

The Honorable Tom Cotton
Chairman, Senate Select Committee on
Intelligence
United States Senate
Washington, D.C. 20510

The Honorable Rick Crawford
Chairman, House Permanent Select
Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mark Warner
Vice Chairman, Senate Select Committee on
Intelligence
United States Senate
Washington, D.C. 20510

The Honorable Jim Himes
Ranking Member, House Permanent Select
Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Cotton, Vice Chairman Warner, Chairman Crawford, and Ranking Member Himes:

We are writing to express our opposition to Section 308(f) and (g) in the Senate Intelligence Authorization Act (S. 2342) that would eliminate Senate confirmation for the general counsels of the Central Intelligence Agency (CIA) and the Office of the Director of National Intelligence (ODNI). Currently, very few positions in either agency are subject to Senate confirmation, and most of the work of the Senate and House Intelligence Committees occurs entirely in secret. This makes the requirement that the general counsels at the CIA and ODNI be confirmed by the Senate a rare and important opportunity for public oversight of the Intelligence Community. Removing this requirement would represent a significant step back in ensuring accountability for the nation's intelligence apparatus.

The general counsels of the CIA and ODNI wield extraordinary influence, and they do so entirely in secret, shaping policies on surveillance, detention, interrogation, and other highly consequential national security matters. Moreover, they are the ones primarily responsible for determining the boundaries of what these agencies may lawfully do. The scope of this power and the fact that it occurs outside of public view is why Senate confirmation is so important. It is also the case that across the government the general counsels of other agencies who deal with national security are required to be confirmed by the Senate, including the general counsels of the Department of Defense, the Army, Navy, Air Force, and the Departments of Homeland Security and Energy, as well as the Legal Adviser of the State Department. The CIA and ODNI general counsel should not be held to a lower standard of scrutiny, particularly given past overreach and abuses that have occurred within these agencies.

The confirmation process has proven its value under both Republican and Democratic presidents. Hearings for these positions have surfaced critical information, compelled nominees to make specific commitments, and revealed agency practices otherwise hidden from the public. Under President Obama for instance, Senator Udall used the hearing to flag the existence of a CIA

report criticizing the CIA torture program and to push for its release.¹ As Senator Udall stated during the confirmation hearing:

*And I understand that you're not in a position on your own to provide these documents and statements, but confirmation processes are one way that U.S. senators can be assured that our voices are heard by the White House and the agencies we oversee. And I don't believe my requests are unreasonable, and I want the CIA to know that I take them seriously.*²

In the same hearing Senator Wyden received a commitment that the CIA would no longer rely on a 2003 OLC opinion related to cybersecurity.³ And under President Bush the Senate forced the withdrawal of the nomination of John Rizzo for CIA general counsel over concerns regarding his role in the CIA's detention and interrogation program.⁴

Moreover, oversight of surveillance authorities such as Section 702 of FISA has often been central to the confirmation process for these positions. Removing that opportunity strips away a key safeguard and undermines the credibility of those who argue that Section 702 does not require reform because it is subject to oversight. Additionally, the recent rule changes in the Senate allowing multiple nominees to move en bloc means that subjecting these positions to Senate confirmation is neither burdensome nor would it impose any unnecessary delays.

For these reasons, we urge you to strike these provisions from the Intelligence Authorization Act and preserve the role of the Senate in confirming the general counsels of both the CIA and ODNI.

Thank you for your consideration.

Sincerely,

American Civil Liberties Union
American Governance Institute
Asian Americans Advancing Justice | AAJC
Brennan Center for Justice at NYU School of Law
Center for Democracy & Technology
Center for Victims of Torture
Citizens for Responsibility and Ethics in Washington (CREW)
Council on American-Islamic Relations (CAIR)
Demand Progress
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)

¹ Mark Mazzetti, *Senate Asks C.I.A. to Share Its Report on Interrogations*, N.Y. Times (Dec. 17, 2013), <https://www.nytimes.com/2013/12/18/us/politics/senators-ask-to-see-internal-cia-review-of-interrogation-program.html>.

² Nomination of Caroline Diane Krass to be General Counsel of the Central Intelligence Agency: Hearing before the Senate Intelligence Committee, 113 Cong. (2013).

³ Id.

⁴ Mark Mazzetti, *Nominee for C.I.A. Counsel Withdraws*, N.Y. Times (Sept. 26, 2007), <https://www.nytimes.com/2007/09/26/washington/26rizzo.html>.

Government Information Watch
Human Rights First
MPower Change Action Fund
National Religious Campaign Against Torture
Project On Government Oversight
Restore The Fourth
September 11th Families for Peaceful Tomorrows
Surveillance Technology Oversight Project (S.T.O.P.)
The Project for Privacy and Surveillance Accountability
X-Lab

CC: The Honorable Chuck Grassley, Chair, Senate Judiciary Committee
The Honorable Dick Durbin, Ranking Member, Senate Judiciary Committee
The Honorable Jim Jordan, Chair, House Judiciary Committee
The Honorable Jamie Raskin, Ranking Member, House Judiciary Committee