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To establish a national commission on presidential war powers and civil liberties. (Introduced in House)

HR 104 IH

111th CONGRESS

1st Session

H. R. 104

To establish a national commission on presidential war powers and civil liberties.

IN THE HOUSE OF REPRESENTATIVES

January 6, 2009

Mr. CONYERS (for himself, Mr. NADLER of New York, Ms. JACKSON-LEE of Texas, Mr. COHEN, Mr. JOHNSON of Georgia, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Select Committee on Intelligence (Permanent Select), the Judiciary, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a national commission on presidential war powers and civil liberties.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Presidential War Powers and Civil Liberties (hereinafter in this Act referred to as the `Commission') to investigate the broad range of policies of the Administration of President George W. Bush that were undertaken under claims of unreviewable war powers, including detention by the United States Armed Forces and the intelligence community, the use by the United States Armed Forces or the intelligence community of enhanced interrogation techniques or interrogation techniques not authorized by the Uniform Code of Military Justice, `ghosting' or other policies intended to conceal the fact that an individual has been captured or detained, extraordinary rendition, domestic warrantless electronic surveillance, and other policies that the Commission may determine to be relevant to its investigation (hereinafter in this Act referred to as `the activities').

SEC. 2. DUTIES.

(a) In General- The Commission shall--

- (1) investigate relevant facts, circumstances and law surrounding the activities; and
- (2) report to the President and Congress the findings and conclusions of the Commission and any recommendations the Commission considers appropriate.

(b) Consideration and Use of Other Investigations- In carrying out its duties, the Commission shall consider and use, to the extent it deems appropriate, the investigations that have been conducted by other entities so as to avoid unnecessary duplication.

(c) Protection of National Security- The Commission shall carry out its duties in a manner consistent with the need to protect national security.

SEC. 3. COMPOSITION OF THE COMMISSION.

(a) Members- Subject to the requirements of subsection (b), the Commission shall be composed of 9 members, of whom--

- (1) 1 member shall be appointed by the President of the United States;
- (2) 2 members shall be appointed by the majority leader of the Senate;
- (3) 2 members shall be appointed by the minority leader of the Senate;
- (4) 2 members shall be appointed by the majority leader of the House of Representatives; and
- (5) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) Qualifications-

- (1) POLITICAL PARTY AFFILIATION- Not more than 5 members of the Commission shall be from the same political party.
- (2) NONGOVERNMENTAL APPOINTEES- No member of the Commission shall be an officer or employee of the Federal Government or any State or local government.
- (3) OTHER QUALIFICATIONS- It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, constitutional law, civil liberties, intelligence gathering, national security, and foreign affairs.
- (4) DEADLINE FOR APPOINTMENT- All members of the Commission should be appointed within 120 days after the date of enactment of this Act.
- (5) INITIAL MEETING- If, 60 days after the date of enactment of this Act, six or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary Chairperson and Vice Chairperson, who may begin the operations of the Commission, including the hiring of staff.
- (6) QUORUM: VACANCIES- After its initial meeting, the Commission shall meet upon the call of the Chairperson or a majority of its members. Five members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same

manner in which the original appointment was made.

(c) Chairperson; Vice Chairperson-

(1) IN GENERAL- Subject to the requirement of paragraph (2), the Chairperson shall be appointed by the President and the Vice Chairperson of the Commission shall be appointed by the Senate minority leader.

(2) POLITICAL PARTY AFFILIATION- The Chairperson and Vice Chairperson shall not be from the same political party.

SEC. 4. POWERS OF THE COMMISSION.

(a) Hearings and Evidence- The Commission may, for purposes of carrying out this Act--

(1) hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths; and

(2) require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.

(b) Subpoenas-

(1) ISSUANCE-

(A) IN GENERAL- The Commission may, by a majority vote, issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter that the Commission is empowered to investigate under this section. The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(B) SIGNATURE- Subpoenas issued under this paragraph may be issued under the signature of the Chair of the Commission, the chair of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission and may be served by any person designated by such Chair, subcommittee chair, or member.

(2) ENFORCEMENT-

(A) IN GENERAL- If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(B) JURISDICTION- In the case of contumacy or failure to obey a subpoena issued under paragraph (1), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(C) ADDITIONAL ENFORCEMENT- In the case of the failure of a witness to comply with any subpoena or to testify when summoned under authority of paragraph (1), the Commission, by majority vote, may certify a statement of fact attesting to such failure to the appropriate United States attorney, who shall bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(c) Closed Meetings- Notwithstanding any other provision of law which would require meetings of the Commission to be open to the public, any portion of a meeting of the Commission may be closed to the public if the President determines that such portion is likely to disclose matters that could endanger national security.

(d) Contracting- The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this Act.

(e) Information From Federal Agencies- The Commission may secure directly from any department, agency, or instrumentality of the United States any information related to any inquiry of the Commission conducted under this Act. Each such department, agency, or instrumentality shall, to the extent authorized by law, furnish such information directly to the Commission upon request.

(f) Assistance From Federal Agencies-

(1) GENERAL SERVICES ADMINISTRATION- The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES- In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(g) Postal Services- The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(h) Powers of Subcommittees, Members, and Agents- Any subcommittee, member, or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

SEC. 5. STAFF OF THE COMMISSION.

(a) Director- The Commission shall have a Director who shall be appointed by the Chairperson and the Vice Chairperson, acting jointly.

(b) Staff- The Chairperson, in consultation with the Vice Chairperson, may appoint additional personnel as may be necessary to enable the Commission to carry out its functions.

(c) Applicability of Certain Civil Service Laws- The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any individual appointed under subsection (a) or (b) shall be treated as an employee for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(d) Detailees- Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(e) Consultant Services- The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 6. COMPENSATION AND TRAVEL EXPENSES.

(a) Compensation- Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) Travel Expenses- While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 7. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 8. REPORTS OF THE COMMISSION; TERMINATION.

(a) Initial Report- Not later than 1 year after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) Final Report- Not later than 6 months after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) Termination-

(1) IN GENERAL- The Commission, and all the authorities of this Act, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION- The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this Act \$3,000,000, to remain available until expended or the Commission is terminated.

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