

Attachment 5. Supplement to “Restore Constitution” Action Point

Restore Constitutional Guarantees Desecrated By the Bush Administration

Separation of Powers

Time and again, administration officials have sought to elevate the President above the law.

- Argued complete discretion in the exercise of his Commander-in-Chief authority.
- Barred Congress and the courts from exercising any oversight.
- Resulted in illegal detentions, disappearances, torture.
- Used to secretly authorize the NSA to wiretap Americans without probable cause or judicial oversight.

Courts have to some extent stood up to the President, but Congress has caved. Examples:

- USA Patriot Act.
- 2006 Military Commissions Act, which insulated military tribunals from any challenge that they violate the Geneva Convention, watered down the criminal prohibitions on cruel, inhuman and degrading treatment and revoked habeas corpus rights for “enemy combatants.”
- 2007 authorization of surveillance of U.S. citizens without FISA court review.

First Amendment Right of Association

- 2001 Executive Order which authorizes freezing of all assets of any person or entity the Treasury Department deemed “otherwise associated” with anyone the administration deemed a “terrorist” – regardless of whether the individual had engaged in terrorist activity of any kind.
- July 2007 Executive Order would authorize seizure of property of those accused of supporting the Iraqi insurgency – so broad that it could be applied to those opposing the Iraq War.

Fourth Amendment Rights to Privacy

- Vastly expanded surveillance authorities under the Patriot Act.
- “National security letters” used by FBI to demand personal information on more than 143,000 occasions over a three-year period in circumstances not authorized even by the Patriot Act.

Fifth Amendment Right to Due Process

- “Enemy combatants” can be held indefinitely without trial.
- Suspicious organizations can have their assets frozen without notice or hearings.
- Military tribunals can sentence defendants to death on the basis of hearsay and coerced testimony.
- Administration claims that lawsuits challenging unconstitutional renditions to torture and warrantless wiretapping cannot be adjudicated because the government’s allegedly unconstitutional conduct is itself a secret – even after it’s been reported in newspapers!

Other Civil Liberties

- Authorization for Use of Military Force, enacted in September 2001, which the President has subsequently used to claim the whole world, including the U.S., is a “battlefield” on the so-called “War on Terror.”
- “The overturning of the venerable Posse Comitatus Act of 1878, which barred the use of active duty military inside the U.S. for police-type functions.
- The revision of the Insurrection Act to empower the President to take control of state National Guard units, even over the objections of state governors and authorize federalization of the National Guard to “suppress public disorder” in the event of broadly-stated occurrences
- The President has greatly reduced hurdles to the declaring of martial law.

Based on an essay by Georgetown Law Center professor David Cole in the June 2007 issue of Harper’s Magazine.