

September 26, 2023

RE: Vote “NO” on H.R. 4368, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 2024, and Vote “NO” on Amendments that Harm Civil Rights, and Civil Liberties

Dear Representative:

The American Civil Liberties Union strongly urges you to vote “NO” on H.R. 4368, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 2024. The ACLU also strongly urges you to vote “NO” on a series of amendments that would undermine or reverse important steps that the Department of Agriculture has taken to protect against discrimination and ensure Americans have access to rental assistance.



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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 score the vote on final passage of the bill.

As passed out of committee, H.R. 4368 already includes dangerous attacks on important civil liberties, namely reproductive freedom. H.R. 4368 includes a harmful new rider that would force back in place burdensome, medically unnecessary restrictions on the medication abortion drug mifepristone that FDA lifted earlier this year after extensive, evidence-based review. Mifepristone is incredibly safe and today accounts for more than half of all abortions across the country. It is supported by hundreds of studies and has a proven safety and effectiveness record of 99%. Access to medication abortion is essential for ensuring that patients are able to make their own private medical decisions. Banning or restricting access to mifepristone is an attack on reproductive freedom and undermines FDA’s authority to make evidence-based approval decisions.

The ACLU strongly urges the House to reject these attacks on Americans’ civil liberties and reproductive freedom—and make clear to House leadership that these attacks on the rights of Americans should not be brought repeatedly before the House.

There are a series of amendments that will compound the harm that the bill would cause:

Undermining Protections Against Discrimination

The ACLU strongly urges you to vote “NO” on Amendments No. 24, offered by Representative Good, which would severely reduce funding for the USDA Office for Civil Rights. This amendment would force drastic cuts to several programs and services that aim to close equity gaps among Black farmers and socially

disadvantaged individuals who have historically faced discrimination for decades at the USDA. The USDA has acknowledged that systemic discrimination in federal lending programs have caused millions of dollars in economic loss, from high rates of loan denials to foreclosures and land loss.¹

The ACLU strongly urges you to vote “NO” on Amendments 69 and 79, offered by Representatives Miller and Boebert, respectively. These amendments, which would dismantle and defund the USDA Equity Commission, are clear, politically motivated attempts by extremist, rightwing politicians to deny economic opportunity to farmers who have been marginalized because of discriminatory lending policies for decades.

The ACLU strongly urges you to oppose Amendments 98 (Arrington) and 99 (Stauber) that defund and environmental justice program and the Farm to School Racial Equity Learning Lab, respectively. Particularly in rural and agricultural areas, the USDA has an important role in addressing racial and ethnic discrimination and its harmful legacy.

The ACLU strongly urges you to vote “NO” on Amendment 100, offered by Representative Good, which would bar the enforcement of provisions of law that protect against discrimination based on sex, including sexual orientation and gender identity, as well as other protections for LGBTQ people in the government and government-funded programs.

The ACLU strongly urges you to vote “NO” on Amendments 56 and 145, offered by Representative Boebert. This amendment, which would block USDA’s use of funds for so-called “woke” courses, books, and study guides. As the ACLU has argued in our challenge to the Florida Woke Act, efforts to target “wokeness” are unconstitutional attempts to silence discussions and education about our history of discrimination based on race, gender, and sexual orientation.

Violating the Constitutional Prohibition Against Congress Enacting a Bill of Attainder

The ACLU strongly urges you to vote “NO” on Amendments 77 (Boebert), 85 (Good), 90 (Good), 91 (Good), 92 (Good), 93 (Good), 94 (Good), 95 (Good), which would each unconstitutionally reduce to \$1 the salary of a named, specific federal, or of a specific employment position specifically held by a specific individual. Each of these amendments would violate the constitutional prohibition against a bill of attainder, as they each would impermissibly result in Congress punishing a specific person by reducing that individual’s salary to \$1.

The prohibition against a bill of attainder is so fundamental to the Constitution’s principle of separation of powers and protection of due process that the drafters of the Constitution wrote it into the body of the Constitution itself. Article I of the Constitution provides that “[n]o bill of attainder or ex post facto law shall be passed” by the Congress. U.S. Const. Art. I, § 9, cl. 3. In interpreting the Bill of Attainder Clause, the Supreme Court has held that “legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution.” United States v. Lovett, 328 U.S. 303, 315 (1946). In Lovett, the Court specifically found that an appropriations provision cutting off funding can be a bill of attainder because cutting off funds is “no less galling or effective than if [the punishment] had been done by an Act which designated the conduct as criminal.” Id. at 316. In Lovett, as in these amendments, the individuals whose salaries were specifically cut by appropriations legislation were federal employees.

A classic test for a bill of attainder is, if someone can take pen and paper and write down the name of each and every person harmed by enactment of punitive legislation, then it is a bill of attainder. Each of these five amendments fails this test. Every member of Congress has an obligation to uphold the Constitution by refraining from passing unconstitutional legislation. We urge you to vote “NO” on these five amendments.

Ending Critical Rental Assistance Programs

The ACLU strongly urges you to vote “NO” on Amendments No. 42 and 43, offered by Representatives Brecheen and Good, respectively. These amendments would eliminate funding for the USDA's Rental Assistance program. If enacted, over 300,000 eligible tenants nationwide would no longer be able to afford to pay their rent.²

For these reasons, the ACLU strongly urges you to vote “NO” on final passage of H.R. 4368, after voting “NO” on each amendment described in this letter. We strongly urge you to reject the attacks on programs and initiatives that protect access to reproductive care, ensure Americans have access to critical rental assistance, and protect people from discrimination. Please do not hesitate to contact us with any questions.

Sincerely,



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Federal Policy Director



Maribel Hernandez Rivera
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Madison Roberts
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