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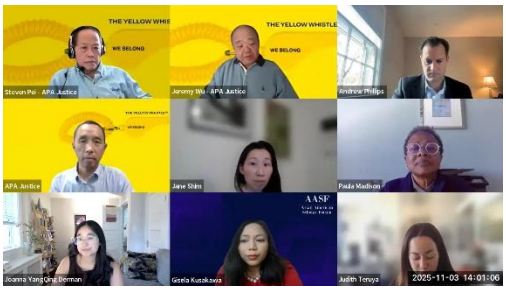
Andy Phillips on The Privacy Case of Dr. Yanping Chen



During the APA Justice monthly meeting on November 3, 2025, **Andy Phillips**, Managing & Founding Partner, Meier Watkins Phillips Pusch LLP, presented an in-depth briefing on Dr. **Yanping Chen 陈燕平**'s Privacy Act case, which he has been litigating for several years.

Dr. Chen emigrated to the U.S. from China and has a medical degree as a cardiologist. She worked as a scientist and supervisor for China's astronaut program. She came to the U.S. to be a visiting scholar at George Washington University in Washington, DC, in the late 80s, became a permanent resident in 1993, and a naturalized U.S. citizen in 2001.

In the 1990s, she founded the University of Management and Technology (UMT) in Arlington, Virginia, focusing on post-secondary and graduate studies for working adults. A fairly large number of UMT's students are service members who seek degrees and receive assistance from the Department of Defense (DOD)'s Tuition Assistance Program, which UMT participates in along with many other schools. The program allows UMT to receive subsidized tuition payments for service members from the DOD.

Dr. Chen became the subject of a years-long Federal Bureau of Investigations (FBI) investigation beginning around 2010 concerning statements she made on her immigration forms related to her work for China's astronaut program. Despite FBI raids on her home and office and

interviews with her family, the U.S. Attorney's Office closed the case in 2016 with no charges filed.

A year later, in 2017, *Fox News* and then reporter **Catherine Herridge** published a series of television and online reports accusing Dr. Chen of being a Chinese spy and suggesting that UMT was a front for gathering sensitive U.S. military information. These reports contained leaked FBI materials, including Dr. Chen's immigration forms, family photographs, and references to internal interview memoranda—clear signs of an unauthorized disclosure of Dr. Chen's private government records.

In response, Dr. Chen filed a Privacy Act lawsuit in 2019 against several federal agencies, including the FBI, Department of Justice (DOJ), DOD, and Department of Homeland Security (DHS), arguing that government officials had unlawfully leaked her protected records to the press.

Andy explained that the Privacy Act of 1974 was enacted to safeguard personal information collected by government agencies and to prevent such records from being used for unauthorized purposes.

Under the Privacy Act, a plaintiff must prove that a government official intentionally or willfully disclosed private information. However, identifying the individual responsible for the leak proved to be the central challenge in Dr. Chen's case. After two years of exhaustive discovery—including depositions, document requests, and interrogatories—Dr. Chen's legal team was unable to pinpoint the leaker within the government.

At that stage, Andy and his firm joined the case in 2022 (Dr. Chen was represented by co-counsel WilmerHale who handled initial stages of the case and discovery against the government) to focus on the media law issues, particularly journalist privilege, which they frequently encounter in First Amendment defamation litigation.

They issued a subpoena compelling Catherine Herridge to reveal her source for the leaked materials. Herridge, represented by counsel, moved to quash the subpoena, citing a qualified First Amendment privilege that allows reporters to protect the identities of confidential sources. The privilege is "qualified," not absolute, meaning it can be overcome under certain circumstances—specifically if the requested information is central to the case and the plaintiff has exhausted all other means of obtaining it.

The U.S. District Court for the District of Columbia ruled in Dr. Chen's favor, finding that both conditions were met: the identity of the leaker was essential to proving her Privacy Act claim, and Dr. Chen had already undertaken substantial efforts to discover the information elsewhere. Herridge's arguments that national security, journalistic freedom, or Dr. Chen's alleged misconduct should weigh against disclosure were rejected. The court stated firmly that the law

must be applied equally and that courts should not make value judgments based on who the plaintiff is or what allegations have been made in the media.

When Herridge refused to comply with the court order during her September 2023 deposition, Andy sought a contempt ruling, which the court granted, imposing a fine of $800 per day for noncompliance. The fine was stayed pending appeal as the case moved to the U.S. Court of Appeals for the D.C. Circuit, which was argued around November 2024. In September 2025, the D.C. Circuit issued a unanimous 3-0 decision affirming the District Court's ruling, rejecting Herridge's call for a broader balancing test and upholding Dr. Chen's right to pursue her Privacy Act claim.

Andy emphasized the broader implications of the case, calling it a vital reaffirmation of the rule of law and government accountability. He explained that the case is not about restricting the press but about ensuring that government officials cannot weaponize confidential information to destroy reputations without consequence. "If this decision had gone the other way," Andy said, "it would have sent the message that government agents could leak with impunity, as long as they laundered their misconduct through a journalist who would protect them."

He drew parallels between Dr. Chen's case and the case of Dr. **Wen Ho Lee 李文和**, where another Chinese American scientist was falsely accused of espionage based on leaked government information and media misrepresentation. Both cases, he noted, reflect how racial bias and national security fears can combine to harm innocent individuals. Andy praised the amicus brief filed in support of Dr. Chen, which traced a long history of anti-Asian discrimination in both media coverage and law enforcement, arguing that accountability and transparency are critical to restoring trust.

Concluding his remarks, Andy said the D.C. Circuit's decision "reaffirmed 50 years of precedent" in the nation's capital and represents a strong affirmation that every citizen—regardless of ethnicity or background—is entitled to equal protection under the law. He expects Herridge to request en banc (before the full court) review or possibly appeal to the U.S. Supreme Court, but remains confident that the case has set an enduring precedent for privacy rights and justice in the face of abuse of power.

A summary of the November 3 monthly meeting has been posted at https://bit.ly/49dbmuO. We thank these distinguished speakers for sharing their thoughts and updates:

- **Judith Teruya**, Executive Director, Congressional Asian Pacific American Caucus (CAPAC)
- **Joanna YangQing Derman**, Director, Anti-Profiling, Civil Rights & National Security Program, Advancing Justice | AAJC
- **Gisela Perez Kusakawa**, Executive Director, Asian American Scholar Forum (AASF)
- **Andy Phillips**, Managing & Founding Partner, Meier Watkins Phillips Pusch LLP

- **Jane Shim**, Director, Stop Asian Hate Project, Asian American Legal and Education Fund
- **Paula Williams Madison**, Chairman and CEO of Madison Media Management LLC and 88 Madison Media Works Inc.; Retired Executive, NBCUniversal
- **Brian Sun**, Partner, Norton Rose Fulbright US LLP; Former Attorney representing Dr. Wen Ho Lee

Banning Collaboration, Fueling Brain Drain: U.S. Science at a Crossroads

Congress's proposed SAFE Act would bar federal funding to U.S. researchers who have collaborated with individuals from "hostile" nations such as China—drawing warnings from leading universities and civil rights groups that it would stifle innovation and revive discrimination. At the same time, deep federal research cuts and political pressures are driving a growing "brain gain" for China, as U.S.-trained scientists relocate there amid expanding investment and opportunity. China's research output rose 17% last year while U.S. output fell 10%, signaling a widening gap. Without renewed openness and funding, experts warn, the U.S. risks losing its global scientific leadership.

1. *Science*: Congressional Push to Restrict Research Ties

Science

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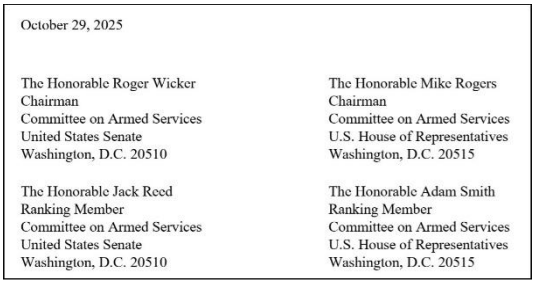
HOME > NEWS > SCIENCEINSIDER > U.S. CONGRESS CONSIDERS SWEEPING BAN ON CHINESE COLLABORATIONS

SCIENCEINSIDER | SCIENCE AND POLICY

U.S. Congress considers sweeping ban on Chinese collaborations

Researchers speak out against proposal that would bar funding for U.S. scientists working with Chinese partners or training Chinese students

6 NOV 2025 · 3:15 PM ET · BY JEFFREY MERVIS


October 29, 2025

The Honorable Roger Wicker
Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, D.C. 20510

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

According to *Science* on November 6, 2025, nearly 800 American scientists have signed a letter opposing a proposed research restriction in the House version of the National Defense Authorization Act (NDAA) known as the Securing American Funding and Expertise from Adversarial Research Exploitation (SAFE) Act. Led by Stanford Professors **Peter Michelson** and **Steven Kivelson**, the letter warns that the measure—which would bar federal funding to U.S. researchers who collaborated within the past five years with individuals "affiliated with a hostile foreign entity" such as China, Russia, Iran, or North Korea—would weaken the very foundation of American innovation.

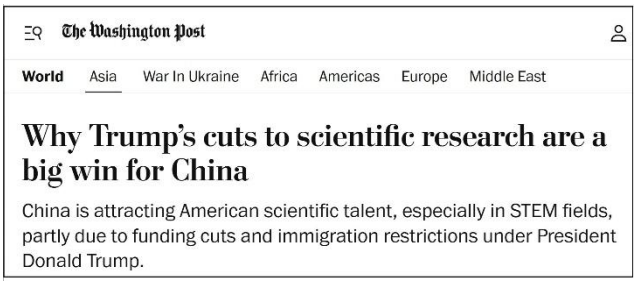
> "To maintain U.S. leadership in science and technology, we must preserve the thriving research ecosystem that laid the foundation for American competitiveness."

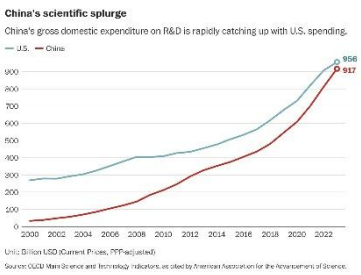
Major higher education groups, including the Association of American Universities (AAU) and the Association of Public and Land-grant Universities (APLU), urged Congress to remove the provision, calling it overly broad and ill-defined. Representative **Zoe Lofgren** (D-CA) added that the SAFE Act "ignores, and in some cases contradicts, what is already in law."

Civil rights and Asian American advocacy organizations warn that the measure could echo the discriminatory effects of the defunct China Initiative, chilling legitimate academic exchange and disproportionately harming scientists of Chinese descent. During the APA Justice monthly meeting on November 3, **Gisela Perez Kusakawa**, Executive Director of the Asian American Scholar Forum (AASF), outlined four major concerns raised in AASF's October 17 letter to the House Armed Services Committee:

- **Five-Year Lookback** – AASF warns this could lead to retroactive punishment for past research activities that were legal or even encouraged, urging fairness and a reasonable transition period for agencies, universities, and individuals.
- **Co-Authorship Barriers** – The provision could effectively bar co-authorship within the timeline provided, restricting international research collaboration and openness, undermining U.S. competitiveness.
- **Overly Broad Definitions** – Vague terms like "affiliation" could include almost any international engagement, making compliance impractical and potentially harmful to innovation and education. Both international students and American-born students benefit from international programs and collaborations.
- **Disparate Impact on Asian Americans** – Broad, ambiguous rules risk biased application and enforcement that could disproportionately harm Asian American scientists, especially those of Chinese descent.

2. *WP*: China's "Brain Gain" Accelerates





While Washington tightens its guardrails and budget, Beijing is expanding its global reach in science and technology. A *Washington Post* investigation finds that China is reaping a "brain gain" as hundreds of U.S.-trained researchers—many of them Chinese American—relocate to China or take joint appointments.

In the first half of 2025 alone, about 50 tenure-track scholars of Chinese descent left U.S.

universities for China, adding to more than 850 departures since 2011. More than 70 percent of these scientists work in STEM fields, particularly engineering and life sciences. Those who have recently moved include a senior biologist from the National Institutes of Health, a Harvard statistician, and a clean-energy expert from the U.S. Department of Energy. Their decisions reflect both “push” and “pull” factors—the deteriorating climate for research in the U.S. and Beijing’s aggressive efforts to attract world-class talent.

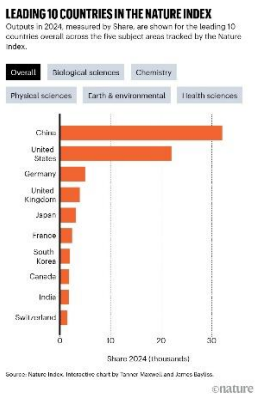
Trump’s policies have deepened that push. His administration has slashed billions from science budgets, canceled research grants, and imposed visa restrictions that hinder international collaboration. The revived scrutiny of researchers with ties to China—echoing the discredited “China Initiative”—has also made many Chinese American scientists feel unwelcome in the U.S. “We hope Trump is president for life, because it’s the best thing to happen to Chinese science,” one Chinese researcher half-joked to a visiting Harvard immunologist.

China, meanwhile, is offering generous incentives. The National Natural Science Foundation of China (NSFC) is channeling much of its $8 billion annual budget into talent programs, while cities and universities compete to lure foreign scientists with high salaries, lab funding, housing, and child care support. A new “K visa” aims to make it easier for young foreign STEM researchers to work in China. Westlake University and Tsinghua University’s Shenzhen International Graduate School have recruited leading U.S. academics, including Nobel-caliber scholars and rising stars.

China’s total R&D spending—$917 billion in 2023—has nearly matched that of the United States, signaling a narrowing gap in global research leadership.

As the two superpowers compete for scientific talent, individual researchers increasingly face painful trade-offs between opportunity and freedom. The result, experts warn, is a shifting global scientific order—one where U.S. skepticism toward science, combined with China’s strategic investment, may erode America’s long-held dominance in research and innovation.

3. *Nature*: U.S. Losing Ground as China’s Lead Expands Rapidly



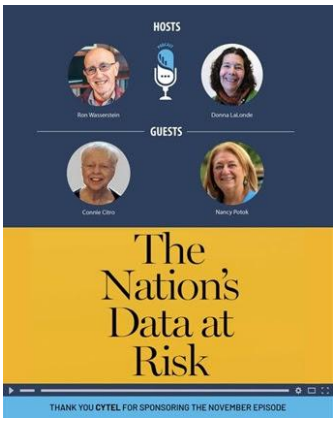
China's dominance in global research is accelerating sharply, while U.S. scientific leadership is eroding at an alarming pace, according to the *Nature Index 2025 Research Leaders* report. The data show China expanding its lead in high-quality scientific output: its total research "Share" reached 32,122 in 2024, compared with 22,083 for the United States. That gap, which emerged only in 2023 when China first overtook the U.S., has now quadrupled in just one year.

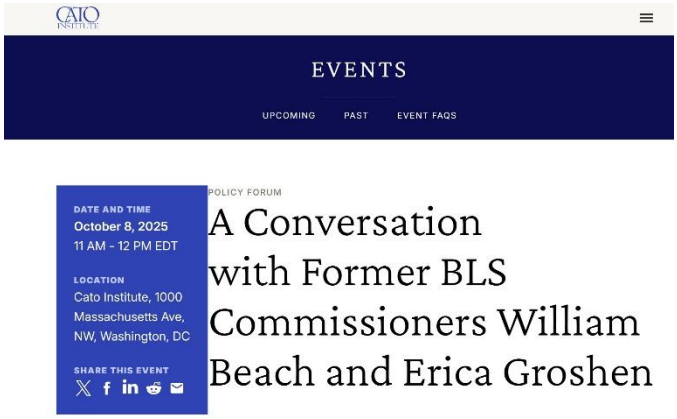
China's adjusted Share grew 17.4%, while the U.S. fell 10.1%, marking its steepest decline in decades. Losses were sharpest in chemistry (−11.6%) and physical sciences (−10.6%), though the U.S. retains a narrow advantage in health and biological research. Other Western countries, including Canada, France, and the U.K., also saw declines of 9% or more.

Experts describe the shift as structural, not cyclical. With a population four times larger than America's, China now produces nearly twice as many STEM PhD graduates—projected 77,000 in 2025, compared with 40,000 in the U.S.—and employs more researchers than both the U.S. and the European Union combined. Although the report's data predate Donald Trump's January 2025 inauguration, analysts warn that his administration's deep cuts to federal research budgets could further accelerate U.S. decline. "The United States has clearly crossed a threshold into actively abdicating our position as a global leader," said **Joanne Carney** of the American Association for the Advancement of Science (AAAS). AAAS CEO **Sudip Parikh** added, "If these cuts stand, the U.S. will no longer be in the global race for R&D leadership."

As U.S. collaboration with foreign partners wanes, China is strengthening ties across Asia. South Korea, Singapore, and others have posted double-digit gains, particularly in green technology and advanced materials, signaling a regional surge in scientific capacity. While some private U.S. funders have stepped in, experts warn they cannot offset federal pullbacks. "We are going through a national crisis," said **Caroline Wagner** of Ohio State University. "It's more than a malaise." She added that research funding cuts, DEI crackdowns, and visa denials for foreign scholars "send a signal to global talent to look for opportunities elsewhere."

U.S. Data at Risk





On November 3, 2025, the "Practical Significance" podcast of the American Statistical Association featured **Nancy Potok**, former chief statistician of the United States and CEO of NAPx Consulting, and **Connie Citro**, Senior Scholar at the National Academies' Committee on National Statistics. The discussion focuses on the state of federal statistics, challenges faced by federal statistical agencies, and efforts to modernize the federal statistical system.

Both guests expressed concerns about U.S. statistical systems at a crossroads with staff losses, hiring freeze, difficulty recruiting skilled professionals, and declining budgets under the current environment. Nancy Potok highlighted the need for modernization to stay relevant in a rapidly changing data environment, including addressing competition from other data sources and maintaining public trust. Connie Citro emphasized the labor-intensive nature of statistical agencies, the need for modernization, and the challenges of data sharing and blending data sets.

Dr. Ji-Hyun Lee, Professor of Biostatistics at University of Florida, serves as 2025 ASA President.

The Cato Institute's October 8, 2025, discussion "A Conversation with Former BLS Commissioners William Beach and Erica Groshen" explored the challenges and importance of maintaining trust, accuracy, and modernization within the U.S. Bureau of Labor Statistics (BLS).

The conversation featured

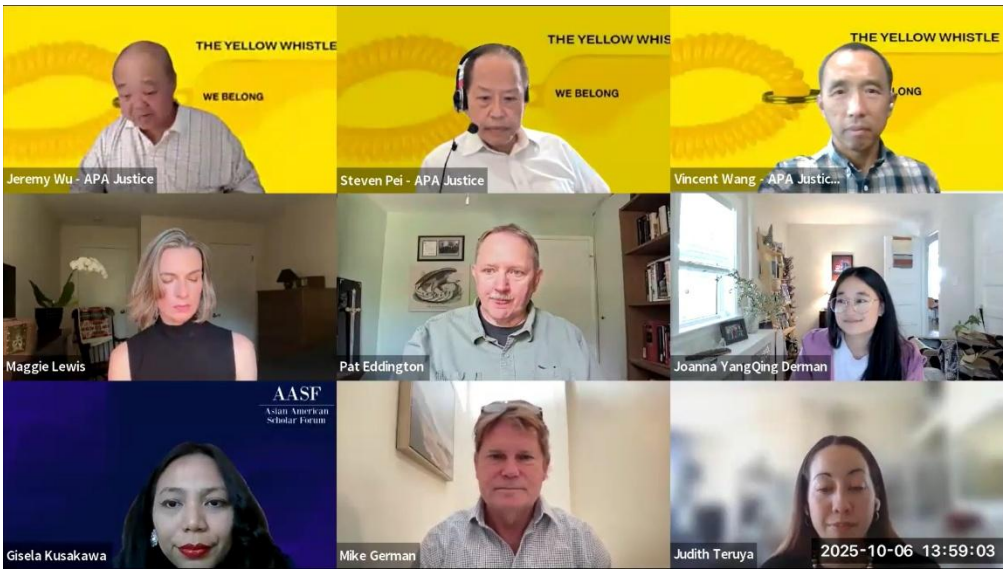
- **Erica Groshen**. Former Commissioner of Labor Statistics (2013-2017); and Senior Economics Advisor, School of Industrial and Labor Relations, Cornell University
- **William Beach**. Former Commissioner of Labor Statistics (2019-2023); Executive Director, Fiscal Lab on Capitol Hill; and Senior Fellow in Economics, Economic Policy Innovation Center
- **Norbert Michel**. Vice President and Director, Center for Monetary and Financial Alternatives, Cato Institute

Both former commissioners emphasized that the agency's credibility hinges on its ability to produce data that is both reliable and timely. As Groshen put it, "They want two things: accurate … and they want it to be timely," highlighting the constant balance between speed and precision in official labor reporting.

Beach and Groshen explained that revisions to monthly job numbers, often criticized by the public, stem largely from the late submission of firm data rather than from methodological flaws. "The first revision of the preliminary number is mostly driven by late-reporting firms," Beach clarified, underscoring that revisions are a feature of transparency, not evidence of manipulation. They also warned that political interference—even the perception of it—can undermine the BLS's mission. "Trust is mission-critical for a statistical agency. You might as well not produce statistics if they're not trusted," Groshen said.

The speakers voiced deep concern about staffing shortages and systemic neglect within the BLS, noting the agency is operating with 20 percent fewer staff and one-third of its top leadership positions vacant. Yet they also saw a potential opening for reform. “This administration is not worried about disruption,” Beach observed, suggesting that current upheavals could create “an opportunity … for really modernizing the statistical system.” The discussion closed on a cautious note: without adequate investment and protection from political pressure, the nation’s core economic data—essential for markets, policy, and public trust—faces growing fragility.

October 2025 APA Justice Monthly Meeting Summary Posted



Summary for the October 2025 APA Justice monthly meeting has been posted at https://bit.ly/43W4qyC.

We thank these distinguished speakers for sharing their insightful remarks and updates:

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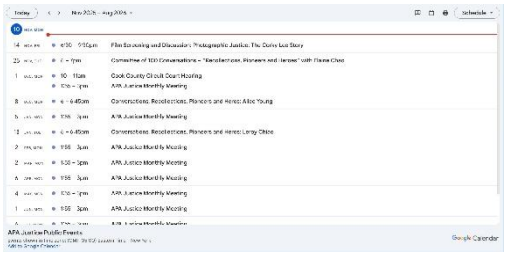
- Joanna YangQing Derman, Director, Anti-Profiling, Civil Rights & National Security Program, Advancing Justice | AAJC
- Gisela Perez Kusakawa, Executive Director, Asian American Scholar Forum (AASF)
- Mike German, Retired Fellow, Liberty & National Security, Brennan Center for Justice
- Margaret Lewis, Professor, Seton Hall University School of Law
- Pat Eddington, Senior Fellow, Homeland Security and Civil Liberties, Cato Institute

The October meeting brought together congressional, advocacy, academic, and policy leaders to discuss ongoing efforts to defend civil rights, research integrity, and democratic governance affecting Asian American and allied communities.

Past monthly meeting summaries are posted at: https://www.apajusticetaskforce.org/library-newsletters-summaries

News and Activities for the Communities

1. APA Justice Community Calendar



Upcoming Events:

2025/11/14 Film Screening and Discussion: Photographic Justice: The Corky Lee Story
2025/11/25 Committee of 100 Conversations – “Recollections, Pioneers and Heroes” with Elaine Chao
2025/12/01 Cook County Circuit Court Hearing - Estate of Jane Wu v Northwestern University
2025/12/01 APA Justice Monthly Meeting
2025/12/08 Conversations, Recollections, Pioneers and Heros: Alice Young

Visit https://bit.ly/3XD61qV for event details.

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APA Justice Task Force is a non-partisan platform to build a sustainable ecosystem that addresses racial profiling concerns and to facilitate, inform, and advocate on selected issues related to justice and fairness for the Asian Pacific American community. For more information, please refer to the new APA Justice website under development at www.apajusticetaskforce.org. We value your feedback. Please send your comments to contact@apajustice.org.

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