

THE CONSTITUTION PROJECT



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Contact: Larry Akey, Director of Communications, (202)580-6922 [o] or (202)580-9313 [c]
lakey@constitutionproject.org

National Security Experts Want Public Debate of Military Commission Changes

WASHINGTON, D.C. -- Twenty-five national security experts from across the political spectrum want Congress to hold public hearings before making changes to the law for prosecuting suspected terrorists in military commissions.

Military commission proceedings have been underway at Guantanamo Bay since 2011 for six detainees accused of planning the 9/11 attacks, and one accused of plotting the bombing of the U.S.S. Cole, with the anticipated trials still several years away. The government is seeking the death penalty against six of the defendants. In mid-April, the Department of Defense asked Congress to consider several amendments to the Military Commissions Act it said would improve the efficiency of the process.

"There are real problems with the military commissions, but the proposed amendments to the MCA do not address them -- and in some cases raise serious constitutional concerns," the experts wrote in a [May 10 statement](#) to members of the Senate Armed Services Committee, which is considering the changes requested by the Pentagon as part of the annual defense authorization legislation. The experts are all members of The Constitution Project's bipartisan [Liberty and Security Committee](#) or the [Task Force on Detainee Treatment](#).

The statement notes that several of the proposed amendments "raise serious due process concerns." One change would allow the judge to convene a hearing where the accused appears via video teleconference, even over the objections of the accused or his counsel. However, the Sixth Amendment guarantees defendants the right to confront the witnesses against them, and the Fifth Amendment guarantees that no one shall lose life or liberty without due process of law. "Both rights can be jeopardized when a defendant is involuntarily absent from a hearing -- particularly a complex hearing that includes witness testimony, such as a suppression hearing in a capital case," the experts wrote.

Another proposed amendment requested by the Pentagon would weaken the statutory prohibition on undue command influence, which could permit political appointees to interfere with the prosecution's or defense counsel's legal strategy, the statement says.

"Fifteen years after the 9/11 attacks and the Cole bombing, it is perfectly understandable that the

government, the families of the victims and the public would all be frustrated by the glacial pace of bringing these alleged perpetrators to justice," said Virginia Sloan, president of The Constitution Project, a nonpartisan legal watchdog and advocacy group.

"But tinkering around the edges of an unfixable law, especially without full public discussion, is not the solution," she said. Instead, Sloan suggested Congress drop its opposition to trying the cases in federal court.

The statement notes that more people have been convicted on terrorism-related charges in federal court -- and are currently incarcerated in federal prison -- than the entire remaining population at Guantanamo. In comparison, military commissions have obtained only eight convictions, four of which were subsequently overturned by federal appeals courts. Military commissions cost \$91 million a year.

The Senate Armed Services Committee is scheduled to begin considering the annual defense authorization legislation, including the changes requested by the Pentagon, on May 11. The committee traditionally debates and votes on the bill in closed sessions.

The statement and full list of signers is available at constitutionproject.org.

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[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.