



June 25, 2015

The Honorable John McCain
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Mac Thornberry
Chairman
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen and Ranking Members:

The Project On Government Oversight is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.

As you begin to conference the FY 2016 National Defense Authorization Act (NDAA), we appreciate your consideration of the following recommendations and urge you to carefully consider how limited taxpayer resources can best be allocated to ensure our national security.

Provisions we support:

Support for the Close Air Support (CAS) Mission (Secs. 132 and 133 in the House; Secs. 132, 134, and 233 in the Senate). We are deeply concerned that, for reasons that defy combat needs and budgetary logic, the Air Force wants to start retiring the A-10 "Warthog" immediately, even as U.S. forces continue fighting prolonged conflicts against enemies on the ground in Afghanistan, Iraq, and Syria. A working group of A-10 pilots, F-16 pilots, and Joint Terminal Attack Controllers (JTACs) estimated that A-10 divestment would "cause significant CAS capability and capacity gaps for 10 to 12 years," create training shortfalls, increase costs per flying hour, and sideline over 200 CAS-experienced pilots due to lack of cockpits for them.¹ We believe it is irresponsible to retire additional A-10s until the F-35 or another aircraft demonstrates that it can perform this essential mission more effectively and efficiently than the A-10. We strongly support provisions in the House and Senate NDAA bills to preserve what is

¹ Mandy Smithberger, "Running for Cover: A Sham Air Force Summit Can't Fix the Close Air Support Gap Created by Dumping the A-10," Straus Military Reform Project, March 25, 2015. <http://www.pogo.org/our-work/straus-military-reform-project/weapons/2015/running-for-cover-a-sham-air-force-summit-cant-the-close-air-support-gap-created-by-dumping-the-a-10.html>

left of our already diminished CAS mission capability and to limit moving any additional A-10s into backup status. The A-10 and its competitor aircraft, such as the F-35, should be considered on their cost and effectiveness merits and not as part of the larger debate in Congress over the misuse of budgetary gimmicks, such as unconstrained overseas contingency operations (OCO) spending for routine Department of Defense expenses. We also urge the conference committee to keep the requirement for an independent study of the required capabilities of better mission platforms to replace the A-10 and significantly improve our CAS capability for the future.

Limitations on Littoral Combat Ship (LCS) Program (Senate Secs. 115, 116, and 4101). We support limits on LCS funding until pre-existing program requirements are met and the Navy has determined the capabilities and concept of operations for LCS modernized ships. Congress and independent evaluators, including POGO, have long raised concerns about the LCS's mission and ability to survive in combat. Plans to upgrade the LCS into a frigate largely fail to address these concerns. The Navy has furthermore failed to provide an acquisition timeline for purchasing upgrades, or for retrofitting them into LCS ships already purchased.² We also support the Senate's decision to cut \$55.8 million from LCS mine countermeasure mission modules that the Department requested in excess of what is necessary to complete operational testing.

Limitations and Oversight of Risks in the Long Range Strike Bomber (House Sec. 4201, House Report language, and Senate Secs. 235 and 4201). We support the House's and Senate's decision to cut \$460 million in excess of what the Department needs for the Long Range Strike Bomber. We also support efforts to exercise oversight of the program through GAO reviews of technology risks, which are likely to drive schedule delays and cost overruns. We hope that if these measures reveal additional budget excesses that the committee will continue to exercise its authority to decrease funding accordingly.

Enhanced Protections for Military Whistleblowers (House Secs. 535, 544, and 549 and Senate Sec. 1088). We strongly support provisions to provide military whistleblowers fair burdens of proof to establish retaliation. We also support providing Special Victims' Counsels for victims of sexual assault who face retaliation. In the Senate bill, we are happy to see language that addresses some of the systemic failures in protecting military whistleblowers identified by the Government Accountability Office by requiring the Department to develop a strategy to prevent retaliation and by requiring investigators to certify that they do not have a conflict of interest in investigating reprisals.³

War Spending Oversight (House Sec. 1543). We strongly oppose the addition of \$39 billion to the Overseas Contingency Operations (OCO) account to circumvent statutory budget caps. OCO has been used as a Pentagon slush fund by Republican and Democratic administrations and by Members of Congress from both parties.⁴ The Office of Management and Budget (OMB) created new restrictions on OCO spending in 2009, but a subsequent review by the Government Accountability Office found the Department of Defense had authorized spending specifically

² Christopher P. Cavas, "No Acquisition Strategy Yet for LCS Frigates," *Defense News*, May 28, 2015. <http://www.defensenews.com/story/defense/2015/05/28/littoral-combat-ship-lcs-frigate-stackley-navy-acquisition-strategy/28083649/> (Downloaded June 24, 2015)

³ Government Accountability Office, *Whistleblower Protection: DOD Needs to Enhance Oversight of Military Whistleblower Reprisal Investigations*, May 7, 2015, p. 45. <http://www.gao.gov/assets/680/670067.pdf>

⁴ Jacob Marx, "The Pentagon's Wartime Slush Fund," March 26, 2015. <http://www.pogo.org/blog/2015/03/the-pentagons-wartime-slush-fund.html>

disallowed by this policy.⁵ Congress should stop overfunding OCO beyond the President's already robust request, and should exercise proper oversight of the expenditure of these funds. We strongly support requiring the Government Accountability Office to submit a report to Congress on how these funds have been used.

Collecting Commercial Item Prices (Senate Sec. 864). We support providing contracting officers with the authority to require offerors to submit cost or pricing data. Such authority will help reduce commercial item cost or price reasonableness problems identified by the GAO and DoD Inspector General.

Compliance with Inventory of Contracts for Services (House Sec. 807). The DoD spends more on services than it does on goods, but has failed for years to meet its statutory requirement to implement an effective inventory of contracts for services and establish the Total Force Management Support Office, which will improve decision-making and result in cost savings. We strongly support the provision enforcing this requirement.

Cost-Efficient Workforce Management (House Secs. 321, 863, and 907). The pressure to reduce the size of government has led to the award of service contracts, resulting in an expanding "shadow government" that costs hundreds of billions of dollars annually. We support preserving the cap on contracting services until civilian personnel ceilings are lifted and the DoD can conduct accurate cost assessments to determine the right workforce mix of military, civilian, and contractor employees. We also support requiring DoD to conduct that analysis before assigning new requirements.

Provisions we oppose:

Undermining Testing and Responsible Acquisition Strategy (House Secs. 851 and 862). We oppose language in the House adding cost and schedule considerations to the Director of Operational Test and Evaluation (DOT&E) and corresponding paperwork burdens to misdirect Congress's intent in the creation of this office. This requirement will undermine the office's effectiveness and—by impeding realistic testing—will increase the risk of cost overruns, performance shortfalls, and schedule delays in weapon systems.⁶ We believe that this change, authored by the defense industry, will undermine weapon effectiveness in combat and will increase total program costs to taxpayers.⁷ A recent report from the Government Accountability Office confirmed what most objective and informed Pentagon watchers already know: operational testing does not cause significant cost increases or schedule delays in major weapons

⁵ Government Accountability Office, *Overseas Contingency Operations: Comparison of the Department of Defense's Overseas Contingency Operations Funding Requests for Fiscal Years 2010 and 2011*, July 6, 2010, p. 14. <http://www.gao.gov/assets/100/96896.pdf>

⁶ Project On Government Oversight, "POGO Calls on Senate to Keep Pentagon Testing Office Strong in NDAA," May 16, 2014. <http://www.pogo.org/our-work/letters/2014/pogo-calls-on-senate-to-keep-pentagon-testing-office-strong.html>

⁷ Austin Wright and Leigh Munsil, "In House bill, arms makers wrote their own rules," *Politico*, May 12, 2015. <http://www.politico.com/story/2015/05/in-house-bill-arms-dealers-wrote-their-own-rules-117842.html> (Downloaded June 24, 2015)

programs.⁸ In fact, this testing is essential for finding and fixing ineffective weapons programs before they fail in operational deployment—thereby saving American lives and reducing cost.⁹ We also oppose the House’s language to reduce the authority of the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation and the Deputy Assistant Secretary of Defense for Systems Engineering. Numerous studies, and the findings included in the House bill, show that sound and robust systems engineering and developmental testing are key components to the success of major defense acquisition programs. Moreover, these offices provide reports that play a crucial role in effective congressional oversight and public scrutiny of weapons programs.

Addition of Weapon Systems Taxpayers Can’t Afford. The use of budget gimmicks with OCO has allowed both committees to pretend to have funds to support \$2.7 billion-worth of “unfunded priorities” in the House and nearly \$10 billion-worth in the Senate.¹⁰ We are particularly disturbed by the addition of six F-35B Joint Strike Fighters for \$1 billion. The GAO, DOT&E, and DoD IG have all found significant challenges that call into question the ability of the Marine Corps to meet its initial operational capability (IOC) deadline.¹¹

Wasteful MOX Fuel Fabrication Facility Spending (House Sec. 3116 and Senate Sec. 4701). The Mixed Oxide Fuel Fabrication Facility (MOX) was designed to convert weapons-grade plutonium into mixed oxide fuel for U.S. commercial nuclear reactors. The facility is over budget, behind schedule, and lacking even a single customer. Though we oppose continued funding for MOX construction, we do support the Senate’s decision to add an additional \$5 million to this program area for the purpose of analyzing alternatives to this wasteful project.

Undisciplined National Sea-Based Deterrence Fund (House Sec. 1407 and Senate Sec. 1022). We oppose the creation of a National Sea-Based Deterrence Fund. Rather than exercising discipline over the *Ohio* Class Replacement (SSBN(X)) program, the Navy has argued that the program should be treated as a “national strategic asset” and be separated from the shipbuilding budget. No previous generations of ballistic missile submarine fleets have been funded outside of the shipbuilding budget. Allowing the Navy to move funding for this program out of its budget

⁸ Government Accountability Office, *DOD Operational Testing: Oversight Has Resulted in Few Significant Disputes and Limited Program Cost and Schedule Increases*, June 2, 2015.

<http://www.gao.gov/assets/680/670565.pdf> (Downloaded June 24, 2015)

⁹ Mandy Smithberger, “Congressional Watchdog Confirms Weapon-Testing Benefits,” Straus Military Reform Project, June 12, 2015. <http://www.pogo.org/our-work/straus-military-reform-project/weapons/2015/congressional-watchdog-confirms-weapon-testing-benefits.html>

¹⁰ Taxpayers for Common Sense, “TCS analysis of National Defense Authorization bill for Fiscal Year 2016,” April 28, 2015. <http://www.taxpayer.net/library/article/tcs-analysis-of-national-defense-authorization-bill-for-fiscal-year-2016>; and Senate Armed Services Committee, “Senate Armed Services Committee Completes Markup of National Defense Authorization Act for Fiscal Year 2016,” May 14, 2015. <http://www.armed-services.senate.gov/press-releases/senate-armed-services-committee-completes-markup-of-national-defense-authorization-act-for-fiscal-year-2016> (All downloaded June 24, 2015)

¹¹ Mandy Smithberger, “GAO Confirms Increased F-35 Production Is a Terrible Idea,” Straus Military Reform Project, April 17, 2015. <http://www.pogo.org/our-work/straus-military-reform-project/weapons/2015/gao-confirms-increased-f-35.html>; Mandy Smithberger, “Not Ready for Prime Time,” Straus Military Reform Project, March 12, 2015. <http://www.pogo.org/our-work/straus-military-reform-project/weapons/2015/not-ready-for-prime-time.html>; Brian Everstine, “IG Faults management of F-35 engine program,” *Air Force Times*, April 28, 2015. <http://www.airforcetimes.com/story/military/2015/04/28/dod-ig-review-f35-engine-program/26461887/> (Downloaded June 24, 2015)

reduces discipline in the program and increases the likelihood of gross cost overruns in what the Congressional Budget Office expects to be a \$102 billion to \$107 billion program. Moreover, it creates a dangerous precedent for the military services to treat other expensive programs, like long range bombers and aircraft carriers, as national assets that shouldn't come out of their budgets.¹²

Exacerbating Wasteful Commercial Item Spending (House Secs. 804, 805, and 852 and Senate Sec. 863). We strongly oppose the continued validity of commercial item designations. Using recent prices paid by the government in the determination of price reasonableness will harm the government and severely limit the government's ability to access any cost or pricing information from contractors selling commercial goods or services. Historic pricing data is insufficient to determine fair and reasonable prices and will result in new bad deals being made based on old bad deals. DoD could be locked in to such a designation despite subsequent changes to the item or military unique requirements that alter the item from its commercial nature. Any continuation of commercial item designations could require DoD to buy commercial items that no longer have a commercial market, and thereby pay excessive costs or prices or settle on timeworn products. Moreover, we are concerned that these provisions, which alter the process for determining commercial items, will only exacerbate overpayment problems identified by the GAO and DoD IG.

Extending the Misused Other Transaction Authority (House Sec. 853 and Senate Sec. 804). We oppose the expansion of other transaction authority (OTA) because this authority is often used as a way to circumvent contract policies and practices and provide new sole source opportunities to traditional contractors. We believe the Senate bill's expansion is particularly risky for taxpayers, but could offer tepid support if the provision were limited to nontraditional defense contractors as defined by 10 U.S.C. § 2302, which the House included in Sec. 853 of its bill. We urge you to carefully oversee this authority and ensure that it is only used to bring innovations to the public from non-traditional government contractors rather than throwing billions of dollars with no oversight controls to the government's top vendors.

Unnecessarily Limiting Conversion of Procurements from Commercial Items (Senate Sec. 865). We strongly oppose any prohibition of converting commercial item procurements to negotiated procurements. Any continuation of commercial item designations could require DoD to buy commercial items that no longer have a commercial market, and thereby pay excessive costs or prices or settle on timeworn products.

Misdefining Goods and Services Provided by Nontraditional Contractors as Commercial Items (Senate Sec. 866). We oppose the treatment of all nontraditional contractors as commercial. Other Transaction Authority already exists to attract nontraditional contractors and the additional risks of categorizing all of their items as commercial, opens the government up to wasteful spending.

¹² Taxpayers for Common Sense, "The Navy's Budget Sleight of Hand," April 28, 2015. http://www.taxpayer.net/images/uploads/articles/TCS_Design_R4-web.jpg?v=1429731364 (Downloaded June 24, 2015)

East Coast Missile Defense Not Needed and Not Requested (House Sec. 1673). We oppose the House’s addition of \$30 million for the planning and designing an East Coast Missile Defense site. Administration and Pentagon officials have rejected the need for an East Coast missile defense site over and over again. Two years ago, the head of the Missile Defense Agency confirmed that there was “no validated military requirement to deploy an East Coast missile-defense site.”¹³ Moreover, last year the Office of Management and Budget called the authorization for an East Coast site “premature and potentially wasteful.”¹⁴

As you prepare the final version of the National Defense Authorization Act for Fiscal Year 2016, we hope you will consider the aforementioned recommendations that will help enhance fiscal responsibility, improve defense acquisition, and strengthen accountability in the Pentagon’s budget.

Sincerely,

A handwritten signature in black ink that reads "Danielle Brian". The signature is written in a cursive, flowing style.

Danielle Brian
Executive Director

cc: Members, House and Senate Armed Services Committee

¹³ Anthony Capaccio, “Pentagon, Army Say East Coast Missile Defense Site Not Needed,” Bloomberg, June 11, 2013. <http://www.bloomberg.com/news/articles/2013-06-11/pentagon-army-say-east-coast-missile-defense-site-not-needed> (Downloaded June 24, 2015)

¹⁴ Office of Management and Budget, “Statement of Administrative Policy, H.R. 4435 – Howard P. ‘Buck’ McKeon National Defense Authorization Act for FY 2015,” May 19, 2014. https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr4435r_20140519.pdf (Downloaded June 24, 2015)