

111TH CONGRESS
1ST SESSION

H. R. 3362

To establish guidelines for the assertion of Executive privilege, to enhance the authority of Congress to enforce subpoenas and punish for contempt, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2009

Mr. MILLER of North Carolina (for himself, Mr. CONYERS, Ms. LINDA T. SÁNCHEZ of California, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on House Administration, 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 guidelines for the assertion of Executive privilege, to enhance the authority of Congress to enforce subpoenas and punish for contempt, and for other purposes.

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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Checks and Balances Restoration and Revitalization
6 Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ASSERTIONS OF EXECUTIVE PRIVILEGE

Sec. 101. Findings.

Sec. 102. Procedure governing claims of Executive privilege before Congress.

Sec. 103. Executive policy.

Sec. 104. Executive privilege defined.

TITLE II—CONTEMPT OF CONGRESS PROCEDURES AND
 ENFORCEMENT

Sec. 201. Availability of civil action to enforce House of Representatives sub-
 poenas.

Sec. 202. Alternate procedures for enforcement of criminal contempt of Con-
 gress.

Sec. 203. Increase in penalty for contempt of Congress.

Sec. 204. Authority of United States Capitol Police to enforce citations.

Sec. 205. Collection of penalties imposed by the House of Representatives on
 persons cited for contempt of House.

TITLE III—PRESIDENTIAL SIGNING STATEMENTS

Sec. 301. Findings.

Sec. 302. Treatment of certain Presidential signing statements as reports es-
 tablishing policy to refrain from enforcing law for purposes of
 notifying counsel for Congress.

Sec. 303. Actions for declaratory or injunctive relief to compel enforcement.

Sec. 304. Qualifying Presidential signing statement defined.

Sec. 305. Effective date.

TITLE IV—PROCEDURES APPLICABLE TO LEGAL OPINIONS OF
 OFFICE OF LEGAL COUNSEL

Sec. 401. Findings.

Sec. 402. Reporting of legal opinions.

Sec. 403. Signature requirements for legal opinions of Office of Legal Counsel.

TITLE V—SEVERABILITY

Sec. 501. Severability.

3 **TITLE I—ASSERTIONS OF**
 4 **EXECUTIVE PRIVILEGE**

5 **SEC. 101. FINDINGS.**

6 Congress finds the following:

1 (1) Assertions of Executive privilege provide the
2 Executive branch an opportunity to perpetuate ex-
3 cessive executive secrecy and to deny Congress ac-
4 cess to the information it requires to perform its
5 Constitutional responsibilities.

6 (2) Excessive secrecy tends to undermine self-
7 government and invite lawlessness and maladmin-
8 istration.

9 (3) A shared and uniform understanding of
10 when and how the President may assert Executive
11 privilege, and when and how this privilege may be
12 overcome by Congress, facilitates information shar-
13 ing among the coordinate branches of the Govern-
14 ment.

15 (4) A judicial forum is available to resolve dis-
16 putes over particular claims of Executive privilege
17 when the political branches are unable to do so.

18 **SEC. 102. PROCEDURE GOVERNING CLAIMS OF EXECUTIVE**

19 **PRIVILEGE BEFORE CONGRESS.**

20 (a) IN GENERAL.—Any claim of Executive privilege
21 before either House of Congress or any body acting under
22 the authority of either House must be—

23 (1) made by the express authority of the Presi-
24 dent; and

1 (2) accompanied by a statement, approved by
2 the President, of the factual and legal basis for that
3 claim.

4 (b) METHOD OF SHOWING EXPRESS AUTHORITY.—

5 In the case of such a claim made other than by the incum-
6 bent President in person, the express authority of the
7 President for the claim must be in writing and signed by
8 the incumbent President.

9 (c) REQUIREMENT OF APPEARANCE.—Noting that

10 each person summoned to appear under the authority of
11 either House of Congress must appear in person in order
12 to assert any privilege or other excuse not to testify, Con-
13 gress also requires that a person (other than the President
14 or a former President) who is or was an Executive branch
15 official make any assertion of Executive privilege by such
16 an appearance.

17 (d) PROCEDURES FOR ASSERTION OF PRIVILEGE IN
18 PERSON.—

19 (1) PRESENTATION OF AUTHORITY TO ASSERT

20 PRIVILEGE.—When a person appears in person to
21 assert Executive privilege as required under sub-
22 section (c), the person shall present a written state-
23 ment that satisfies the requirements of subsection
24 (b) and authorizes the person to assert the privilege,
25 except that if the person reasonably believes that a

1 question would elicit information that is subject to
2 Executive privilege, but is not in possession of such
3 a written statement, the witness may assert a provi-
4 sional claim of Executive privilege in lieu of answer-
5 ing the question.

6 (2) SUBSEQUENT RESPONSE AFTER ASSERTION
7 OF PROVISIONAL CLAIM.—Not later than 10 cal-
8 endar days after asserting a provisional claim of Ex-
9 ecutive privilege under paragraph (1) in response to
10 a question, the person shall submit to the House of
11 Congress before which the person appeared—

12 (A) a written statement that satisfies the
13 requirements of subsection (b) with respect to
14 the claim asserted; or

15 (B) a written answer to the question.

16 (e) REQUIREMENT OF IDENTIFICATION OF MATE-
17 RIALS WITHHELD ON THE GROUND OF PRIVILEGE.—Any
18 person withholding subpoenaed documents, written com-
19 munications, or tangible items from either House of Con-
20 gress on a claim of Executive privilege shall provide to
21 the requesting body an index of the withheld documents,
22 communications, and items and a statement describing the
23 nature of each such document, communication, and item
24 in a manner that, without revealing the information
25 claimed as privileged, will enable the requesting body to

1 assess the validity of the claim that Executive privilege
2 applies to that particular document, communication, or
3 item.

4 **SEC. 103. EXECUTIVE POLICY.**

5 (a) ESTABLISHMENT OF POLICY.—Not less than 180
6 days after the date of the enactment of this Act, and
7 thereafter, not less than 180 days following the beginning
8 of each four-year presidential term, the President or the
9 Attorney General shall issue binding guidelines setting
10 forth a policy governing the use of Executive privilege.

11 (b) SPECIFICATIONS.—The policy set forth pursuant
12 to subsection (a)—

13 (1) shall specify the procedures by which a deci-
14 sion to assert Executive privilege is reached, which
15 shall be consistent with section 102; and

16 (2) shall be consistent with the holding of
17 United States v. Nixon (418 US 683, 713–714) that
18 the demonstrated, specific need of a coordinate
19 branch of government is sufficient to overcome a
20 claim of Executive privilege.

21 **SEC. 104. EXECUTIVE PRIVILEGE DEFINED.**

22 In this title, the term “Executive privilege” means—

23 (1) a withholding of information which is based
24 on a claim of authority under article II of the Con-
25 stitution of the United States; or

1 (2) a withholding of information by any indi-
2 vidual who is an officer or employee of the Executive
3 branch (or who was an officer or employee of the
4 Executive branch at the time the information was
5 first sought by either House of Congress) which is
6 based on any other claim of law.

7 **TITLE II—CONTEMPT OF CON-**
8 **GRESS PROCEDURES AND EN-**
9 **FORCEMENT**

10 **SEC. 201. AVAILABILITY OF CIVIL ACTION TO ENFORCE**
11 **HOUSE OF REPRESENTATIVES SUBPOENAS.**

12 (a) CIVIL ACTION.—The House of Representatives
13 may in a civil action obtain any appropriate relief to en-
14 force compliance with a subpoena or order of the House,
15 or to enforce compliance with a subpoena or order issued
16 by a committee or subcommittee of the House authorized
17 to issue a subpoena or order, if the House by resolution
18 authorizes the commencement of that civil action.

19 (b) REPRESENTATION BY GENERAL COUNSEL.—Un-
20 less the House otherwise provides, the Office of the Gen-
21 eral Counsel of the House of Representatives shall rep-
22 resent the House in the civil action.

23 (c) PERSONAL JURISDICTION.—Personal jurisdiction
24 of the court over a defendant in a civil action under this

1 section extends outside the territorial jurisdiction of the
2 court if the claim—

3 (1) arose out of conduct by the defendant—

4 (A) within that territorial jurisdiction, or

5 (B) causing any injury, including informa-
6 tional injury to the right of the House to make
7 an investigation, within that territorial jurisdic-
8 tion; or

9 (2) otherwise has a reasonable relationship to
10 contacts of the defendant with the territorial juris-
11 diction.

12 (d) ASSESSMENT OF COMPETING INTERESTS.—

13 (1) IN GENERAL.—In any civil action brought
14 under this section, if the court has determined that
15 the information or material which is the subject of
16 the subpoena or order involved is presumptively priv-
17 ileged based upon the President’s generalized inter-
18 est in confidentiality, the House may overcome this
19 presumption by showing that—

20 (A) the House, or a committee or sub-
21 committee thereof, has a specific need for the
22 information or material in order to carry out its
23 constitutional obligations; and

24 (B) the information is not otherwise avail-
25 able.

1 (2) ENFORCEMENT.—If the court determines
2 that the House, or a committee or subcommittee
3 thereof, has made the showing described in para-
4 graph (1), it shall enforce the subpoena or order in-
5 volved.

6 (e) EXPEDITION OF TRIAL AND APPELLATE PRO-
7 CEEDINGS.—The court shall hear and determine a civil ac-
8 tion under this section as expeditiously as possible, and
9 to the maximum extent practicable during the Congress
10 in which the action is commenced. Any appellate pro-
11 ceedings relating to such a civil action shall similarly be
12 expedited to assure to the extent possible that the matter
13 is fully resolved during the Congress in which the action
14 was commenced.

15 **SEC. 202. ALTERNATE PROCEDURES FOR ENFORCEMENT**
16 **OF CRIMINAL CONTEMPT OF CONGRESS.**

17 (a) ALTERNATE PROCEDURE.—

18 (1) SCOPE OF APPLICATION.—If the House of
19 Representatives finds a current or former officer or
20 employee of the Executive branch has violated sec-
21 tion 102 of the Revised Statutes of the United
22 States (2 U.S.C. 192) or that any person has vio-
23 lated such section at the direction of the President
24 or another officer of the Executive branch, the pro-
25 cedures of this section apply.

1 (2) CERTIFICATION BY SPEAKER.—In accord-
2 ance with section 104 of the Revised Statutes of the
3 United States (2 U.S.C. 194), upon the finding by
4 the House of Representatives of a violation to which
5 this section applies, the Speaker shall certify that
6 finding to the appropriate United States attorney,
7 whose duty it shall be to bring the matter before the
8 grand jury for its action.

9 (3) CIRCUMSTANCES LEADING TO APPOINT-
10 MENT OF SPECIAL COUNSEL.—If—

11 (A) the Attorney General or the United
12 States attorney to whom the finding was cer-
13 tified informs the court or the House that the
14 Department of Justice will not prosecute the
15 case; or

16 (B) by the end of the 30th day after the
17 date of receipt of a certification made under
18 paragraph (2) a grand jury has not returned an
19 indictment based on the violation alleged in the
20 certification;

21 the Special Division established under subsection (b)
22 (hereinafter in this Act referred to as the “Special
23 Division”) shall appoint a special counsel under sub-
24 section (c). It shall be the duty of the Attorney Gen-
25 eral to inform that court and the House if a grand

1 jury does not return an indictment by the end of the
2 30-day period. The Speaker of the House, or any in-
3 terested congressional party, may file with the Spe-
4 cial Division a suggestion that circumstances giving
5 rise to a duty to appoint a special counsel have oc-
6 curred after the 30-day period ends without the re-
7 turn of an indictment.

8 (b) SPECIAL DIVISION.—

9 (1) ESTABLISHMENT.—There is hereby estab-
10 lished within the United States Court of Appeals for
11 the District of Columbia a Special Division to carry
12 out the appointment of special counsels under this
13 section.

14 (2) DESIGNATION.—

15 (A) IN GENERAL.—The Chief Justice of
16 the United States shall designate three judges
17 or justices of the United States, one of whom
18 shall be an active judge of the United States
19 Court of Appeals for the District of Columbia,
20 to serve on the Special Division, except that
21 none of the judges or justices serving on the
22 Special Division may serve or have served on
23 the same court.

24 (B) PRIORITY.—In designating judges and
25 justices to serve on the Special Division, the

1 Chief Justice shall give priority to senior circuit
2 judges and retired justices of the United States
3 Supreme Court.

4 (C) DEADLINE.—The Chief Justice shall
5 make the first such designation not later than
6 45 days after the date of the enactment of this
7 Act.

8 (3) TERM OF SERVICE.—Each designation to
9 the Special Division shall be for a term of 2 years,
10 but the Chief Justice may fill any vacancy arising
11 before the end of a term for the remainder of that
12 term.

13 (c) APPOINTMENT, QUALIFICATIONS, AND PROSECU-
14 TORIAL JURISDICTION OF SPECIAL COUNSEL, AND AD-
15 MINISTRATIVE MATTERS RELATING TO THE SPECIAL
16 COUNSEL.—

17 (1) APPOINTMENT, QUALIFICATIONS, AND
18 PROSECUTORIAL JURISDICTION OF SPECIAL COUN-
19 SEL.—

20 (A) APPOINTMENT AND QUALIFICA-
21 TIONS.—The Special Division shall appoint the
22 special counsel, who must be an attorney in
23 good standing with substantial prosecutorial ex-
24 perience—

1 (i) who has not served in any capacity
2 in the administration of the President who
3 is or who was in office at the time the
4 Speaker of the House certified the finding
5 of a violation; and

6 (ii) who is or who was not a Member,
7 officer, or employee of Congress at the
8 time the Speaker of the House certified the
9 finding of a violation.

10 (B) PROSECUTORIAL JURISDICTION.—The
11 Special Division shall define the special coun-
12 sel’s prosecutorial jurisdiction as comprising the
13 investigation and prosecution of the alleged vio-
14 lation, any conspiracy to commit the alleged
15 violation, and any perjury, false statement, or
16 obstruction of justice occurring in relation to
17 such investigation and prosecution.

18 (2) AUTHORITY OF SPECIAL COUNSEL WITH
19 RESPECT TO MATTERS WITHIN PROSECUTORIAL JU-
20 RISDICTION.—With respect to all matters in that
21 special counsel’s prosecutorial jurisdiction, a special
22 counsel appointed under this section shall have full
23 power and independent authority to exercise all pros-
24 ecutorial functions and powers, and any other func-
25 tions and powers normally ancillary thereto, of the

1 Department of Justice, the Attorney General, and
2 any other officer or employee of the Department of
3 Justice, except that the Attorney General shall exer-
4 cise direction or control as to those matters that spe-
5 cifically require the Attorney General's personal ac-
6 tion under section 2516 of title 18, United States
7 Code.

8 (3) COMPLIANCE WITH POLICIES OF THE DE-
9 PARTMENT OF JUSTICE.—

10 (A) IN GENERAL.—A special counsel shall,
11 except to the extent that to do so would be in-
12 consistent with the purposes of this section,
13 comply with the written or other established
14 policies of the Department of Justice respecting
15 enforcement of the criminal laws.

16 (B) NATIONAL SECURITY.—A special coun-
17 sel shall comply with guidelines and procedures
18 used by the Department in the handling and
19 use of classified material.

20 (4) SALARY.—The special counsel shall receive
21 a salary equivalent to the salary of the United
22 States Attorney for the District of Columbia.

23 (5) STAFF.—The special counsel may appoint
24 and fix the salaries of such staff, not to exceed 12
25 in number, as the special counsel deems necessary to

1 carry out the functions of the special counsel under
2 this section. However, no salary of a member of such
3 staff may exceed the salary of the special counsel.

4 (6) EXPENSES.—The Department of Justice
5 shall pay all costs relating to the establishment and
6 operation of any office of special counsel. The Attor-
7 ney General shall submit to the Congress, not later
8 than 30 days after the end of each fiscal year, a re-
9 port on amounts paid during that fiscal year for ex-
10 penses of investigations and prosecutions the special
11 counsel.

12 (7) REPORT TO CONGRESS.—Each special coun-
13 sel shall report to Congress annually on the special
14 counsel's activities under this section. The report
15 shall include a description of the progress of any in-
16 vestigation or prosecution conducted by the special
17 counsel and provide information justifying the costs
18 of the activities reported on.

19 (d) REMOVAL OF SPECIAL COUNSEL.—

20 (1) IN GENERAL.—A special counsel may be re-
21 moved from office, other than by impeachment and
22 conviction, only by the personal action of the Attor-
23 ney General, and only for good cause, physical or
24 mental disability, or any other condition that sub-

1 stantially impairs the performance of that special
2 counsel's duties.

3 (2) REPORT UPON REMOVAL.—If a special
4 counsel is removed from office, the Attorney General
5 shall promptly submit to the Special Division and to
6 Congress a report specifying the facts found and the
7 ultimate grounds for the removal.

8 (3) JUDICIAL REVIEW OF REMOVAL.—A special
9 counsel removed from office may obtain judicial re-
10 view of the removal in a civil action. The Special Di-
11 vision may not hear or determine any appeal of a de-
12 cision in any such civil action. The special counsel
13 may be reinstated or granted other appropriate relief
14 by order of the court.

15 (4) APPOINTMENT OF REPLACEMENT.—Upon
16 removal of a special counsel, the Special Division
17 shall appoint a similarly qualified individual to con-
18 tinue the functions of the special counsel.

19 (e) TERMINATION OF SPECIAL COUNSEL'S AUTHOR-
20 ITY.—

21 (1) IN GENERAL.—The authority of the special
22 counsel shall cease 2 years after the date of the spe-
23 cial counsel's appointment, but the Special Division
24 may extend that authority for an additional period
25 not to exceed one year, if the Special Division finds

1 good cause to do so. Good cause to do so includes
2 that the investigation or prosecution undertaken by
3 the special counsel has been delayed by dilatory tac-
4 tics by persons who could provide evidence that
5 would significantly assist the investigation or pros-
6 ecution, and also includes the need to allow the spe-
7 cial counsel to participate in any appellate pro-
8 ceedings related to prosecutions engaged in by the
9 special counsel.

10 (2) TERMINATION BY COURT.—The Special Di-
11 vision, either on the Special Division’s own motion
12 or upon the request of the Attorney General, may
13 terminate an office of special counsel at any time, on
14 the ground that the investigation of all matters with-
15 in the prosecutorial jurisdiction of such special coun-
16 sel, and any resulting prosecutions, have been com-
17 pleted or so substantially completed that it would be
18 appropriate for the Department of Justice to com-
19 plete such investigations and prosecutions.

20 **SEC. 203. INCREASE IN PENALTY FOR CONTEMPT OF CON-**
21 **GRESS.**

22 Section 102 of the Revised Statutes of the United
23 States (2 U.S.C. 192) is amended by striking “deemed”
24 and all that follows through “twelve months” and insert-

1 ing “fined not more than \$1,000,000 or imprisoned not
2 more than 2 years, or both”.

3 **SEC. 204. AUTHORITY OF UNITED STATES CAPITOL POLICE**
4 **TO ENFORCE CITATIONS.**

5 (a) **AUTHORITY.**—Section 9B(a) of the Act entitled
6 “An Act to define the area of the United States Capitol
7 Grounds, to regulate the use thereof, and for other pur-
8 poses”, approved July 31, 1946 (2 U.S.C. 1967(a)), is
9 amended—

10 (1) by striking “and” at the end of paragraph
11 (4);

12 (2) by striking the period at the end of para-
13 graph (5) and inserting “; and”; and

14 (3) by adding at the end the following new
15 paragraph:

16 “(6) within any area, to enforce a citation
17 issued with respect to a violation of section 102 of
18 the Revised Statutes of the United States which re-
19 lates to the House of Representatives, or any cita-
20 tion issued with respect to a resolution adopted by
21 the House citing a person for contempt of the
22 House.”.

23 (b) **EFFECTIVE DATE.**—The amendment made by
24 subsection (a) shall apply with respect to citations issued

1 on or after the expiration of the 90-day period which be-
2 gins on the date of the enactment of this Act.

3 **SEC. 205. COLLECTION OF PENALTIES IMPOSED BY THE**
4 **HOUSE OF REPRESENTATIVES ON PERSONS**
5 **CITED FOR CONTEMPT OF HOUSE.**

6 (a) CIVIL ACTION.—If the House of Representatives
7 adopts a resolution citing a person for contempt of the
8 House, the House may commence a civil action to collect
9 a monetary penalty from the person if the House by subse-
10 quent resolution authorizes the commencement of that
11 civil action.

12 (b) REPRESENTATION BY GENERAL COUNSEL.—Un-
13 less the House otherwise provides, the Office of the Gen-
14 eral Counsel of the House of Representatives shall rep-
15 resent the House in the civil action.

16 (c) PERSONAL JURISDICTION.—Personal jurisdiction
17 of the court over a defendant in a civil action under this
18 section extends outside the territorial jurisdiction of the
19 court if the claim—

20 (1) arose out of conduct by the defendant—

21 (A) within that territorial jurisdiction; or

22 (B) causing any injury, including informa-
23 tional injury to the right of the House to make
24 an investigation, within that territorial jurisdic-
25 tion; or

1 (2) otherwise has a reasonable relationship to
2 contacts of the defendant with the territorial juris-
3 diction.

4 (d) EXPEDITION OF TRIAL AND APPELLATE PRO-
5 CEEDINGS.—The court shall hear and determine a civil ac-
6 tion under this section as expeditiously as possible, and
7 to the maximum extent practicable during the Congress
8 in which the action is commenced. Any appellate pro-
9 ceedings relating to such a civil action shall similarly be
10 expedited to assure to the extent possible that the matter
11 is fully resolved during the Congress in which the action
12 was commenced.

13 **SEC. 206. NO EFFECT OF EXPIRATION OF CONGRESS ON**
14 **PENDING ACTIONS.**

15 Any civil action commenced by the House of Rep-
16 resentatives pursuant to this title, and the authority of
17 the Office of the General Counsel of the House of Rep-
18 resentatives with respect to the action, shall not be ren-
19 dered moot or otherwise affected as the result of the expi-
20 ration of the Congress in which the House commenced the
21 action.

22 **TITLE III—PRESIDENTIAL**
23 **SIGNING STATEMENTS**

24 **SEC. 301. FINDINGS.**

25 Congress finds the following:

1 (1) To ensure that the lawmaking power would
2 be exercised by the branch of government that is the
3 closest and most accountable to the people the Con-
4 stitution provides that “All legislative power herein
5 granted shall be vested in a Congress of the United
6 States, which shall consist of a Senate and House of
7 Representatives”.

8 (2) Article I, section 8, clause 18, gives Con-
9 gress the power “To make all laws which shall be
10 necessary and proper for carrying into execution the
11 foregoing powers, and all other powers vested by this
12 Constitution in the government of the United States,
13 or in any department or officer thereof”.

14 (3) The Constitution provides that the Presi-
15 dent “shall take care that the laws be faithfully exe-
16 cuted” and limits the role of the President in the
17 lawmaking process to—

18 (A) giving Congress information on the
19 State of the Union;

20 (B) recommending to Congress for consid-
21 eration such measures as the President deems
22 necessary and expedient; and

23 (C) approving or vetoing bills and joint
24 resolutions presented to him for signature.

1 (4) Statements made by the President contem-
2 poraneously with the signing of a bill or joint resolu-
3 tion that express the President’s interpretation of
4 the scope, constitutionality, and intent of Congress
5 in enacting the bill or joint resolution presented for
6 signature may encroach upon the power to make
7 laws that the Framers vested solely in the Congress.

8 **SEC. 302. TREATMENT OF CERTAIN PRESIDENTIAL SIGNING**
9 **STATEMENTS AS REPORTS ESTABLISHING**
10 **POLICY TO REFRAIN FROM ENFORCING LAW**
11 **FOR PURPOSES OF NOTIFYING COUNSEL FOR**
12 **CONGRESS.**

13 Section 530D(e) of title 28, United States Code, is
14 amended by striking “or order)” and inserting the fol-
15 lowing: “or order, or to the issuance of any qualifying
16 Presidential signing statement (as defined in section 304
17 of the Checks and Balances Restoration and Revitalization
18 Act))”.

19 **SEC. 303. ACTIONS FOR DECLARATORY OR INJUNCTIVE RE-**
20 **LIEF TO COMPEL ENFORCEMENT.**

21 (a) IN GENERAL.—In accordance with the require-
22 ments of this section, the General Counsel of the House
23 of Representatives and the Senate Legal Counsel, acting
24 jointly, may bring a civil action in the appropriate United
25 States district court for declaratory or injunctive relief to

1 compel the enforcement of the provision of law which is
2 the subject of a qualifying Presidential signing statement.

3 (b) ADOPTION OF RESOLUTION REQUIRED.—The
4 General Counsel of the House of Representatives and the
5 Senate Legal Counsel may bring a civil action under sub-
6 section (a) only upon the adoption by the House of Rep-
7 resentatives and the Senate of a resolution which meets
8 each of the following requirements:

9 (1) The resolution is introduced prior to the ex-
10 piration of the 10-day period (excluding weekends,
11 holidays, and any day on which either House of Con-
12 gress is not in session because of an adjournment
13 sine die, a recess of more than 3 days, or an ad-
14 journment of more than 3 days) which begins on the
15 date on which the House of Representatives and the
16 Senate receive notice pursuant to section 530D(e) of
17 title 28, United States Code, of the issuance of a
18 qualifying Presidential signing statement.

19 (2) The resolution does not have a preamble.

20 (3) The matter after the resolving clause is as
21 follows: “That Congress directs the General Counsel
22 of the House of Representatives and the Senate
23 Legal Counsel to bring a civil action for declaratory
24 or injunctive relief to compel the enforcement of
25 _____”, with the blank space filled in with a

1 citation to the provision of law which is the subject
2 of the qualifying Presidential signing statement for
3 which the House and Senate received the notice de-
4 scribed in paragraph (1).

5 (4) The title is as follows: “Concurrent resolu-
6 tion directing the General Counsel of the House of
7 Representatives and the Senate Legal Counsel to
8 bring a civil action for declaratory or injunctive re-
9 lief to compel the enforcement of _____”, with
10 the blank space filled in with a citation to the provi-
11 sion of law which is the subject of the qualifying
12 Presidential signing statement for which the House
13 and Senate received the notice described in para-
14 graph (1).

15 **SEC. 304. QUALIFYING PRESIDENTIAL SIGNING STATE-**
16 **MENT DEFINED.**

17 In this title, the term “qualifying Presidential signing
18 statement” means a statement issued by the President
19 and published in the Federal Register about a bill or joint
20 resolution in conjunction with signing that bill or joint res-
21 olution into law pursuant to article I, section 7, of the
22 Constitution of the United States which asserts or implies
23 an intention not to enforce any provision of the bill or joint
24 resolution, in part or in whole.

1 **SEC. 305. EFFECTIVE DATE.**

2 This title and the amendments made by this title
3 shall apply with respect to Presidential signing statements
4 issued on or after the expiration of the 90-day period
5 which begins on the date of the enactment of this Act.

6 **TITLE IV—PROCEDURES APPLI-**
7 **CABLE TO LEGAL OPINIONS**
8 **OF OFFICE OF LEGAL COUN-**
9 **SEL**

10 **SEC. 401. FINDINGS.**

11 Congress finds the following:

12 (1) To fulfill the constitutional duty of the Ex-
13 ecutive branch to act lawfully, the President must
14 have access to a reliable source of legal advice.

15 (2) The Attorney General has delegated to the
16 Office of Legal Counsel in the Department of Jus-
17 tice the function of providing legal advice to guide
18 the actions of the President and the Executive
19 branch.

20 (3) To fulfill its legislative and oversight duties
21 under the Constitution, Congress must have access
22 to information about how and whether the Executive
23 branch is implementing the laws of the United
24 States.

25 (4) To fulfill its legislative and oversight duties
26 under the Constitution, Congress must have greater

1 access to information about the legal opinions ren-
2 dered by the Office of Legal Counsel, and the legal
3 theories and doctrines on which they rely.

4 **SEC. 402. REPORTING OF LEGAL OPINIONS.**

5 (a) ISSUANCE OF OPINIONS REQUIRING REPORTS TO
6 CONGRESS.—Section 530D(a) of title 28, United States
7 Code, is amended—

8 (1) in paragraph (1)—

9 (A) in subparagraph (B), by striking “or”
10 at the end;

11 (B) by redesignating subparagraph (C) as
12 subparagraph (E); and

13 (C) by inserting after subparagraph (B)
14 the following:

15 “(C) except as provided in paragraph (3),
16 issues an authoritative legal interpretation (in-
17 cluding an interpretation under section 511,
18 512, or 513 by the Attorney General or by an
19 officer, employee, or agency of the Department
20 of Justice pursuant to a delegation of authority
21 under section 510) of any provision of any Fed-
22 eral statute—

23 “(i) that concludes that the provision
24 is unconstitutional or would be unconstitu-
25 tional in a particular application;

1 “(ii) that relies for the conclusion of
2 the authoritative legal interpretation, in
3 whole or in the alternative, on a deter-
4 mination that an interpretation of the pro-
5 vision other than the authoritative legal in-
6 terpretation would raise constitutional con-
7 cerns under article II of the Constitution
8 of the United States or separation of pow-
9 ers principles;

10 “(iii) that relies for the conclusion of
11 the authoritative legal interpretation, in
12 whole or in the alternative, on a legal pre-
13 sumption against applying the provision,
14 whether during a war or otherwise, to—

15 “(I) any department or agency
16 established in the Executive branch of
17 the Federal Government, including
18 the Executive Office of the President
19 and the military departments (as de-
20 fined in section 101(8) of title 10); or

21 “(II) any officer, employee, or
22 member of any department or agency
23 established in the Executive branch of
24 the Federal Government, including

1 the President and any member of the
2 Armed Forces; or

3 “(iv) that concludes the provision has
4 been superseded or deprived of effect in
5 whole or in part by a subsequently enacted
6 statute where there is no express statutory
7 language stating an intent to supersede the
8 prior provision or deprive it of effect;

9 “(D) except as provided in paragraph (3),
10 issues an authoritative legal interpretation (in-
11 cluding an interpretation under section 511,
12 512, or 513 by the Attorney General or by an
13 officer, employee, or agency of the Department
14 of Justice pursuant to a delegation of authority
15 under section 510) regarding the constitu-
16 tionality or legality of a policy or action of the
17 Executive branch; or”;

18 (2) in paragraph (2), by striking “For the pur-
19 poses” and all that follows through “if the report”
20 and inserting “Except as provided in paragraph (4),
21 a report shall be considered to be submitted to the
22 Congress for the purposes of paragraph (1) if the re-
23 port”; and

24 (3) by adding at the end the following:

1 “(3) EXCEPTION FOR ADVISORY OPINIONS.—
2 The submission of a report to Congress based on the
3 issuance of an authoritative legal interpretation shall
4 be discretionary on the part of the Attorney General
5 or an officer described in subsection (e)—

6 “(A) in the case of an interpretation de-
7 scribed in paragraph (1)(C), if no action is
8 taken or withheld or no policy is implemented
9 or stayed on the basis of the authoritative legal
10 interpretation; or

11 “(B) in the case of an interpretation de-
12 scribed in paragraph (1)(D), if the authoritative
13 legal interpretation is not followed with respect
14 to the Executive branch policy or action in-
15 volved.

16 “(4) CLASSIFIED INFORMATION.—

17 “(A) SUBMISSION OF REPORT CONTAINING
18 CLASSIFIED INFORMATION REGARDING INTEL-
19 LIGENCE ACTIVITIES.—Except as provided in
20 subparagraph (B), if the Attorney General sub-
21 mits a report relating to an instance described
22 in paragraph (1) that includes a classified
23 annex containing information relating to intel-
24 ligence activities, the report shall be considered

1 to be submitted to the Congress for the pur-
2 poses of paragraph (1) if—

3 “(i) the unclassified portion of the re-
4 port is submitted to each officer specified
5 in paragraph (2); and

6 “(ii) the classified annex is submitted
7 to the Select Committee on Intelligence
8 and the Committee on the Judiciary of the
9 Senate and the Permanent Select Com-
10 mittee on Intelligence and the Committee
11 on the Judiciary of the House of Rep-
12 resentatives.

13 “(B) SUBMISSION OF REPORT CONTAINING
14 CERTAIN CLASSIFIED INFORMATION ABOUT
15 COVERT ACTIONS.—

16 “(i) IN GENERAL.—In a circumstance
17 described in clause (ii), a report described
18 in that clause shall be considered to be
19 submitted to the Congress for the purposes
20 of paragraph (1) if—

21 “(I) the unclassified portion of
22 the report is submitted to each officer
23 specified in paragraph (2); and

24 “(II) the classified annex is sub-
25 mitted to—

1 “(aa) the chairman and
2 ranking minority member of the
3 Select Committee on Intelligence
4 of the Senate;

5 “(bb) the chairman and
6 ranking minority member of the
7 Committee on the Judiciary of
8 the Senate;

9 “(cc) the chairman and
10 ranking minority member of the
11 Permanent Select Committee on
12 Intelligence of the House of Rep-
13 resentatives;

14 “(dd) the chairman and
15 ranking minority member of the
16 Committee on the Judiciary of
17 the House of Representatives;

18 “(ee) the Speaker and mi-
19 nority leader of the House of
20 Representatives; and

21 “(ff) the majority leader and
22 minority leader of the Senate.

23 “(ii) CIRCUMSTANCES.—A cir-
24 cumstance described in this clause is a cir-
25 cumstance in which—

1 “(I) the Attorney General sub-
2 mits a report relating to an instance
3 described in paragraph (1) that in-
4 cludes a classified annex containing
5 information relating to a Presidential
6 finding described in section 503(a) of
7 the National Security Act of 1947 (50
8 U.S.C. 413b(a)); and

9 “(II) the President determines
10 that it is essential to limit access to
11 the information described in subclause
12 (I) to meet extraordinary cir-
13 cumstances affecting vital interests of
14 the United States.”.

15 (b) DEADLINE FOR SUBMISSION.—Section 530D(b)
16 of such title is amended to read as follows:

17 “(b) DEADLINE.—A report shall be submitted—

18 “(1) under subsection (a)(1)(A), not later than
19 30 days after the establishment or implementation
20 of each policy;

21 “(2) under subsection (a)(1)(B), within such
22 time as will reasonably enable the House of Rep-
23 resentatives and the Senate to take action, sepa-
24 rately or jointly, to intervene in timely fashion in the

1 proceeding, but in no event later than 30 days after
2 the making of each determination;

3 “(3) under subsection (a)(1)(C) or (a)(1)(D)—

4 “(A) not later than 30 days after the date
5 on which the Attorney General, the Office of
6 Legal Counsel, or any other officer of the De-
7 partment of Justice issues the authoritative
8 legal interpretation of the Federal statutory
9 provision; or

10 “(B) if the President or other responsible
11 officer of a department or agency established in
12 the Executive branch of the Federal Govern-
13 ment, including the Executive Office of the
14 President and the military departments (as de-
15 fined in section 101(8) of title 10), issues a di-
16 rective described in subsection (a)(3) and the
17 directive is subsequently rescinded, not later
18 than 30 days after the date on which the Presi-
19 dent or other responsible officer rescinds that
20 directive; and

21 “(4) under subsection (a)(1)(E), not later than
22 30 days after the conclusion of each fiscal-year quar-
23 ter, with respect to all approvals occurring in such
24 quarter.”.

1 (c) CONTENTS OF REPORTS.—Section 530D(c) of
2 such title is amended to read as follows:

3 “(c) CONTENTS.—A report required by subsection (a)
4 shall—

5 “(1) specify the date of the establishment or
6 implementation of the policy described in subsection
7 (a)(1)(A), of the making of the determination de-
8 scribed in subsection (a)(1)(B), of the issuance of
9 the authoritative legal interpretation described in
10 subsection (a)(1)(C) or (a)(1)(D), or of each ap-
11 proval described in subsection (a)(1)(E);

12 “(2) with respect to a report required under
13 subparagraph (A), (B), (D), or (E) of subsection
14 (a)(1), specify the Federal statute, rule, regulation,
15 program, policy, or other law at issue, and the para-
16 graph and clause of subsection (a)(1) that describes
17 the action of the Attorney General or other officer
18 of the Department of Justice;

19 “(3) include a complete and detailed statement
20 of the relevant issues and background (including a
21 complete and detailed statement of the reasons for
22 the policy, authoritative legal interpretation, or de-
23 termination, and the identity of the officer respon-
24 sible for establishing or implementing such policy,
25 issuing such authoritative legal interpretation, mak-

1 ing such determination, or approving such settle-
2 ment or compromise), except that—

3 “(A) any classified information shall be
4 provided in a classified annex, which shall be
5 handled in accordance with the security proce-
6 dures established under section 501(d) of the
7 National Security Act of 1947 (50 U.S.C.
8 413(d));

9 “(B) except for information described in
10 paragraph (1) or (2), such details may be omit-
11 ted as may be absolutely necessary to prevent
12 improper disclosure of information the disclo-
13 sure of which is prohibited by section 6103 of
14 the Internal Revenue Code of 1986, any other
15 statute, or any court order if the fact of each
16 such omission (and the precise ground or
17 grounds therefor) is clearly noted in the state-
18 ment, except that this subparagraph shall not
19 be construed to deny to the Congress (including
20 any House, Committee, or agency thereof) any
21 such omitted details (or related information)
22 that it lawfully may seek, subsequent to the
23 submission of the report; and

24 “(C) the requirements of this paragraph
25 shall be deemed satisfied—

1 “(i) in the case of an authoritative
2 legal interpretation described in subsection
3 (a)(1)(C) or (a)(1)(D), if a copy of the Of-
4 fice of Legal Counsel or other legal opinion
5 setting forth the authoritative legal inter-
6 pretation is provided;

7 “(ii) in the case of an approval de-
8 scribed in subsection (a)(1)(E)(i), if an
9 unredacted copy of the entire settlement
10 agreement and consent decree or order (if
11 any) is provided, along with a statement
12 indicating the legal and factual basis or
13 bases for the settlement or compromise (if
14 not apparent on the face of documents pro-
15 vided); and

16 “(iii) in the case of an approval de-
17 scribed in subsection (a)(1)(E)(ii), if an
18 unredacted copy of the entire settlement
19 agreement and consent decree or order (if
20 any) is provided, along with a statement
21 indicating the injunctive or other nonmone-
22 tary relief (if not apparent on the face of
23 documents provided); and

24 “(4) in the case of a determination described in
25 subsection (a)(1)(B) or an approval described in

1 subsection (a)(1)(E)(i), indicate the nature, tribunal,
2 identifying information, and status of the pro-
3 ceeding, suit, or action.”.

4 (d) APPLICABILITY.—Section 530D(e) of such title is
5 amended by striking “subsection (a)(1)(A)” and inserting
6 “subsection (a)(1)(A), issues an authoritative interpreta-
7 tion described in subsection (a)(1)(C) or (a)(1)(D),”.

8 **SEC. 403. SIGNATURE REQUIREMENTS FOR LEGAL OPIN-**
9 **IONS OF OFFICE OF LEGAL COUNSEL.**

10 An authoritative legal interpretation described in sub-
11 section (a)(1)(C) or (a)(1)(D) of section 530D of title 28,
12 United States Code (as amended by section 402(a)), shall
13 have no legal affect unless the interpretation is signed per-
14 sonally by the Attorney General.

15 **TITLE V—SEVERABILITY**

16 **SEC. 501. SEVERABILITY.**

17 If any provision of this Act or any amendment made
18 by this Act, or the application of a provision or amend-
19 ment to any person or circumstance, is held to be uncon-
20 stitutional, the remainder of this Act and the amendments
21 made by this Act, and the application of the provisions
22 and amendments to any person or circumstance, shall not
23 be affected by the holding.

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