

August 25, 2011

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Secretary Janet Napolitano  
Department of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528

Attorney General Eric H. Holder, Jr.  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Director of National intelligence James R. Clapper  
Office of the Director of National Intelligence  
Washington, DC 20511

Dear Mr. President, Secretary Napolitano, Attorney General Holder, and Director Clapper:

In November 2009 and March 2010 many of the undersigned organizations wrote to the administration to express our concern over the lack of nominations to the Privacy and Civil Liberties Oversight Board (PCLOB). The urgency of our plea has increased. As you know, the 9/11 Commission recommended creating such a board, and Congress has enacted authorizing legislation. There is broad bipartisan support for this board to carry out its intended mission. However, without nominated and confirmed members to serve on this board, the PCLOB does not currently exist. Now, as we approach the 10<sup>th</sup> Anniversary of 9/11, it is more important than ever that we implement the 9/11 Commission's recommendation. Our continued fight for the security of our country must include measures to safeguard the liberty of its people.

We appreciate the President's nominations of James Dempsey and Elisebeth Collins Cook this past December. Still, we write today to request that the President appoint individuals for the remaining three positions on the board immediately. Without the additional nominees, and in particular, without a nomination for Chair of the PCLOB, the Senate is not likely to move

forward with the confirmation process and we will continue to face the prospect of no board at all.

As you are aware, Congress created the original Privacy and Civil Liberties Oversight Board seven years ago, as part of the Intelligence Reform Act of 2004. In 2007, Congress enacted legislation to strengthen the Board, including making it an independent agency with subpoena powers. However, since that time, neither President Bush nor President Obama has nominated a full slate of members to serve on the board. The purpose of the Board is to play a vital, independent role in oversight of privacy and civil liberties for national security programs and policies. In recent years, our nation has adopted a variety of new programs and policies designed to combat terrorism, and it is critical that we incorporate robust safeguards for privacy rights and civil liberties. Without the PCLOB, there is no built-in mechanism to ensure *independent* review of these programs, and we lack the necessary checks and balances to protect the privacy and liberty which are essential to Americans' lives.

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. While the PCLOB appointments may not have been at the top of the priority list when this administration came into office, after over two and one-half years, these nominations are long overdue. Indeed, this past March, 9/11 Commission Co-Chairs Thomas Kean and Lee Hamilton testified before the Senate Committee on Homeland Security and Governmental Affairs that, "The government-wide board has been a disappointment," and if they "were issuing grades, the implementation of this recommendation would receive a failing mark." As the 9/11 Commission co-chairs further explained: "An array of security-related policies and programs present significant privacy and liberty concerns. 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."

Similarly, in May of 2009, the administration's own Cybersecurity Review found that, "it is important to reconstitute [the Board], accelerate the selection for its Board Members and consider to seek legislative amendments to broaden its scope to include cybersecurity-related issues." The time has come to implement these recommendations. The Board will provide vital oversight as the government enters a new decade and exercises its powers to confront the challenges posed by new technology and information collection systems. The Board must be an advocate for the American public in assuring that data collection capabilities and cyber security measures do not infringe on their privacy rights and civil liberties. We urge the administration not to delay any further in nominating individuals for the remaining three slots on the Board, so that we may proceed to Senate confirmation and finally allow the PCLOB to begin its important work.

As the 9/11 Commission stated in its final report, "The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend." Now, as we

approach the tenth anniversary of 9/11, and four years after Congress revamped the Board to make it independent, it is crucial to nominate the remaining members so that it can fulfill its role in balancing the need for power with the need to protect privacy and civil liberties.

Sincerely,

American Association of Law Libraries  
American Booksellers Foundation for Free Expression  
The American Civil Liberties Union  
Arab American Institute  
Asian Law Caucus  
Association of Research Libraries  
Bill of Rights Defense Committee  
Brennan Center for Justice  
The Constitution Project  
Council on American-Islamic Relations  
Cyber Privacy Project  
Defending Dissent Foundation  
Electronic Frontier Foundation  
Liberty Coalition  
Muslim Public Affairs Council  
OMB Watch  
OpenTheGovernment.org  
Professor Chip Pitts, Stanford Law School and Oxford University  
September Eleventh Families for Peaceful Tomorrows