

April 17, 2012

The Honorable Patrick Leahy  
The Honorable Chuck Grassley  
Senate Judiciary Committee  
226 Dirksen Senate Office Building  
Washington, DC

Dear Senators Leahy and Grassley,

The undersigned organizations welcome the confirmation hearing that the Senate Judiciary Committee is holding tomorrow, April 18<sup>th</sup>, on President Obama's nominees to the Privacy and Civil Liberties Oversight Board (PCLOB): Rachel Brand, Elizabeth Cook, James Dempsey, David Medine and Patricia Wald. As you know, many of us had repeatedly pressed the administration to make such nominations, and we had written to you on March 13<sup>th</sup> urging a prompt hearing. As we noted in March, while many of our organizations do not take positions endorsing or opposing any specific candidates, we all agree it is critical that this Committee and the full Senate act quickly to move forward with the confirmation process and allow the PCLOB to begin its important work.

As you are aware, the 9/11 Commission recommended creating a privacy and civil liberties oversight board and Congress formed the original Board as part of the Intelligence Reform Act of 2004. In 2007, Congress enacted legislation to strengthen the Board, including making it an independent agency and giving it subpoena power. The goal was to create an entity that plays a vital, independent role in oversight of privacy and civil liberties for national security programs and policies. Sadly, although Congress took the important step of creating an independent body tasked with both advising the executive branch on policy, and overseeing its implementation, the PCLOB has remained an unfulfilled promise. Since the 2007 legislation was enacted, not a single member has been confirmed to the PCLOB, and the newly-empowered independent Board has never come into existence.

Our intelligence community needs tools to ensure our nation's safety, but that power must be balanced with the need to protect privacy and civil liberties. In recent years, our nation has adopted a variety of new programs and policies designed to combat terrorism. However, without the Board, there is no built-in mechanism to ensure *independent* review of these programs. Indeed, in a report assessing the government's response to the 9/11 Commission's recommendations, the 9/11 Commission Co-Chairs, Thomas Kean and Lee Hamilton, listed the PCLOB as one of the nine major unfinished 9/11 Commission Recommendations. Speaking about the report, Congressman Hamilton said the unimplemented recommendations "require urgent attention" and Governor Kean added that political leaders from both parties and at all levels of government should renew their focus on implementing the remaining 9/11 commission recommendations.

Our organizations have long advocated that the President and the Senate nominate and confirm members to the PCLOB so that the Board can begin to serve this critical oversight role. This need has become even more urgent as Congress considers cybersecurity legislation that raises new issues for safeguarding privacy and civil liberties. As we noted in our March letter, both the Obama Administration's cybersecurity proposal from May 2011 and S. 2105, the Cybersecurity Act of 2012, include an oversight role for the PCLOB. Such oversight provisions will remain ineffective, of course, unless and until the members of the PCLOB have been confirmed and the Board is constituted.

The PCLOB is needed to provide critical oversight as the government develops and relies on new national security programs, including cybersecurity and reliance on powerful new technologies and information collection systems. The Board must be a watchdog for the American public in assuring that national security programs, including data collection capabilities and cybersecurity measures, do not infringe on their privacy rights and civil liberties. With his December nominations President Obama has finally offered a full bipartisan slate of candidates to serve on this essential oversight board. It is now time for the Senate to carry out its duties. We urge the Senate Judiciary Committee to move forward quickly with the confirmation process so that the PCLOB is finally able to begin its important work.

Sincerely,

American Association of Law Libraries  
American Civil Liberties Union  
American Library Association  
Association of Research Libraries  
Bill of Rights Defense Committee  
Center for Financial Privacy and Human Rights  
The Constitution Project  
Consumer Action  
Consumer Watchdog  
Defending Dissent Foundation

Liberty Coalition  
Muslim Public Affairs Council  
National Association of Criminal  
Defense Lawyers  
OpenTheGovernment.org  
Patient Privacy Rights  
Privacy Times  
Remar Sutton; Founder,  
Privacy Rights Now Coalition

cc:

Sen. Herb Kohl  
Sen. Dianne Feinstein  
Sen. Chuck Schumer  
Sen. Dick Durbin  
Sen. Sheldon Whitehouse  
Sen. Amy Klobuchar  
Sen. Al Franken  
Sen. Christopher Coons  
Sen. Richard Blumenthal

Sen. Orrin Hatch  
Sen. Jon Kyl  
Sen. Jeff Sessions  
Sen. Lindsey Graham  
Sen. John Cornyn  
Sen. Michael Lee  
Sen. Tom Coburn