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HOUSE RESOLUTION NO. 167

Offered February 12, 2013

Memorializing the Congress of the United States to examine independently the U.S. Justice Department White Paper asserting a constitutional basis for the Executive Branch's assertion of authority to target and kill United States citizens off the battlefield under certain conditions.

 Patron—Marshall, R.G.

 Referred to Committee on Rules

WHEREAS, President Obama has admitted that he and his Administration have ordered the killings of at least three U.S. Citizens, including a 16-year-old boy, off the battlefield, based on the belief that they were associated in some way with terrorist activity; and

WHEREAS, in exercising that power, President Obama is exercising a power that no prior President has ever exercised, or ever asserted he possessed; and

WHEREAS, these killings have been carried out using unmanned aerial drones; and

WHEREAS, a number of U.S. Senators and others have called upon President Obama to disclose the basis for his claimed authority; and

WHEREAS, U.S. District Court Judge Colleen McMahon denied Freedom of Information Act requests by the ACLU and the *New York Times* to obtain legal documents purportedly authorizing the president's claim of unilateral powers, while expressing concern that the documents "implicate serious issues about the limits on the power of the Executive Branch under the Constitution and laws of the United States, and about whether we are indeed a nation of laws not of men"; and

WHEREAS, a U.S. Justice Department White Paper entitled "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Operational Leader of Al-Qa'ida or An Associated Force," is based on a flawed view of the Fifth Amendment Due Process Clause, and ignores the procedural protections afforded citizens expressly provided in the Constitution's Third Article, preventing the president from serving as prosecutor, judge, jury, and executioner of the laws of the United States; and

WHEREAS, the White Paper identifies three requirements to order a killing: (i) "an informed high-level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States; (ii) capture is infeasible; and (iii) the operation would be conducted in a manner consistent with the applicable law of war principles"; and

WHEREAS, the White Paper intentionally confuses an imminent threat to American interests with an imminent attack in violation of the principles of the Natural Law Just War Doctrine; and

WHEREAS, the White Paper concludes that the U.S. Constitution would not require the government to resort to any type of judicial process "before using lethal force" on a U.S. citizen; and

WHEREAS, the invention of new crimes subject to the summary execution at the pleasure of the President and his attorneys is not the constitutional remedy for an American suspected of treason; and

WHEREAS, in Federalist No. 43, James Madison proclaimed that the Treason Clause would protect citizens "from new-fangled and artificial treasons ... by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it"; and

WHEREAS, the Constitution does not permit the President's lawyers to invent an elastically defined offense of "an imminent threat of violent attack against the United States," in substitution for the constitutionally concrete definition of "levying war against the United States, or in adhering to their enemies, giving them aid and comfort"; and

WHEREAS, Article III, Section 3 of the United States Constitution requires trial in "open court" and not designation for assassination as devised in a secret "war room" in an undisclosed location; and

WHEREAS, Article III of the United States Constitution further requires proof by "the testimony of two witnesses to the same overt act, or on confession," and not by a unilateral "determination that the targeted individual poses an imminent threat of an attack against the United States"; and

WHEREAS, Article III, Section 2 of the United States Constitution requires "trial by jury" on a charge of treason, not trial by an unidentified "high-level official of the U.S. government no matter how well-informed" he may be; and

WHEREAS, the U.S. Justice Department lawyers have ignored precedent established by the Founders regarding the subordination of the laws of war to constitutional requirements relating to the conduct of war and prosecution for treason; and

WHEREAS, while the President has considerable power to direct and carry out foreign policy, which includes his duty to protect American citizens and interests on United States soil and overseas, such

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59 power must be exercised consistent with the U.S. Constitution; now, therefore, be it
60 RESOLVED by the House of Delegates, That the Congress of the United States be urged to examine
61 independently the constitutionality of claims to presidential power concerning the practice of using lethal
62 operations against citizens of the United States as specified in the U.S. Department of Justice White
63 Paper; and be it
64 RESOLVED FURTHER, That the Clerk of the House of Delegates transmit copies of this resolution
65 to the Speaker of the United States House of Representatives, the President of the United States Senate,
66 and the members of the Virginia Congressional Delegation, so that they may be apprised of the concerns
67 of the Virginia House of Delegates relating to this matter.