



October 7, 2004
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 10 - 9/11 Recommendations Implementation Act

(Rep. Hastert (R) Illinois and 23 co-sponsors)

The Administration supports House passage of H.R. 10 and appreciates the efforts of the House Leadership and Committees to bring this legislation quickly to the Floor. The Administration looks forward to working with the House and Senate in conference as they resolve their differences on intelligence reform legislation so that it can be enacted as soon as possible. The Administration looks forward to working with Congress to address its concerns with the bill, including those described below, and to ensure prompt enactment of necessary legislation to create a strong National Intelligence Director (NID) with full budget authority and other authorities to manage the Intelligence Community, and to provide statutory authority for the newly created National Counterterrorism Center (NCTC).

The Administration appreciates that H.R. 10 has been revised to clarify the authorities of the NCTC and the definition of national intelligence. The Administration is also pleased that H.R. 10 would prevent disclosure of sensitive information about the intelligence budget. Disclosing to the Nation's enemies, especially during wartime, the amounts requested by the President, and provided by the Congress, for the conduct of the Nation's intelligence activities would be a mistake.

Legislation proposed by the President provides the NID with full budget authority, including clear authority to determine the national intelligence budget, strong transfer and reprogramming authorities, explicit authority to allocate appropriations, and the ability to influence the execution of funds by national intelligence agencies. The Administration is concerned that H.R. 10 does not provide the NID sufficient authorities to manage the Intelligence Community effectively.

The Administration looks forward to working with the House to improve a number of provisions relating to appointments. In particular, the Director of the NCTC should be appointed by the President, and the appointment of certain other officers as proposed in H.R. 10 may raise constitutional issues.

The Administration remains concerned about other provisions that create new bureaucratic structures and layers in the office of the NID and elsewhere that would hinder, not help, the effort to strengthen U.S. intelligence capabilities and preserve constitutional rights.

The Administration commends and supports provisions of H.R. 10 that promote the development of a secure information sharing environment under the direction of the NID while also providing flexibility concerning its design and implementation. We look forward to working with Congress to address some concerns with the degree of specificity of provisions concerning interoperable law enforcement and intelligence data systems.

In addition to provisions concerning the NID, the NCTC, and other core issues responsive to the Administration's proposal, H.R. 10 contains a number of additional provisions, some of which are discussed below.

The Administration strongly supports those provisions of Title II that ensure the Intelligence Community and others in the war on terror have all the necessary tools to prevent terrorist attacks – including provisions to prevent attack by “lone wolf” terrorists and enhanced provisions to deny material support to terrorists, prevent attacks using weapons of mass destruction, and further dry up sources of terrorist financing. These and other additional anti-terrorism tools would help keep America safer.

The Administration also supports those provisions of Titles II and III that will better protect our borders from terrorists, while still maintaining our traditions as a welcoming Nation. In particular, the Administration supports efforts to allow visa revocations as a basis for deportation and provisions concerning the judicial review of immigration orders, as in Section 3009. The Administration strongly opposes the overbroad expansion of expedited removal authorities. The Administration has concerns with the overbroad alien identification standards proposed by the bill that are unrelated to security concerns. The Administration welcomes efforts in Congress to address the 9/11 Commission's recommendations concerning uniform standards for preventing counterfeiting of and tampering with drivers licenses and birth certificates, but believes that additional consultation with the States is necessary to address important concerns about flexibility, privacy, and unfunded mandates.

Section 3001 acts to close a security gap by eliminating the Western Hemisphere exception for U.S. citizens. The Administration intends to work with the Congress to ensure that these new requirements are implemented in a way that does not create unintended, adverse consequences.

The Administration strongly opposes section 3032 of the bill. The Administration remains committed to upholding the United States' obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Consistent with that treaty, the United States does not expel, return, or extradite individuals to countries where the United States believes it is more likely than not they will be tortured. The Administration is willing to work with the Congress on ways to address the Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001), insofar as it may constrain the detention of criminal aliens, while they are awaiting removal, or limit the government's authority to detain dangerous aliens who would be removed from the United States but for the fact that they are afforded protection under the Convention Against Torture.

Title IV contains a number of provisions that purport to establish the policy of the United States on foreign policy issues, require the Executive branch to negotiate certain international agreements, direct how the President will use the voice and vote of the United States in international institutions, direct the content of diplomatic communications with foreign governments, direct the make-up of U.S. delegations to multilateral meetings and negotiations, and require that plans and strategies to achieve specified foreign policy objectives be submitted to the Congress. These provisions are inconsistent with the President's constitutional authority with respect to foreign relations, diplomacy, and international negotiations. Therefore, these

provisions should be eliminated or cast in precatory rather than mandatory terms.

In Title V, the Administration commends the provisions that add to the Secretary of Homeland Security's flexibility in providing first responder grant funds to certain high-risk areas, but has concerns about border state funding mandates which reduce that flexibility. The Administration opposes provisions in Title V that would create inequities in personnel policy between the FBI and other law enforcement agencies, and looks forward to working with the Congress on a separate and comprehensive reform of law enforcement pay and benefits. The Administration also opposes provisions that would encumber the Federal rulemaking process with duplicative and burdensome new requirements.

The Administration opposes Section 5043 of the bill, which would eliminate the level playing field established for all three branches of government by the Government-Wide Ethics Reform Act of 1989, creating a new regime of non-uniform ethics laws. The financial disclosure process should be modernized to reflect changed circumstances. The Administration urges Congress to adopt the bill to modernize government-wide financial disclosure submitted by the Office of Government Ethics to the Speaker on July 16, 2003.

The Administration is also very concerned about the dozens of new reporting requirements contained in the bill. The Administration will continue to work with the Congress to eliminate or reduce the burden created by unnecessary or duplicative statutory reporting requirements, while respecting the responsibilities of the Congress.

The Administration is also concerned about provisions in Title V that would, taken together, construct a cumbersome new bureaucracy, duplicate existing legal requirements, and risk unnecessary litigation. The Administration urges the House to delete or significantly revise these problematic provisions.

The Administration notes that the Committee bill did not include Section 6 ("Preservation of Authority and Accountability") of the Administration's proposal; the Administration strongly supports inclusion of this provision in the House bill. The Administration's proposal also provides necessary additional authorities for the NID to be able to effectively operate the Office of NID; however, H.R. 10 does not provide the NID with these additional authorities. The legislation should also recognize that its provisions would be executed to the extent consistent with the constitutional authority of the President: to conduct the foreign affairs of the United States; to withhold information the disclosure of which could impair the foreign relations, the national security, deliberative processes of the Executive, or the performance of the Executive's constitutional duties; to recommend for congressional consideration such measures as the President may judge necessary or expedient; and to supervise the unitary executive.

Finally, the Administration has concerns with a number of other provisions in the bill and looks forward to working with Congress to address them as the bill proceeds.

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