREAS, since 9/11 some Muslims in the United States have been targeted by the U.S. government for increased scrutiny, surveillance and prosecution; and

WHEREAS, the United States government created a warrantless electronic surveillance program which obtained secret classified information on Americans, apparently in violation of various laws including the Foreign Intelligence Surveillance Act, and the First and Fourth Amendments to the U.S. Constitution; and

WHEREAS, the Department of Justice and the FBI created a program called “preemptive prosecution” in which Muslims who are not involved in criminal activity are targeted and prosecuted based on “secret evidence,” often derived from warrantless electronic surveillance; and

WHEREAS, there is a substantial probability that the activities and programs of the U.S. government which target a religious minority in such a manner violate their civil rights as Americans; and

WHEREAS, in 2003 the Albany Common Council voted unanimously to object to the Patriot Act because of the dangers that this act posed to the civil rights and liberties of all Americans; and

WHEREAS, in 2009 the Albany Common Council voted to support immigrant rights in the City of Albany so that immigrant families would not live in constant fear of repression, jail, or deportation; and

WHEREAS, because of excessive secrecy by the U.S. government about its warrantless eavesdropping and preemptive prosecution programs, substantial doubt remains as to whether hundreds of Muslims were preemptively prosecuted, and guilty of crimes, and whether the defendants received their civil rights guaranteed under the U.S. Constitution, including the right to receive exculpatory information, and a fair trial; and

WHEREAS, after Senator Ted Stevens was convicted of Bribery, the Justice Department did an independent assessment of how his case was prosecuted, determined that exculpatory information had been withheld by prosecutors, and dismissed the case; and

WHEREAS, the Inspector General of the Department of Justice, in a July 10, 2009 report on US surveillance programs recommended, “that Department of Justice carefully consider whether it must re-examine past [terrorism] cases to see whether potentially discoverable but undisclosed Rule 16 or *Brady* material was collected under the President's Surveillance Program, and take appropriate steps to ensure that it has complied with its discovery obligations in such cases” (report p. 19).

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany requests that the U.S. Department of Justice implement the recommendation of its own Inspector General, and establish an independent panel within the Department of Justice, similar to what was done in the Stevens case, and to what was recommended by the Inspector General, to review all of the convictions of Muslims who were “preemptively prosecuted” to determine if these defendants were properly given exculpatory information and other rights of discovery to which defendants in criminal prosecutions are entitled, and whether these prosecutions in all ways met the high standards of truth, openness, fairness, and justice that are embodied in the US Constitution and the Bill of Rights.

BE IT FURTHER RESOLVED, that the Common Council of the City of Albany requests that the Clerk of this Council forward copies of this resolution to United States Senators Kirsten Gillibrand and Charles Schumer and United States Representative Paul Tonko.

TO: John Marsolais, City Clerk
FROM: Dominick Calsolaro, Council Member
RE: Request for Common Council Legislation
Supporting Memorandum
DATE: March 24, 2010

RESOLUTION NUMBER 39.41.10R

TITLE: RESOLUTION URGING THE U.S. DEPARTMENT OF JUSTICE TO REVIEW THE CONVICTIONS OF MUSLIMS WHO WERE “PREEMPTIVELY PROSECUTED” TO ENSURE THEIR FAIR TREATMENT UNDER THE U.S. CONSTITUTION AND BILL OF RIGHTS

GENERAL PURPOSE OF LEGISLATION: This resolution officially expresses the opinion of the Common Council.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW: Since the terrorist attack on 9/11/2001, Muslims in the United States have been targeted by the U.S. government for increased scrutiny, surveillance, and prosecution. Following 9/11, the United States government created a warrantless electronic surveillance program which obtained secret classified information on Americans, apparently in violation of various laws including the Foreign Intelligence Surveillance Act, and the First and Fourth Amendments to the U.S. Constitution. Albany residents have not been immune from these possible violations of civil rights and of law. A few years ago, in the City of Albany, the FBI and Justice Department targeted and “preemptively prosecuted” two local Muslims, Yassin Aref and Mohammad Hossain, based in part on secret evidence, warrantless electronic surveillance, and an agent provocateur sent to the Masjid As-Salam mosque on Central Avenue in Albany. Furthermore, the Inspector General of the United States Department of Justice, in a July 10, 2009 report on U.S. surveillance programs recommended, "that Department of Justice carefully consider whether it must re-examine past [terrorism] cases to see whether potentially discoverable but undisclosed Rule 16 or Brady material was collected under the President's Surveillance Program, and take appropriate steps to ensure that it has complied with its discovery obligations in such cases."

FISCAL IMPACT: None.