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ANALYSIS OF H.R. 10:

REPUBLICAN LEADERSHIP BILL ON 9/11 COMMISSION RECOMMENDATIONS

9/11 Commission Recommendations:	41
Recommendations Fully Implemented:	11
Extraneous Provisions Added:	Over 50

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EXECUTIVE SUMMARY

The National Commission on Terrorist Attacks upon the United States, popularly known as the 9/11 Commission, released a unanimous report on the September 11 attacks and what Congress and the Executive Branch should do to prevent future terrorist attacks. The 9/11 Commission made 41 recommendations for action. As the Commissioners wrote, the 41 specific recommendations are necessary to accomplish three core objectives: “(1) attack terrorists and their organizations, (2) prevent continued growth of Islamist terrorism, and (3) protect against and prepare for future terrorist attacks.”

This report compares the recommendations made by the 9/11 Commission to H.R. 10, the legislation developed by the Republican House leadership in response to the Commission’s recommendations. It finds that H.R. 10, as passed by the House, contains significant shortcomings. Of the 41 recommendations made by the 9/11 Commission, H.R. 10 fully implements only 11 recommendations. In contrast, 15 recommendations are not addressed at all, and 15 are only partially implemented. See Figure 1.

The recommendations that are ignored in H.R. 10 include some of the Commission’s most important recommendations. Contrary to the recommendations of the 9/11 Commission, H.R. 10:

- Fails to give the National Intelligence Director sufficient authority over the budget and personnel of the intelligence agencies;
- Fails to strengthen U.S. efforts to prevent the proliferation of nuclear weapons;
- Fails to secure U.S. borders by integrating disparate screening systems;
- Fails to mandate and fund the use of explosive detection devices for airline safety;
- Fails to provide additional security assistance to Afghanistan or economic development assistance to Arab and Muslim countries.

In testimony before congressional committees, the 9/11 Commissioners repeatedly emphasized the importance of enacting their recommendations as a complete package. As Commissioner John Lehman, the former Secretary of the Navy, testified before the Government Reform Committee: “Our recommendations are not a Chinese menu. They are a whole system. If all important elements are not adopted, it makes it very difficult for the others to succeed.” H.R. 10 does not meet this standard.

ANALYSIS OF H.R. 10: REPUBLICAN LEADERSHIP BILL ON 9/11 COMMISSION RECOMMENDATIONS

At the same time that H.R. 10 fails to implement many of the recommendations of the 9/11 Commission, the legislation includes over 50 extraneous provisions that were not recommended by the Commission. While some of these extraneous provisions are noncontroversial, many are “poison pills” that will delay or frustrate passage of the legislation. For example, H.R. 10:

- Gives the President “fast track” authority to reorganize the intelligence agencies, undermining the reforms recommended by the 9/11 Commission;
- Gives the President authority to bypass Senate confirmation of the Director of the CIA and other key intelligence and defense officials, weakening congressional oversight;
- Gives federal law enforcement officials new authority to deport and indefinitely detain foreign nationals, revoke visas, and deny asylum without judicial review;
- Creates new national databases of drivers licenses, birth certificates, and criminal histories, raising civil liberties and privacy concerns;
- Expands the authority of the Justice Department by relaxing grand jury secrecy requirements and increasing its ability to conduct secret surveillance.

Like the failure to implement all 41 recommendations, the inclusion of the extraneous provisions also conflicts with the position of the 9/11 Commission. As Commission Vice Chairman Lee Hamilton said with Commission Chairman Thomas Kean on September 30: “We respectfully submit that consideration of controversial provisions at this late hour can harm our shared purpose in getting a good bill to the President.”

ANALYSIS OF H.R. 10: REPUBLICAN LEADERSHIP BILL ON 9/11 COMMISSION RECOMMENDATIONS

Figure 1: Implementation of 9/11 Commission Recommendations under H.R. 10

	✓ Implemented	-- Incomplete	✗ Not Implemented	
#1	Identify and Prioritize Terrorist Sanctuaries	✓		
#2	Prioritize Efforts in Pakistan	✓		
#3	Prioritize Efforts in Afghanistan		✗	
#4	Prioritize Efforts in Saudi Arabia	✓		
#5	Engage in the Struggle of Ideas in the Islamic World	--		
#6	Promote America’s Message of Opportunity in the Islamic World	✓		
#7	Defend American Ideals Abroad		✗	
#8	Support Education Programs in the Islamic World	--		
#9	Bolster Economic Development in the Islamic World		✗	
#10	Create a Coalition Strategy to Defeat Terrorists	--		
#11	Ensure the Humane Treatment of Captured Terrorists		✗	
#12	Strengthen Counterproliferation Efforts		✗	
#13	Track Terrorist Financing	--		
#14	Track Terrorist Travel	--		
#15	Create a Network of Screening Systems to Thwart Terrorists	--		
#16	Create a Robust Biometric Entry-Exit Screening System	✓		
#17	Set Global Standards for Security Systems	✓		
#18	Establish Federal Standards for Drivers Licenses and Birth Certificates	--		
#19	Develop Transportation Security Strategy	✓		
#20	Strengthening Pre-screening of Aviation Passengers	✓		
#21	Improve Passenger Screening for Explosives	--		
#22	Protect Individual Privacy in Information Sharing Systems	--		
#23	Justify Expansions of Governmental Powers	--		
#24	Create a Civil Liberties Board		✗	
#25	Distribute First Responder Grants Based on Risk	--		
#26	Adopt Incident Command System Procedures	✓		
#27	Ensure Adequate Radio Spectrum for Public Safety		✗	
#28	Adopt the ANSI Standard for Private Sector Preparedness		✗	
#29	Create a National Counterterrorism Center (NCTC)	--		
#30	Establish a National Intelligence Director (NID)	--		
#31	Improve the CIA	--		
#32	Give the Department of Defense Control over Paramilitary Operations		✗	
#33	Declassify the Intelligence Budget		✗	
#34	Provide Incentives for Information Sharing		✗	
#35	Create Information Sharing Network		✗	
#36	Reform Congressional Intelligence Committees		✗	
#37	Reorganize Congress to Oversee Homeland Security Department		✗	
#38	Accelerate National Security Appointments	✓		
#39	Improve FBI Counterterrorism Capabilities	✓		
#40	Assess and Oversee the Northern Command’s Strategy	--		
#41	Assessing, Planning, and Preparing for Threats to the Nation and Its Critical Infrastructure		✗	
		11	15	15

I. FAILURE TO ADDRESS COMMISSION RECOMMENDATIONS

● = Not Implemented

● = Partially Implemented

● = Implemented

Recommendation 1: Identify and Prioritize Terrorist Sanctuaries

Grade: ● Green

Commission Recommendation: “The U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power. We should reach out, listen to, and work with other countries that can help.” (9/11 Commission Report, p. 367.)

Senate¹: The McCain-Lieberman bill requires the President to develop a strategy for addressing and eliminating terrorist sanctuaries. The report will describe the sanctuaries and assess the priorities for addressing and eliminating them. (S. 2774, § 501.)

House: The House bill requires the President to report on the strategy for addressing and eliminating terrorist sanctuaries. The report will include a prioritized list of actual and potential sanctuaries, and a strategy for preventing their use and for ending them. (H.R. 10, § 4001.)

Analysis: Both bills address the Commission’s recommendation.

Recommendation 2: Prioritize Efforts in Pakistan

Grade: ● Green

Commission Recommendation: “Sustaining the current scale of aid to Pakistan, the United States should support Pakistan’s government in its struggle against

¹ This report compares the H.R. 10 to two Senate bills: the McCain-Lieberman bill (S. 2774) and the Collins-Lieberman bill (S. 2845) as passed by the Governmental Affairs Committee. 9/11 Commission Chairman Thomas Kean and Vice Chairman Lee Hamilton endorsed the McCain-Lieberman bill on September 7 and the Collins-Lieberman bill on October 1.

extremists with a comprehensive effort that extends from military aid to support for better education, so long as Pakistan’s leaders remain willing to make difficult choices of their own.” (9/11 Commission Report, p. 369.)

Senate: The McCain-Lieberman bill calls for the United States to make a long-term commitment to assisting Pakistan, conditioned only on a continued commitment to enlightened moderation on the part of Pakistan’s government. The Senate bill mirrors the Commission’s call for assistance to extend beyond military aid. (S. 2774, § 502.)

House: The House bill includes a similar Sense of Congress provision on aid to Pakistan. The bill includes an additional two-year waiver of coup related restrictions on aid to Pakistan. (H.R. 10, § 4082.)

Analysis: Both bills address the Commission’s recommendation.

Recommendation 3: Prioritize Efforts in Afghanistan

Grade: ● Red

Commission Recommendation: “[T]he United States and the international community should make a long-term commitment to a secure and stable Afghanistan, in order to give the government a reasonable opportunity to improve the life of the Afghan people. The United States and the international community should help the Afghan government extend its authority over the country, with a strategy and nation-by-nation commitments to achieve their objectives.” (9/11 Commission Report, p. 370.)

Senate: The McCain-Lieberman bill acknowledges the obstacles Afghanistan still faces on the road to becoming a stable and prosperous democracy. The bill reaffirms the provisions of the U.S.-Afghan Freedom Support Act and calls for the U.S. to work multilaterally to assist Afghanistan. The bill then authorizes an additional \$2.8 billion for fiscal year 2005 and continued assistance to Afghanistan through fiscal year 2009 for specific security and development programs. (S.2774, § 503.)

House: The House bill amends sections of the U.S.-Afghan Freedom Support Act by adding additional reporting requirements. It also calls for the development of a long-term bilateral strategy to address Afghan economic development and security needs, and includes related language urging — but not requiring — expanded U.S. assistance for counternarcotics and international peacekeeping efforts. (H.R. 10, §§ 4061–4070.)

Analysis: The Senate bill is clearly superior because it authorizes an additional \$2.8 billion for fiscal year 2005 and continued assistance to Afghanistan through fiscal year 2009 for education, health, security and development programs. H.R. 10 contains no additional resources, just additional reports on how existing funds are being spent.

Recommendation 4: Prioritize Efforts in Saudi Arabia

Grade: ● Green

Commission Recommendation: “The United States and Saudi Arabia must determine if they can build a relationship that political leaders on both sides are prepared to publicly defend— a relationship about more than oil. It should include a shared commitment to political and economic reform, as Saudis make common cause with the outside world.” (9/11 Commission Report, p. 374.)

Senate: The McCain-Lieberman bill expresses the sense of the Congress that the U.S.-Saudi relationship should be based on common interests beyond oil. (S. 2774, §504.)

House: H.R. 10 bill includes a similar provision on the U.S.-Saudi relationship. (H.R. 10, § 4081.)

Analysis: Both bills address the Commission’s recommendation.

Recommendation 5: Engage In the Struggle of Ideas in the Islamic World

Grade: ● Yellow

Commission Recommendation: “The U.S. government . . . should offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors.” (9/11 Commission Report, p. 376.)

Senate: The McCain-Lieberman bill requires the President to develop a long-term strategy to win the struggle of ideas in the Islamic world, requiring specific goals, benchmarks, and an estimate of financial assistance required to accomplish this objective. (S. 2774, §505.)

House: The House bill includes a declaration of policy and Sense of Congress committing the U.S. to a long-term investment in engaging with citizens of

Muslim nations, particularly youth. It also calls for the expansion of the Democracy Caucus at the United Nations, reforms the organizations of the United Nations, and establishes an office of multilateral negotiations, but does not require the President to develop a strategy similar to that of the Senate bill. (H.R. 10, § 4032.)

Analysis: To win the war on terror, the government must take actions to thwart the growth of Islamist fundamentalism and change the image of the U.S. in the Islamic world. The provision in the House bill expanding the Democracy Caucus is a positive step, but the bill does not require the executive branch to develop policies to engage the Islamic world.

Recommendation 6: Promote America’s Message of Opportunity in the Islamic World

Grade: ● Green

Commission Recommendation: “Where Muslim governments, even those who are friends, do not respect these principles, the United States must stand for a better future.” (9/11 Commission Report, p. 376.)

Senate: The McCain-Lieberman bill includes a Sense of Congress that describes the policy the U.S. government should take towards dictatorships in Muslim countries, including the promotion of the values of life, education, and individual economic opportunity. (S.2774, § 506.)

House: The House bill includes a Sense of Congress that the U.S. government should work with other democratic governments to discuss, develop, and refine policies to support and promote democratic reforms in Muslim countries. (H.R. 10, § 4023.)

Analysis: Both bills address the Commission’s recommendation.

Recommendation 7: Defend America’s Ideals Abroad

Grade: ● Red

Commission Recommendation: “Just as we did in the Cold War, we need to defend our ideals abroad vigorously If the United States does not act aggressively to define itself in the Islamic world, the extremists will gladly do the job for us.” (9/11 Commission Report, p. 377.)

Senate: The McCain-Lieberman bill requires the President to develop a strategy to expand the outreach of the U.S. government in the Muslim world. The strategy must include the existing initiatives with respect to outreach to Muslim audiences, recommendations to present U.S. views through broadcast media, and assessment of incentives for U.S. broadcasters to dub news programs in Arabic. It also authorizes \$728 million for fiscal year 2005 for international broadcasting operations, and capital improvements. The Senate bill also expands scholarship and exchange programs that reach out to Muslim youth and authorizes \$60 million in fiscal year 2005 for that purpose. (S. 2774, §§ 507-508.)

House: The House bill requires an annual assessment of the U.S.'s public diplomacy strategy, a statement of policy on public diplomacy training, and ties promotion in the foreign service to public diplomacy training. It also requires a report on media bias in the Islamic world, and a report on an outreach strategy that is included in the Senate bill. The House bill provides no additional resources for broadcasting in Islamic countries and there are no provisions for educational and cultural exchange with countries with significant Muslim populations. The bill does not authorize any resources to increase public diplomacy efforts or expand educational and cultural exchange programs. (H.R. 10, §§ 4021-4024.)

Analysis: The House bill would be greatly improved if it included the Senate provisions authorizing funds for public diplomacy initiatives and educational and cultural exchange programs.

Recommendation 8: Support Education Programs in the Islamic World

Grade: ● Yellow

Commission Recommendation: “The U.S. government should offer to join with other nations in generously supporting a new International Youth Opportunity Fund. Funds will be spent directly for building and operating primary and secondary schools in those Muslim states that commit to sensibly investing their own money in public education.” (9/11 Commission Report, p. 378.)

Senate: The McCain-Lieberman bill requires the establishment of an International Youth Opportunity Fund. This fund will provide financial assistance for the improvement of public education, including assistance for construction and operation of schools in Muslim nations committed to investing in public education. It also authorizes \$40 million in fiscal year 2005 for this fund. (S. 2774, § 509.)

House: The House bill authorizes a pilot project to provide grants for scholarships for Muslim youth to attend U.S.-sponsored schools located in countries with significant Muslim populations. There is no specific amount of funding for this pilot project. (H.R. 10, § 4041.)

Analysis: The House bill would be greatly improved if it added the 9/11 Commission's recommendation to establish an International Youth Opportunity Fund and authorize the amount included in the Senate bill. While the grant program for Muslim youth to attend American schools is a worthy endeavor, it will only reach a limited number of students, whereas the International Youth Opportunity Fund would give Muslim youth a greater opportunity to receive a complete education and reduce the influence of madrassas that teach these youth to hate America and its ideals.

Recommendation 9: Bolster Economic Development in the Islamic World

Grade: ● Red

Commission Recommendation: "A comprehensive U.S. strategy to counter terrorism should include economic policies that encourage development, more open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future." (9/11 Commission Report, p. 379.)

Senate: The McCain-Lieberman bill includes a Sense of Congress that the U.S. counterterrorism strategy must include economic policies that encourage development, open societies, and opportunities for people to improve the lives of their families and enhance prospects for their children's future. It also authorizes \$200 million for the Middle East Partnership Initiative, which will promote economic development and the rule of law in the Middle East. (S. 2774, §§ 510-11.)

House: The House bill does not include any substantive provisions for economic development in the Muslim world.

Analysis: The House bill would be improved if it included the Senate provisions on economic development and the Middle East Partnership.

Recommendation 10: Create a Coalition Strategy to Defeat Terrorists

Grade: ● Yellow

Commission Recommendation: “The United States should engage other nations in developing a comprehensive coalition strategy against Islamist terrorism. The most important policies should be discussed and coordinated in a flexible contact group of leading coalition governments.” (9/11 Commission Report, p. 379.)

Senate: The McCain-Lieberman bill authorizes the President to establish an international counterterrorism policy contact group with leaders of governments to develop policies and strategies to address military issues, law enforcement, intelligence collection, analysis, and dissemination, terrorists’ travel, customs issues, financial issues, and sanctuaries. (S. 2774, § 512.)

House: The House bill authorizes the State Department to negotiate bilateral international agreements under which the parties work to address and interdict acts of international terrorism. The provisions cite various activities of these bilateral relationships: joint training exercises; establishing terrorism interdiction centers; deploying terrorism prevention teams; and integrating, military, and law enforcement personnel from countries that are parties to the agreements. (H.R. 10, § 4013.)

Analysis: Elements from the Senate bill should be included to achieve a comprehensive international strategy. Multilateral and more specific and focused bilateral arrangements are necessary to provide a proactive strategy along with sufficient responses to terrorist activities.

Recommendation 11: Ensure the Humane Treatment of Captured Terrorists

Grade: ● Red

Commission Recommendation: “The United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists. New principles might draw upon Article 3 of the Geneva Conventions on the law of armed conflict.” (9/11 Commission Report, p. 380.)

Senate: The McCain-Lieberman bill would require the government to treat captured terrorists in the same manner that the U.S. would demand that its personnel be treated if captured by the enemy in the war on terrorism. It also

prohibits treating any prisoner inhumanely, or in a manner inconsistent with the Constitution or other laws and treaties of the United States. (S. 2774, § 513.)

House: The House bill contains a Sense of the Congress provision stating that the President should pursue all diplomatic means to develop an effective approach toward the detention and humane treatment of captured terrorists. (H.R. 10, § 4014.)

Analysis: In order to protect our American citizens and soldiers abroad, especially in war zones and in unfriendly countries, the United States must set an example of how to treat detainees and captured personnel. If the U.S. does not do so, our men and women overseas are put at risk of being abused and tortured. The House bill does not go far enough in prohibiting abuse and provides no guarantees that the U.S. will set an example for other nations.

Recommendation 12: Strengthen Counterproliferation Efforts

Grade: ● Red

Commission Recommendation: “Our report shows that al Qaeda has tried to acquire or make weapons of mass destruction for at least ten years. There is no doubt the United States would be a prime target. Preventing the proliferation of these weapons warrants a maximum effort — by strengthening counterproliferation efforts, expanding the Proliferation Security Initiative, and supporting the Cooperative Threat Reduction program.” (9/11 Commission Report, p. 381.)

Senate: The McCain-Lieberman bill requires the President to submit a strategy for expanding and strengthening the Proliferation Security Initiative, the programs for Cooperative Threat Reduction, and other nonproliferation programs, and an estimate of the funding necessary to execute the strategy. It also requires the President to report on whether the U.S. would be more effective in addressing the global threat by establishing a central coordinator for Cooperative Threat Reduction; eliminating the requirement that the President spend no more than \$50 million annually on programs outside the former Soviet Union; and repealing the provisions of the Soviet Nuclear Threat Reduction Act of 1991 that place conditions on the former Soviet Union unrelated to bilateral cooperation on weapons dismantlement. (S. 2774, § 514.)

House: The House bill requires the State Department to identify all of the major deficiencies in existing U.S. counterproliferation policies, and report on the proposals that would address threats deriving from those deficiencies. The State Department will provide an Advisory Board of experts with resources to conduct the studies. (H.R. 10, § 4012.)

Analysis: The study called for by the House bill is unnecessary because deficiencies in counterproliferation programs are already well known. The Senate bill is superior because it calls for strengthening and expanding Cooperative Threat Reduction programs, expanding the Proliferation Security Initiative, and expanding nonproliferation programs outside the former Soviet Union.

Recommendation 13: Track Terrorist Financing

Grade: ● Yellow

Commission Recommendation: “Vigorous efforts to track terrorist financing must remain front and center in the U.S. counterterrorism efforts.” (9/11 Commission Report, p. 382.)

Senate: The McCain-Lieberman bill requires the President to submit a report evaluating the effectiveness of United States efforts to curtail the international financing of terrorism, including a review on the effectiveness of current policies and recommendations on how to improve international governmental cooperation, performance of financial institutions, and agencies. (S. 2774, § 515.)

House: The House bill authorizes funds for existing FinCEN mandates under the USA PATRIOT Act; reauthorizes the National Money Laundering Strategy through 2005 (it expired in 2003); and makes Title III of the USA PATRIOT Act permanent. (H.R. 10, §§ 2101–2122.)

Analysis: While the House bill contains a number of technical measures, it does not address critical policies such as developing a comprehensive strategy on terrorist financing, achieving greater cooperation from the international community and financial institutions, and providing enhanced agency coordination. The bill fails to provide any new legal authorities or provide additional enforcement resources.

Recommendation 14: Track Terrorist Travel

Grade: ● Yellow

Commission Recommendation: “Targeting terrorist travel is at least as powerful a weapon against terrorists as targeting their money. The United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility.” (9/11 Commission Report, p. 385.)

Senate: The McCain-Lieberman bill requires the Administration to develop a comprehensive strategy to target terrorist travel and directs that the strategy be implemented. It also requires the development of a plan to acquire document authentication technology and a timetable for deploying such technology. In addition, the bill authorizes funding for an intelligence analysis program for terrorist travel. (S. 2774, § 601.)

House: The House bill includes a series of provisions that address aspects of terrorist travel such as a study on machine readable passports, promoting international agreements to track and curtail terrorist travel, requiring the DHS to create a mechanism through which terrorist travel information could be shared, establishing a terrorist travel analysis and training program and creating a technology acquisition and dissemination plan to facilitate document identification. (H.R. 10, §§ 3081–3085, 3087–3089, 3091–3092, 3101–3104.)

Analysis: While the House bill contains a number of terrorist travel initiatives, it does not create a comprehensive unified strategy to address the problem, as the Senate bill does, but rather attacks the problem in a piecemeal fashion.

Recommendation 15: Create a Network of Screening Systems to Thwart Terrorists

Grade: ● Yellow

Commission Recommendation: “The U.S. border security system should be integrated into a larger network of screening points that includes our transportation system and access to vital facilities, such as nuclear reactors. The President should direct the Department of Homeland Security to lead the effort to design a comprehensive screening system, addressing common problems, and setting common standards with system wide goals in mind.” (9/11 Commission Report, p. 387.)

Senate: The McCain-Lieberman bill sets out a comprehensive framework for integrating transportation, border and critical infrastructure screening systems. It also calls for U.S. citizens to carry secure biometric identification for all international travel. (S. 2774, §§ 602, 604.)

House: The House bill requires international travelers to carry a passport, but otherwise does not require integration of screening systems. (H.R. 10, §§ 3001, 3002.)

Analysis: The House bill does not fully implement the 9/11 Commission recommendation.

Recommendation 16: Create a Robust Biometric Entry-Exit Screening System

Grade: ● Green

Commission Recommendation: “The Department of Homeland Security, properly supported by Congress, should complete, as quickly as possible, a biometric entry-exit screening system, including a single system for speeding qualified travelers.” (9/11 Commission Report, p. 389.)

Senate: The McCain-Lieberman bill requires the Secretary of Homeland Security to develop a plan to accelerate full implementation of an entry-exit system and requires the Department to report to Congress on the accelerated plan within 180 days. Such a plan would include information on the strengths and weaknesses of such a system as well as the implementation schedule, and areas that need to be addressed, including enhancements in interoperability and information technology. Additionally, the provision directs the Secretary to implement a single registered traveler program to expedite the processing of registered travelers. (S. 2774, § 603.)

House: The House bill language is substantially similar to the Senate language, but includes additional language requiring that the entry-exit system include data on benefits applicants. (H.R. 10, § 3090.)

Analysis: Both bills implement the Commission’s recommendation.

Recommendation 17: Set Global Standards for Security Systems

Grade: ● Green

Commission Recommendation: “The U.S. government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other governments. We should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation.” (9/11 Commission Report, p. 390.)

Senate: The McCain-Lieberman bill expresses the Sense of Congress that the United States Government should exchange terrorist information with trusted allies. The provision also requires the Department of Homeland Security to

submit a report to Congress on federal efforts to collaborate with allies of the United States in the exchange of terrorist information. (S. 2774, § 605.)

House: The House bill addresses the issue of information exchange by directing the President in his efforts to track the travel of terrorists to establish a system to share information on lost, stolen, and fraudulent passports and other travel documents. (H.R. 10, §§ 3088.)

Analysis: The bills implement this recommendation in different but acceptable ways.

Recommendation 18: Establish Federal Standards for Drivers Licenses and Birth Certificates

Grade: ● Yellow

Commission Recommendation: “Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses.” (9/11 Commission Report, p. 390.)

Senate: The McCain-Lieberman bill sets out minimum standards for the format and issuance of new drivers licenses and birth certificates; requires proof and verification of identity before an ID card or birth certificate can be issued; and requires drivers licenses to be compatible with a variety of biometric identifiers; and provides grants to states to revise their license format and issuance process. (S. 2774.)

House: The House bill establishes the same minimum standards for licenses and birth certificates as the Senate bill, but the House bill prevents acceptance of any foreign document except a passport as proof of identity for obtaining a drivers license or birth certificate. In addition, the House bill limits the number of birth certificates that can be obtained and by whom; requires state departments of motor vehicles to link their driver databases; and requires states to subject all persons with access to vital records to appropriate security clearance requirements. The House bill also includes a timeline for implementation of standards for drivers licenses and birth certificates. (H.R. 10, §§ 3051–3076.)

Analysis: While the House bill addresses the substance of the 9/11 Commission’s recommendation on setting minimum standards for drivers licenses and birth certificates, the proposed system is overly prescriptive, and the linking of state DMV databases raises privacy concerns.

Recommendation 19: Develop Transportation Security Strategy

Grade: ● Green

Commission Recommendation: “The U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of doing so, and then develop a plan, budget, and funding to implement the effort. The plan should assign roles and missions to the relevant authorities (federal, state, regional, and local) and to private stakeholders.” (9/11 Commission Report, p. 391.)

Senate: The McCain-Lieberman bill requires the Secretary of Homeland Security to produce and regularly report on the implementation of a transportation security strategy. (S. 2774, § 702.)

House: The House bill requires the Secretary of Homeland Security to produce a transportation security strategy and individual transportation modal security plans. The provision further requires the Transportation Security Agency (TSA) to report to Congress on its implementation criteria for the aviation modal transportation plan. (H.R. 10, § 2172.)

Analysis: The Senate bill provides more guidance to the Secretary on what the transportation security plan must include and provides for continuing oversight over the implementation of that plan. However, both versions respond to the 9/11 Commission’s recommendation.

Recommendation 20: Strengthening Pre-Screening of Aviation Passengers

Grade: ● Green

Commission Recommendation: “Improved use of ‘no-fly’ and ‘automatic selectee’ lists should not be delayed while the argument about a successor to CAPPS continues. This screening function should be performed by the TSA, and it should utilize the larger set of watch lists maintained by the federal government. Air carriers should be required to supply the information needed to test and implement this new system.” (9/11 Commission Report, p. 393.)

Senate: The McCain-Lieberman bill directs the Secretary of Homeland Security, acting through TSA, to check passenger information against a comprehensive terrorist watch list. (S. 2774, § 703.)

House: The House bill similarly requires TSA to test, then implement, a passenger prescreening program that utilizes a comprehensive terrorist watch list. The bill also requires the establishment of an appeals process to assist passengers who are incorrectly placed on the “no fly” and terrorist watch lists (H.R. 10, §§ 2172-2173.)

Analysis: Both the House and Senate bills respond to the 9/11 Commission recommendation.

Recommendation 21: Improve Passenger Screening for Explosives

Grade: ● Yellow

Commission Recommendation: “The TSA and the Congress must give priority attention to improving the ability of screening checkpoints to detect explosives on passengers. As a start, each individual selected for special screening should be screened for explosives. Further, the TSA should conduct a human factors study, a method often used in the private sector, to understand problems in screener performance and set attainable objectives for individual screeners and for the checkpoints where screening takes place.” (9/11 Commission Report, p. 393.)

Senate: The McCain-Lieberman bill requires TSA to improve its capabilities to detect explosives carried aboard or placed on an aircraft by passengers. The bill also requires an interim measure to ensure that all high-risk passengers are screened for explosives and authorizes appropriations of such sums as are needed for developing improved explosive detection technology. The bill requires a human factors study to help TSA improve screener performance. (S. 2774, § 704.)

House: The House bill does require that TSA “give priority to developing, testing, improving, and deploying technology at screening checkpoints” but does not require any measures to achieve the goal of improved passenger screening for explosives. The bill authorizes the collection of \$30 million in fees for two years to pay for passenger explosive detection equipment, but provides no additional authorization for the more than \$200 million remaining needed funds. (H.R. 10, §§ 2174, 2177.)

Analysis: H.R. 10 does not address the 9/11 Commission recommendations or match the McCain-Lieberman legislation to significantly improve TSA’s ability to screen passengers for explosives. Given terrorists’ past attempts and success at

carrying explosives onboard a commercial plane, the House legislation fails to address a significant vulnerability.

Recommendation 22: Protect Individual Privacy in Information Sharing Systems

Grade: ● Yellow

Commission Recommendation: “As the President determines the guidelines for information sharing among government agencies and by those agencies with the private sector, he should safeguard the privacy of individuals about whom information is shared.” (9/11 Commission Report, p. 394.)

Senate: The McCain-Lieberman bill requires the President to establish a network to promote the sharing of terrorism information in a manner consistent with national security and the protection of privacy and civil liberties. (S. 2774, § 201(c)(1).)

House: The House bill requires the establishment of a secure information sharing environment for the sharing of intelligence and related information in a manner consistent with national security and the protection of privacy and civil liberties. (H.R. 10, § 1017.)

Analysis: The House bill’s approach only appears to address information sharing within the government and does not address the sharing of information between the federal government and the private sector.

Recommendation 23: Justify Expansions of Governmental Powers

Grade: ● Yellow

Commission Recommendation: “The burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive’s use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use.” (9/11 Commission Report, pp. 394–95.)

Senate: The McCain-Lieberman bill creates an Inspector General for the National Intelligence Authority, who is responsible for an assessment of the effectiveness of all measures in place within the Intelligence Community for the

protection of civil liberties and privacy of U.S. persons, as well as an Intelligence Community Officer for Civil Rights and Civil Liberties in the National Intelligence Authority. (S. 2774, §§ 119, 120, 902.)

House: The House bill does not provide for any government-wide initiative to ensure that government powers will enhance security and have adequate safeguards to prevent abuse. The bill does create chief privacy officers in some law enforcement and counterterrorism agencies but does not provide a single entity in the federal government to coordinate all of the federal government's efforts or ensure that agencies working together are clearly protecting our citizens' rights. (H.R. 10, §§ 1022, 5091, 5092.)

Analysis: The House bill's approach does not provide critical leadership or authority to truly ensure that governmental powers are not abused. Further measures to strengthen our civil liberties and privacy could include a requirement that incentives and safeguards be put in place at the FBI and other agencies to prevent misuse of governmental powers.

Recommendation 24: Create A Civil Liberties Board

Grade: ● Red

Commission Recommendation: "At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties." (9/11 Commission Report, p. 394.)

Senate: The McCain-Lieberman bill creates a Privacy and Civil Liberties Oversight Board in the Executive Office of the President. (S. 2774, § 901.)

House: The House bill does not include any board within the executive branch to ensure that civil liberties are protected.

Analysis: The creation of a Privacy and Civil Liberties Oversight Board is critical. Such a Board is needed to analyze and review actions of the Executive Branch to ensure that civil liberties concerns are considered when our country develops laws, regulations and policies related to efforts to protect the Nation against terrorism.

Recommendation 25: Distribute First Responder Grants Based on Risk

Grade: ● Yellow

Commission Recommendation: “Homeland security assistance should be based strictly on an assessment of risks and vulnerabilities. Now, in 2004, Washington, D.C., and New York City are certainly at the top of any such list. Federal homeland security assistance should not remain a program for general revenue sharing.” (9/11 Commission Report, p. 396.)

Senate: The McCain-Lieberman bill directs the Secretary of Homeland Security to distribute homeland security assistance to communities solely based on threats, risks, and vulnerabilities, with the goal of achieving and enhancing essential emergency preparedness and response capabilities throughout the nation. (S. 2774, § 801.)

House: The House bill implements changes to the first responder grant programs that will result in greater funding being distributed based on an assessment of risks and vulnerabilities. However, the legislation also includes an arbitrary, two-tiered funding formula that would guarantee border states at least 0.45 percent of first responder grant funds, while other states would be guaranteed only 0.25 percent of the grant funds. (H.R. 10, §§ 5001–5009.)

Analysis: The state minimums and arbitrary funding formula included in the House bill are inconsistent with the 9/11 Commission’s recommendation.

Recommendation 26: Adopt Incident Command System Procedures

Grade: ● Green

Commission Recommendation: “Emergency response agencies nationwide should adopt the Incident Command System (ICS). When multiple agencies or multiple jurisdictions are involved, they should adopt a unified command. Both are proven frameworks for emergency response.” (9/11 Commission Report, p. 397.)

Senate: The McCain-Lieberman bill includes a Sense of Congress that emergency response agencies nationwide should adopt the Incident Command System, and that the Secretary of Homeland Security should require, as a further condition of receiving homeland security preparedness funds, that grant applicants

implement the Incident Command System and unified command procedures. (S. 2774, § 802.)

House: The House bill includes a Sense of Congress that all levels of government should adopt the National Incident Management System (NIMS), and that the regular use of and training in NIMS by States, territories, tribes, and local governments should be a condition for receiving Federal preparedness assistance. (H.R. 10, § 5132.)

Analysis: Both the Senate and House bills address this recommendation.

Recommendation 27: Ensure Adequate Radio Spectrum for Public Safety

Grade: ● Red

Commission Recommendation: “Congress should support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes.” (9/11 Commission Report, p. 397.)

Senate Bill: The McCain-Lieberman bill includes the full text of H.R. 1425, the HERO Act, in order to free up additional radio spectrum for first responders. The Senate bill also requires the Secretary of Homeland Security to support the establishment of consistent and effective communications capabilities in the event of an emergency in urban areas determined by the Secretary to be at consistently high levels of risk from terrorist attack. (S. 2774, §§ 804–805.)

House Bill: The House bill merely includes a Sense of Congress that analog radio spectrum should be returned to the government at the end of 2006 so that it is available for public safety and “advanced commercial” uses. However, unlike the HERO Act, the House bill does not require the government to assign any radio spectrum for use by first responders. Although the bill does make necessary changes to the Federal structure for improving interoperability, it also creates an unfunded interoperability grant program. (H.R. 10, §§ 5011, 5131.)

Analysis: Despite the heroic efforts and experience of first responders, communications deficiencies and lack of interoperable systems among police, firefighters, and other rescue agencies hindered their response, and was at least partially responsible for the loss of 343 firefighters at the World Trade Center. We need to dedicate specific radio spectrum and federal resources to solve a problem that both the 9/11 Commission and Secretary Ridge have called a priority issue for our first responders.

Recommendation 28: Adopt the ANSI Standard for Private Sector Preparedness

Grade: ● Red

Commission Recommendation: “We endorse the American National Standards Institute’s recommended standard for private preparedness. We were encouraged by Secretary Tom Ridge’s praise of the standard, and urge the Department of Homeland Security to promote its adoption. We believe that compliance with the standard should define the standard of care owed by a company to its employees and the public for legal purposes.” (9/11 Commission Report, p. 398.)

Senate: The McCain-Lieberman bill requires the Secretary of Homeland Security to establish a program to promote private sector preparedness for terrorism and other emergencies, including promoting the adoption of a voluntary national preparedness standard such as the private sector preparedness standard developed by the American National Standards Institute and based on the National Fire Protection Association. (S. 2774, §§ 806.)

House: The House bill includes no provisions addressing the need for standards for private sector preparedness. The bill only includes a Sense of the Congress that encourages credit rating agencies to consider private sector disaster and emergency preparedness in assessing insurability and creditworthiness. (H.R. 10, § 5088.)

Analysis: The 9/11 Commission demonstrated that many tenants of the World Trade Center were unprepared for a catastrophic event. With nearly 85 percent of the critical infrastructure of our country owned and operated by the private sector, it is clear that a national preparedness standard, as implemented by the Senate bill, is necessary to guarantee the safety of all Americans.

Recommendation 29: Create National Counterterrorism Center

Grade: ● Yellow

Commission Recommendation: “We recommend the establishment of a National Counterterrorism Center (NCTC), built on the foundation of the existing Terrorist Threat Integration Center (TTIC). Breaking the older mold of national government organization, this NCTC should be a center for joint operational planning *and* joint intelligence, staffed by personnel from the various agencies. The head of the NCTC should have authority to evaluate the performance of the people assigned to the Center.” (9/11 Commission Report, p. 403.)

Senate: The Collins-Lieberman bill establishes the National Counterterrorism Center to develop strategy, integrate intelligence, and develop interagency plans for counterterrorism. The Director is given authority in counterterrorism to serve as the President’s principal advisor, advise on the adequacy of budget, and consult on hiring agency heads. The Director would direct and control the NCTC staff. (S. 2845, § 143.)

House: The House bill establishes the National Counterterrorism Center to integrate counterterrorism intelligence. The Director of the NCTC would report to the National Intelligence Director, not the President, and would not be statutorily involved in budget or hiring decisions. (H.R. 10, § 1021.)

Analysis: While both the House and Senate bills follow the 9/11 Commission’s recommendation to establish a National Counterterrorism Center, the House does not follow the recommendation to give the Director authority over NCTC staff. The Senate bill provides the NCTC Director with additional authorities and responsibilities, which are likely to have the effect of elevating the NCTC’s stature within the intelligence community.

Recommendation 30: Establish National Intelligence Director

Grade: ● Yellow

Commission Recommendation: “The current position of Director of Central Intelligence should be replaced by a National Intelligence Director with two main areas of responsibility: (1) to oversee national intelligence centers on specific subjects of interest across the U.S. government and (2) to manage the national intelligence program and oversee the agencies that contribute to it.” (9/11 Commission Report, p. 411.)

Senate: The Collins-Lieberman bill creates the position of National Intelligence Director (NID) with broad authorities to lead the intelligence community. The NID would be the lead official for determining the annual intelligence budget and reprogramming funds within that budget. (S. 2845, Title I.)

House: The House bill creates the position on National Intelligence Director with broad authorities to manage the intelligence community. The House bill does not contain strong budget authority for the NID, providing authorization to “participate” and “provide guidance” to other agencies in determining their budget levels. (H.R. 10, Title I.)

Analysis: The Senate bill responds fully and faithfully to the 9/11 Commission’s recommendation by vesting the National Intelligence Director with sufficient

authority to direct the component agencies of the intelligence community. The House bill does not provide such authority and therefore risks creating an NID that cannot fulfill the responsibilities of the office.

Recommendation 31: Improve the CIA

Grade: ● Yellow

Commission Recommendation: “The CIA Director should emphasize (a) rebuilding the CIA’s analytic capabilities; (b) transforming the clandestine service by building its human intelligence capabilities; (c) developing a stronger language program, with high standards and sufficient financial incentives; (d) renewing emphasis on recruiting diversity among operations officers so they can blend more easily in foreign cities; (e) ensuring a seamless relationship between human source collection and signals collection at the operational level; and (f) stressing a better balance between unilateral and liaison operations.” (9/11 Commission Report, p. 415.)

Senate: The Collins-Lieberman bill includes a requirement for the CIA Director to enhance analysis and intelligence collection, improve language proficiency, develop a more diverse workforce, and better balance unilateral and liaison operations. The bill requires annual reports on implementation of these goals and metrics to measure progress. (S. 2845, § 301.)

House: The House bill requires a report to Congress by the NID on current human intelligence capacity and a plan for improvement, if needed, across the intelligence community. The bill has provisions for improved education and language training across the intelligence community. (H.R. 10, §§ 1042, 1051, 1052.)

Analysis: The Senate bill responds to the 9/11 Commission’s recommendation to enhance the CIA’s core missions. The House bill addresses human intelligence capacity, but does not provide for the institutional changes or accountability to accomplish this goal.

Recommendation 32: Give the Department of Defense Control over Paramilitary Operations

Grade: ● Red

Commission Recommendation: “Lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to

the Defense Department. There it should be consolidated with the capabilities for training, direction, and execution of such operations already being developed in the Special Operations Command.” (9/11 Commission Report, p. 415.)

Senate: The McCain-Lieberman bill contains a sense of the Congress that the Secretary of Defense should have the lead responsibility for directing and executing paramilitary operations; the Special Operations Command should have lead responsibility within DOD; and the Secretary of Defense and the DCI should work jointly to plan paramilitary operations. (S. 2774, § 164.)

House: The House bill contains no provision for this recommendation.

Analysis: The Senate bill is consistent with the 9/11 Commission recommendation because it suggests a greater role for the DOD while still allowing for joint DOD-DCI planning.

Recommendation 33: Declassify the Intelligence Budget

Grade: ● Red

Commission Recommendation: “[T]he overall amounts of money being appropriated for national intelligence and to its component agencies should no longer be kept secret. Congress should pass a separate appropriations act for intelligence, defining the broad allocation of how these tens of billions of dollars have been assigned among the varieties of intelligence work.” (9/11 Commission Report, p. 416.)

Senate: The Collins-Lieberman bill would require public disclosure annually of the amounts requested and appropriated for intelligence. (S. 2845, § 201.)

House: The House bill does not include any provision to declassify the national intelligence budget.

Analysis: The Senate bill responds faithfully to the 9/11 Commission’s recommendation; the House bill does not.

Recommendation 34: Provide Incentives for Information Sharing

Grade: ● Red

Commission Recommendation: “Information procedures should provide incentives for sharing, to restore a better balance between security and shared knowledge.” (9/11 Commission Report, p. 417.)

Senate: The Collins-Lieberman bill would require department and agency heads, within 180 days, to reduce disincentives (including over classification) and provide affirmative incentives (including performance measures and awards) for information sharing. (S. 2845, § 206.)

House: The House bill charges the proposed National Intelligence Director with establishing policies and procedures to resolve conflicts between the need to share intelligence information and the need to protect intelligence sources and methods. (H.R. 10, § 1011.)

Analysis: The Senate bill responds to the 9/11 Commission recommendation by providing incentives for intelligence community personnel to better share information, thereby addressing the previous cultural barriers. The House bill shifts the DCI's responsibility to the NID, but does not otherwise affect the intelligence community's traditional failure to share information.

Recommendation 35: Create Information Sharing Network

Grade: ● Red

Commission Recommendation: “The president should lead the government-wide effort to bring the major national security institutions into the information revolution. He should coordinate the resolution of the legal, policy, and technical issues across agencies to create a ‘trusted information network.’” (9/11 Commission Report, p. 418.)

Senate: The Collins-Lieberman bill establishes a trusted information network to improve information sharing within the intelligence community and with additional personnel as appropriate. The bill requires the improved use of information technology to create and implement this network. (S. 2845, § 206.)

House: The House bill requires the creation of a secure “Information Sharing Environment” but provides no authorization for funds or direction regarding information technology. There is no explanation of what such an environment would consist of, or how it would resolve legal, policy, or technical issues. (H.R. 10, § 1017.) A floor amendment requires steps to enhance information sharing within the Department of Homeland Security, but does nothing to create a “trusted information network” to facilitate information sharing across agencies.

Analysis: The Senate bill responds fully and faithfully to the 9/11 Commission's recommendation. The House bill fails to substantially address this recommendation. In fact, the executive branch could determine that an

information sharing environment already exists and that Section 1017 poses no additional requirements.

Recommendation 36: Reform Congressional Intelligence Committees

Grade: ● Red

Commission Recommendation: “Congressional oversight for intelligence — and counterterrorism — is now dysfunctional. Congress should address this problem. We have considered various alternatives: A joint committee on the old model of the Joint Committee on Atomic Energy is one. A single committee in each house of Congress, combining authorizing and appropriating authorities, is another.” (9/11 Commission Report, p. 420.)

Senate: The McCain-Lieberman bill would require the Senate to amend its rules to create either a joint House-Senate intelligence committee or an intelligence committee in each chamber with authorizing and appropriations authority. (S. 2774, § 302.)

House: The House has no provision regarding the organization or authorities of congressional intelligence committees.

Analysis: The Senate bill requires that the 9/11 Commission’s recommendations be implemented by the Senate before adjourning. The House bill fails in whole to address this recommendation.

Recommendation 37: Reorganize Congress to Oversee Homeland Security Department

Grade: ● Red

Commission Recommendation: “Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.” (9/11 Commission Report, p. 421.)

Senate: The McCain-Lieberman bill would require the Senate to amend its rules to consolidate jurisdiction over matters relating to the Department of Homeland Security within a single committee with a nonpartisan staff. (S. 2774, § 302.)

House: The House bill includes a Sense of Congress that the House Rules Committee should consider recommendations from various committees to determine the appropriate organization of the House for homeland security activities. (H.R. 10, § 5027.)

Analysis: The Senate bill requires that the 9/11 Commission's recommendations be implemented by the Senate before adjourning. The House bill does not require that any action be taken, and in fact, the non-binding Sense of Congress provision does not even endorse the 9/11 Commission's recommendation that responsibility for homeland security in the Congress be consolidated.

Recommendation 38: Accelerate National Security Appointments

Grade: ● Green

Commission Recommendation: "Since a catastrophic attack could occur with little or no notice, we should minimize as much as possible the disruption of national security policymaking during the change of administrations by accelerating the process for national security appointments." (9/11 Commission Report, p. 422.)

Senate: The McCain-Lieberman bill requires the President-elect to submit national security nominations as soon as possible and direct the FBI to complete background checks expeditiously. It also provides for expedited security clearance processing for transition team members. Also, the Senate bill has the President select a single federal agency to conduct security clearance investigations. (S. 2774, § 401.)

House: The House bill contains similar provisions. However, the House bill allows each agency to continue doing its own investigations. (H.R. 10, § 5077.)

Analysis: Both bills address the Commission recommendation.

Recommendation 39: Improve FBI Counterterrorism Capabilities

Grade: ● Green

Commission Recommendation: “A specialized and integrated national security workforce should be established at the FBI consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture imbued with a deep expertise in intelligence and national security.” (9/11 Commission Report, pp. 425–426.)

Senate: The McCain-Lieberman bill requires the FBI to take specific recruitment and training actions to strengthen the intelligence workforce. (S. 2774, § 165.)

House: The House bill establishes a program for intelligence analysis, including recruitment and hiring of analysts and analyst training. In addition, it creates a specialized, integrated intelligence cadre. (H.R. 10, § 2193.) In addition, it raises the mandatory retirement age from 60 to 65, provides for retention and relocation bonuses, and creates a FBI Reserve Service. (H.R. 10, §§ 5051–5054.)

Analysis: Both the Senate and House bills address the 9/11 Commission recommendation.

Recommendation 40: Assess and Oversee the Northern Command’s Strategy

Grade: ● Yellow

Commission Recommendation: “The Department of Defense and its oversight committees should regularly assess the adequacy of Northern Command’s strategies and planning to defend the United States against military threats to the homeland.” (9/11 Commission Report, p. 428.)

Senate: The McCain-Lieberman bill requires the Secretary of Defense to assess regularly the adequacy of Northcom’s strategy and plans to protect the U.S. (S. 2774, § 808.)

House: The House bill requires the Secretary of Defense to assess the adequacy of Northcom’s strategy and plans to protect the U.S. (H.R. 10, § 5133.)

Analysis: The Senate bill fully implements the 9/11 Commission recommendation because it requires both DOD and congressional oversight regarding the Northern Command; the House bill does not.

Recommendation 41: Assessing, Planning, and Preparing for Threats to the Nation and Its Critical Infrastructure

Grade: ● Red

Commission Recommendation: “The Department of Homeland Security and its oversight committees should regularly assess the types of threats the country faces to determine (a) the adequacy of the government’s plans — and progress against those plans — to protect America’s critical infrastructure and (b) the readiness of the government to respond to the threats that the United States might face.” (9/11 Commission Report, p. 428.)

Senate: The Senate bill directs the Secretary of Homeland Security to submit biannual risk assessment and readiness reports to Congress in order to ensure progress. (S. 2774, § 807.)

House: The House bill does nothing to assess the collective or individual threats to our nation, improve the protection of our nation’s physical critical infrastructure, or require the executive branch to report on progress in planning or preparing to respond to any attack.

Analysis: The House bill fails to take even the most basic steps towards holding the Department of Homeland Security accountable for its plans and progress in protecting the nation against threats. Congress gave the Department the responsibility to assess and coordinate preparedness for threats to the United States, such as weapons of mass destruction and attacks on critical infrastructure and transportation networks. But the Department has repeatedly failed to establish or fulfill requirements to complete risk assessments, report on planning, and measure preparedness. The 9/11 Commission and the Senate bill recognize the necessity of requiring accountability from the Department in order to ensure the adequacy of planning and progress in readiness.

II. CONTROVERSIAL EXTRANEIOUS PROVISIONS

H.R. 10 includes over 50 extraneous provisions that were not recommended by the 9/11 Commission and are not present in either of the Senate bills. Most were included in the bill without being the subject of congressional hearings or

extensive public debate. Some of these extraneous provisions are not controversial, such as prohibiting the use of fake police badges for decorative or recreational purposes. But many of the extraneous provisions are “poison pills” that were not recommended by the 9/11 Commission and will delay and complicate passage of the legislation. Fourteen of the controversial extraneous provisions are summarized below.

Extraneous Provision 1: Intelligence Reorganization Authority

House Bill: Section 5021 grants the President expedited reorganization authority for the entire intelligence community. Under the provision, a presidential plan to reorganize the intelligence community would have an up or down vote, with no amendments, within 90 days of submission to Congress.

Analysis: This provision establishes a “fast-track” legislative procedure that would allow the executive branch to undo any of the intelligence reforms enacted in the legislation. Instead of enhancing congressional oversight, as the 9/11 Commission recommended, this provision would do the opposite, transferring power over how the intelligence community is organized from Congress to the President.

Extraneous Provision 2: Avoiding Senate Confirmation for Senior Intelligence Officials

House Bill: Section 5041 provides that senior intelligence and national security officials, including the Director of Central Intelligence, the Secretaries of the Air Force, Army, and Navy, and the Deputy Secretaries of the Departments of Defense, State, and Homeland Security do not need Senate confirmation if the Senate fails to act on their nomination within 30 legislative days.

Analysis: This provision would undermine congressional oversight of intelligence agencies by effectively repealing Senate confirmation of key appointees. Although the Commission recommended stronger congressional oversight over the intelligence community, this provision would effectively bypass the Senate’s advice and consent power for key positions within the intelligence community. Under the provision, the Senate Majority Leader could delay bringing an intelligence nominee to the Senate floor for consideration for 30 days, resulting in the nominee’s automatic appointment. The Commission, in contrast, recommended that the Senate adopt rules to require a confirmation vote for intelligence and national security nominees within 30 days.

Extraneous Provision 3: Expedited Removal of Aliens

House Bill: Section 3006 directs immigration officers to order the expedited removal “from the United States without further hearing or review” of (a) arriving aliens and (b) aliens already in the United States who have false travel documents, who have not been admitted or paroled into the United States, and who have not been living continuously in the United States for the previous five years. This does not apply if the alien in question is applying for asylum.

Analysis: This provision extends the use of expedited removal to aliens who have lived in the United States for several years. This is the first time expedited removal will be used against aliens already in the United States. Under current law, only arriving aliens are subject to expedited removal. On the House floor, an amendment to eliminate this provision passed by a 212-203 margin before being defeated on a re-vote.

Extraneous Provision 4: Revocation of Visas

House Bill: Section 3008 eliminates all judicial review of a revoked visa, including habeas corpus review. The provision also makes an alien deportable if his or her visa has been revoked. In addition, this section eliminates the requirement that a petitioner receive notice of the revocation of his or her immigration petition. This provision also transfers the authority to review petitions of revocation from the Attorney General to the Secretary of Homeland Security.

Analysis: Aliens who used a fraudulent visa to enter the country can already be removed based on unlawful admission. The provision eliminates the basic protections of notice and judicial review for discretionary decisions made by the Justice or State Department.

Extraneous Provision 5: Making It More Difficult to Obtain Asylum

House Bill: Section 3007 amends the Immigration and Nationality Act to change evidentiary requirements for all asylum-seekers. Under the provision, the burden of proof is on the asylum-seeker to establish that he or she is a “refugee” under the statute. In order to sustain this burden, the applicant must (a) corroborate his or her testimony or (b) at the discretion of the trier of fact, provide an explanation as to why such corroborating evidence cannot be presented. Judicial review of a determination as to the availability of corroborating evidence is limited.

Analysis: Many of this provision's requirements are not tailored to suspected terrorists, but apply to all asylum-seekers. The new evidentiary standards will make it more difficult for legitimate asylum-seekers to obtain asylum and may do nothing to prevent terrorists from entering the country.

Extraneous Provision 6: Limiting Judicial Review of Orders of Removal

House Bill: Section 3009 amends the Immigration and Naturalization Act to eliminate habeas corpus review of certain orders of removal. Under the provision, circuit courts of appeal may only hear petitions based on constitutional claims or pure questions of law and are the sole and exclusive means of defense against an order of removal.

Analysis: This provision further restricts federal court review of discretionary immigration decisions and applies these restrictions to pending cases.

Extraneous Provision 7: Deportation and Indefinite Detention of Aliens

House Bill: Section 3031 amends the Immigration and Nationality Act to permit individuals whom the Secretary of Homeland Security determines to be "a danger to the security of the United States" to be removed to a country where they are likely to be persecuted or threatened. Section 3032 empowers the Secretary of Homeland Security, at his "unreviewable discretion," to detain these individuals until they are removed.

Analysis: These provisions allow for (a) the deportation of individuals to countries where they face persecution and (b) the indefinite detention of these individuals pending removal. There are no time limits on this detention and no judicial review of the detention order. Where an individual is determined to be "a danger to the security of the United States" but cannot be removed because of a protection granted by immigration law, detention is required and may be permanent.

Extraneous Provision 8: Limiting Financial Disclosure for the Intelligence Community

House Bill: Section 5043 amends the Ethics in Government Act of 1978 by reducing public disclosure of the income and assets of the heads of intelligence

agencies. Under section 5043, the Director of National Intelligence and other senior intelligence officials would no longer be required to disclose assets worth over \$50 million, \$25 million, or even \$5 million.

Analysis: Instead of enhancing congressional and public oversight of the intelligence community, as the 9/11 Commission recommended, this provision would actually restrict the public's access to information about the backgrounds and potential conflicts of interest of key government officials. This extraneous provision would allow multimillionaires serving the public to keep their finances secret.

Extraneous Provision 9: National Drivers License and Birth Certificate Requirements

House Bill: Sections 3051 through 3067 place a long list of requirements on the states relating to drivers licenses and birth certificates, including what information must appear on drivers licenses and birth certificates and what documents must be required to receive a state authenticated drivers license or birth certificate. The provisions require the verification of all identity documents before a drivers license or birth certificate is issued, as well as the creation of a national database of state drivers license records accessible by all states and the federal government. The provisions also require that states create a national network of electronic birth and death registration information.

Analysis: These provisions go well beyond the 9/11 Commission recommendation that the federal government "set standards for the issuance of birth certificates and sources of identification," which could be achieved without the elaborate and overly burdensome requirements set forth in the bill. They are opposed by the National Governors Association and the National Association of State Legislators, which predict that the new paperwork burdens will result in individuals waiting hours, if not days, to get a new drivers license or birth certificate. Civil liberties groups object to the potential loss of privacy created by the new national databases.

Moreover, the linkage of all state databases, without any requirements for security or privacy protection, creates a severe risk of identity theft.

Extraneous Provision 10: Grand Jury Information Sharing

House Bill: Section 2191 amends the Federal Rules of Criminal Procedure to permit a government attorney to disclose any grand jury matter involving a terrorist threat or foreign intelligence-gathering activities to foreign governments.

Analysis: This provision is problematic because officials of foreign governments who receive secret grand jury information may not be subject to penalties for further dissemination.

Extraneous Provision 11: FISA Amendment

House Bill: The Foreign Intelligence Surveillance Act of 1978 permits searches and surveillance of agents of foreign powers and terrorist organizations on U.S. soil through a secret court. Section 2001 amends FISA by expanding the definition of “agent of a foreign power” to include individuals who act alone. This provision would permit secret surveillance of an individual in the United States, even if the individual could not be tied to a terrorist organization or a foreign country.

Analysis: This provision expands the use of secret intelligence court orders, which can be issued under a far lower standard than traditional warrants or wire taps.

Extraneous Provision 12: Federal Flight Deck Officer Weapon Carriage Pilot Program

House Bill: Section 2182 directs the Transportation Safety Administration to implement a pilot program to allow pilots participating in the federal flight deck officer program to transport their firearms on their persons. If, after a review, the Assistant Secretary determines that the resulting safety level is comparable to the status quo, the Assistant Secretary must allow all participating pilots the option of carrying their firearm on their persons.

Analysis: After the September 11 attacks, there was an extensive debate in Congress about whether pilots should have guns in the cockpit. Ultimately, pilots were allowed to have guns in the cockpits under specific rules and with specific training requirements. Without any substantive debate or hearings, this provision would significantly expand the authority of pilots to possess weapons, granting pilots what amounts to a federal concealed weapons permit. Further, it authorizes a single Assistant Secretary to make the pilot program permanent.

Extraneous Provision 13: Undersecretary of Homeland Security for Tourism

House Bill: As amended on the House floor, H.R. 10 establishes the position of Undersecretary of Homeland Security for the Private Sector and Tourism. The new Undersecretary is to coordinate with the Commerce Department in order to promote tourism and travel to the United States.

Analysis: This provision requires homeland security resources to be expended on increasing tourism, rather than on fighting terrorism.

Extraneous Provision 14: Waiving Environmental Laws to Expedite Construction of a Border Fence

House Bill: Section 3121 exempts construction of two sections of the 14-mile security fence at the San Diego border from various environmental and Native American protection laws.

Analysis: Despite ongoing negotiations regarding the construction of the security fence, this provision unnecessarily waives multiple environmental statutes, including the Clean Air Act, Clean Water Act, and Coastal Zone Management Act, as well as protections for endangered species and the bald eagle. The provision also eliminates statutory protections for Native American burial grounds and cultural and historical sites in the construction area.