

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

FOR IMMEDIATE RELEASE - January 23, 2014

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## TCP: Privacy Panel Provides 'Compelling Reasons' to End Bulk Data Collection Programs

WASHINGTON, D.C. -- Virginia Sloan, president of The Constitution Project, a bipartisan legal watchdog group, offered the following comments regarding a [report](#) released earlier today by the Privacy and Civil Liberties Oversight Board on the surveillance programs conducted by the government under Section 215 of the Patriot Act:

"This important new report from the independent, bipartisan Privacy and Civil Liberties Oversight Board provides compelling reasons why Congress needs to end the unnecessary and illegal bulk collection of billions of private telephone records by the National Security Agency. [The USA Freedom Act](#), a bipartisan reform bill introduced in the Senate by Sen. Patrick Leahy (D-Vt.), Chair of the Senate Judiciary Committee, and in the House by Rep. Jim Sensenbrenner (R-Wis.), one of the original authors of the Patriot Act, offers the opportunity to do just that.

"Until the program can be ended, the board unanimously recommends a number of essential safeguards on the use and retention of the existing data, some of which mirror the modest reforms President Obama proposed last week, but many of which go much farther toward protecting privacy. Their report adds weight to the growing consensus that these bulk collection programs pose an unacceptable threat to fundamental freedoms guaranteed by the Constitution and require substantial modification. We ask policymakers in both the executive and legislative branches to immediately implement the critical reforms identified by the PCLOB.

"We trust the PCLOB will exhibit the same thoroughness and even-handedness in their analyses of the many other government surveillance programs that have become public over the last several months. We applaud them for their ongoing openness, and we urge them to act just as decisively in making those additional reports public."

The report from the PCLOB is the latest to question the legality and efficacy of the bulk

collection program. In December, the President's Review Group on Intelligence and Communications Technologies, a panel of experts appointed by the White House earlier in the year, [urged the president](#) to significantly rein in the way the National Security Agency collects, stores and accesses phone call records. In a [speech delivered](#) at the Department of Justice last week, Obama accepted some of the group's ideas -- such as backing the creation of a panel of public advocates at the secret intelligence court, and narrowing how far NSA analysts can search the database for connections to suspected terrorist numbers -- but shifted many of the toughest questions about surveillance to Congress.

Importantly, the PCLOB found "no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack." Similarly, the President's Review Group concluded that collection of the phone data "was not essential to preventing attacks." An analysis of NSA's surveillance programs by the New America Foundation reached the [same conclusion](#) about the ineffectiveness of the bulk collection programs.

The PCLOB report contains a detailed analysis, endorsed by three of the five members, of the legality of bulk collection programs under the Patriot Act, concluding that the program "lacks a viable legal foundation under Section 215." But the two other members, both Justice Department lawyers under President George W. Bush, rejected the finding that the program is illegal.

In December, U.S. District Court Judge Richard Leon [found](#) that the bulk collection program almost certainly violates the Fourth Amendment ban on unreasonable searches and seizures. He too noted that the federal government had failed to show that collecting the information had helped to head off terrorist attacks.

TCP's Liberty and Security Committee has [previously called](#) for the reform of Section 215 of the Patriot Act. One of the PCLOB members, Judge Patricia Wald, previously served on TCP's committee.

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#### [About The Constitution Project](#)

*Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.*