

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 202515

August 22, 2023

Dear Chairmen Reed and Rogers and Ranking Members Wicker and Smith,

As you enter into conference to resolve the differences between the House and Senate version of the National Defense Authorization Act for Fiscal Year 2024 (FY24 NDAA), we urge you to strike provisions that stoke racial animus, bias, and discrimination, as well as undermine Asian American participation in the Armed Services.¹

Specifically, we ask you to remove provisions that would undercut Diversity, Equity, and Inclusion (DEI) efforts and discourage the adoption of critical race theory (CRT) in classrooms or training sessions within the U.S. military. We also urge you to prohibit the inclusion of provisions that would effectively bar foreign nationals – including Chinese foreign nationals – from acquiring certain types of U.S. agricultural land.

We oppose the following provisions:

- **H.R. 2670 § 364 – This provision prohibits DOD from appointing personnel to fill vacancies in existing DEI positions with a rank or grade of GS-10 or higher.** Military or civilian employees currently appointed to such a position would be reassigned to another position within 180 days. If enacted, this provision would stigmatize and disincentivize further DEI efforts in the Armed Forces.
- **H.R. 2670 § 570F – This provision eliminates any DEI offices and the relevant personnel across the military and DOD.** If enacted, this provision would deprioritize diversity, equity, and inclusion programs with the U.S. military and reinforce problematic structures that not only result in racism, racial-profiling, and civil rights violations, but also render our military less able to attract, train, and retain top talent for the services.
- **H.R. 2670 § 570G – This provision prohibits any funds authorized in the bill from being used by military services academies to discriminate on the basis of race.** It also

¹ National Defense Authorization Act for Fiscal Year 2024, H.R. 2670, 118th Cong. (2023); *see also* National Defense Authorization Act for Fiscal Year 2024, S. 2226, 118th Cong. (2023).

would prohibit the use of racial quotas for admission into the military academies. This provision mischaracterizes the commitment that service academies have shown to a diverse student body which currently do not involve the use of racial quotas.²

- **H.R. 2670 § 640C – This provision prohibits gender transition procedures such as medication or surgery through the Exceptional Family Member Program.** This provision reflects the latest attempt to target the transgender community in America. Many state legislatures, including those in Alabama, Arizona, and Tennessee have passed anti-trans bills such as those limiting or outright banning access to gender-affirming care.³ Not only does this fail to live up to our nation's principles of diversity and inclusion, but it also harms our national security interests by turning away individuals in the transgender community who would have otherwise chosen to contribute their valuable skills and expertise to the Armed Forces.
- **H.R. 2670 § 660– This provision prohibits any funds authorized for the Department of Defense Education Activity (DODEA) from being used to promote certain ideas about race in America.** This includes the idea that 1) any race is inherently superior or inferior to any other race, color, or national origin 2) The U.S. is a fundamentally racist country 3) The Declaration of Independence or the U.S. Constitution are racist documents 4) An individual's moral character or worth is determined by the individual's race, color, or national origin 5) An individual, by virtue of the individual's race, is inherently racist or oppressive, whether consciously or unconsciously and 6) An individual, because of the individual's race, bears responsibility for the actions committed by other members of the individual's race, color, or national origin. This is a thinly veiled attempt to ban ideas associated with “Critical Race Theory.”
- **H.R. 2670 § 661 – This provision prohibits the DODEA and its schools from purchasing and having pornographic and radical gender ideology books in their libraries.** This provision would perpetuate a moral panic and conspiracy theories regarding the LGBTQ community by equating gender ideology with pornography.⁴
- **H.R. 2670 § 717 – This provision prohibits TRICARE from covering and the DOD from furnishing sex reassignment surgeries and gender hormone treatments for transgender individuals.** This is a very similar amendment to Section 640 C as discussed above and for the same reasons, we oppose it.

² Leo Shane III, *Military Academies' Diversity Efforts Draw GOP Concerns, Dem support*, Military Times (July 19, 2023), <https://www.militarytimes.com/news/pentagon-congress/2023/07/19/military-academies-diversity-efforts-draw-gop-concerns-dem-support/>.

³ Adeel Hassan, *States Passed a Record Number of Transgender Laws. Here's What They Say*, N.Y. Times (June 27, 2023), <https://www.nytimes.com/2023/06/27/us/transgender-laws-states.html>; see also Human Rights Campaign, *Map: Attacks on Gender-Affirming Care by State*, <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>.

⁴ James Kirchick, *The Long, Sordid History of the Gay Conspiracy Theory: Today's Right Wing Campaign Against 'Groomers' is America's latest moral panic*, New York Magazine (May 31, 2022), <https://nymag.com/intelligencer/2022/05/the-long-sordid-history-of-the-gay-conspiracy-theory.html>.

- **H.R. 2670 § 904** – This provision prohibits federal funds from being used to establish DOD positions for anything similar to Chief Diversity Officers or Senior Advisors for Diversity and Inclusion. Not only does this provision effectively discontinue DEI efforts within the military, but it also fails to appreciate that the Pentagon has committed to annual and mandatory DEI-related trainings for decades now such as equal opportunity (EO) and sexual harassment training (SHARP).
- **H.R. 2670 § 1099B** – This provision prohibits the DOD from making participation in training or support for certain race-based concepts a requirement for hiring, promotion, or retention. It also ensures that employees and service members cannot be compelled to declare belief in or participate in training that promotes such concepts as a condition of favorable personnel actions. We believe that this is yet another attempt to combat the imagined “threat” of “Critical Race Theory.”⁵
- **H.R. 2670 § 1884** – This provision would require the Secretary of Defense to notify local, state, and federal officials no later than 90 days before the DOD uses, creates, or repurposes a military base to house migrants. This is an anti-immigrant provision that seeks to discourage military bases from being used as temporary housing for migrants. It also comes at a time when many cities are struggling to provide permanent housing solutions for them.⁶
- **S. 2226 § 1086**– This provision would effectively prohibit foreign nationals, including Chinese people, from owning certain types of agricultural land in the United States. There are currently no exceptions for visa holders and there is a high standard for a waiver which has to be granted by the President of the United States. This provision is in line with a broader set of discriminatory land laws which continue a long legacy in this country of singling out citizens who otherwise have no connection to the actions of their governments.⁷

We support the following provisions:

- **H.R.2670 § 1689** – This provision would close the data broker loophole at DOD. This provision, which was introduced as a bipartisan amendment with overwhelming support and adopted without opposition, prohibits the DOD from purchasing data that is protected under the Fourth Amendment, including internet records and sensitive location information. Asian Americans have long been subject to warrantless government surveillance and unconstitutional privacy violations, and this provision is step forward in efforts to ensure that the federal government cannot

⁵ Moira Donegan, *What the Moral Panic About ‘Critical Race Theory’ is About*, The Guardian (June 17, 2021), <https://www.theguardian.com/commentisfree/2021/jun/17/critical-race-theory-republicans-moira-donegan>.

⁶ Christopher Magg and Raul Vilchis, *As Politicians Cry ‘Crisis,’ Some Migrants are Finding Their Way*, N.Y. Times (July 13, 2023), <https://www.nytimes.com/2023/07/13/nyregion/migrants-nyc-politics.html>.

⁷ Keith Aoki, “No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment,” 40 B.C. L. Rev. 37, 38-40 (1998); see also Emma Newcombe, *How States Used Land Laws to Exclude and Displace Asian Americans*, *Governing* (Nov. 23, 2022), <https://www.governing.com/context/how-states-used-land-laws-to-exclude-and-displace-asian-americans>.

continue to evade longstanding privacy protections by simply purchasing data from data brokers.

Thank you for considering our recommendations to promote a more diverse, inclusive, and competitive U.S. military. We believe that the FY24 NDAA should meaningfully engage in efforts to develop a more tolerant and highly-skilled U.S. military, especially when it comes to reflecting a genuine cross-section of America.⁸ As Secretary of Defense Lloyd Austin said, a diverse military force “must be a part of who we are.”⁹

Sincerely,

Asian Americans Advancing Justice | AAJC

Signatories

Asian Americans Advancing Justice Southern California

Asian Americans Leadership Council

AAPI Montclair

Asian Texans for Justice

Chinese for Affirmative Action

Code Pink

Common Defense

Communities United for Status & Protection (CUSP)

Demand Progress

Haitian Bridge Alliance

Human Rights Campaign

Human Rights First

Immigration Hub

Japanese American Citizens League

⁸ Amanda Barroso, *The Changing Profile of the U.S. Military: Smaller in Size, More Diverse, More Women in Leadership*, Pew Research Center (Sep. 10, 2019), <https://www.pewresearch.org/short-reads/2019/09/10/the-changing-profile-of-the-u-s-military/#:~:text=In%202017%2C%2057%25%20of%20U.S.,grown%20steadily%20in%20recent%20decades..>

⁹ Veronica Stracqualursi, *On Memorial Day, Austin Reflects on Strength of U.S. Military and Dismisses Adversaries' Criticism*, CNN (May 31, 2021), <https://www.cnn.com/2021/05/31/politics/lloyd-austin-us-military-diversity-china-russia-cnntv/index.html>.

Justice is Global

Lawyers' Committee for Civil Rights Under Law

Muslim Advocates

National Council of Jewish Women

National Iranian American Council Action

Ohio Chinese American Association

Peace Action

Project On Government Oversight

Rise AAPI

Stop AAPI Hate

Win Without War

Woori Juntos