

LIBERTY AND SECURITY: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS

A coalition of more than twenty organizations and over seventy-five individuals collaborated to create “Liberty and Security: Recommendations for the Next Administration and Congress.” The Constitution Project coordinated the production of the report, which was released in November 2008.

“Liberty and Security” indexes policy proposals across 20 different issue areas, including privacy, secrecy and surveillance; detention, interrogation, and trials of so-called “enemy combatants”; and discrimination in immigration and charities policy. It includes recommendations for congressional and executive action, and provides in-depth background information to support action by policy makers. It also includes lists of issue-based resources and experts in the community. The report includes the following chapters:

Charities, Foundations, and National Security

CHAPTER 1: Eliminate Unnecessary Barriers to Legitimate Charitable Work

Detention, Interrogation, and Trials of Suspected Terrorists

CHAPTER 2: Closing Guantánamo

CHAPTER 3: End Illegal Detention, Torture, and Rendition

CHAPTER 4: Prosecute Terrorist Suspects in Accordance with the Law

Immigration and National Security

CHAPTER 5: Failing to Protect Refugees and Asylum Seekers: Overly Broad Definition of Material support for Terrorism.

CHAPTER 6: Ending Immigration Enforcement Based on National Origin, Ethnicity, and Religion

CHAPTER 7: Misuse of Immigration Detention Laws in Counterterrorism Efforts

Secrecy, Surveillance, and Privacy

CHAPTER 8: Revising Attorney General Guidelines on FBI Investigations

CHAPTER 9: Updating the Law Governing the Privacy of Electronic Communications

CHAPTER 10: Fusion Centers and the Expansion of Domestic Intelligence

CHAPTER 11: Promoting Government Transparency

CHAPTER 12: National Security Letters and Section 215 of the USA PATRIOT Act

CHAPTER 13: Reform of the National Security Surveillance Laws and Procedures

CHAPTER 14: Preventing Over-Classification and Retroactive Classification and Promoting Declassification of Government Documents

CHAPTER 15: Reforming the State Secrets Privilege

CHAPTER 16: Reforming Watch Lists

Separation of Powers and Executive Authority

CHAPTER 17: Assertion of Executive Authority in National Security Matters

CHAPTER 18: Executive Privilege and Congressional Oversight

CHAPTER 19: Signing Statements

CHAPTER 20: War Powers Authority

The full report is available online at <http://2009transition.org/liberty-security/>, at www.constitutionproject.org, and on the websites of many members of the coalition.

For policy questions, please contact the individuals or organizations identified in the catalogue as allies. Please direct general questions to Daniel Schuman, Director of Communications and Counsel, the Constitution Project, at 202-580-6922.

APPENDIX

WAR POWERS

I. Jurisdiction

- A. **Congress:** Proposal 3 would most likely be addressed by the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, which have jurisdiction over declarations of war.
- B. **Executive Branch:** Proposals 1 and 2 would be addressed by the White House and could be addressed by enforcing and complying with the existing constitutional requirements.

II. Status of Actions in Legislative, Executive, and Judicial Branches

A. Legislative Branch:

1. House Joint Resolution 53 (Constitutional War Powers Amendments of 2007) was introduced on September 25, 2007 by Rep. Walter Jones (R-NC) (with 11 co-sponsors). The bill would amend the War Powers Resolution to ensure the collective judgment of both the Congress and the President will apply to the initiation of hostilities by the Armed Forces and the continued use of the Armed Forces in hostilities. The bill also includes consultation procedures concerning the participation of the Armed Forces in military operations of the United Nations. The bill was referred to the House Foreign Affairs and Rules Committees on September 25, 2007. No further action has been taken.
2. House Concurrent Resolution 33 was introduced on January 16, 2007 by Rep. Peter DeFazio (D-OR) (with 59 co-sponsors). The Resolution states the congressional belief that: (1) initiating military action against Iran without congressional approval does not fall within the President's "Commander-in-Chief" powers under the Constitution; and (2) seeking congressional authority prior to taking military action against Iran is not discretionary, but rather is a legal and constitutional requirement. It also rejects any suggestion that P.L. 107-40 (the authorization of force resolution approved in response to the terrorist attacks of September 11, 2001) or P.L. 107-243 (the authorization of force resolution approved to go to war with Iraq) extends to authorizing military action against Iran, including over its nuclear program. The Resolution was referred to the House Committee on Foreign Affairs on January 16, 2007. No further action has been taken.
3. Senate Concurrent Resolution 13 was introduced on February 15, 2007 by Sen. Bernard Sanders (I-VT) and is the related, Senate version of House Concurrent Resolution 33 discussed immediately above. The Senate Resolution was referred to the Senate Committee on Foreign Relations on February 15, 2007. No further action has been taken.