APPENDIX EIGHT

TEXT OF THE WAR POWERS CONSULTATION ACT OF 2009

WHEREAS, the War Powers Resolution of 1973 has not worked as intended, and has added to the divisiveness and uncertainty that exists regarding the war powers of the President and Congress; and,

WHEREAS, the American people want both the President and Congress involved in the decision-making process when United States armed forces are committed to significant armed conflict, and such involvement of both branches is important in building domestic understanding and political support for doing so and ensuring the soundness of the resulting decision; and,

WHEREAS, past efforts to call upon the Judicial Branch to define the constitutional limits of the war powers of the Executive and Legislative Branches of government have generally failed because courts, for the most part, have declined jurisdiction on the grounds that the issues involved are "political questions" or that the plaintiffs lack standing; and,

WHEREAS, it harms the country to have the War Powers Resolution of 1973, the centerpiece statute in this vital area of American law, regularly and openly questioned or ignored; and,

WHEREAS, the country needs to replace the War Powers Resolution of 1973 with a constructive and practical way in which the judgment of both the President and Congress can be brought to bear when deciding whether the United States should engage in significant armed conflict, without prejudice to the rights of either branch to assert its constitutional war powers or to challenge the constitutional war powers of the other branch.

NOW THEREFORE BE IT RESOLVED:

Section 1. Short Title.

The War Powers Resolution of 1973, Pub. L. No. 93-148, is hereby repealed. This Act shall be cited as the War Powers Consultation Act of 2009.

Section 2. Purpose.

The purpose of this Act is to describe a constructive and practical way in which the judgment of both the President and Congress can be brought to bear when deciding whether the United States should engage in significant armed conflict. This Act is not meant to define, circumscribe, or enhance the constitutional war powers of either the Executive or Legislative Branches of government, and neither branch by supporting or complying with this Act shall in any way limit or prejudice its right or ability to assert its constitutional war powers or its right or ability to question or challenge the constitutional war powers of the other branch.

Section 3. Definitions.

3(A). For purposes of this Act, "significant armed conflict" means (i) any conflict expressly authorized by Congress, or (ii) any combat operation by U.S. armed forces lasting more than a week or expected by the President to last more than a week.

3(B). The term "significant armed conflict" shall not include any commitment of United States armed forces by the President for the following purposes: (i) actions taken by the President to repel

attacks, or to prevent imminent attacks, on the United States, its territorial possessions, its embassies, its consulates, or its armed forces abroad; (ii) limited acts of reprisal against terrorists or states that sponsor terrorism; (iii) humanitarian missions in response to natural disasters; (iv) investigations or acts to prevent criminal activity abroad; (v) covert operations; (vi) training exercises; or (vii) missions to protect or rescue American citizens or military or diplomatic personnel abroad.

3(C). The "Joint Congressional Consultation Committee" consists of:

(i) The Speaker of the U.S. House of Representatives and the Majority Leader of the Senate;

(ii) The Minority Leaders of the House of Representatives and the Senate;

(iii) The Chairman and Ranking Minority Members of each of the following Committees of the House of Representatives:

(a) The Committee on Foreign Affairs,

(b) The Committee on Armed Services,

(c) The Permanent Select Committee on Intelligence, and

(d) The Committee on Appropriations.

(iv) The Chairman and Ranking Minority Members of each of the following Committees of the Senate:

(a) The Committee on Foreign Relations,

(b) The Committee on Armed Services,

(c) The Select Committee on Intelligence, and

(d) The Committee on Appropriations.

3(D). The Chairmanship and Vice Chairmanship of the Joint Congressional Consultation Committee shall alternate between the Speaker of the House of Representatives and the Majority Leader of the Senate, with the former serving as the Chairman in each odd-numbered Congress and the latter serving as the Chairman in each even-numbered Congress.

Section 4. Consultation and Reporting.

4(A). The President is encouraged to consult regularly with the Joint Congressional Consultation Committee regarding significant matters of foreign policy and national security.

4(B). Before ordering the deployment of United States armed forces into significant armed conflict, the President shall consult with the Joint Congressional Consultation Committee. To "consult," for purposes of this Act, the President shall provide an opportunity for the timely exchange of views regarding whether to engage in the significant armed conflict, and not merely notify the Joint Congressional Consultation Committee that the significant armed conflict is about to be initiated. If one of the military actions described in Section 3(B) of this Act becomes a significant armed conflict as defined in Section 3(A), the President shall similarly initiate consultation with the Joint Congressional Consultation Committee.

4(C). If the need for secrecy or other emergent circumstances precludes consultation with the Joint Congressional Consultation Committee before significant armed conflict is ordered or begins, the President shall consult with the Joint Congressional Consultation Committee within three calendar

days after the beginning of the significant armed conflict.

4(D). Before ordering or approving any significant armed conflict, the President shall submit a classified report, in writing, to the Joint Congressional Consultation Committee setting forth the circumstances necessitating the significant armed conflict, the objectives, and the estimated scope and duration of the conflict.

4(E). If the need for secrecy or other emergent circumstances precludes providing such a report before significant armed conflict is ordered or begins, such a report shall be provided to the Joint Congressional Consultation Committee within three calendar days after the beginning of the significant armed conflict.

4(F). For the duration of any significant armed conflict, the President shall consult with the Joint Congressional Consultation Committee at least every two months.

4(G). On the first Monday of April of each year, the President shall submit a classified written report to the Joint Congressional Consultation Committee describing (i) all significant armed conflicts in which the United States has been engaged during the previous year; (ii) all other operations, as described in Section 3(B) of this Act, other than covert operations, in which the United States was engaged in the same time period.

4(H). Congress shall employ a permanent, bi-partisan joint professional staff to facilitate the work of the Joint Congressional Consultation Committee under the direction of its Chairman and Vice Chairman. The members of the Joint Congressional Consultation Committee and the professional staff shall be provided all relevant national security and intelligence information.

Section 5. Congressional Approval or Disapproval.

5(A). If Congress has not enacted a formal declaration of war or otherwise expressly authorized the commitment of United States armed forces in a significant armed conflict, then within 30 calendar days after the commitment of United States armed forces to the significant armed conflict, the Chairman and Vice Chairman of the Joint Congressional Consultation Committee shall introduce an identical concurrent resolution in the Senate and House of Representatives calling for approval of the significant armed conflict.

5(B). Such a concurrent resolution shall be referred to the House of Representatives Committee on Foreign Affairs and Senate Committee on Foreign Relations and the Committees shall report on the concurrent resolution within seven calendar days. When the Committees so report, the concurrent resolution may be called up by any Senator or Representative, shall be highly privileged, shall become the pending business of both Houses, shall be voted on within 5 calendar days thereafter, and shall not be susceptible to intervening motions, except that each house may adjourn from day to day.

5(C). If the concurrent resolution of approval is defeated, any Senator or Representative may file a joint resolution of disapproval of the significant armed conflict, and the joint resolution shall be highly privileged, shall become the pending business of both Houses, shall be voted on within five calendar days thereafter, and shall not be susceptible to intervening motions, except that each house may adjourn from day to day. The effect of the passage of this joint resolution shall not have the force of

law unless presented to the President and either signed by the President or subsequently approved by Congress over the President's veto, but Congress may specify the effect of the joint resolution of disapproval in the internal rules of each House of Congress.

5(D). Nothing in this Section 5 alters the right of any member of Congress to introduce a measure calling for the approval, disapproval, expansion, narrowing, or ending of a significant armed conflict.

Section 6. Treaties.

The provisions of this Act shall not be affected by any treaty obligations of the United States.

Section 7. Severability.

If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.