



May 18, 2016

RE: Vote “NO” on Final Passage of H.R. 4909, the National Defense Authorization Act for Fiscal Year 2017

Dear Representative:

The American Civil Liberties Union strongly urges you to vote “NO” on final passage of H.R. 4909, the National Defense Authorization Act for Fiscal Year 2017 (NDAA), because it would: block the closing of the Guantanamo detention facility and the ending of indefinite detention, undermine civil rights protections by allowing discrimination by federal contractors and grantees, and authorize the transfer of military drones—specifically MQ-9/Predator B drones—to state and federal agencies. The ACLU also expresses our concern and disappointment that the House Rules Committee stripped a provision that would have required equal treatment of men and women by the Selective Service, and denied the full House the opportunity to consider the provision.

The NDAA Would Make Nearly Impossible Closing the Guantanamo Prison

The ACLU strongly opposes the extension for another year of a prohibition against transfers of Guantanamo detainees to the United States. Allowing the prohibition on transfers to the United States to end is important to the objectives of closing the Guantanamo detention facility and ending indefinite detention without charge or trial.

The effort to close Guantanamo and end indefinite detention is at a critical moment. The population at Guantanamo has dwindled to 80 men, of whom 36 have already been cleared for transfer overseas, and only 10 have ever been charged or tried for a crime. After more than 14 years of the United States operating a prison that was created to try to operate outside the Constitution and the rule of law, it is beyond time to close the prison and end indefinite detention. The NDAA prohibition on all transfers to the United States is problematic because Guantanamo can only close when detainees charged with a crime can be put on trial in federal criminal courts, which are in the United States.

The NDAA Endangers Civil Rights

The ACLU strongly opposes section 1094, which endangers civil rights protections held by employees of federal contractors and grantees. This

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provision, which applies to every federal agency, requires that federal contractors and grantees that are religiously affiliated (including large institutions like hospitals and universities) be permitted to discriminate in hiring with taxpayer dollars.

Section 1094, which is also strongly opposed by the administration, stands in stark contrast to a nearly 75-year-old, bipartisan tradition of prohibiting discrimination with taxpayer dollars. On June 25, 1941, President Roosevelt signed Executive Order 8802, which prohibited discrimination based on race, creed, color, and national origin by federal contractors in the national defense industry.

Section 1094 could permit religiously affiliated federal contractors and grantees to claim a right to (among other things):

- Fire a woman who uses birth control or who is pregnant and unmarried;
- Fire a man who marries his same-sex partner; and
- Refuse to interview anyone, however qualified, based on their religious beliefs, effectively making clear: “Jews, Sikhs, Catholics, Mormons need not apply.”

The government should never fund discrimination, and no one should be disqualified from a taxpayer-funded job because of their religious beliefs or because they do not follow the same religious tenets as the employer.

The NDAA Authorizes the Transfer of Military Drones to State Governments

The ACLU strongly opposed the addition of Poe Amendment No. 14 to the NDAA, because the provision is a dangerous expansion of the Department of Defense 1033 program that transfers military weapons and equipment from war zones to local law enforcement and communities. Under the new provision, federal and state agencies engaged in southern border security would have their requests for MQ-9 Reaper/Predator B drones, night-vision goggles, and Humvees prioritized over requests from other law enforcement agencies.

The Poe amendment would perpetuate the abuse and surveillance of communities that have long been militarized. Misuse of 1033 military weapons and equipment by federal and state agencies doing border enforcement—within the United States itself—has been documented, resulting in 1033 program suspension. Additionally, the 100-mile border zone would ensure this amendment’s deep reach into communities across our country, affecting millions of people.

Failure to Allow a Vote on Women and Selective Service

Because the ACLU opposes the discriminatory treatment of women under the Military Selective Service Act, we are concerned and disappointed by the unorthodox procedural maneuver by the Rules Committee that stripped from the FY17 NDAA a provision adopted by the Armed Services Committee that required women to register under the Selective Service system. This maneuver negated a bipartisan committee vote to advance women’s opportunity and equal citizenship and avoided a separate vote by the full House.

The ACLU opposes involuntary military conscription because it is a violation of civil liberties and constitutional guarantees. Because of the linkage between registration and conscription, we

also oppose the current Selective Service system and urge Congress to dismantle it. However, our opposition to the Selective Service system as a whole does not diminish our opposition to inequities within the draft registration system. Indeed, in *Rostker v. Goldberg*, 453 U.S. 57 (1981), we challenged the wholesale exclusion of women from registration requirements. We believed then and believe even more so today that such a policy reflects paternalistic gender stereotypes about women, constitutes invidious sex-based discrimination, fails to acknowledge women's expanded participation in our nation's armed forces, and flouts the recent Department of Defense decision to allow women to serve in ground combat units and positions. The amendment adopted in committee would have corrected this wrong and its removal, without debate, was unfortunate and misguided.

The ACLU urges you to vote "NO" on final passage. Thank you for your attention to these concerns. If you have any questions about any of these amendments, please contact Chris Anders at 202-675-2308 or at canders@aclu.org.

Sincerely,



Karin Johanson
Director, Washington Legislative Office



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