

June 15, 2015

The Honorable John Boehner  
Speaker  
United States House of Representatives

The Honorable Nancy Pelosi  
Minority Leader  
United States House of Representatives

The Honorable Kevin McCarthy  
Majority Leader  
United States House of Representatives

The Honorable Steny Hoyer  
Democratic Whip  
United States House of Representatives

The Honorable Steve Scalise  
Majority Whip  
United States House of Representatives

The Honorable Adam Schiff  
Ranking Member, Permanent Select  
Committee on Intelligence

The Honorable Devin Nunes  
Chairman, Permanent Select Committee  
on Intelligence

**RE: Gabbard and Himes Amendment to the Intelligence Authorization Act for  
Fiscal Year 2016, H.R. 2596**

Dear Leadership:

We write to urge your support for Representative Gabbard's amendment, co-sponsored by Representative Himes, to the Intelligence Authorization Act. This amendment would strike proposed Section 306 of the bill, which would allow executive branch agencies to withhold information deemed related to covert action from the Privacy and Civil Liberties Oversight Board (PCLOB).

The PCLOB is an independent agency within the executive branch that was established by Congress in response to recommendations by the 9/11 Commission. The Board is charged with ensuring that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. To ensure that the Board is able to fulfill this mission, it is authorized by statute to access all relevant executive agency records, reports, audits, reviews, documents, papers, recommendations, and any other relevant materials, including classified information.

Proposed section 306 would carve out an unnecessary and expansive exception to this requirement by allowing agencies to withhold from the Board any information they deem related to covert action. Covert action, defined in section 503(e) of the National Security Act of 1947, means any "activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly."

Allowing agencies to withhold information related to such action would severely restrict the Board's ability to fulfill its statutory mission of conducting oversight of our nation's

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counterterrorism efforts. Many counterterrorism programs and policies that the Board is charged with overseeing fall within the covert action definition. The Board simply cannot conduct oversight if it is unable to access information related to the very programs it is charged with overseeing. Moreover, oversight of non-covert programs would be hampered as well if agencies can withhold information by deeming it merely related to covert action. We are also concerned that allowing agencies to withhold this information would prevent the PCLOB from reviewing information related to credible allegations of violations of human rights law and the laws of war, which the United States is legally bound to investigate.

Perhaps most importantly, such a restriction is entirely unnecessary. Under its enabling statute, the PCLOB may only access information that is relevant to its mission of ensuring that counterterrorism programs adequately respect privacy and civil liberties. Its Board and staff have top secret security clearances and routinely handle classified information. Its reports are made public only to the greatest extent that is consistent with the protection of classified information. Similarly, its public hearings must be conducted in a manner that is consistent with the protection of classified information. There is no indication that any classified information has been compromised as a result of the PCLOB's oversight function, including after two in-depth inquiries into surveillance programs.

Troubling news reports indicate that Section 306 of the bill may have been motivated by the PCLOB's current inquiry into counterterrorism programs under Executive Order 12333 or the suggestion, made by the Board's Chair in an opinion piece, that the PCLOB be tasked with a role related to drone strikes.<sup>1</sup> We urge you to reject such backlash against an important independent oversight agency.

Sincerely,

Access  
American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
American Library Association  
Appeal for Justice  
Amnesty International USA  
Bill of Rights Defense Committee  
Center for Democracy and Technology  
The Center for Victims of Torture

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<sup>1</sup> Ellen Nakashima, *Upset Over Op-ed, GOP Lawmakers Seek to Curb Privacy Board*, WASH. POST, (June 10, 2015), available at [http://www.washingtonpost.com/world/national-security/upset-over-op-ed-gop-lawmakers-seek-to-curb-privacy-board/2015/06/10/11ee864e-0f12-11e5-adec-e82f8395c032\\_story.html](http://www.washingtonpost.com/world/national-security/upset-over-op-ed-gop-lawmakers-seek-to-curb-privacy-board/2015/06/10/11ee864e-0f12-11e5-adec-e82f8395c032_story.html); Julian Hattem, *GOP Accused of Trying to Hobble Privacy Watchdog*, THE HILL, (June 10, 2015), available at <http://thehill.com/policy/technology/244574-gop-accused-of-trying-to-hobble-privacy-watchdog>.

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Council on American-Islamic Relations

CREDO

The Constitution Project

Defending Dissent Foundation

Demand Progress

Electronic Frontier Foundation

Fight for the Future

Human Rights Watch

International Justice Network

National Religious Campaign Against Torture

New America's Open Technology Institute

OpenTheGovernment.org

PEN American Center

Reprieve

The Rutherford Institute

TechFreedom

Sunlight Foundation

Venture Politics

Win Without War