

November 24, 2020

Dear Speaker Pelosi and Leader McCarthy:

The undersigned organizations urge you to bring the Intelligence Authorization Act for 2021 (IAA) to the floor only under regular order. The House must not advance the Senate's IAA without the opportunity to cure critical defects in that legislation and add necessary reforms, such as the overwhelmingly popular Lee-Leahy amendment that would improve the workings of the Foreign Intelligence Surveillance Court (FISC).

As you are aware, the House has not passed an IAA, and the Senate passed its version as part of the National Defense Authorization Act for 2021 (NDAA) earlier this year. The House passed its own version of the NDAA, so that legislation now appears poised for conference. If the conference report adopts the Senate's IAA, the House will be voting on it without having had any opportunity to consider amendments.

The IAA is a significant a piece of legislation, which, as passed by the Senate, includes controversial provisions and entirely fails to address the many intelligence surveillance scandals that have come to light in the past year, including widespread errors and omissions in applications to conduct electronic surveillance of American targets under Title I of the Foreign Intelligence Surveillance Act (FISA). It is imperative that Representatives have the opportunity to address these concerns.

Specifically, Representatives must have the opportunity to:

- **Insert the Lee-Leahy amendment**, which earned the overwhelming support of 77 Senators earlier this year when offered in conjunction with the USA FREEDOM Reauthorization Act. This amendment would strengthen and expand the role of the independent amici who appear before the Foreign Intelligence Surveillance Court in certain cases. Among other things, it would safeguard Americans' First Amendment rights by requiring the Court to seek the advice of amici if the government sought to use FISA surveillance against religious groups or the domestic media. These amici are the only representatives the public has before the FISC, even though FISC decisions can secretly affect the privacy of every single person in the United States. Adoption of the Lee-Leahy amendment is an important step in preventing recurrences of the surveillance abuses that have emerged over the past year.
- **Remove Sec. 9307 from the Senate IAA**, which makes the establishment of a Social Media Data and Threat Analysis Center mandatory. The Center would be established by the Director of National Intelligence and would serve to convene social media companies, journalists, academic researchers, and others around identifying "foreign influence operations," a term the bill does not define. While the Center would be charged with designing ethical and privacy standards for the analysis of data, there are no explicit requirements or even guidelines for what those protections must include. This is

particularly concerning because the Center will share the information it collects with government agencies and will establish a searchable database related to foreign influence and disinformation campaigns. Without proper safeguards and clear definitions of the information to be collected and analyzed, the center runs the risk of sweeping up far more information than is contemplated. Depending on how that information is gathered, it could even constitute an end-run around the Fourth Amendment.

- **Remove Sec. 9505 from the Senate IAA**, which orders the Federal Bureau of Investigation (FBI) to create a plan to “publicize mechanisms that members of the public can use” to report perceived “influence activities by the Government of the People’s Republic of China.” Sec. 9505 in the Senate’s IAA is deeply problematic, as it fails to provide safeguards against the reporting of baseless suspicions that Asian Americans are foreign agents. It further fails to provide remedies when they sustain financial, professional, and psychological losses due to probing investigations that do not find evidence of espionage. Moreover, the FBI already raises public awareness of influence activities and has means to receive tips from the public. As a negative collateral effect, many of the 2,600 Asian Americans who reported bias incidents since the outbreak of the pandemic also said that they had been falsely accused of being spies. This provision risks further stigmatizing an already besieged community.

Instead of this provision, members should have the opportunity to insert Sec. 905 from the House IAA, H.R. 7856, which makes a one-time report in last year’s IAA on “best practices to protect privacy and civil liberties of Chinese Americans” into an annual report that also covers civil rights. Hundreds of Chinese Americans have been investigated, not for economic espionage, but for minor matters like administrative violations — or even just having family in China. This is forcing highly educated and skilled diversity talent out of the United States government at a time when federal agencies need employees with language skills and cultural competency to face global challenges, as well as employees with the skills to staff national labs, which are currently facing critical shortages.

In short, the IAA passed by the Senate is flawed in multiple respects, and the House must have an opportunity to address those issues. This legislation should not coast into law by means of the NDAA conference report or by any other means that deprives Representatives of the chance to amend this important bill. If representatives are not given the opportunity to vote on these and other issues, we would **oppose** passage in the House.

Sincerely,

Access Now
Advocacy for Principled Action in Government
American-Arab Anti-Discrimination Committee (ADC)

American Civil Liberties Union
Americans for Prosperity
Asian Americans Advancing Justice | AAJC
Asian American Federal Employees for Nondiscrimination
Asian American Legal Defense and Education Fund
Brennan Center for Justice
Constitutional Alliance
Defending Rights & Dissent
Demand Progress
Due Process Institute
Fight for the Future
Free Press Action
FreedomWorks
Government Information Watch
Justice is Global
NAACP
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
National Security Counselors
New America's Open Technology Institute
OCA-Asian Pacific American Advocates
Open The Government
Poligon Education Fund
Project for Privacy and Surveillance Accountability
Restore The Fourth
RootsAction.org
S.T.O.P. - The Surveillance Technology Oversight Project
United Chinese Americans
Woodhull Freedom Foundation
X-Lab