

AlterNet

VOTER GUIDES



Progressive Voter Guide to Human Rights and Civil Liberties

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There's no question the Bush administration has presided over some of the most sweeping expansions of executive power in our country's history. Most of them, like the government's secret spying program, can be traced back to September 11. The terrorist attacks changed the rules of the counterterrorism game by bestowing the president with a perceived, and then actual, authority to dictate the rules. As Vice President Dick Cheney famously told the late Tim Russert days after 9/11, "A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we're going to be successful. That's the world these folks operate in, and so it's going to be vital for us to use any means at our disposal, basically, to achieve our objective."

The words are chilling still, especially after seeing hundreds of innocent men wrongly detained Guantanamo and the torture photos at Abu Ghraib. But it is important to remember that the expansion of executive power for counterterrorism has been a bipartisan project. Many of the programs that comprised the post-9/11 rule changes were in the works before the planes hit the Twin Towers and the Pentagon. The CIA's extraordinary rendition program, for example, in which terror suspects are kidnapped and flown to other countries to be interrogated and tortured, actually began under the Clinton administration. George W. Bush dramatically escalated the practice in the name of the so-called "War on Terror." As Election Day nears, as the question of what the new president would do to roll back some of these powers becomes all the more pressing, it is critical to remember that as David Cole recently wrote, "Government officials do not as a rule like to give up power." It is critical that we not assume Barack Obama would necessarily roll back Bush's power grab. For those who truly wish to see change in a new administration, casting a ballot in this election should be a first, not last, step. Fortunately, whereas once it was deemed unpatriotic to criticize the Bush administration's "War on Terror," more recently, its excesses are more widely acknowledged. "Growing consensus," writes Cole, "recognizes that the Bush administration's post-9/11 actions have not only compromised some of our most fundamental principles, but have actually made us less safe."

The project to restore the Constitution and reclaim our democracy must begin the moment the next president takes office. Luckily, there are writers, thinkers and activists who have spent years working to design blueprints for how to accomplish this. The Center for Constitutional Rights, the ACLU, Amnesty International, and the Brennan Center for Justice are just a few critical resources that can show us how we might restore the checks and balances that once defined the United States. AlterNet has culled information from these organizations, examined the candidates' voting records and created an election guide to help you distinguish between Barack Obama's and John McCain's positions on some of the most important human rights and civil liberties issues facing us today.

1. DOMESTIC SPYING

Following the path laid by the PATRIOT Act, which included a broad provision authorizing “roving” wiretaps for domestic intelligence gathering, in 2002, under presidential order, the National Security Agency began secretly monitoring the international phone calls and e-mails of Americans, without a warrant. After the program was revealed by the New York Times on Dec. 15, 2005, the Bush administration, with the help of Congress, simply legalized the illegal activity, passing the Protect America Act in 2007, which granted the president sole discretion on whether to wiretap U.S. citizens. The FISA Amendments Act followed this past summer, granting legal immunity to the telecoms that enabled the spying.

Solution: Repeal the FISA Amendments Act and replace it with legislation that imposes the proper checks and balances on administrations to come. Repeal the PATRIOT Act, particularly its roving wiretap provisions.

Obama’s position: Obama’s record on domestic spying is mixed. Until recently, Obama was a critic of Bush’s warrantless wiretapping. He voted against the Protect America Act and vowed to support a filibuster of legislation granting immunity for telecoms. But he voted for the FISA Amendments Act. He has voted to reauthorize the PATRIOT Act, despite saying he would repeal it, but voted against extending the PATRIOT Act’s wiretap provision.

McCain’s position: McCain was absent for both the Protect America Act and the FISA Amendment Act votes, but he, too, was critical of the NSA spying program until recently. After a campaign spokesperson suggested that the senator wanted hearings on telecoms’ role in the program, McCain disavowed the statement, and his campaign delivered a line on the issue that that is the same as the Bush administration’s: “Neither the administration nor the telecoms need apologize for actions that most people, except for the ACLU and the trial lawyers, understand were Constitutional and appropriate in the wake of the attacks on September 11, 2001.” McCain voted for the PATRIOT Act and its re-authorizations. Unlike Obama, he also voted to extend the PATRIOT Act’s wiretap provisions.

Learn more: “100 Days to Restore the Constitution,” Center for Constitutional Rights¹, Glenn Greenwald², Electronic Frontier Foundation³

2. TORTURE

The Supreme Court may have revived the ancient writ of habeas corpus in its decision in *Boumediene v. Bush* this summer, but the Military Commissions Act, which gives the president the right to define what qualifies as torture, remains. The appalling mistreatment of prisoners in Iraq, at Guantanamo and in secret “black sites” across the world, where victims of extraordinary rendition are sent to be interrogated at the behest of the CIA, has been perhaps the greatest moral stain on the country since

1 <http://ccrjustice.org/100days>

2 <http://www.salon.com/opinion/greenwald/>

3 <http://www EFF.org/issues/privacy>

the start of the “War on Terror.”

Solution: Repeal the Military Commissions Act.

Obama’s position: Obama was a vocal opponent to the MCA and tried to include a sunset provision so that it would expire after five years. That initiative failed, so he voted against it. Since then, he has repeatedly condemned the use of torture. He also co-sponsored the Restoring the Constitution Act. Introduced in February 2007, the legislation seeks “effective prosecution of terrorists and guaranteed due process rights.”

McCain’s position: McCain was known for his Detainee Treatment Act, which prohibited torture, but as Glenn Greenwald pointed out earlier this year, his moral posturing -- all the more weighty given his time as a POW -- amounted to little in the end. After insisting that the Military Commissions Act comply with the Geneva Conventions, McCain endorsed and voted for the law, which “vested sole and unchallenged discretion in the President to determine what does and does not constitute a violation of the Conventions.” McCain’s vote was instrumental to the passage of the MCA.

Learn more: ACLU: Torture FOIA⁴, ACLU Fact Sheet: Military Commissions Act⁵, “100 Days to Restore the Constitution,” Center for Constitutional Rights⁶, Human Rights Watch: Military Commissions⁷, Brennan Center for Justice: Twelve Steps to Restore Checks and Balances⁸

3. GUANTANAMO AND THE U.S. GOVERNMENT’S SECRET PRISONS

With the Supreme Court ruling granting prisoners at the prison camp at Guantanamo Bay the right to appeal their detention, now is the time to either try the famed detainees or release them. With the torture, hunger strikes, forced feeding and suicide attempts, not to mention those who have died in custody, Guantanamo represents the worst abuses of power in the so-called War on Terror. At 270, the number of prisoners has sharply declined -- it used to be more than 700. Even members of the Bush administration acknowledge it needs to be closed down. Doing so is long overdue.

Solution: Close Guantanamo; try the remaining prisoners in federal courts.

Obama’s position: Obama has vowed to close Guantanamo, saying that it has “destroyed our credibility.” He praised the Supreme Court’s decision in *Boumediene v. Bush* granting the right of habeas corpus to prisoners at Guantanamo. He favors trying its prisoners in federal courts, as the United States has done in previous terror attacks.

McCain’s position: McCain has called the Boumediene ruling “one of the worst decisions in

4 <http://www.aclu.org/safefree/torture/torturefoia.html>

5 <http://www.aclu.org/safefree/detention/29145res20070322.html>

6 <http://ccrjustice.org/100days>

7 <http://www.hrw.org/backgrounder/usa/qna1006/2.htm>

8 http://www.brennancenter.org/content/resource/twelve_steps_to_restore_checks_and_balances/

the history of this country.” In 2006, he said that closing Guantanamo would be “premature,” but more recently said that he is in favor of it.

Learn more: Witness Against Torture: A Campaign to Shut Down Guantanamo⁹; Center for American Progress; Human Rights Watch: “How to Close Guantanamo¹⁰,” “100 Days to Restore the Constitution,” Center for Constitutional Rights¹¹

4. THE SUPREME COURT

The incoming president could appoint up to three new justices to the Supreme Court. This means the stakes are alarmingly high for issues like abortion rights, as well as for curbing the expansion of executive power, which has gotten egregiously out of control under the Bush administration. But it’s not just about the Supreme Court; the Bush administration has been devoted to appointing conservative judges to the federal bench since it came into power. These judges then are on track to hand down rulings in the most powerful courts in the nation and make decisions that will affect the entire country.

Solution: Restore balance to the Supreme Court and other courts by blocking the selection of ideologically driven judges.

Obama’s position: A student of constitutional law, Obama has shown concern over judges who consistently vote in favor of the powerful over the powerless. He voted against the nominations of Samuel Alito and John Roberts. When asked by Pastor Rick Warren at the Saddleback Church debate which justices he would not have nominated to the bench, he named Clarence Thomas and Antonin Scalia.

McCain’s position: An opponent of abortion rights, McCain voted to confirm not only Roberts and Alito, but Robert Bork and Clarence Thomas to the Supreme Court. When it came to the federal bench, according to Doug Kendall, founder and president of the Constitutional Accountability Center, McCain pushed hard for the confirmation of both William Pryor and Janice Rogers Brown, the two hardest-edged conservatives appointed to the federal bench by President George W. Bush.

Learn more: “Fair and Just Courts,” People for the American Way¹²; Brennan Center for Justice¹³

5. STATE SECRETS PRIVILEGE

The Bush administration has been described as the most secretive in the history of the country. At every level, it has blocked inquiries, hamstrung FOIA and invoked national security in order to keep

9 <http://www.witnesstorture.org/>

10 <http://hrw.org/english/docs/2008/01/03/usint18111.htm>

11 <http://ccrjustice.org/100days>

12 http://site.pfaw.org/site/PageServer?JServSessionIdr012=eol1hashh1.app306b&pagename=issues_courts_landing

13 <http://www.brennancenter.org/content/section/category/justice/>

from handing over documents that would reveal an abuse of authority. When it comes to lawsuits against some of the abuse inflicted in the name of the so-called War on Terror, the Bush White House has repeatedly reached for the State Secrets Privilege to undermine plaintiffs' attempt to seek justice. The State Secrets Privilege exists to prevent courts from revealing state secrets in the course of civil litigation. But in cases like the ACLU's lawsuit against Boeing subsidiary Jeppesen Dataplan, which participated in the CIA's extraordinary rendition flights, State Secrets Privilege was invoked to block the lawsuit, brought on behalf of five torture victims, from going forward. That is just one example. "Again and again," according to the Center for Constitutional Rights, "they have invoked the State Secrets Privilege to avoid scrutiny in court, oversight and legal responsibility for their actions."

Solution: Pass legislation, like the State Secrets Protection Act, to impose checks on the executive branch to keep it from abusing the State Secrets Privilege.

Obama's position: Obama has not signed on to the State Secrets Protection Act¹⁴, introduced by Sen. Edward Kennedy (and co-sponsored by running mate Joe Biden). The act, according to Kennedy, "requires courts to examine the evidence for which the privilege is claimed, in order to determine whether the executive branch has validly invoked the privilege. ... Only after a court has considered the evidence and found that it provides a valid legal defense can it dismiss a claim on state secrets grounds."

McCain's position: McCain has not signed on to the State Secrets Protection Act.

Learn more: "100 Days to Restore the Constitution," Center for Constitutional Rights¹⁵; ACLU, Secrecy¹⁶; "State Secrets' Privilege Derails Rendition Suit," IPS News¹⁷

6. AMERICANS' RIGHT TO DISSENT

As was recently and glaringly evident in St. Paul during the Republican National Convention, which saw police conduct mass arrests and "pre-emptive raids" against innocent activists and media workers under the authority of the PATRIOT Act, our right to peaceful protest is under assault. According to the Center for Constitutional Rights, "increasingly, political dissent is treated as terrorism." "Joint Terrorism Task Forces encourage large-scale stop-and-frisk operations; anti-war groups are infiltrated by government agents; and a sweeping new DNA database takes samples from anyone who is arrested, regardless of whether they are convicted."

Solution: Repeal the PATRIOT Act and block such dangerous legislation as the Violent Radicalization and Homegrown Terrorism Prevention Act of 2007¹⁸, which broadens the definition of terrorism to potentially include activist groups who are merely exercising their First Amendment rights.

14 <http://www.govtrack.us/congress/bill.xpd?bill=s110-2533>

15 <http://ccrjustice.org/100days>

16 <http://www.aclu.org/safefree/secrecy/index.html>

17 <http://www.ipsnews.net/news.asp?idnews=43065>

18 <http://www.govtrack.us/congress/bill.xpd?bill=h110-1955>

Obama's position: Obama is on the Senate Committee for Homeland Security and Governmental Affairs and initially supported the Violent Radicalization and Homegrown Terrorism Prevention Act, but more recently says he has not made a decision on it. Obama has also voted to reauthorize the PATRIOT Act, but he voted to strike down its wiretap provisions.

McCain's position: McCain voted for the PATRIOT Act and its re-authorizations, voted to extend the PATRIOT Act's wiretap provisions, and supports the Homegrown Terrorism Prevention Act.

Learn more: National Lawyers Guild¹⁹; Center for Constitutional Rights: "Here Come the Thought Police: The Violent Radicalization and Homegrown Terrorism Prevention Act of 2007"²⁰;" "100 Days to Restore the Constitution," Center for Constitutional Rights²¹

7. WRONGFUL CONVICTIONS

More than 220 prisoners have been exonerated in the United States to date, and the number rises every year. This is due in part to the advent of DNA technology, which has been revolutionary in uncovering wrongful convictions. But even as DNA technology expands and helps shine the light on wrongful convictions, most of these exonerated prisoners find themselves with no support upon their release, making it extremely difficult to start their lives anew. According to the Innocence Project, right now, 25 states and the District of Columbia have compensation of some form, but even many of these are inadequate.

Solution: In addition to passing reform legislation that makes states videotape police interrogations and invests in other safeguards against wrongful convictions, federal legislation should be passed to make states provide compensation for exonerated prisoners.

Obama's position: Obama hails from a state that saw an epidemic of wrongful convictions, many of which involved innocent men being tortured into giving false confessions to crimes that would land them on death row. After Gov. George Ryan emptied Illinois's death row, as a state legislator, Obama helped pass pioneering legislation requiring police officers to videotape interrogations as one safeguard against wrongful convictions. He has no record on post-exoneration benefits for prisoners who are found innocent.

McCain's position: McCain has long favored "tough on crime" legislation, which suggests he would not make criminal justice reform -- or reparations for wrongfully convicted prisoners -- a priority. Arizona has seen many exonerations in the past few decades; one well-known exoneree, Ray Krone, spent 10 years in prison and faced the death penalty for a rape and murder he did not commit. In 2002, after DNA evidence proved he was innocent, Krone became the 100th death row prisoner to be exonerated. As an Arizona senator, McCain has been notably silent about wrongful convictions.

19 <http://www.nlg.org/>

20 <http://ccrjustice.org/learn-more/faqs/factsheet--violent-radicalization-and-homegrown-terrorism-prevention-act-2007>

21 <http://ccrjustice.org/100days>



Learn more: “Compensation for the Wrongfully Convicted,” the Innocence Project²²; “Compensating the Wrongfully Convicted,” the American Prospect²³; Life After Exoneration Program²⁴; “I Spent 16 Years in Jail for a Crime I Didn’t Commit. Here’s What Should Be Done²⁵.”

8. POLITICIZATION OF THE DEPARTMENT OF JUSTICE

The U.S. attorneys scandal in 2007 blew the lid off a Department of Justice that the Bush administration essentially tried to redesign in its own image. Through illegal hiring and firing practices, the Alberto Gonzales DOJ all but gutted the nation’s top law enforcement office, filling it with political appointees trusted to carry out the will of the White House, which included politically motivated prosecutions such as the one against Democratic Alabama Gov. Don Siegelman as well as the aggressive push for the DOJ to authorize the government’s warrantless wiretapping scheme. Recently, former White House aide Harriet Miers, White House chief of staff Joshua Bolten, and Karl Rove were subpoenaed to testify before the House Judiciary Committee on some of these issues, but they claimed executive privilege to avoid testifying.

Moreover, the Office of Legal Council has been responsible for providing legal cover to some of the worst instances of executive overreach under Bush. “In legal opinions sanctioning torture, rendition, and warrantless surveillance, the OLC failed to check flagrant governmental disregard of the law,” writes Aziz Huq, director of the Justice Program at the Brennan Center. Rather than fulfilling its “special obligation to ensure compliance with the law, including respect for the rights of affected individuals and the constitutional allocation of powers,” the OLC fell into an “advocacy model,” i.e., simply signing off on what the president wanted.

Solution: Revert to nonpolitical hiring practices and hold those officials who committed criminal or ethical breaches accountable. Reform the Office of Legal Counsel.

Obama’s position: Obama was a sharp critic of Alberto Gonzales, having voted against his nomination in 2006. More recently, he has reserved comment on the question of accountability for Karl Rove et al. It is unclear whether he would seek to prosecute Bush administration officials for their illegal behavior.

McCain’s position: At the time of the U.S. attorney firings, a McCain aide called the scandal “mostly a combination of nonsense and politics,” but in April 2007, McCain, who voted to confirm John Ashcroft as well as Attorney General Alberto Gonzales, later called on Gonzales to resign, saying that the DOJ “is the last institution of government where there should be any politicization of any kind.” McCain’s former campaign co-chair, Rick Renzi, was tied to the firing of Arizona U.S. attorney Paul Charlton, who was investigating Renzi at the time.

22 <http://www.innocenceproject.org/fix/Compensation.php>

23 http://www.prospect.org/cs/articles?article=compensating_the_wrongly_convicted

24 <http://www.exonerated.org/j/index.php>

25 http://www.alternet.org/rights/98928/i_spent_16_years_in_jail_for_a_crime_i_didn_t_commit_here_s_what_should_be_done/

Learn more: Brennan Center for Justice: Twelve Steps to Restore Checks and Balances²⁶, TPM Muckraker: U.S. Attorneys²⁷, TPM U.S. Attorney Purge Timeline²⁸, Send Karl Rove to Jail²⁹

9. EXPANSION OF THE FEDERAL DEATH PENALTY

Begun under Attorney General John Ashcroft and quietly continued by Alberto Gonzales, one of the less discussed policies of the Bush administration was a major expansion of the federal death penalty -- at a time when death sentences have hit historic lows in states across the country. (One of the untold stories of the U.S. attorneys scandal was the targeting of attorneys who did not seek the death penalty as often as the administration wanted.) Part of this mission has involved overriding federal prosecutors to push for federal death sentences in states without the death penalty on the books.

Solution: Roll back this policy, which undermines the independence of U.S. attorneys and expands capital punishment against the will of the states.

Obama and McCain's position: While neither Obama nor McCain have commented on this policy, both are death penalty supporters and unlikely to address it explicitly.

Learn more: "Prosecutors and the Death Penalty," *The Nation*³⁰; "Ashcroft Zealous in Pursuit of Death Penalty," *Washington Post*³¹; The Federal Death Penalty, Death Penalty Information Center³²; Amnesty International: The Federal Death Penalty³³

10. SIGNING STATEMENTS

President Bush has used signing statements to defang legislation he disagrees with. In January of 2008, Bush gave himself the power to bypass four laws, among them "a prohibition against using federal funds to establish permanent U.S. military bases in Iraq," that Congress passed as part of a new defense bill. According to Charlie Savage of the *Boston Globe*: "Bush made the assertion in a signing statement ... (in which) Bush asserted that four sections of the bill unconstitutionally infringe on his powers, and so the executive branch is not bound to obey them." The American Bar Association has condemned signing statements as "contrary to the rule of law and our constitutional separation of powers."

Solution: Curb the president's use of signing statements.

26 http://www.brennancenter.org/content/resource/twelve_steps_to_restore_checks_and_balances/

27 http://tpmmuckraker.talkingpointsmemo.com/archives/cats/us_attorneys/

28 <http://www.talkingpointsmemo.com/usa-timeline.php>

29 <http://sendkarlovetojail.com/>

30 <http://www.thenation.com/doc/20070409/segura>

31 <http://www.commondreams.org/headlines02/0701-05.htm>

32 <http://www.deathpenaltyinfo.org/article.php?scid=29&did=147>

33 <http://www.amnestyusa.org/Facts-and-Figures/The-Federal-Death-Penalty/page.do?id=1101082&n1=3&n2=28&n3=99>



Obama's position: Obama has said he will use signing statements occasionally. "The problem with this administration is that it has attached signing statements to legislation in an effort to change the meaning of the legislation, to avoid enforcing certain provisions of the legislation." But: "No one doubts that it is appropriate to use signing statements to protect a president's constitutional prerogatives."

McCain's position: McCain has said he will not make use of signing statements. "Never, never, never, never. If I disagree with a law that passed, I'll veto it."

Learn more: "On Signing Statements, McCain Says 'Never,' Obama and Clinton 'Sometimes,'" *Washington Post*³⁴; Brennan Center for Justice: Twelve Steps to Restore Checks and Balances³⁵

34 <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/24/AR2008022401995.html>

35 http://www.brennancenter.org/content/resource/twelve_steps_to_restore_checks_and_balances/