



Legislation Text

File #: Res 0731-2003, **Version:** *

Res. No. 731

Resolution denouncing the recent judicial decision to modify and ease the Handschu Agreement's surveillance restrictions, thereby expanding the ability of the NYPD to monitor the activities of political groups in certain cases.

By Council Members Lopez, Barron, Clarke, Jackson, Perkins, Quinn, Seabrook and Vann

Whereas, Last September, the NYPD petitioned a federal district court judge to modify the Handschu Agreement, a longstanding court order that limits the ability of the police to monitor political activity, contending that the eighteen-year-old Handschu restrictions were outmoded and were threatening to hamper law enforcement's present ability to conduct post-9/11 counterterrorism surveillance; and

Whereas, The NYPD's efforts to obtain greater surveillance power and flexibility by seeking judicial modification of the Handschu Agreement, sparked serious opposition from many groups who characterized the effort as a possibly unconstitutional attempt to infringe upon civil rights; a number of opponents, including civil-libertarian groups, objected to any removal or easing of Handschu's procedural safeguards as being an unwarranted expansion of law enforcement's powers of surveillance at the expense of citizens' civil liberties; and

Whereas, However, last week, Manhattan federal judge Charles S. Haight, citing what he called "fundamental changes in the threats to public security", agreed with the NYPD and announced his intention to modify the 1985 Handschu consent decree which had effectively limited the NYPD's ability to conduct surveillance on political groups in the absence of evidence of concrete information indicating that a crime is about to be committed; and

Whereas, The NYPD had argued that the Handschu restrictions were making it too difficult to investigate terrorism because they required evidence of a crime in order to initiate an investigation; the NYPD maintained that in order to effectively investigate and combat covert terror plots, law enforcement must have the ability to conduct police surveillance and undercover operations on political activities even in the absence of specific evidence or concrete information; and

Whereas, Opponents, however, contend that the NYPD is attempting to "open the door" to police surveillance of legitimate political activity, without any evidence of illegal conduct; as Chris Dunn, Associate Legal Director for the NYCLU, has stated, "While the NYPD, of course, should be investigating potential criminal and terrorist activity, it has no legitimate reason to spy on lawful political activity"; and Whereas, Jethro M. Eisenstein, one of the lawyers for the plaintiffs in the long-running case, called the recent decision "a major, major loss"; "What's wrong with this decision," Mr. Eisenstein stated, "is that it eliminates a process that became part of the culture of the Police Department. The city, in its effort to get out from under Handschu, portrayed the rules as much more onerous than they were"; and

Whereas, As Mr. Eisenstein stated, "What was so valuable about Handschu was the investigative discipline"; "The process of going through that day in and day out was always, in our view, an incredibly important part"; and

Whereas, Although the requirements are being relaxed, Judge Haight has said that he believes that the continuing existence of the three-member oversight panel, consisting of two senior police officials and a civilian appointed by the mayor, would act as a deterrent to illegal police conduct; and

Whereas, However, despite Judge Haight's assurance, as we know from experience, this is not always the case; now, thanks to Judge Haight's decision, the NYPD has even more flexibility and unrestricted power to potentially trample upon our rights and liberties; and Whereas, Although the Handschu restrictions have been undermined, the NYPD must continue to respect our constitutional rights and must not use its newly acquired power to spy on lawful political activity absent a compelling showing that a crime is about to be committed; and

Whereas, For years the Handschu Agreement has affirmed and protected our constitutional rights of privacy, freedom of speech and assembly and now, although our Handschu protections have been terribly weakened, our civil rights and liberties continue to prevail and we will continue to defend them; and

Whereas, The people of the City of New York should be assured that all efforts are being made to protect and preserve their civil liberties, and that these precious rights are not being traded in for the illusion of safety and security; and

Whereas, The people of the City of New York will consistently monitor and scrutinize the NYPD's implementation of their now expanded investigative abilities to ensure that their new surveillance power is not used in any way that jeopardizes the rights and liberties of the citizens of the City of New York; and

Whereas, Our citizens must be reassured that law enforcement does not obtain an unchecked ability to intrude into the lives of individuals engaging in legitimate political activities; now, therefore be it

Resolved, That the Council of the City of New York denounces the recent judicial decision to modify and ease the Handschu Agreement's surveillance restrictions, thereby expanding the ability of the NYPD to monitor the activities of political groups in certain cases.

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