

July 8, 2019

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Nancy Pelosi
Speaker
United States House of Representatives

The Honorable Charles Schumer
Minority Leader
United States Senate

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

The undersigned groups write to ask that you remove a provision in the Intelligence Authorization Act for Fiscal Year 2020 that would dramatically expand the existing federal crime of disclosing the identity of intelligence operatives. The provision, which is Section 305 in H.R. 3494 and S. 1589 (S. 1589 has also been added to S. 1790, the National Defense Authorization Act), would permit the prosecution of reporters or any other person who discloses the identity of a current or retired operative, regardless of whether the disclosure is necessary to reveal government misconduct or threats to the intelligence agencies themselves. It would also obstruct congressional oversight of the intelligence community and hinder public access to information.

The provision would expand the definition of “covert agent” for purposes of prosecution under the Intelligence Identities Protection Act, in what appears to be a clear attempt to subvert transparency, oversight, and accountability. Under current law, “covert agent” is defined as an individual: (1) whose relationship with the intelligence community is classified, and (2) (for U.S. citizens) either resides or serves outside the United States, or has done so within the past five years.

This provision would remove the second requirement, and define all U.S. citizens with a classified relationship with the U.S. intelligence community as “covert agents” regardless of when (if ever) they last served overseas. In doing so, it makes the definition apply indefinitely, even after retirement.

Among other potential impacts, the provision would:

Impede congressional oversight. Without any congressionally imposed limits, whether an individual qualified as a “covert agent” would depend entirely on classification decisions by the executive branch, which can be highly inconsistent and excessive. It would harm congressional oversight of the intelligence community, making it much more difficult to obtain information about almost any individual’s relationship to intelligence agencies and allowing the executive branch to avoid oversight through arbitrary classification. Additionally, it would potentially make it more difficult for intelligence community whistleblowers to approach Congress with reports of fraud, waste, and abuse.

Weaken accountability. In a statement found in the [Senate Select Committee on Intelligence report](#) on S. 1589, Senator Ron Wyden (D-OR) noted that the provision could be used to shield officials from accountability, even those who have “become senior management or have retired.” His concern stemmed from the provision’s indefinite timeline, as well as the CIA’s request for the provision’s

inclusion, in which the agency explained the need for the expansion of the Intelligence Identities Protection Act by citing “incidents related to past Agency programs, such as the RDI [Rendition, Detention and Interrogation] investigation.” The specific reference to the CIA’s torture program is a troubling sign that the agency intends to use this provision to further reduce transparency around the long-defunct program, which remains shrouded in secrecy.

Obstruct public access to information. The provision would limit disclosure under the Freedom of Information Act by significantly expanding both the number of intelligence identities currently allowed to be withheld under FOIA exemptions and by increasing the duration those identities are protected. It would also delay declassification of historical information and potentially censor information currently available to the public.

Create a chilling effect. Because of the potentially widespread legal ramifications for working with individuals who have retired or otherwise left their work with the intelligence community, this provision would likely have a profound chilling effect on journalists’ and public interest organizations’ work.

This provision is an extremely broad expansion of felony criminal penalties, and delegates authority as to when those penalties apply to the executive branch. It would be significantly damaging to transparency, oversight, and accountability, and should be removed from the Intelligence Authorization Act.

Thank you for your consideration. For more information, please contact Lisa Rosenberg at Open the Government, rosenberg@openthegovernment.org or 202-332-6736.

Sincerely,

American-Arab Anti-Discrimination Committee
American Civil Liberties Union
Amnesty International
Campaign for Liberty
Center for Victims of Torture
Constitutional Alliance
Defending Rights and Dissent
Demand Progress
Electronic Frontier Foundation
Electronic Privacy Information Center
Government Accountability Project
Government Information Watch
Human Rights First
Human Rights Watch
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
National Freedom of Information Coalition
National Religious Campaign Against Torture
National Security Archive
No More Guantánamos

North Carolina Stop Torture Now
Open the Government
Physicians for Human Rights
Project On Government Oversight
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
Society of Professional Journalists
TechFreedom
Win Without War

cc:

Chairman Richard Burr
Senate Select Committee on Intelligence

Ranking Member Mark Warner
Senate Select Committee on Intelligence

Chairman Adam Schiff
House Permanent Select Committee on
Intelligence

Ranking Member Devin Nunes
House Permanent Select Committee on
Intelligence