

July 13, 2023

RE: Vote “NO” on Multiple Amendments to National Defense Authorization Act

Dear Representative:

The American Civil Liberties Union strongly urges you to vote “NO” on multiple amendments to the National Defense Authorization Act. Many of the amendments made in order by the rule today would undermine important steps that the Department of Defense has taken to protect civil liberties and civil rights, including for uniformed service members, civilian employees, children and families of service members, researchers, and contractors.



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The ACLU urges you to vote “NO” on each of the amendments specified in this letter, and will score each of these votes, even if an amendment becomes part of an en bloc amendment. The ACLU also will oppose final passage of the NDAA if any of the amendments are added to the bill.

In the same week that the nation has been repulsed by Senator Tommy Tuberville both defending white supremacists in the military and blocking the Senate from confirming all military promotions as leverage to stop women serving in the military from having access to abortion and reproductive health care, the House is now debating a series of amendments that would facilitate those very objectives. The nation is rejecting Senator Tuberville’s statements and actions, and the House should reject amendments that would write those harmful objectives into law.

We urge you to vote “NO” on amendments that would: effectively block women in the military from having access to abortion and reproductive health care, block service members and their families from having access to gender-affirming health care, dismantle the programs developed by uniformed and civilian leadership to end racism and other discrimination in the military through proven diversity, equity, and inclusion programming, prohibit the renaming of military facilities currently named for racists and defenders of slavery, ban books for children of service members, ban the rainbow flag, misdirect service academies admissions, infringe on academic research and speech rights, and facilitate the further militarization and weaponization of state and local police.

Denying Access to Reproductive Health Care to Service Members and Their Families

The ACLU strongly urges you to vote “NO” on Amendment No. 5. The amendment prohibits DOD from carrying out its “Ensuring Access to Reproductive Health Care” policy, which directs DOD to take a series of actions to ensure service members and their families can access reproductive health care. Service members and their families are often forced to travel greater distances to seek reproductive health care due to the nature of the military service and not being in control of where they are stationed. By restricting this policy, the amendment would interfere with service members’ ability to make private health care decisions and would restrict DOD from ensuring service members and their families are able to access reproductive health care, regardless of where they are stationed.

Denying Access to Gender-Affirming Care to Service Members and Their Families

The ACLU strongly urges you to vote “NO” on Amendment No. 10, offered by Representative Rosendale and **Amendment No. 20,** offered by Representative Norman. Rosendale Amendment No. 10 would prohibit coverage for gender-affirming care in TRICARE. Norman Amendment No. 20 would do the same in the Exceptional Family Member Program.

We urge you to oppose these amendments because they seek to strip life-saving health care coverage for transgender service members and their families, as well as transgender members of the National Guard and Reserve. Transgender people, including those who serve in our nation’s Armed Forces, have a fundamental right to access gender-affirming care. Every leading medical and mental health organization in the country - including the American Medical Association and the American Psychological Association - agree that this health care saves lives. It is safe, effective, and necessary. Medical and mental health treatment for transgender people is always guided by evidence-based clinical guidelines and always based on the individual needs of each patient. It is for this reason that, to date, federal courts have consistently upheld the legal right to access gender-affirming care.

Members of Congress should never place themselves between patients, families, and doctors, and yet that is exactly what Rosendale Amendment No. 10 and Norman Amendment No. 20 seek to do. These amendments violate the constitutional guarantee of equal protection under the law and the ACLU urges strong opposition to both.

Stripping Protections Against Discrimination Based on Race and Other Characteristics

The ACLU strongly urges you to vote “NO” on Amendments 30, 32, 33, 52, 57 and 62 which generally prohibit the DoD from carrying out diversity, equity and inclusion programming and practices. The ACLU urges you to oppose these amendments because to protect against racial discrimination and to begin to heal and move toward real racial justice, we must address not only the harms of the recent past, but also the harms tracing back to this country’s origins. Racism has played an active role in the creation of our systems of education, health care, ownership, and employment, and virtually every other facet of life—including the military—

since this nation's founding. The history of the United States has shown that it is not enough to take racist policies off the books to achieve true justice. Those past policies have structured our society and created deeply-rooted patterns and practices that can only be disrupted and reformed with new policies of similar strength and efficacy. In short, a systemic problem requires a systemic solution. These amendments, when taken together, would move the country backwards on the journey towards racial justice. The military has traveled too far along that journey towards racial justice to be pushed back by these amendments.

The ACLU strongly urges you to vote "NO" on Amendment No. 47, offered by Representatives Good, which would prohibit the DoD from implementing the recommendations of the Department's Naming Commission to rename several military bases commemorating Confederate officers and others supporting slavery and racism. Congress established the Naming Commission in the National Defense Authorization Act of fiscal 2021, after huge bipartisan majorities in both houses of Congress successfully overrode President's Trump veto. As Secretary of Defense Austin noted in his memo approving the Commission's plan, "The names of these installations and facilities should inspire all those who call them home, fully reflect the history and the values of the United States, and commemorate the best of the republic that we are all sworn to protect."

The ACLU strongly urges you to vote "NO" on Amendment No. 63, offered by Representative Banks, which would end the use of race conscious admissions for military service academies. In the Supreme Court's recent ruling, the Court specifically exempted military academies from its decision ending race-conscious admission policies citing "distinct interests" those institutions have. The ACLU urges you to oppose the amendment because our nation's future as a thriving multiracial democracy depends on students having the freedom and opportunity to learn, work together, and understand what unites us.

Book Ban; and Undermining Research, Scientific Inquiry, Academic Freedom, and Free Speech

The ACLU strongly urges you to vote "NO" on Amendment No. 35, offered by Representative Boebert, which would prohibit Department of Defense Education Activity schools from purchasing and having any book that "contains pornographic material" or "espouses radical gender ideology" in their libraries. The ACLU urges you to oppose the amendment because this bill violates students' First Amendment right to read and learn, free from censorship, and would create an unwelcoming educational environment for female and LGBTQ+ students. In addition, this amendment's use of the term "pornography" could be used to exclude age-appropriate books about health, or art. Our nation's lawmakers should trust Department of Defense educators and librarians to make appropriate decisions on what books to offer, and trust servicemember's children to make their own decisions about what they read and believe.

The ACLU strongly urges you to vote "NO" on Amendment No. 4, offered by Representative Stefanik, which would prohibit any Department of Defense research, development, test, and evaluation funding from going to any entity that partners with

universities in China, Russia, or any other country that meets the applicable criteria. The ACLU urges you to oppose the amendment because it is overbroad in its application and has the potential to prohibit legitimate international scientific collaborations currently being conducted by US research institutions.

The ACLU strongly urges you to vote “NO” on Amendment No. 72, offered by Representative Good, which would require the Secretary of Defense to provide a report to Congress that would include a list of United States Government-funded entities, including research institutions, laboratories, and institutions of higher education, which have hired Chinese nationals or allowed Chinese nationals to conduct research, including an estimate in the number of nationals hired or involved in research projects. The ACLU urges you to oppose the amendment because it will chill research institutions from hiring or accepting Chinese nationals who are poised to make valuable scientific contributions, and will perpetuate unjustified suspicion about scientists and students from China based on their national origin, regardless of any wrongdoing.

The ACLU strongly urges you to vote “NO” on Amendment No. 31, offered by Representative Roy, which would prohibit the use of federal funds for teaching critical race theory in Defense Education Activity Schools. The ACLU urges you to oppose the amendment because it would silence discussions of race amongst students and educators, thereby suppressing free speech and denying the children of service members the right to an accurate, complete, and inclusive learning environment. Like the Florida Governor Ron DeSantis’s STOP WOKE Act, which was struck down by a district court, this amendment likely violates the First and Fourteenth Amendments by imposing viewpoint based restrictions on teaching that are vague and discriminatory.

The ACLU strongly urges you to vote “NO” on Amendment No. 34, offered by Representative Norman, which is intended to prohibit the display of LGBTQ Pride Flags. Rainbow flags, pride flags, and other symbols celebrating LGBTQ pride are a protected form of free speech. Prohibitions like this aimed at banning the Rainbow Flag represent viewpoint discrimination in violation of the First Amendment. In first creating the Rainbow Flag in San Francisco in 1978, Gilbert Baker intended it as a way to celebrate visibility and empower the LGBTQ liberation movement. In the decades since, it has been used both as a show of support and a way to instill a sense of community. Prohibiting display of LGBTQ Pride Flags sends a disturbing message to LGBTQ service members and their families that this community is not to be celebrated or protected.

The ACLU strongly urges you to vote “NO” on Amendments No. 18 and 19, offered by Representatives Reschenthaler and Lamborn, which would require a report to Congress on whether products sold at commissary were produced by companies boycotting the State of Israel, and would prohibit the Department of Defense from entering into or renewing contracts with entities that are boycotting Israel. The ACLU urges you to oppose these amendments because they would prevent businesses from expressing their political views in the form of a boycott, and pave the way for the Department of Defense to selectively penalize boycotts that

express disfavored messages. For more than 40 years, the right to boycott based on political views was unequivocally protected by the First Amendment, and the government should continue to uphold the value that politically motivated boycotts are protected speech.

Removing Barriers to Further Militarizing and Weaponizing State and Local Law Enforcement

The ACLU strongly urges you to vote “NO” on Amendment 41, which would remove long-standing restrictions on the transfer of military weapons of war to state and local law enforcement, resulting in a return to real harms that [fall](#) disproportionately on people of color.

While it is difficult to trace the individual pieces of equipment transferred under Section 1033 authority when deployed by law enforcement, we can identify moments where 1033 is implicated in troubling police violence. Take the protests of June 2020, which began in response to the police murder of George Floyd, and sought to address systemic racism and violence in policing. During those protests in Austin, Texas, police [critically injured](#) a 20-year-old Black man protesting using “less-lethal” weapons. At the time, they had in their possession five “less-lethal” firing devices transferred through 1033.

As the ACLU has [reported](#), the 1033 program is not only unsafe but ineffective as it fails to reduce improve public safety. Police should not be at war with those whom they are sworn to protect and serve. Since 1990 more than \$7.4 billion dollars of military weapons have been transferred. A reduction in access to and use of militarized weapons designed for the battlefield of war is the step necessary to protect life and preserve civil liberties. Lifting the previously imposed restrictions on the program is step in the wrong direction.

The ACLU strongly urges you to reject these harmful amendments just as America itself is rejecting Senator Tuberville’s vision for the military. Thank you for your attention, and please do not hesitate to contact me at canders@aclu.org with any questions related to this legislation.

Sincerely,



Christopher Anders
Federal Policy Director
American Civil Liberties Union