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United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

September 25, 2006

Memorandum For: Senator Bill Frist, Majority Leader

From: Senator John Warner, Chairman

Subject: Status of Defense Authorization Conference Report

The Chairmen and Ranking Members of the Senate and the House met to resolve the customary differences between the bills on six occasions. The conferees met many more times at the panel and full conference level. In addition, Chairman Hunter and I have conferred on a regular basis.

Issues that arise from the provisions in the two bills have been mutually resolved.

There remains but one policy issue relating to the desire of a number of colleagues, almost all non-members of the defense committees, to have the conferees agree to include in the conference report nine or more bills all of which the Parliamentarian would opine are "out-of-scope".

I have firmly opposed putting any out-of-scope bills in the conference report. Chairman Hunter will speak for himself, but he presently believes several bills should be considered for inclusion by the conferees.

My strong objection is based on the following precedents:

- Section 102 of S.2349, The Legislative Transparency and Accountability Act of 2006 which passed the Senate on May 23, 2006 clearly expresses the views of the Senate that out-of-scope provisions are not to be included in conference reports.
- Rule 28 of the Standing Rules of the Senate make conference reports that include out-of-scope provisions subject to a point of order.

(There is strong reason to believe a point of order will be raised should the conference report have out-of-scope bills attached.)

- Riddick's Manual on Senate Procedure requires that a conference report have a majority of signatures of the conferees in order to be considered by the Senate. I know of three signatures on the Republican side, mine and two others, in opposition to including out-of-scope bills. There may be others who share our views.

- Further, the Ranking Member, Carl Levin, has given me a letter stating "I am prepared to sign, and believe my fellow Democratic Members of the Committee will be willing to sign, a conference report that conforms to the one that you and I have discussed, provided no out-of-scope bills are added to it."
- Consequently, there are not even sufficient signatures to effect a partisan Republican report, 13 signatures being required.
- Lastly, I have been privileged each of my 28 years on this Committee, serving under seven Chairmen, to participate as a conferee in all steps leading to a conference report. This Committee has an historic record of submitting conference reports with bipartisan support on the signature sheets. The Committee has, under the Constitution, a specific mandate in Article 1, Section 7:

"To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;"

Given the gravity of public concern for our Service persons today, and their families, especially those serving in Iraq and Afghanistan, I feel very strongly it is in the Nation's interest we continue this tradition of bipartisanship.

*Respectfully,
John Warner*