

October 4, 2004

To the Members of Congress.

We write to you on behalf of a broad and diverse coalition of state and national organizations who actively support privacy, civil liberties and immigration rights to express our views on Congressional efforts to implement the recommendations of the 9/11 Commission Report.

The Commission pursued an important investigation of the conditions that contributed to the failure to prevent the attacks of September 11, 2001. As Congress works to provide our nation with better protection from terrorist attacks, it is equally important to ensure that our civil liberties are well protected. Indeed, respect for civil liberties is what distinguishes us from those who would seek to impose their values through terrorist acts. We ask you to consider our views and suggestions as you move forward.

- 1) Oversight and Limits on Authority — It should not be left to the President alone to establish privacy safeguards for information sharing. Congress has a critical oversight role. The appointment of Privacy and Civil Rights and Civil Liberties Protection Officers for each federal department would help ensure compliance with those safeguards. The effectiveness of these positions will be based on how independent they are to investigate and to make recommendations to the Inspector General and/or the Department of Justice regarding their findings. Routine public reporting should also be established to ensure that the public is able to evaluate the costs and benefits of information sharing with the federal government.

There should be a mechanism for individuals or groups to file civil or criminal complaints against domestic intelligence gathering agencies for alleged abuse of privacy, civil rights, or civil liberties by employees, contractors or contract employees. To be effective, a Privacy and Civil Liberties Oversight Board must be independent of the executive branch. It must have a budget sufficient to fund its work with appropriate congressional review and oversight. However, unlike the membership of the recently created President's Board on Safeguarding Americans' Civil Liberties, members should include representatives from outside of the federal government with advocacy experience in safeguarding privacy, civil rights, and civil liberties.

- 2) Identification Requirements and Limits on Travel — Some steps should be taken to reduce the risk of fraud and identity theft. Identification documents should be made more secure. But, we oppose actions taken in response to the Commission Report that would create a national identification system in word or effect. The integration of secure identity cards with interconnected databases raises substantial privacy risks that will require new legislation and new forms of oversight. Privacy enhancing techniques that minimize the collection and use of personally identifiable information should also be considered. Significant errors have been found in both the no-fly watchlists and the automatic selectee system. This is a particularly serious problem for U.S. persons who travel within

the United States. Recent reports that a U.S. Senator and Member of Congress were detained due to these passenger screening measure begs the question, "how are ordinary citizens faring?"

Federal law should expressly prohibit profiling of citizens or groups based on race, citizen's country of origin, ethnicity or religious beliefs. We support efforts to target individuals who may be carrying weapons or materials that threaten the safety of air travel. This is a more effective security technique than profiling or data mining. When considering the application of biometric features into identification documents, Congress should consider their privacy and civil liberty implications. There should be an independent evaluation of how best to operate these screening systems and still safeguard basic rights.

A properly designed identification systems or travel systems to ensure security of the borders should not provide the basis for routine identification within the United States. Therefore we caution against the establishment of travel checkpoints within the United States that would require individuals to prove their identity to gain access to public transportation. Such proposal would conflict with our basic rights to freedom of movement and civil liberties. Furthermore, citizens who do not possess these documents should not be barred from travel, access to federal benefits, or be denied any citizenship rights.

- 3) Accountability— The Executive Branch has the responsibility of justifying the continued use of the PATRIOT Act authorities. In light of the Presidential Executive Order establishing new policy regarding the design and use of information systems and the dissemination of information among agencies, caution should be taken to create appropriate internal agency checks that provide congressional oversight and judicial review on these changes in federal agency information policy to offer institutional protection of privacy, civil rights, and civil liberties of residents. To remain consistent with the goal of protecting privacy, civil rights and civil liberties it would be prudent to establish within federal agencies sufficient autonomy in regulatory authority to monitor, identify and stop inappropriate use of private or public networks, data mining resources, or other digital resources that access personal information on individuals.

Furthermore, any system that is proposed that would link or access information from government and/or private computer networks should be subject to review and audit by independent authority that is charged with reporting to the public and to Congress its findings. Further, agencies should make reports to Congress and take public comment on the consequences of using private sources of information to facilitate their mission. Private information brokers that provide information to government should be required by federal contract to abide by the Privacy Act and fair information practices.

- 4) Transparency — Streamlining the oversight of intelligence agencies is sensible, but Congressional intelligence committees have a tradition of secrecy and extensive classification that may frustrate public oversight and press reporting on matters of national interest. Therefore, in conjunction with the creation of any new department or

agency charged with expanded or consolidation of surveillance authority, there must be a corresponding commitment to openness and public participation. In addition, each agency or department should have a Freedom of Information Act Officer to respond to requests from the public on the work of the agency. We endorse the recommendation of the Commission that the President disclose in the annual federal budget "the overall amounts of money being appropriated for national intelligence and to its component agencies" to increase transparency and accountability to the public.

- 5) Internal Checks of Power — The 9/11 Commission report does not mention the Federal Whistleblower Protection Act that helps ensure effective federal oversight. In addition, senior intelligence staff in any oversight entity that is created must have the ability to act without fear of reprisals. They should be free to communicate with Congress and make appropriate referrals to the Inspector General for investigation of misconduct by employees or contract workers of that agency.
- 6) Clarification—There must be a clear statutory definition of the words "terrorism," and "terrorist," as well as the phrase "terrorist organization." Without clear definitions, these designations could be misused, such as in the past when the word "subversive" was used to justify actions taken against some civil rights activists, civil liberty groups and others who were engaged in lawful pursuits.

The creation of new government authority without the counterbalance of accountability is inconsistent with the American form of government. Congress should, in advance of establishing any National Intelligence Authority or similar intelligence authority, enact criminal and civil statutory disincentives to discourage abuse and misuse of information resources, and to protect privacy, civil rights, and civil liberties. The implementation of such a system must include structural checks and balances to preserve Constitutional safeguards.

In Congress' efforts to act quickly to address the Commission's recommendations there may be unintended negative consequences for privacy and civil liberties. Congress should be mindful of the known failure of current information sharing schemes to secure this nation against terrorist attacks, which have been deployed at the cost of civil rights and civil liberties.

We encourage you to hold more hearings on these issues and to solicit input from the many organizations who have worked to safeguard political rights so that these and other concerns can be thoroughly explored as you consider the 9/11 Commission's recommendations.

The unique brand of democracy that this nation enjoys has demonstrated resilience and fortitude in extremely trying and troubling times during its 228 years of existence. Sometimes our government has inadvertently or unwisely intruded on the civil rights and civil liberties that we all hold so dear, and has been obliged to redress those wrongs later. We ask Congress to use its deliberative authority to craft new legislation that is based on our democratic values. We believe that this nation can achieve effective security without sacrificing our civil liberties or privacy.

Sincerely,

American Arab Anti Discrimination Committee  
American Association of Law Libraries  
American Civil Liberties Union  
American Friends Service Committee  
American Immigration Lawyers Association  
American Library Association  
Americans for Religious Liberty  
Arab American Institute USA  
Asian American Legal Defense and Education Fund  
Association of Research Libraries  
Bill of Rights Defense Committee  
Consumer Action  
Drug Policy Alliance  
Electronic Frontier Foundation  
Electronic Privacy Information Center  
Fairfax County Privacy Council  
First Amendment Foundation  
Freedom of Information Center, University of Missouri School of Journalism  
Friends Committee on National Legislation (Quaker)  
Government Accountability Project  
Greenpeace  
Islamic Circle of North America (ICNA Relief)  
Japanese American Citizens League  
Libertarian Party  
National Asian Pacific American Legal Consortium  
National Association for the Advancement of Colored People  
National Center for Transgender Equality  
National Committee Against Repressive Legislation  
National Consumers League  
OMB Watch  
People For the American Way  
Privacy International  
Privacy Journal  
Privacy Rights Clearinghouse  
Privacy Rights Now Coalition.  
Privacy Times  
PrivacyActivism  
The Independent Institute  
The Multiracial Activist  
University of Missouri School of Journalism  
World Organization for Human Rights USA  
World Privacy Forum