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January 23, 2017

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

As Ranking Member of the Subcommittee on National Security, I respectfully urge you to appoint a full membership to the Privacy and Civil Liberties Oversight Board (“Board”). The operation of a full five-member Board will facilitate the critical mission of this independent and bipartisan agency to conduct robust oversight of United States counterterrorism policies and programs in the shared interest of our continued national security and the protection of privacy and civil liberties.

Pursuant to the *Implementing Recommendations of the 9/11 Commission Act of 2007*, the Privacy and Civil Liberties Oversight Board must consist of a full-time chairman and four additional members, appointed by the President with the advice and consent of the U.S. Senate for non-concurrent six year terms.¹ No more than three members can represent the same political party.² In order to initiate investigations and policy reviews, conduct official business, and hold public hearings, the Board is required to maintain a quorum of at least three members.³ Moreover, only the Board chairman is authorized to appoint staff.⁴

Regrettably, the current composition of the Board stands in stark contrast to this statutory framework; it is also an impediment to its important national security mission. As of January 7, 2017, the Board consists of only two members, both of whom represent the same political party and one whose term is scheduled to expire at the end of the month.⁵ As a result, the Board cannot satisfy the quorum necessary to do its job and will remain unable to carry out its responsibilities absent the nomination and confirmation of new members. With the resignation of former chairman David Medine in 2016, the Board also continues to lack a chairman and cannot presently hire a replacement for its outgoing Executive Director.⁶ As recently described in *Politico* by Adam Klein of the bipartisan Center for a New American Security:

¹ 42 U.S.C. § 2000ee.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Tami Abdollah, *US Privacy Board in Disarray Before Trump Takes Office*, Associated Press (December 22, 2016) (online at <http://bigstory.ap.org/article/eaab3aee5bcd4f66bb383547d5f763ac>).


⁶ *Id.*

The board has only recently become a credible, visible oversight agency – yet it is already on the verge of becoming defunct, with too few Senate-confirmed members to function. This would be a setback for Americans’ privacy and civil liberties. But counterintuitively, it would also have an immediate and detrimental effect for national security and counterterrorism. The board’s reports can help legitimize controversial programs and prove to skeptical allies that the U.S. prioritizes privacy protections. By contrast, a defunct board would be an embarrassing eyesore on the oversight landscape, degrading U.S. credibility and fueling skepticism abroad.⁷

The deterioration of the Privacy and Civil Liberties Oversight Board is particularly concerning from a national security perspective given the vital role that this agency has served in enhancing accountability and transparency in the implementation of key U.S. counterterrorism policies and programs and better ensuring that such efforts incorporate appropriate safeguards against unwarranted governmental intrusion on privacy and civil liberties. Most notably, in the aftermath of disclosures that the National Security Agency (“NSA”) had been collecting telephone records relating to the calls of American citizens on a continuing basis, a full five-member Board conducted a comprehensive review of the NSA’s bulk telephone records program in 2013.⁸ In its final report, the Board concluded that the program demonstrated a limited counterterrorism value while also lacking a “viable legal foundation” and implicating First and Fourth Amendment constitutional concerns.⁹ For these reasons, the Board recommended that the government terminate the program.¹⁰ This determination proved instrumental as Congress sought to develop meaningful surveillance reform legislation and ultimately enacted the landmark *USA Freedom Act* on a bipartisan basis in June of 2015.¹¹ In the interest of national security, the Act ended the NSA’s massive bulk telephone records program in favor of a targeted and narrowly-tailored governmental authority for gaining access to call detail records.¹²

As we continue to undertake national and global counterterrorism efforts in the face of evolving terrorist threats, the watchdog mission of the Privacy and Civil Liberties Oversight Board will remain essential to enhancing the effectiveness of our national security policies and programs. I again respectfully urge you to further this mission by making every effort to fill existing member vacancies in accordance with the *Implementing Recommendations of the 9/11 Commission Act of 2007* and facilitating the ability of the Board to do its job on behalf of the American people. Thank you for your consideration of this letter.

Sincerely,



STEPHEN F. LYNCH
Ranking Member
Subcommittee on National Security

⁷ Adam Klein, *Why Trump Must Save the Government’s Privacy Board*, Politico (January 4, 2017) (online at <http://www.politico.com/agenda/story/2017/01/privacy-board-trump-national-security-000264>).

⁸ Privacy and Civil Liberties Oversight Board, *Report on the Telephone Records Program Conducted Under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court* (January 23, 2014) (online at https://www.pclob.gov/library/215-Report_on_the_Telephone_Records_Program.pdf).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Privacy and Civil Liberties Oversight Board, *Recommendations Assessment Report* (February 5, 2016) (online at https://www.pclob.gov/library/Recommendations_Assessment_Report_20160205.pdf).

¹² Chairman Bob Goodlatte, House of Representatives Judiciary Committee, *USA Freedom Act* (online at <https://judiciary.house.gov/issue/usa-freedom-act/>).