

Statement on Signing the Consolidated Appropriations Act, 2017

May 5, 2017

Today I have signed into law H.R. 244, the Consolidated Appropriations Act, 2017, which authorizes appropriations that fund the operation of the Federal Government through September 30, 2017.

Certain provisions of this bill (e.g., Division C, sections 8049, 8058, 8077, 8081, and 8116; Division J, under the heading "Contribution for International Peacekeeping Activities") would, in certain circumstances, unconstitutionally limit my ability to modify the command and control of military personnel and materiel or unconstitutionally vest final decision-making authority in my military advisers. Further, Division B, section 527; Division C, section 8101; and Division F, section 517 each restrict the transfer of Guantanamo detainees to the United States; Division C, section 8103 restricts the transfer of Guantanamo detainees to foreign countries and does not include an exception for when a court might order the release of a detainee to certain countries. I will treat these, and similar provisions, consistently with my constitutional authority as Commander in Chief.

Certain provisions (e.g., Division C, sections 8040, 8075, 8114, 9005, 9011, 9014, and under the headings "Operation and Maintenance, Defense-Wide," "Afghanistan Security Forces Fund," "Counter-ISIL Train and Equip Fund," and "Joint Improvised Threat Defeat Fund") require advance notice to the Congress before the President may direct certain military actions or provide certain forms of military assistance. In approving this bill, I wish to reiterate the longstanding understanding of the executive branch that these types of provisions encompass only military actions for which providing advance notice is feasible and consistent with my constitutional authority and duty as Commander in Chief to protect national security.

Numerous provisions could, in certain circumstances, interfere with the exercise of my constitutional authorities to negotiate international agreements (e.g., Division B, sections 509, 519, 530; Division J, sections 7010(c), 7013(a), 7025(c), 7029, 7031(e)(2), 7037, 7042, 7043, 7044, 7045, 7048, 7060, 7070, and 7071), to receive ambassadors (e.g., Division J, section 7031(c)), and to recognize foreign governments (e.g., Division J, section 7070(b)(2)(A)). My Administration will treat each of these provisions consistently with my constitutional authorities in the area of foreign relations.

Division E, section 622 prohibits the use of funds to pay the salaries and expenses for several advisory positions in the White House. The President has well-established authority to supervise and oversee the executive branch and to obtain advice in furtherance of this supervisory authority. The President also has the prerogative to obtain advice that will assist him in carrying out his constitutional responsibilities, not only from executive branch officials and employees outside the White House, but also from advisers within it. Legislation that significantly impedes my ability to supervise or obtain the views of appropriate senior advisers violates the separation of powers by undermining my ability to exercise my constitutional responsibilities, including to take care that the laws be faithfully executed. My Administration will, therefore, construe section 622 consistently with these Presidential prerogatives.

Division B, section 537 provides that the Department of Justice may not use any funds to prevent implementation of medical marijuana laws by various States and territories. I will treat

this provision consistently with my constitutional responsibility to take care that the laws be faithfully executed.

Several provisions (e.g., Division C, section 10006(b); Division D, section 401; Division J, section 7041(b)(3); Division N, sections 310, 311, 402, 502(d), and 503) mandate or regulate the submission of certain executive branch information to the Congress. I will treat these provisions in a manner consistent with my constitutional authority to withhold information that could impair foreign relations, national security, the deliberative processes of the executive branch, or the performance of my constitutional duties. In particular, Division E, section 713(1) and (2) prohibits the use of appropriations to pay the salary of any Federal officer or employee who interferes with or prohibits certain official communications between Federal employees and Members of Congress or who takes adverse action against an officer or employee because of such communications. I will construe these provisions not to apply to any circumstances that would detract from my authority to supervise, control, and correct employees' communications with the Congress related to their official duties, including in cases where such communications would be unlawful or could reveal confidential information protected by executive privilege.

Division C, section 8009 prohibits the use of funds to initiate a special access program unless the congressional defense committees receive 30 days' advance notice. The President's authority to classify and control access to information bearing on the national security flows from the Constitution and does not depend upon a legislative grant of authority. Although I expect to be able to provide the advance notice contemplated by section 8009 in most situations as a matter of comity, situations may arise in which I must act promptly while protecting certain extraordinarily sensitive national security information. In these situations, I will treat these sections in a manner consistent with my constitutional authorities, including as Commander in Chief.

Several provisions (e.g., Division C, section 8134; Division J, section 7063; and Division K, section 418) prohibit the use of funds to deny an Inspector General access to agency records or documents. I will construe these, and similar provisions, consistently with my authority to control the dissemination of information protected by executive privilege.

Several provisions prohibit the use of funds to recommend legislation to the Congress (e.g., Division A, section 716; Division C, sections 8005, 8014, 8070(a)(2), 8076; and Division H, section 210), or require recommendations of legislation to the Congress (e.g., Division C, section 8012(b), 8035(b); Division F, section 532; Division G, sections 101, 102, and a proviso under the heading "Administrative Provisions—Forest Service"; Division N, sections 605(c) and 610). Because the Constitution gives the President the authority to recommend "such Measures as he shall judge necessary and expedient" (Article II, section 3), my Administration will continue to treat these, and similar provisions, as advisory and non-binding.

Numerous provisions authorize congressional committees to veto a particular use of appropriated funds (e.g., Division C, section 8058), or condition the authority of officers to spend or reallocate funds on the approval of congressional committees (e.g., Division A, sections 702, 706, and 717; Division D, sections 101(a) and 201(a); Division G, sections 403 and 409; Division K, sections 188, 222, 405 and 406). These are impermissible forms of congressional aggrandizement in the execution of the laws other than by enactment of statutes. My Administration will notify the relevant committees before taking the specified actions and will accord the recommendations of such committees all appropriate and serious consideration,

but it will not treat spending decisions as dependent on the approval of congressional committees.

My Administration shall treat provisions that allocate benefits on the basis of race, ethnicity, and gender (e.g., Division B, under the heading "Minority Business Development"; Division C, sections 8016, 8021, 8038, and 8042; Division H, under the headings "Departmental Management Salaries and Expenses," "School Improvement Programs," and "Historically Black College and University Capital Financing Program Account"; Division K, under the heading "Native American Housing Block Grants"; and Division K, section 213) in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Constitution's Fifth Amendment.

DONALD J. TRUMP

The White House,
May 5, 2017.

NOTE: H.R. 244, approved May 5, was assigned Public Law No. 115–31. An original was not available for verification of the content of this statement.

Categories: Bill Signings and Vetoes : Consolidated Appropriations Act, 2017, signing statement.

Subjects: Budget, Federal : Appropriations :: Consolidated; Cuba : Guantanamo Bay, U.S. Naval Base :: Detention of alleged terrorists; Defense and national security : Classified national security information; Health and medical care : Marijuana, medical uses; Legislation, enacted : Consolidated Appropriations Act, 2017; Presidency, U.S. : Constitutional role and powers; Presidency, U.S. : Separation of powers; Terrorism : Counterterrorism efforts; Terrorism : Transfer of detainees at Guantanamo Bay.

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