

February 10, 2022

The Honorable Joseph Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Biden:

We, the undersigned organizations, write to express our serious concern with your signing statement for the FY 2022 National Defense Authorization Act (NDAA).

Presidential signing statements that signal the executive branch's unwillingness to comply with laws duly enacted by Congress and signed by the president pose a fundamental threat to our system of checks and balances. In this instance, we are concerned with your assertion that you have the authority to withhold disclosure to Congress of information you deem "highly sensitive" even though you are required by law to transmit that information.

There is no constitutional basis for the executive to withhold information it is required by law to transmit to Congress. While the Constitution may give the president the authority and responsibility to protect classified information, it unquestionably gives Congress significant authority over national security matters. Additionally, statutes such as the National Security Act of 1947 and the Intelligence Oversight Act of 1980 codify Congress's right to national security information. Congress may therefore require the executive branch to provide it with classified information that Congress needs to perform its own constitutionally assigned functions.

As you note in your statement, "congressional oversight committees have legitimate needs to perform vital oversight and other legislative functions with respect to national security and military matters." These "legitimate needs" are in fact constitutional prerogatives, stemming from Congress's constitutionally granted powers to declare war, create and fund the military, and craft rules governing and regulating the military. The information that Congress requested in this instance implicates each of these expressly enumerated powers.

We are especially concerned by your objection to § 1048 of the NDAA, which imposes a funding limitation until the executive branch provides Congress with complete reports on the military's execute orders and civilian casualty policies. Congress has the ultimate constitutional authority over military appropriations, and it has acted well within its authority in imposing conditions on the executive's use of government funds. Even if the president had a right to withhold the information Congress requests, Congress would retain the authority to limit funding in response.

To the extent the signing statement implies otherwise, it flies in the face of the Constitution's separation of powers.

More broadly, if you had concerns with the NDAA's reporting requirements, the appropriate approach would have been to work out your concerns with Congress prior to enactment, and then to use your veto power should you remain unsatisfied. Now that the NDAA has passed, the only legitimate course of action is to follow the law as enacted, instead of unilaterally rewriting its provisions.

We urge you to rescind your statement asserting your authority to withhold from Congress information you are required by law to provide, and to fully carry out the legislatively mandated reporting requirements contained in the FY 2022 NDAA.

Signed,

American Civil Liberties Union
American Friends Service Committee
American Oversight
Antiwar.com
Avaaz
Brennan Center for Justice
Bridges Faith Initiative
CODEPINK
Common Cause
CommonDefense.us
Defending Rights & Dissent
Demand Progress
Essential Information
Fight for the Future
Friends Committee on National Legislation
Government Accountability Project
Government Information Watch
Issue One
Just Foreign Policy
Justice Is Global
MADRE
National Priorities Project at the Institute for Policy Studies
National Security Archive
National Security Counselors
Niskanen Center

Open Society Policy Center
Open The Government
Peace Education Center
Physicians for Social Responsibility
Progressive Democrats of America
Project On Government Oversight (POGO)
Public Citizen
Quincy Institute for Responsible Statecraft
RootsAction.org
September 11th Families for Peaceful Tomorrows
Sisters of Mercy of the Americas - Justice Team
Veterans For Peace
Win Without War
Women's Action for New Directions (WAND)
X-Lab
Yemen Relief and Reconstruction Foundation
Yemeni Alliance Committee