

**September 27, 2006**

**Press Release** | Contact: Danielle Langone (202) 225-6416

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WASHINGTON, DC—U.S. Congressman Peter DeFazio voted today against a bill that would create an unfair and possibly unconstitutional trial system for foreign military detainees and is vague as to whether or not the U.S. will abide by the Geneva Conventions. The bill passed the House today.

“I support establishing military tribunals to try foreign terrorists held by the United States,” DeFazio said. “But a variety of military leaders and legal experts have raised serious concerns about the constitutionality and wisdom of the specific legislation considered today. We must uphold American values and respect for the rule of law. Doing so is essential to protecting our own military, intelligence and civilian personnel stationed overseas. And it is essential for winning the war on terror against al-Qaeda and the war of ideas in the Muslim world. We should hold ourselves to a higher standard of conduct than our enemies hold themselves. Unfortunately, while this bill contains the beginnings of a reasonable military tribunal process, it ultimately falls short.”

One of the primary reasons DeFazio voted against the bill is because it does not create a sustainable system to expedite the trials of terrorists held by the U.S. Congress considered today's legislation only after the Supreme Court threw out the original military tribunal process set up by the Bush administration. However, there are significant constitutional and legal questions with the current legislation, which means it will certainly be subject to additional legal wrangling and court rulings, including consideration by the Supreme Court. That means further delays in prosecuting terrorists. Further, any prosecutions undertaken as a result of this bill could be thrown out later if courts find the tribunal process set up by this legislation to have constitutional or other legal flaws. That could lead to terrorists being set free and would force the U.S. back to where it started, without a working military commission system.

DeFazio, along with numerous military leaders and other legal experts, have expressed several concerns about the legislation: (1) It allows convictions, including a death sentence, based on evidence the accused can never see or challenge; (2) it allows convictions based on evidence obtained through torture and abusive interrogations; (3) it allows convictions based on hearsay evidence rather than requiring witnesses to actually testify and be cross-examined; (4) it allows the president too much discretion in interpreting U.S. obligations under the Geneva Conventions, which could allow CIA interrogators to use abusive techniques that have been

outlawed by the Pentagon; and (5) it prohibits any detainees from filing habeas corpus appeals. Quotes from numerous military leaders who have raised concerns about aspects of this legislation follow:

General criticism of the legislation: &quot;Following the law of war protects our military in the field, enhances our national reputation at home and abroad, and promotes the growth of the rule of law and democracy that in the end are our strongest weapons against terrorism.&quot; - Lt. Cmdr. Charles Swift, Office of Chief Defense Counsel, Office of Military Commissions, Department of Defense (Testimony before the Senate Judiciary Committee, 7/11/06)

General criticism of the legislation: &quot;'It methodically strips rights' guaranteed by laws and treaties and appears to be unconstitutional.&quot; - Marine Corps Col. Dwight Sullivan, Chief Defense Counsel for the Defense Department's Office of Military Commissions (as reported in the Washington Post, 9/23/2006)

Regarding the need to preserve U.S. obligations under the Geneva Conventions: &quot;If any agency of the U.S. government is excused from compliance with these standards, or if we seek to redefine what Common Article 3 requires, we should not imagine that our enemies will take notice of the technical distinctions when they hold U.S. prisoners captive. If degradation, humiliation, physical and mental brutalization of prisoners is decriminalized or considered permissible under a restrictive interpretation of Common Article 3, we will forfeit all credible objections should such barbaric practices be inflicted upon Americans prisoners.&quot; - Letter to the Senate Armed Services Committee from 27 retired military leaders, 9/12/2006

Regarding the prohibition of habeas corpus appeals: &quot;It is inconsistent with our own history and tradition to take this action. If we diminish or tarnish our values, those values that the Founders fought for and memorialized in the Constitution and have been carefully preserved by the blood and honor of succeeding generations, then we will have lost a major battle in the war on terror. There has never been a time when it is more important for us to remember who we are. We owe that both to honor the memory of the men and women who gave us those rights and to hope for our progeny for whom we must preserve and protect them. We don't want to leave them a diminished Constitution.&quot; - Rear Admiral John Hutson (ret.), from USN JAG (Testimony before the Senate Judiciary Committee, 9/25/2006).

Regarding barring defendants from access to some evidence: &quot;I am not aware of any situation in the world where there is a system of jurisprudence that is recognized by civilized

people where an individual can be tried and convicted without seeing the evidence against him. And I don't think that the United States needs to become the first." - Marine Corps Brig. Gen. James C. Walker, staff judge advocate to the commandant (House Armed Service Committee hearing, 9/7/2006)

Regarding allowing convictions based on evidence obtained through abusive interrogations: "Sir, I don't believe that a statement that is obtained under coercive, under torture, certainly, and under coercive measures, should be admissible." - Major General Scott Black, judge advocate general for the Army (Senate Armed Services Committee hearing, 9/2/2006) The legislation must now be passed by the Senate.