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AMERICANS FOR LESS SECRECY, MORE DEMOCRACY

The Border Security for America Act (H.R.3548)

Threats to privacy, the right to know, and government accountability

We urge Members of Congress to oppose the *Border Security for America Act* ([H.R.3548](#)). The bill contains unnecessary provisions that are fundamentally at odds with government accountability, and would authorize the implementation of massive federal border security, immigration enforcement, and surveillance programs in secret and without privacy protections. H.R.3548 passed the House Committee on Homeland Security on October 4.

- **The bill would keep the public in the dark about its implementation:** Section 112 of the bill contains an exemption to the Administrative Procedure Act (APA) that would prevent the public from being informed of the bill's implementation via the *Federal Register*, and from offering comments and receiving feedback from implementing agencies. The APA already contains a good cause exemption from its notice and comment procedures that agencies cite when it is "impracticable, unnecessary, or contrary to the public interest" to provide public notice. Any further exemptions severely undermine the public's right to know.
- **The bill would threaten privacy rights:** Section 112 would also exempt the bill from the Privacy Act, meaning that the public would lose crucial privacy and right to know protections including the right to review and correct government records about themselves. This is particularly concerning given the surveillance and biometric data collection provisions in the bill. If an agency believes it's necessary to exempt a certain system of records from Privacy Act protections, it can already do so by publishing a notice in the *Federal Register* and receiving public comments.
- **The bill significantly expands DHS authority and undermines Congress.** Section 102 of H.R.3548 gives the Secretary of Homeland Security the authority to "waive all legal requirements...necessary to ensure the expeditious construction, installation, operation, and maintenance of the tactical infrastructure and technology under this section." This provision is a major expansion of the authority granted in the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), which allowed waivers only for construction of barriers and roads. This bill expands the authority well beyond IIRIRA to include operation and maintenance, meaning the waivers could remain in place indefinitely, well after construction is completed. In addition to "barriers and roads," H.R.3548 includes "tactical infrastructure and technology," which would allow the Secretary to waive every law that would safeguard against civil liberties violations, misuse of taxpayer dollars, and avenues for accountability and Congressional oversight. In 2008, DHS [used the much narrower authority](#) it had (pursuant to IIRIRA) to waive the APA and a number of other laws protecting the environment, farmland, religious freedom, and historical sites.

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