

February 12, 2019

VOTE “YES” ON THE MCGOVERN AMENDMENT TO H.J. RES. 37

VOTE “NO” ON THE BUCK AMENDMENT TO H.J. RES. 37

VOTE “YES” ON FINAL PASSAGE OF H.J. RES. 37, IF THE MCGOVERN AMENDMENT PASSES

RE: ACLU Position on H.J. Res. 37 and Amendments



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Susan Herman
President

Anthony Romero
Executive Director

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*National Political
Director*

Dear Representative:

The American Civil Liberties Union strongly urges you to vote “yes” on the McGovern Amendment to H.J. Res. 37, the joint resolution removing U.S. forces from hostilities against the Houthi forces in Yemen. The ACLU also strongly urges you to vote “no” on the Buck Amendment to H.J. Res. 37. Finally, if the joint resolution is amended by the McGovern Amendment, the ACLU will also strongly urge you to vote “yes” on final passage of H.J. Res. 37. The ACLU will score all three of these votes.

Vote “YES” on the McGovern Amendment

The ACLU supports the McGovern Amendment because it will remove any colorable argument by the Executive Branch that the scope of the resolution is somehow unclear, or that the joint resolution, if enacted, would have no legal effect because of the Executive Branch’s mistaken interpretation of the term “hostilities” under the War Powers Resolution. As amended by the McGovern Amendment, H.J. Res. 37 would make clear that the President must “remove United States Armed Forces from hostilities directed at Houthi forces in or affecting the Republic of Yemen,” which is a clear statement of the scope of the hostilities that must end.

That statement modified by the McGovern Amendment is clear on its own, but an additional sentence at the end of section 2 of H.J. Res. 37 reinforces this clarity of purpose. The last sentence in section 2, which tracks an amendment offered by Senator Todd Young during the last Congress, specifies the kinds of activities considered “hostilities” for the purpose of the resolution. It further ends any colorable argument by the Executive Branch that “hostilities” somehow does not include the use of U.S. forces to assist in a sustained Saudi-led bombing

campaign that has caused what a United Nations committee has called “the largest humanitarian crisis in the world.”

Vote “NO” on the Buck Amendment

The ACLU strongly opposes the Buck Amendment to H.J. Res. 37 because it appears to suggest that the United States may share intelligence with any foreign country, presumably including the Kingdom of Saudi Arabia, “if the President determines such sharing is appropriate and in the national security interests of the United States.” This provision of the Buck Amendment mistakenly implies that the President has unfettered authority to provide foreign countries with intelligence related to the hostilities referenced in the resolution, as long as the President himself or herself determines “such sharing is appropriate and in the national security interests of the United States.”

The Buck Amendment fails to acknowledge explicitly that a president is constrained by law. Intelligence sharing must be consistent with the Constitution, federal law, and the United States’ obligations under international law. Particularly given the serious allegations, including of potential war crimes violations and other violations of international law by Saudi Arabia and United Arab Emirates forces, reported by the United Nations’ Group of Regional and International Eminent Experts on Yemen, Congress should be exceedingly careful in setting explicit limitations on any intelligence sharing between the United States and members of the Saudi-led campaign against the Houthis in Yemen. The Buck Amendment shows no regard for the rule of law, and the significant legal restraints on the United States—including on the President—in sharing intelligence with foreign countries that have credibly been alleged to have committed horrific crimes and other violations of law. While we do not believe that the Buck Amendment would relieve the President of any existing legal obligations, there is no reason for Congress to risk any confusion and resulting harm.

Vote “YES” on Final Passage, If the McGovern Amendment Has Already Passed

H.J. Res. 37, if and only if amended by the McGovern Amendment, would be an important assertion by Congress of its Article I constitutional sole authority to decide whether, when, and against whom the United States will use lethal force. As amended, the joint resolution would be a clear statement by Congress—with legal effect—that Congress has not authorized the U.S. role in the Saudi-led fight against the Houthi forces, and that the Executive Branch must end its role.

Across two administrations, the Executive Branch has acted without authorization from Congress, in violation of both the Constitution and the War Powers Resolution. Without any authorization from Congress, President Barack Obama ordered the use of American armed forces to participate in the Saudi-led hostilities against the

Houthi forces in the Republic of Yemen. Over the past two years, President Donald Trump has continued, and at times expanded, the role of American armed forces in these hostilities, again without any congressional authorization. This longstanding and persistent use of U.S. armed forces has been in violation of both the Constitution and the War Powers Resolution.

If amended by the McGovern Amendment, H.J. Res. 37 will highlight and reinforce the illegality of the U.S. role in support of the Saudi-led forces, will reassert the constitutional authority of Congress, and will reinforce the legal, humanitarian, and political need to end the U.S. role. We strongly urge you to support ending the U.S. role in the catastrophic harm to Yemenis caused by the Saudi-led campaign.

The ACLU strongly urges you to support the McGovern Amendment, oppose the Buck Amendment, and support the resolution itself if amended by the McGovern Amendment. Please do not hesitate to contact us at canders@aclu.org or 202-675-2308 if you have any questions. Thank you for your attention to this issue.

Sincerely,



Faiz Shakir
National Political Director



Christopher E. Anders
Deputy Director, Washington
Legislative Office