

**ATTORNEYS GENERAL OF MASSACHUSETTS, COLORADO, CONNECTICUT,
DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MINNESOTA, NEW
MEXICO, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE
ISLAND, WASHINGTON, WISCONSIN, AND THE DISTRICT OF COLUMBIA**

November 8, 2022

The Honorable Charles E. Schumer
Majority Leader
U.S. Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Re: PFAS Provisions in the Fiscal Year 2023 National Defense Authorization Act

Dear Majority Leader Schumer and Minority Leader McConnell:

As you work to finalize the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, S.4543 (Senate Bill),¹ the undersigned state attorneys general express our support for the Senate's passing a bill that builds on Congress's accomplishments in prior defense authorization bills addressing per- and polyfluoroalkyl substances (PFAS). We specifically urge you to pass a bill that incorporates protective provisions addressing PFAS contained in the recent House-passed version of the National Defense Authorization Act for Fiscal Year 2023, H.R.7900 (House Bill).²

The House and Senate Bills each helps to further the whole-of-government approach to addressing PFAS set forth in the Biden Administration's *PFAS Strategic Roadmap*.³ However, to appropriately protect our military personnel and others that live on or adjacent to military facilities, and to safeguard the public and environment against this highly persistent and toxic

¹ National Defense Authorization Act for Fiscal Year 2023, S.4543, 117th Congress (2021-2022), reported and introduced July 18, 2022. See <https://www.congress.gov/bill/117th-congress/senate-bill/4543/text>.

² National Defense Authorization Act for Fiscal Year 2023, H.R.7200, 117th Congress (2021-2022), passed Jul. 14, 2022. See <https://www.congress.gov/bill/117th-congress/house-bill/7900/text?r=2&s=1&format=txt>.

³ U.S. Environmental Protection Agency (EPA), *Strategic Roadmap: EPA's Commitments to Action 2021-2024* (October 2021) ("EPA Roadmap") at 5, https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf. While the states applaud the policies enunciated in the EPA Roadmap, and the strategic measures it maps out, the states believe it does not and cannot be a substitute for necessary Congressional action, including passing a FY2022 NDAA that appropriately addresses current urgencies related to PFAS for which we advocate in this letter.

class of “forever” chemicals, we urge you to finalize a bill incorporating many of the important PFAS provisions now found only in the House Bill.⁴

PFAS have been used to produce countless consumer products since the 1940s, including textiles with Scotchgard™; Teflon™ products, including non-stick cookware; food packaging; and waterproof clothing. Firefighting foam containing PFAS has also been used for decades by the U.S. military, airports, industrial facilities, and local fire departments. PFAS are entirely human-made and are estimated to be detectable in the blood stream of 99% of the U.S. population. Unfortunately, PFAS generally appear to be highly toxic to humans and animals, they tend to bioaccumulate in organisms and migrate up the food chain, and they are extremely resistant to degradation in the environment—which is why PFAS are known as “forever chemicals.” As the science regarding PFAS toxicity continues to develop, we know PFAS are linked to serious adverse health effects in humans and animals. The two most studied types of PFAS are perfluorooctanoic acid, known as PFOA, and perfluorooctanesulfonic acid, known as PFOS. Human health effects associated with exposure to PFOA include kidney and testicular cancer, thyroid disease, liver damage, and preeclampsia; exposure to PFOS is associated with immune system effects, changes in liver enzymes and thyroid hormones, and other conditions.⁵

Our states continue to face substantial threats to public health and the environment posed by PFAS, and we are shouldering costs in the many millions of dollars to address contamination in drinking water sources. Many of our states are installing equipment to remediate PFAS contamination, providing alternative drinking water supplies, testing the blood of impacted communities, sampling fish and wildlife for consumption advisories, and investigating numerous areas of known and potential contamination, among other efforts. Other states are just beginning to investigate the extent of PFAS contamination within their borders, with estimates in the billions of dollars to address drinking water contamination nationwide. Contaminated sites include areas in or around military bases where firefighting foam was used, firefighting training centers, civilian airports, industrial facilities, landfills, and wastewater residuals disposal facilities. PFAS from many of these sites have migrated to contaminate nearby public and private drinking water supplies, at great costs to impacted communities and our states.

The undersigned are pleased that recommendations made in earlier letters by state attorneys general in each of 2019, 2020, and 2021 have been signed into law,⁶ and are heartened

⁴ The undersigned state attorneys general express no views or positions herein on aspects of the National Defense Authorization Act for Fiscal Year 2023 unrelated to PFAS.

⁵ See, e.g., C8 Science Panel, <http://www.c8sciencepanel.org/> (last updated January 22, 2020); U.S. Environmental Protection Agency, *Basic Information on PFAS, Are there health effects from PFAS?*, <https://www.epa.gov/pfas/basic-information-pfas#health>.

⁶ See letters to Congressional leadership, dated July 30, 2019, joined by attorneys general from twenty-two states and sovereigns, to the House and Senate Armed Services Committees, dated October 5, 2020, joined by attorneys general from twenty states and sovereigns, and to Senate leadership, dated November 24, 2021, joined by attorneys general from 15 states and sovereigns (see November 24, 2021 letter, with Appendices A and B, www.mass.gov/doc/multistate-pfas-ndaa-letter-to-the-senate/download). Some of these recommendations have already been adopted, including (1) adding many PFAS to the list of chemicals covered by the Toxics Release Inventory (TRI) under Section 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11023, see https://www.epa.gov/sites/default/files/2021-01/documents/tri_non-cbi_pfas_list_1_8_2021_final.pdf; (2) limiting and ultimately prohibiting the use of PFAS aqueous film forming foam at military installations; (3) requiring the U.S. Department of Defense (DoD) to establish a task force to address the effects of the release of

that the National Defense Authorization Acts (NDAAs) for the last two years included many provisions that meaningfully addressed PFAS contamination. For example, the FY2022 NDAA⁷ had many helpful provisions, including requiring DoD to review the agency’s mutual support agreements with non-DoD entities (including state and local governments) involving fire-suppression activities to prevent and mitigate spills of PFAS-containing firefighting foams; requiring DoD to submit a proposed schedule on the completion of remediation of PFAS substances at military installations, National Guard facilities, and formerly used defense sites that were identified as having released PFAS as of March 31, 2021; and requiring reporting on the status of remediation of released PFAS at 50 priority military installations.

We also greatly appreciate the progress that the Senate Bill represents, including providing for the transfer of up to \$20 million to the U.S. Department of Health and Human Services (HHS) for the study on health effects of PFAS in drinking water; requiring DoD to publish a website that records timely information about DoD’s PFAS research collaborations with governmental and non-governmental entities, reflects on alternatives to PFAS-containing firefighting agents, reports on the health effects of PFAS, discusses water treatment options, and provides budget information related to PFAS; and prohibiting DoD from procuring PFAS-containing personal protective equipment for firefighters after October 1, 2026. And we applaud the Senate Armed Services Committee’s express recognition last year that PFAS chemicals are toxic and persistent in the environment and that a “whole-of-government” approach should be pursued to address these forever chemicals.⁸

To further the needed protections to combat PFAS exposures in our communities, we encourage the Senate to include other important provisions appearing in the bipartisan House Bill that seek to protect our communities from PFAS, including providing DoD with additional tools necessary to conduct remediation and removal of PFAS contamination to protect public health and the environment.⁹ These include the following provisions from the House Bill:

- Mandating that all DoD cleanups of PFAS contaminations satisfy the most stringent state and federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) standards and Safe Drinking Water Act standards and health advisories;
- Requiring a report from the DoD on implementing on-site PFAS destruction technologies that do not require incineration;

PFAS by DoD, including monitoring health aspects of PFAS exposure; (4) identifying and procuring PFAS-free fire-fighting foams; (5) coordinating across DoD to mitigate the effects of PFAS releases; and (6) assessing perceptions of Congress and the public related to DoD’s efforts to mitigate the effects of its PFAS releases.

⁷ National Defense Authorization Act for Fiscal Year 2022, S.1605, 117th Congress (2021-2022), signed by the president December 27, 2021, Public Law No. 117-81. See <https://www.congress.gov/bill/117th-congress/senate-bill/1605>.

⁸ See U.S. Senate Committee on Armed Services Report No. 117-39, National Defense Authorization Act for Fiscal Year 2022 Report [to accompany S. 2792] To Authorize Appropriations for Fiscal Year 2022 For Military Activities of the Department of Defense, For Military Construction, and For Defense Activities of the Department of Energy, to Prescribe Military Personnel Strengths for such Fiscal Year, and For Other Purposes, p. 124, 117th Congress, First Session, Sept. 22, 2021, available at <https://www.congress.gov/117/crpt/srpt39/CRPT-117srpt39.pdf>.

⁹ There are approximately 678 active or closed military installations with known or suspected PFAS contamination on- or off-site, requiring prompt attention to protect military personnel and surrounding communities. See <https://www.ewg.org/interactive-maps/2019-pfas-crash-training-military-sites-March2020/map/>.

- Expanding the list of prohibited products under § 333 of the Fiscal Year 2021 National Defense Authorization Act;
- Prohibiting the procurement of personal protective firefighting equipment containing PFAS after October 1, 2025 (subject to an exception for lack of availability);
- Calling on DoD to provide Congress with a list of each known use of PFAS that the department deems essential and for which of these uses a replacement substance is impossible or impractical;
- Requiring DoD to provide briefings to the Armed Services Committees on steps the department has taken to identify items containing PFOA and PFOS and its efforts to limit procurement of those products;
- Requiring a report to Congress no later than one year after enactment detailing how to establish a process to alert active and retired members of the Armed Forces (and their families) about exposure to PFAS;
- Requiring a report not later than one year after enactment of progress made in the replacement of fire-fighting agents containing aqueous film forming foam (AFFF) and a report on known or suspected PFAS contaminations around military installations related to substances other than AFFF;
- Directing HHS to expand its study of the health effects of PFAS contamination, and to report its progress to Congress one year after enactment;
- Directing DoD to establish a program coordinating with the U.S. Environmental Protection Agency (EPA) to test for PFAS in drinking water at schools operated by DoD and to install safe and effective filtration systems to meet either the standard under the Safe Drinking Water Act or applicable state standard, whichever is stricter;
- Amending § 8(a)(7) of the Toxic Substance Control Act to add the phrase “that contains at least one fully fluorinated carbon atom,” after “perfluoroalkyl or polyfluoroalkyl substance” for reporting purposes; and
- Directing EPA to publish in the Federal Register effluent limitation guidelines for PFAS under § 304(a)(1) of the Clean Water Act not more than three years after enactment.

We applaud the Senate’s past efforts in this regard and look forward to similar, even stronger gains, in the future consistent with our recommendations in this letter. Thank you for once again making PFAS remediation and the protection of our communities a priority. We urge Congress to maintain focus on PFAS remediation as a crucial priority in crafting the final version of the FY2023 NDAA and to keep the goal of developing strong federal regulation of PFAS compounds at the forefront for Congress.

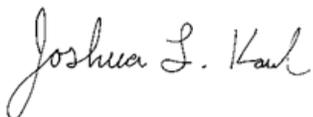
Sincerely,



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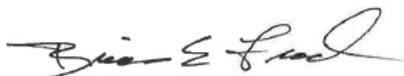
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cc: The Honorable Jack Reed, Chair, Senate Armed Services Committee
The Honorable James M. Inhofe, Ranking Member, Senate Armed Services Committee
The Honorable Nancy Pelosi, Speaker, United States House of Representatives
The Honorable Steny Hoyer, Majority Leader, United States House of Representatives
The Honorable Kevin McCarthy, Minority Leader, United States House of Representatives
The Honorable Adam Smith, Chair, House Armed Services Committee
The Honorable Mike Rogers, Ranking Member, House Armed Services Committee