NCPCF 2012 SUMMER LEGISLATIVE AGENDA

This summer’s congressional recess presents an enormous opportunity for grassroots supporters to meet with their elected representatives and focus those representatives on legislation that will address the concerns of NCPCF. Four key pieces of legislation, outlined below, need to be highlighted.

**Lobbying Strategies**

Many Congressional Representatives and Senators have only a vague idea, if any, about the four bills outlined below. To the extent that members of Congress have an opinion about the bills, their opinion may well be unfavorable, or they may have the impression that the bills are not popular and not worth supporting. Thus the purpose of lobbying is to 1) force congressional members to become familiar with our concerns and legislation, 2) understand our arguments as to why the legislation is good and necessary, and 3) become convinced that the bills enjoy widespread support.

Here are some simple ways to do this:

1. During summer recess, many Congressional Representatives hold “town hall meetings” in different parts of their districts to listen to the concerns of their constituents. Attending these meetings and asking the members of Congress for their opinion about the four bills is a great way to force Representatives and Senators to quickly become familiar with our legislation. It is a particularly successful strategy if at least one different person can be at each of the town hall meetings to ask questions about the legislation. This reinforces the point that the bills are of interest to many members of the electorate.

   One approach would be to call your representative’s office and determine when town hall meetings are to be held. At the same time notify a member of the congressional staff that you are interested in the Representative’s opinion on our four key pieces of legislation, and give the staff member our talking points for why this legislation is good and necessary. In this way the staff member can brief the Representative before the meeting and the Representative will hopefully use our talking points at the Town Hall meeting to explain why the legislation should be supported.

2. Another approach is to request a meeting with your Representative to discuss your concerns about out four key pieces of legislations. This strategy is particularly successful when a group of people attends the meeting to emphasize that there is widespread interest and concern about the issue.
3. Another approach is to write your Representative a letter explaining in your own words why these bills are necessary, or discuss them with the Representative’s staff.

4. Organize a petition drive and then present the results of the petition to the Representative or the staff.

THE FOUR BILLS THAT REQUIRE SUPPORT

1. The JUSTICE ACT (Judicious Use of Surveillance Tools In Countering Extremism Act)

The JUSTICE Act would essentially repeal the overreaching aspects of the Patriot Act, repeal the FISA amendments of 2008 which permitted widespread use of secret surveillance, reverse the Humanitarian Law Project decision (which permits people to be convicted of material support for terrorism without having any intent to support terrorism), and hinder preemptive prosecutions (in which targets are convicted of contrived or pretext crimes without actually having committed a real crime). The bill was originally authored by (and introduced as essentially the last official act of) Senator Russell Feingold (D-WI), who cast the sole dissenting vote in the Senate opposing the Patriot Act 10 years ago. Further information about the JUSTICE Act is available online: Click Here.

Talking Points about the JUSTICE Act

* Broad rationale: The JUSTICE act would ensure that our government's war on terror also respects our Constitution. For the past decade, our political leaders have done the work of terrorists for them by eroding the Bill of Rights. This bill, authored by the only Senator to vote against the PATRIOT Act in 2001, would fix many of its abuses.

* Material support: The JUSTICE Act would amend the material support statute so that prosecutors would have to establish that a defendant intended to support violence in order to secure a conviction for "material support for terrorism."

* Bulk collection by NSA: The JUSTICE Act would also prohibit bulk collection of electronic communications by the NSA under the illegal wiretapping provisions authorized by the FISA Amendments of 2008. However severe the threat of terrorism, it cannot possibly justify allowing our government to invade the privacy of every American's phone conversations and e-mail exchanges.

Key Question to ask: Would you be willing to co-sponsor the JUSTICE Act?
2. NDAA (National Defense Authorization Act) – Indefinite Detention

The summer recess should see a continuation of the congressional debate on repealing the domestic military detention provisions of the National Defense Authorization Act. (NDAA). President Obama signed into law a confused provision, which appeared to give the military the right to detain anyone, including an American citizen, merely on suspicion of being associated with a terrorist group, and to hold that person indefinitely without charges. There have been a number of competing bills offered to reestablish the constitutional standard that no American Citizen can be detained without charges. A BORDC newsletter featured a lead story on this debate, and focused supporters on the Smith-Amash amendment (more info here), while also encouraging support for separate amendments from Nadler and Paul, and encouraging opposition to red herrings introduced by Rigell-Landry and Feinstein-Garamendi.

**Talking Points for NDAA**

* Broad rationale: The military should not be allowed to indefinitely detain people within the US without trial. That was among the fundamental principles enshrined in our Constitution when it was drafted and ratified over 200 years ago.

* Pre-empting congressional red herrings: Congress' attempts to limit domestic military detention, such as Section 1021(e) of the 2012 NDAA, or the Gohmert amendment to the 2012 NDAA approved by the House, do not meaningfully limit executive power. Whether the executive branch has the power to detain individuals within the US, including US citizens, should not remain ambiguous (as it does under the 2012 NDAA), nor should it depend on habeas corpus (which does not ensure freedom from arbitrary detention, but rather a procedural opportunity for a judge to cite the NDAA as a basis to allow indefinite detention).

**Key Questions to ask:**

1. The language of the Smith-Amash amendment rejected by the House in May 2012 would provide meaningful protection from the specter of indefinite military detention without trial?

2. Would you be willing to co-sponsor amendments to the National Defense Authorization Act modeled on the proposals by Representatives Smith (D-WA) and Amash (R-MI)?
3. ERPA (End Racial Profiling Act)

The End Racial Profiling Act has been introduced in every congressional session for the past decade. The version introduced this congressional session reflects a significant step forward from prior versions, by including religion as a prohibited basis for profiling. More info on ERPA is available [here](#) and [here](#). ERPA could have the strongest chance of passing, because of the firestorm of controversy unleashed by the death of Trayvon Martin.

**Talking Points for ERPA**

* Broad rationale: The presence of pervasive racial bias is apparent throughout the criminal justice system, from profiling by police, to sentencing by judges. No individual should be subjected to scrutiny based on the color of their skin or religious affiliation, absent a description of a specific suspect wanted in connection to a specific offense.

* Background: Congress was poised to enact ERPA in 2001, until reaction to the 9/11 attacks squelched interest in addressing civil rights abuses. Since that time, profiling has emerged as an even broader problem impacting not only communities vulnerable to excesses in the war on drugs, but also (overlapping) others targeted in the war on immigration and the war on terror.

* Transparency: Even law enforcement agencies would benefit from ERPA. The bill's central provision is for monitoring to verify when racial profiling happens as a matter of empirical fact, which can help police departments that do not engage in racial profiling defend themselves from community concerns.

*Public safety: Profiling undermines public safety by distracting police from investigating crimes, chilling incident reports from victims and witnesses, and reinforcing community distrust of police in general.

**Key Question to ask:** Would you be willing to co-sponsor the ERPA?

4. Fairness In Disclosure of Evidence Act (FIDE) – aka The Murkowski Bill

The FIDE Act was introduced by Senator Lisa Murkowski, (R- Alaska) in response to disclosures that the Department of Justice in its corruption prosecution of Senator Ted Stevens of Alaska, failed to disclose evidence that Senator Stevens was actually innocent of the charges. The DOJ’s failure to disclose evidence of
Stevens’ innocence (exculpatory evidence) was so massive that it resulted in Sen. Stevens being exonerated of the charges after he was convicted. The Murkowski Bill seeks to clarify what information is exculpatory (including classified information) and when it has to be disclosed to avoid a repeat of the Stevens disaster.

NCPCF has offered two amendments to the bill, which would address NCPCF concerns. One amendment would provide for random checking by the Inspector General of the Justice Department to ensure that the DOJ is complying with its obligation to disclose exculpatory evidence. The second amendment would require the government to implement the recommendation of the Inspector General of the DOJ made in a 2009 report to Congress, which calls for the DOJ to review cases involving classified surveillance material to determine if the DOJ complied with its obligation to provide exculpatory information.

**Talking Points about the FIDE**

It is outrageous that the DOJ would secretly hold evidence that a defendant is innocent and fail to disclose it as required by law. The FIDE Act clarifies what exculpatory evidence is and when the DOJ must disclose it, but it does not provide any enforcement mechanism.

The NCPCF amendments **provide an enforcement mechanism (random checks by the Inspector General)**, and in addition **requires the Inspector General to review prior cases involving classified surveillance material to determine if the DOJ complied with its obligation to disclose exculpatory information.** If it did not this might result in new trials for the defendants involved or even dismissal of charges. It could potentially free many defendants who were preemptively prosecuted and so thus this bill is of great significance to NCPCF campaigns.

**Key Question to ask:** **Would you be willing to co-sponsor the FIDE Act with the potential amendments?**

NCPCF philosophy is to rely on grassroots activists and citizens lobbying their government officials in fulfilling its mission. Please be part of this effort to uphold the promises of our Constitution.

Please Email NCPCF at policy@civilfreedoms.org and inform us of your efforts, meetings, and contacts with your congressional members or staff. Thank you.