

Senate Blocks Bipartisan Surveillance Reform

Government Surveillance & Searches

On November 18, the Senate failed to advance bipartisan surveillance reform legislation to rein in a National Security Agency program that collected domestic phones from millions of Americans. Supporters of the USA Freedom Act came up two votes short on an effort to allow floor debate of the bill, a procedural motion that required 60 votes to pass. "It is unfortunate that the Senate did not allow this important and widely supported legislation to come to a vote," said Virginia Sloan, president of The Constitution Project, in a [press release](#).

The decision against proceeding means that legislative efforts to reform surveillance laws will have to wait until the next Congress. A key provision of the USA Patriot Act that enables the intelligence community to gather data for counterterrorism purposes will expire on June 1 unless Congress renews it. [READ MORE](#)

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Gov. White and Others Urge Clemency for Mentally Ill Death Row Inmate in Texas; 5th Circuit Delays Execution

Death Penalty

On November 12, more than two dozen former state and federal judges, prosecutors and other legal practitioners joined former Texas Governor Mark White in calling on the current governor and Texas Board of Pardons and Parole to grant clemency to Scott Panetti, a mentally ill death row inmate scheduled for execution in Texas on December 3.

In a [letter](#) organized by The Constitution Project, the group wrote to Governor Rick Perry and the state's parole board, "Many of us have prosecuted serious crimes, including cases where the death penalty was imposed. Although Mr. Panetti committed a tragic crime, because of his severe mental illness and the uncertainty of his capital trial, at which he represented himself, we believe the most fitting punishment in his case is life in prison." TCP also helped initiate a [letter](#) in favor of clemency from nearly two dozen prominent conservative leaders, three of whom penned a [guest editorial](#) for The Washington Times.

On December 3, just hours before his scheduled execution, the Fifth Circuit Court of Appeals granted a stay to Panetti to allow it consider complex legal issues relating to the case. [READ MORE](#)

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TCP Advises Caution on Proposed Change in CIA Email Retention

Transparency & Accountability

The Constitution Project wants the National Archives to move cautiously in reviewing a proposed change in email retention for the CIA. It appears the proposed change would authorize the intelligence agency to destroy the emails of all but 22 of its personnel as early as the day those employees stop working at the CIA. In a November 17 [letter](#), TCP President Virginia Sloan and Senior Counsel Scott Roehm warned that the proposed change has the potential to frustrate Congressional oversight.

On November 21, the Chief Records Officer at the Archives [wrote](#) to three members of the Senate Select Intelligence Committee, "Based on the comments and concerns that you and others have

raised, we have informed the CIA we need to reassess their proposed schedule, including the scope of the senior leadership positions and the proposed retention periods." [READ MORE](#)

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Congress Needs to Be Clear in Granting War Powers Against Islamic Militants, Groups Say

War Powers

When Congress considers giving President Obama the power to conduct a war against Islamic State militants in Syria and Iraq, it should make clear that earlier authorizations for the use of military force against al Qaeda and Saddam Hussein are not applicable to the current conflict, a coalition of organizations from across the political spectrum told key legislators. The militants are sometimes called the Islamic State of Iraq and the Levant, or ISIL.

"If Congress fails to tackle the 2001 AUMF and the 2002 Iraq AUMF in any new ISIL-focused AUMF, it risks simply adding to a tangled and ambiguous web of war authorities from which a president could pick and choose without explanation," the groups wrote in a [letter](#) organized by The Constitution Project and delivered to the Hill on November 19. While Senator Tim Kaine (D-Va.) and Senator Rand Paul (R-Ky.) have each offered a legislative proposal that limits the president's ability to rely on earlier AUMFs, the Congress is not expected to debate new war-making authority until it returns next year. [READ MORE](#)

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If the Military Has Nothing to Hide on Guantanamo Force-Feeding, Why Appeal?

Detention & Prosecution of Suspected Terrorists

In October, D.C. District Court Judge Gladys Kessler [ordered](#) the unsealing of secret videos that show Guantanamo Bay prisoner Abu Wa'el Dhiab being forcibly extracted from his cell and force-fed. In this [blog post](#), TCP Senior Counsel Scott Roehm asks: "If the military is right and forced-feeding at Guantanamo really is a painless, safe, ethical and humane medical procedure that detainees undergo without complication or complaint, accompanied by the responsible use of minimal force only when absolutely necessary, wouldn't meaningful transparency prove it? What warrants the secrecy?"

You will want to read [Scott's answer](#). And, while you are there, check out our other [recent blog posts](#) as well. Judge Kessler has subsequently granted a request from the Justice Department to indefinitely stay the order.

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Siemion Talks to Regulators about UAVs and Privacy

Government Surveillance & Searches

TCP Policy Counsel Rita Siemion attended the annual conference of the International Association of Security & Investigative Regulators in Louisville, Kentucky on November 12 and 13. In a presentation entitled "Unmanned Aircraft Systems: Guidelines for Preserving Privacy and Civil Liberties," Siemion provided an overview of the existing legal landscape regarding aerial surveillance and Fourth Amendment privacy protections, including how the courts have traditionally viewed aerial

surveillance and how this landscape is likely to shift in light of the technological advantages of unmanned aerial vehicles, or drones. She also offered guidelines, based on TCP's video surveillance report, for ensuring that proper privacy protections are in place when conducting aerial surveillance using advanced technologies. The conference was attended by regulators from various states, Canadian provinces and other countries, as well as executives from the private security, law enforcement, and related industries.

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Congratulations!

Current Events

- On November 20, the Professional Women in Advocacy announced at its annual conference that TCP President Virginia Sloan was the winner of the 2014 Excellence in Advocacy Award in a Federal Campaign. She was selected from among 47 nominees in the category for her leadership efforts last year in securing improved funding for federal public defenders. These defenders provide the vital "right to counsel" required by the Sixth Amendment to the U.S. Constitution, ensuring that those too poor to hire their own lawyers have quality legal representation. [READ MORE](#)
- Earlier in the month, the American Bar Association Standing Committee on Law and National Security honored TCP Board of Directors member William S. Sessions with its Morris I. Leibman Award in Law and National Security. The award recognizes lawyers who have demonstrated a sustained commitment to and made exceptional contributions to the field of law and national security. [READ MORE](#)

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