

112TH CONGRESS
1ST SESSION

H. R. 109

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. CONYERS (for himself, Ms. JACKSON LEE of Texas, Mr. JOHNSON of Georgia, Mr. SCOTT of Virginia, and Mr. JONES) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on the Judiciary, Foreign Affairs, and Select Intelligence (Permanent Select), 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ESTABLISHMENT OF COMMISSION.**

4 There is established the National Commission on
5 Presidential War Powers and Civil Liberties (hereinafter
6 in this Act referred to as the “Commission”) to investigate
7 the broad range of executive branch national security poli-
8 cies undertaken since the terrorist attacks of September

1 11, 2001, including detention by the United States Armed
2 Forces and the intelligence community, the use by the
3 United States Armed Forces or the intelligence commu-
4 nity of enhanced interrogation techniques or interrogation
5 techniques not authorized by the Uniform Code of Military
6 Justice, “ghosting” or other policies intended to conceal
7 the fact that an individual has been captured or detained,
8 extraordinary rendition, domestic warrantless electronic
9 surveillance, targeted killings away from conventional bat-
10 tlefields, the use of the state secrets or other litigation tac-
11 ties or privileges to avoid judicial review of executive
12 branch national security actions, and any other policies
13 that the Commission may determine to be relevant to its
14 investigation (hereinafter in this Act referred to as “the
15 activities”).

16 **SEC. 2. DUTIES.**

17 (a) IN GENERAL.—The Commission shall—

18 (1) investigate relevant facts, circumstances and
19 law surrounding the activities; and

20 (2) report to the President and Congress the
21 findings and conclusions of the Commission and any
22 recommendations the Commission considers appro-
23 priate.

24 (b) CONSIDERATION AND USE OF OTHER INVESTIGA-
25 TIONS.—In carrying out its duties, the Commission shall

1 consider and use, to the extent it deems appropriate, the
2 investigations that have been conducted by other entities
3 so as to avoid unnecessary duplication.

4 (c) PROTECTION OF NATIONAL SECURITY.—The
5 Commission shall carry out its duties in a manner con-
6 sistent with the need to protect national security.

7 **SEC. 3. COMPOSITION OF THE COMMISSION.**

8 (a) MEMBERS.—Subject to the requirements of sub-
9 section (b), the Commission shall be composed of 9 mem-
10 bers, of whom—

11 (1) 1 member shall be appointed by the Presi-
12 dent of the United States;

13 (2) 2 members shall be appointed by the major-
14 ity leader of the Senate;

15 (3) 2 members shall be appointed by the minor-
16 ity leader of the Senate;

17 (4) 2 members shall be appointed by the major-
18 ity leader of the House of Representatives; and

19 (5) 2 members shall be appointed by the minor-
20 ity leader of the House of Representatives.

21 (b) QUALIFICATIONS.—

22 (1) POLITICAL PARTY AFFILIATION.—Not more
23 than 5 members of the Commission shall be from
24 the same political party.

1 (2) NONGOVERNMENTAL APPOINTEES.—No
2 member of the Commission shall be an officer or em-
3 ployee of the Federal Government or any State or
4 local government.

5 (3) OTHER QUALIFICATIONS.—It is the sense of
6 Congress that individuals appointed to the Commis-
7 sion should be prominent United States citizens,
8 with national recognition and significant depth of ex-
9 perience in such professions as governmental service,
10 law enforcement, the armed services, constitutional
11 law, civil liberties, intelligence gathering, national se-
12 curity, and foreign affairs.

13 (4) DEADLINE FOR APPOINTMENT.—All mem-
14 bers of the Commission should be appointed within
15 120 days after the date of enactment of this Act.

16 (5) INITIAL MEETING.—If, 60 days after the
17 date of enactment of this Act, six or more members
18 of the Commission have been appointed, those mem-
19 bers who have been appointed may meet and, if nec-
20 essary, select a temporary Chairperson and Vice
21 Chairperson, who may begin the operations of the
22 Commission, including the hiring of staff.

23 (6) QUORUM; VACANCIES.—After its initial
24 meeting, the Commission shall meet upon the call of
25 the Chairperson or a majority of its members. Five

1 members of the Commission shall constitute a
2 quorum. Any vacancy in the Commission shall not
3 affect its powers, but shall be filled in the same
4 manner in which the original appointment was
5 made.

6 (c) CHAIRPERSON; VICE CHAIRPERSON.—

7 (1) IN GENERAL.—Subject to the requirement
8 of paragraph (2), the Chairperson shall be appointed
9 by the President and the Vice Chairperson of the
10 Commission shall be appointed by the Senate minor-
11 ity leader.

12 (2) POLITICAL PARTY AFFILIATION.—The
13 Chairperson and Vice Chairperson shall not be from
14 the same political party.

15 **SEC. 4. POWERS OF THE COMMISSION.**

16 (a) HEARINGS AND EVIDENCE.—The Commission
17 may, for purposes of carrying out this Act—

18 (1) hold hearings, sit and act at times and
19 places, take testimony, receive evidence, and admin-
20 ister oaths; and

21 (2) require, by subpoena or otherwise, the at-
22 tendance and testimony of witnesses and the produc-
23 tion of books, records, correspondence, memoranda,
24 papers, and documents.

25 (b) SUBPOENAS.—

1 (1) ISSUANCE.—

2 (A) IN GENERAL.—The Commission may,
3 by a majority vote, issue subpoenas requiring
4 the attendance and testimony of witnesses and
5 the production of any evidence relating to any
6 matter that the Commission is empowered to
7 investigate under this section. The attendance
8 of witnesses and the production of evidence may
9 be required from any place within the United
10 States at any designated place of hearing within
11 the United States.

12 (B) SIGNATURE.—Subpoenas issued under
13 this paragraph may be issued under the signa-
14 ture of the Chair of the Commission, the chair
15 of any subcommittee created by a majority of
16 the Commission, or any member designated by
17 a majority of the Commission and may be
18 served by any person designated by such Chair,
19 subcommittee chair, or member.

20 (2) ENFORCEMENT.—

21 (A) IN GENERAL.—If a person refuses to
22 obey a subpoena issued under paragraph (1),
23 the Commission may apply to a United States
24 district court for an order requiring that person
25 to appear before the Commission to give testi-

1 mony, produce evidence, or both, relating to the
2 matter under investigation. The application
3 may be made within the judicial district where
4 the hearing is conducted or where that person
5 is found, resides, or transacts business. Any
6 failure to obey the order of the court may be
7 punished by the court as civil contempt.

8 (B) JURISDICTION.—In the case of contu-
9 macy or failure to obey a subpoena issued
10 under paragraph (1), the United States district
11 court for the judicial district in which the sub-
12 poenaed person resides, is served, or may be
13 found, or where the subpoena is returnable,
14 may issue an order requiring such person to ap-
15 pear at any designated place to testify or to
16 produce documentary or other evidence. Any
17 failure to obey the order of the court may be
18 punished by the court as a contempt of that
19 court.

20 (C) ADDITIONAL ENFORCEMENT.—In the
21 case of the failure of a witness to comply with
22 any subpoena or to testify when summoned
23 under authority of paragraph (1), the Commis-
24 sion, by majority vote, may certify a statement
25 of fact attesting to such failure to the appro-

1 appropriate United States attorney, who shall bring
2 the matter before the grand jury for its action,
3 under the same statutory authority and proce-
4 dures as if the United States attorney had re-
5 ceived a certification under sections 102
6 through 104 of the Revised Statutes of the
7 United States (2 U.S.C. 192 through 194).

8 (c) CLOSED MEETINGS.—Notwithstanding any other
9 provision of law which would require meetings of the Com-
10 mission to be open to the public, any portion of a meeting
11 of the Commission may be closed to the public if the Presi-
12 dent determines that such portion is likely to disclose mat-
13 ters that could endanger national security.

14 (d) CONTRACTING.—The Commission may, to such
15 extent and in such amounts as are provided in appropria-
16 tion Acts, enter into contracts to enable the Commission
17 to discharge its duties under this Act.

18 (e) INFORMATION FROM FEDERAL AGENCIES.—The
19 Commission may secure directly from any department,
20 agency, or instrumentality of the United States any infor-
21 mation related to any inquiry of the Commission con-
22 ducted under this Act. Each such department, agency, or
23 instrumentality shall, to the extent authorized by law, fur-
24 nish such information directly to the Commission upon re-
25 quest.

1 (f) ASSISTANCE FROM FEDERAL AGENCIES.—

2 (1) GENERAL SERVICES ADMINISTRATION.—

3 The Administrator of General Services shall provide
4 to the Commission on a reimbursable basis adminis-
5 trative support and other services for the perform-
6 ance of the Commission's functions.

7 (2) OTHER DEPARTMENTS AND AGENCIES.—In

8 addition to the assistance prescribed in paragraph
9 (1), departments and agencies of the United States
10 are authorized to provide to the Commission such
11 services, funds, facilities, staff, and other support
12 services as they may determine advisable and as may
13 be authorized by law.

14 (g) POSTAL SERVICES.—The Commission may use
15 the United States mails in the same manner and under
16 the same conditions as departments and agencies of the
17 United States.

18 (h) POWERS OF SUBCOMMITTEES, MEMBERS, AND
19 AGENTS.—Any subcommittee, member, or agent of the
20 Commission may, if authorized by the Commission, take
21 any action which the Commission is authorized to take by
22 this section.

1 **SEC. 5. STAFF OF THE COMMISSION.**

2 (a) DIRECTOR.—The Commission shall have a Direc-
3 tor who shall be appointed by the Chairperson and the
4 Vice Chairperson, acting jointly.

5 (b) STAFF.—The Chairperson, in consultation with
6 the Vice Chairperson, may appoint additional personnel as
7 may be necessary to enable the Commission to carry out
8 its functions.

9 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
10 LAWS.—The Director and staff of the Commission may
11 be appointed without regard to the provisions of title 5,
12 United States Code, governing appointments in the com-
13 petitive service, and may be paid without regard to the
14 provisions of chapter 51 and subchapter III of chapter 53
15 of such title relating to classification and General Schedule
16 pay rates, except that no rate of pay fixed under this sub-
17 section may exceed the equivalent of that payable for a
18 position at level V of the Executive Schedule under section
19 5316 of title 5, United States Code. Any individual ap-
20 pointed under subsection (a) or (b) shall be treated as an
21 employee for purposes of chapters 63, 81, 83, 84, 85, 87,
22 89, and 90 of that title.

23 (d) DETAILEES.—Any Federal Government employee
24 may be detailed to the Commission without reimbursement
25 from the Commission, and such detailee shall retain the

1 rights, status, and privileges of his or her regular employ-
2 ment without interruption.

3 (e) CONSULTANT SERVICES.—The Commission is au-
4 thorized to procure the services of experts and consultants
5 in accordance with section 3109 of title 5, United States
6 Code, but at rates not to exceed the daily rate paid a per-
7 son occupying a position at level IV of the Executive
8 Schedule under section 5315 of title 5, United States
9 Code.

10 **SEC. 6. COMPENSATION AND TRAVEL EXPENSES.**

11 (a) COMPENSATION.—Each member of the Commis-
12 sion may be compensated at a rate not to exceed the daily
13 equivalent of the annual rate of basic pay in effect for
14 a position at level IV of the Executive Schedule under sec-
15 tion 5315 of title 5, United States Code, for each day dur-
16 ing which that member is engaged in the actual perform-
17 ance of the duties of the Commission.

18 (b) TRAVEL EXPENSES.—While away from their
19 homes or regular places of business in the performance
20 of services for the Commission, members of the Commis-
21 sion shall be allowed travel expenses, including per diem
22 in lieu of subsistence, in the same manner as persons em-
23 ployed intermittently in the Government service are al-
24 lowed expenses under section 5703(b) of title 5, United
25 States Code.

1 **SEC. 7. SECURITY CLEARANCES FOR COMMISSION MEM-**
2 **BERS AND STAFF.**

3 The appropriate executive departments and agencies
4 shall cooperate with the Commission in expeditiously pro-
5 viding to the Commission members and staff appropriate
6 security clearances in a manner consistent with existing
7 procedures and requirements, except that no person shall
8 be provided with access to classified information under
9 this section who would not otherwise qualify for such secu-
10 rity clearance.

11 **SEC. 8. REPORTS OF THE COMMISSION; TERMINATION.**

12 (a) INITIAL REPORT.—Not later than 1 year after
13 the date of the first meeting of the Commission, the Com-
14 mission shall submit to the President and Congress an ini-
15 tial report containing such findings, conclusions, and rec-
16 ommendations for corrective measures as have been
17 agreed to by a majority of Commission members.

18 (b) FINAL REPORT.—Not later than 6 months after
19 the submission of the initial report of the Commission, the
20 Commission shall submit to the President and Congress
21 a final report containing such findings, conclusions, and
22 recommendations for corrective measures as have been
23 agreed to by a majority of Commission members.

24 (c) TERMINATION.—

25 (1) IN GENERAL.—The Commission, and all the
26 authorities of this Act, shall terminate 60 days after

1 the date on which the final report is submitted
2 under subsection (b).

3 (2) ADMINISTRATIVE ACTIVITIES BEFORE TER-
4 MINATION.—The Commission may use the 60-day
5 period referred to in paragraph (1) for the purpose
6 of concluding its activities, including providing testi-
7 mony to committees of Congress concerning its re-
8 ports and disseminating the second report.

9 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated to the Com-
11 mission to carry out this Act \$3,000,000, to remain avail-
12 able until expended or the Commission is terminated.

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