

December 12, 2022

Dear Senators:

We are deeply concerned that the National Defense Authorization Act will severely undermine accountability for federal judges regarding ethical and conflicts-of-interest matters. Accordingly, **we call upon the Senate to remove Section 5934 from the NDAA prior to passage.**

The "Judicial Security and Privacy Act" contained in Title LIX Subtitle D of the NDAA empowers federal judges to order websites and data brokers to remove information that concern federal judges off the internet and out of their databases, backed by the threat of a penalty and damages for noncompliance. While the entirety of Subtitle D is intended to protect federal judges, Section 5934 seriously infringes upon the First Amendment and impinges upon public oversight of ethics matters concerning the federal judiciary.

Section 5934 allows for the involuntary removal of information from the internet and databases concerning current and former federal judges, their families, and anyone living in their household. It provides for the censoring of information such as their birthdates, their employers, where they intend to go to school, any home addresses, and much more.

The result is that non-profit organizations that engage in judicial oversight will no longer feel comfortable publishing information about judicial conflicts of interest. For example, it allows for the federal courts to demand the removal from the internet of information concerning the employer of the spouse of a Supreme Court Justice, subject to penalty. It would hinder the publication of concerning facts, such as a hypothetical Judge Doe's husband works at a company with a case before Judge Doe, or that Judge Doe's vacation home has been purchased by a certain well-connected couple. Non-profit organizations that perform an essential role in our society simply cannot afford the penalties, the legal fees, and the risk associated with publishing this data.

The legislation attempts to remedy these problems through a series of carve-outs. However, the cave-out language is subject to a wide-variety of interpretations, which chills speech through uncertainty. Furthermore, the legislative text contains a canon of interpretation that effectively states that when there is ambiguity, it should be decided in favor of censoring information. Finally, federal judges ultimately will be called upon to review this legislation, and they possess an obvious conflict of interest.

The language we identified in Section 5934 has not been fully vetted by public stakeholders, who expressed their dismay with this provision even as it was voted upon by the House of Representatives. Indeed, the NDAA text considered by the House had not been previously made publicly available. Nonetheless, we ask only that Section 5934 be excised from the NDAA and not the remaining provisions of Subtitle D, the Judicial Privacy and Security Act.

As written, this legislation is a strike against the public interest, ensuring that federal judges who have conflicts of interest will remain undiscovered. Surely the right of the public to know and have faith in an uncorrupted judiciary is a principle that deserves significant respect.

We strongly urge you to vote NO on the NDAA unless it no longer contains Section 5934, as that provision undermines our right to speak freely about courts ethics, and we look forward to working with you in the coming months on a security bill that keeps judges and our speech rights safe.

Sincerely yours,

Center for Democracy & Technology
Citizens for Responsibility and Ethics in Washington (CREW)
Common Cause
Defending Rights & Dissent
Demand Progress
Fix the Court
Foundation for Individual Rights and Expression
Free Law Project
Government Accountability Project
Government Information Watch
NETWORK Lobby for Catholic Social Justice
Project on Government Oversight
TechFreedom
The Digital Democracy Project
Woodhull Freedom Foundation