

May 9, 2012

Dear Senate Judiciary Committee Members:

We write as conservatives to urge you to approve the bipartisan slate of five nominees to the Privacy and Civil Liberties Oversight Board (PCLOB) – Rachel Brand, Elizabeth Cook, James Dempsey, David Medine, and Patricia Wald – so that these nominations may quickly be considered by the full Senate and the PCLOB can soon begin its important work. We applaud the Committee for holding a confirmation hearing on these five nominations last month, and call upon you to move forward with the confirmation process. We are deeply troubled by the fact that it has been almost five years since Congress enacted legislation to create an independent PCLOB with meaningful oversight authority, and yet the Board has not yet come into existence.

As you know, the PCLOB was created based on the recommendations of the bipartisan 9/11 Commission. The PCLOB was designed to provide meaningful oversight for national security programs, to ensure that they incorporate proper safeguards for privacy and civil liberties. As conservatives, we fully support such oversight to ensure that we uphold our constitutional values and keep our government operating within its proper limits. The 2007 legislation granting the board independence and subpoena power was signed by President George W. Bush. We do not consider this a partisan issue and hope that you do not either.

In September 2011, the 9/11 Commission Members came together to issue a 10th anniversary report card which highlighted “nine major unfinished 9/11 Commission Recommendations.” One of these nine was the government’s failure to establish an operational privacy and civil liberties oversight board. In their report, the Commission Members noted:

If we were issuing grades, the implementation of this recommendation would receive a failing mark. A robust and visible Board can help reassure Americans that these programs are designed and executed with the preservation of our core values in mind. Board review can also give national security officials an extra degree of assurance that their efforts will not be perceived later as violating civil liberties.

The lack of a Board has become an even more urgent problem in recent months as the Congress considers cybersecurity legislation. Both of the lead cybersecurity bills in the Senate, the Cyber Security Act of 2012, S. 2105, and the SECURE IT Act, S. 2151, would rely on the PCLOB for oversight of the cybersecurity program. These oversight provisions will be meaningless unless and until the Senate confirms the nominees and the PCLOB actually comes into existence.

Creation of the PCLOB is long overdue. The Senate Judiciary Committee has now held a hearing to consider a full bipartisan slate of five nominees. We implore you to act without further delay to move these nominations forward.

Sincerely,

Bob Barr, CEO, Liberty Strategies, LLC; the 21st Century Liberties Chair for Freedom and Privacy, the American Conservative Union; Chairman, Patriots to Restore Checks and Balances; Member of Congress (R-GA), 1995-2003

Mickey Edwards, Vice President, The Aspen Institute; Member of Congress (R-OK), 1977-1993; former Chairman of the House Republican Policy Committee

Asa Hutchinson, Senior Partner, Asa Hutchinson Law Group; Undersecretary, Department of Homeland Security, 2003-2005; Administrator, Drug Enforcement Administration, 2001-2003; Member of Congress (R-AR), 1997-2001; United States Attorney, Western District of Arkansas, 1982-1985

David A. Keene, former Chairman, American Conservative Union

Michael D. Ostrolenk, National Director, Liberty Coalition

William S. Sessions, Partner, Holland and Knight LLP; Director, Federal Bureau of Investigation, 1987-1993; Judge, United States District Court for the Western District of Texas, 1974-1987 (Chief Judge, 1980-1987); United States Attorney, Western District of Texas, 1971-1974

Fred L. Smith, Jr., President, Competitive Enterprise Institute

Berin Szoka, President, TechFreedom

William H. Taft IV, Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP; Legal Adviser to the Department of State, 2001-2005; Deputy Secretary of Defense, 1984-1989

Don Wallace, Jr., Chairman, International Law Institute; Professor of Law, Georgetown University

John W. Whitehead, President, The Rutherford Institute

Lawrence B. Wilkerson, Colonel, U.S. Army (Ret.); Adjunct Professor of Government and Public Policy at the College of William and Mary; Chief of Staff to Secretary of State Colin L. Powell, 2002-2005

**Affiliations listed for identification purposes only*