

June 12, 2024

**RE: Vote “NO” on Multiple Amendments to H.R. 8070, the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025**

Dear Representative:



**National Political  
Advocacy Department**  
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Washington, DC 20005-2112  
[aclu.org](http://aclu.org)

**Deirdre Schifeling**  
Chief Political &  
Advocacy Officer

**Anthony D. Romero**  
Executive Director

**Deborah N. Archer**  
President

The American Civil Liberties Union (ACLU) strongly urges you to vote “NO” on multiple amendments to the National Defense Authorization Act (NDAA). Many of the amendments made in order by the rule today would undermine important civil liberties and civil rights, including for uniformed service members, civilian employees, children and families of service members, researchers, and contractors. Further, the ACLU opposes politically motivated riders within the base bill, such as those that attack policies that promote racial equity, militarize the southwest border, prohibit humanitarian relief to refugees, and expand the failed War on Drugs.

**The ACLU urges you to vote “NO” on each of the amendments specified in this letter should they come for a floor vote. The ACLU also will oppose final passage of the NDAA if any of the amendments are added to the bill.**

We urge you to vote “NO” on several poison pill 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;
- ban freedom of expression and display of the rainbow flag;
- erode fundamental privacy rights;
- undermines First Amendment rights to free speech and boycott; 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. 55, offered by Representative Van Dyne and others. The amendment prohibits the Department of Defense (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, including reimbursing expenses related to abortion care. Service members and their families are often forced to travel greater distances to seek reproductive health care due to the nature of military service, which often leaves service members and their families without control over 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 Nos. 52 and 53,** offered by Representative Rosendale and Representative Norman. Amendment 52 would prohibit coverage for gender-affirming care in TRICARE. Amendment 53 would do the same in the Exceptional Family Member Program.

These amendments seek to strip life-saving health care coverage for transgender service members and their families. 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 healthcare 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. These amendments violate the constitutional guarantee of equal protection under the law and the ACLU urges strong opposition to both.

### **Limiting Freedom of Expression and Attacking the LGBTQ+ Community**

**The ACLU strongly urges you to vote “NO” on Amendment Nos. 49 and 54,** offered by Representative Mills and Representative Breechen. Amendment 49 is intended to prevent the military chain of command or senior civilian leadership from approving the display of unapproved flags at military installations. This amendment specifically seeks to prohibit the display of Pride flags at military installations. Amendment 54 would prohibit drag shows, drag queen story hour, and similar events. Together, these amendments attack the rights and dignity of LGBTQ people by trampling on the constitutional right to free speech and free expression.

Rainbow flags, Pride flags, and other symbols celebrating LGBTQ pride are a protected form of free speech. Efforts like Amendment 49 aimed at banning the rainbow flag represent viewpoint discrimination in violation of the First Amendment. Prohibiting display of LGBTQ Pride flags – including at military installations – sends a disturbing message that the LGBTQ community is not to be celebrated or protected.

Likewise, the First Amendment also protects freedom of speech and expression regardless of what you are wearing. It is both discriminatory and unconstitutional to single out – as Amendment 54 does – male and female impersonators in a bid to shut down their speech. Drag performance has always been a hallmark of the queer community. This discriminatory amendment is part of a larger effort to censor a fundamental constitutional right and attempt to remove LGBTQ people from public life.

**The ACLU strongly urges you to vote “NO” on Amendment No. 46**, offered by Representative Steube, which would prohibit the DOD from using funds to purchase, maintain, or display in libraries or classrooms, materials that include pornographic content or that "promotes radical gender ideology." 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 DOD educators and librarians to make appropriate decisions on what books to offer, and trust service members to make their own decisions about what their children read.

### **Stripping Protections Against Discrimination Based on Race and Other Characteristics**

**The ACLU strongly urges you to vote “NO” on Amendment Nos. 41, 42, and 43.** These amendments would effectively reduce or dismantle the DOD's diversity, equity, and inclusion (DEI) office and programs that seek to strengthen military readiness by building an inclusive military and addressing discrimination within the military. The amendments seek to eliminate all efforts by DOD's Office for Diversity, Equity, and Inclusion to ensure that “service members are treated with dignity and respect and are afforded equal opportunity in an environment free from prohibited discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), gender identity, or sexual orientation.”<sup>1</sup>

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<sup>1</sup> DoD Military Equal Opportunity Program. P. 4 [DoDI 1350.02, "DoD Military Equal Opportunity Program," September 4, 2020; Incorporating Change 1 on December 20, 2022 \(whs.mil\).](#)

75 years ago, President Truman signed Executive Order 9981 that banned segregation in the armed forces and called for the abolition of discrimination on the basis of race, color, religion, or national origin in the military. Nevertheless, the student populations in all military academies still do not reflect the demographics and diversity of the rest of the nation. In the fall of 2021, non-white cadets accounted for between 36% and 40% of the military service academies' student body.<sup>2</sup> Yet, the overall U.S. non-white undergraduate college population was 50% in the fall of 2020.<sup>3</sup> In July 2023, the GAO found that military academies may not have a clear understanding of the frequency of discrimination or harassment or the best information on how to address them.<sup>4</sup> The GAO also found that although women have served in ground-combat roles, including those in U.S. Special Operations Forces, since 2013, they continue to face lower representation and discrimination.<sup>5</sup>

Furthermore, by recruiting highly qualified and talented individuals from a "broader talent pool and broader interest groups," DEI efforts can serve as "a force multiplier" and "make the U.S. military more successful in achieving critical missions."<sup>6</sup> The DOD's recruitment of individuals from diverse backgrounds also leads to "more innovative thought and solutions to incredibly complex and complicated problems that are facing the national security apparatus today."<sup>7</sup>

The history of the United States has shown that it is not enough to take racist policies off the books to achieve true justice. A systemic problem requires a systemic solution and the U.S. Supreme Court left affirmative action policies at military academies intact "in light of the potentially distinct interests that military academies may present."<sup>8</sup> These amendments, when taken together, would move the country backwards on the journey towards racial and gender equality.

**The ACLU strongly urges you to vote "NO" on Amendment No. 47**, offered by Representatives Luna and Banks, which would prohibit the use of federal funds for teaching "critical race theory and associated race-based theories" in Defense Education Activity Schools. The ACLU urges you to oppose the amendment because it would silence discussions amongst students and educators of race and systemic injustice against racial minorities, thereby suppressing free

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<sup>2</sup> See id.

<sup>3</sup> U.S. Government Accountability Office, WatchBlog: Following the Federal Dollar, *75 Years After Segregation Banned in the Military, DOD Continues Its Efforts to Combat Discrimination*, (July, 26, 2023) [75 Years After Segregation Banned in the Military, DOD Continues Its Efforts to Combat Discrimination | U.S. GAO.](#)

<sup>4</sup> See id.

<sup>5</sup> See id.

<sup>6</sup> Jim Garamone, *Diversity, Equity, Inclusion Are Necessities in the U.S. Military*, DOD News (Feb. 9, 2022) [Diversity, Equity, Inclusion Are Necessities in U.S. Military > U.S. Department of Defense > Defense Department News.](#)

<sup>7</sup> See id.

<sup>8</sup> See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 213 n. 4 (2023).

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 blocked by the 11th Circuit U.S. Court of Appeals, this amendment likely violates the First and Fourteenth Amendments by imposing viewpoint-based restrictions on teaching that are vague and discriminatory.

### **Undermining Free Speech and Right to Demonstrate**

**The ACLU strongly urges you to vote “NO” on Amendments No. 4 and 9**, offered by Representatives Boebert and Curtis, which would prohibit the DOD from entering into contracts with entities that are boycotting Israel, and prohibit the sale of goods at commissary stores from entities that have or are engaged in a boycott of 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 DOD to selectively penalize boycotts that express disfavored messages. For more than 40 years, the right to boycott based on political views has been unequivocally protected by the First Amendment, and the government should continue to uphold the value that politically motivated boycotts are protected speech.

**The ACLU strongly urges you to vote “NO” on Amendment No. 45**, offered by Representative Williams of Texas, which prohibits funding entities that fact-check mis- and disinformation. While mis- and disinformation are protected by the First Amendment, so too is speech commenting upon it. In fact, key to the First Amendment is the ability to robustly debate, and to create a marketplace of ideas. Accordingly, we urge you to vote “no” on this amendment which aims to protect some speech by threatening other speech.

**The ACLU strongly urges you to vote “NO” on Amendment No. 315**, offered by Representative Edwards, which would suspend security clearances held by individuals who have spoken or demonstrated in support of a terrorist organization. There is nothing more American than protest and exercising one's free speech rights. However, this amendment is likely to be abused to silence disfavored speech. We've already seen government actors accuse those speaking out in support of Palestine or opposition to Israel's conduct of the war of supporting terrorism. But this speech is unequivocally political speech protected by the First Amendment. Stripping security clearances can be tantamount to ending someone's career, so enshrining this amendment into law will enable the government to chill protected political speech.

### **Further Militarizing and Weaponizing State and Local Law Enforcement**

**The ACLU strongly urges you to vote “NO” on Amendment No. 34**, offered by Representative Crenshaw, which would increase police militarization within 100 miles of the border by granting small and medium law enforcement agencies

priority access to the Pentagon's military equipment for use in civilian border communities. Nearly 19 million people live and work in cities and towns across the southern border, mainly in California, Texas, and Arizona. Increased access to military equipment such as tanks, artillery, and high-capacity weapons will result in harmful and aggressive policing tactics for everyone living in border communities, especially for Latinx individuals. The ACLU of New Mexico has issued a report of dangerous, sometimes deadly, Customs and Border Protection (CBP) vehicular pursuits and the ACLU has filed a complaint seeking federal investigation and intervention into racial profiling of Latinx drivers and passengers in traffic stops in Texas. We strongly urge Members to 'Vote NO' on this amendment and resist militarized policing and further loss of civil liberties for the individuals and communities living and working near the U.S. Southern Border.

**The ACLU strongly urges you to vote “NO” on Amendment No. 115**, offered by Representatives Scott and Austin, which would blur the line between civilian police activities and military operations at the U.S. Southern Border. Federal military involvement in law enforcement activities through joint task forces creates a legally ambiguous, gray zone for the protection of civil liberties of individuals who live and work at the U.S. Southern Border. The ACLU strongly opposes federal militarization of law enforcement and the deployment of the military in towns and cities for undefined, extra constitutional purposes.

The ACLU continues to be concerned about the deployment of the military and National Guard to participate in immigration and border enforcement, for which they are not trained. Previous military deployments at the border have proven damaging to military service members, resulting in “rampant drug and alcohol abuse”<sup>9</sup> and poor living conditions. At least five people died by suicide and three died in separate alcohol-related accidents in just 13 months between September 2021 and October 2022.<sup>10</sup> The use of the military and National Guard to police for immigration violations has also been increasingly dangerous for migrants; over the last several months (and as recently as two weeks ago), National Guard service members have fired pepper balls at arriving migrants, including families with children, at the southwest border.<sup>11</sup> Escalating these engagements and the militarization of the border, particularly in the absence of meaningful oversight and accountability, is dangerous for border communities, service members, and arriving immigrants.

Thank you for your attention to these critical issues, and should you have any questions, please contact Tara Stutsman at [tstutsman@aclu.org](mailto:tstutsman@aclu.org).

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<sup>9</sup> Joseph Nunn, End Military Operations at the U.S.-Mexico Border, Brennan Ctr. for Just. (May 22, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/end-military-operations-us-mexico-border>.

<sup>10</sup> See id.

<sup>11</sup> Newsweek, “Migrants Say They Took Cover As Texas National Guard Fired Pepper Balls,” May 30, 2024, <https://www.newsweek.com/migrants-el-paso-bullets-texas-guard-1905906>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Zamore", with a long, sweeping horizontal line extending to the right.

Mike Zamore  
National Policy and Government Affairs Director