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Greetings!

I know it's early, but I hope all of you will mark your calendars now for our [2012 Constitutional Champions Gala and Award Reception](#). The event will take place on March 29, 2012 from 6:00 to 9:00 pm.

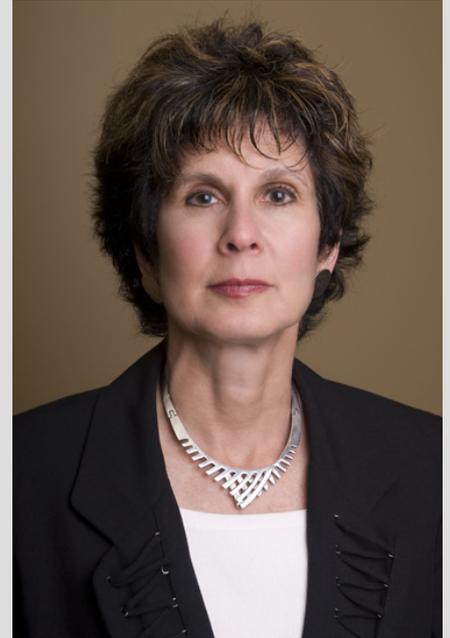
We are excited that we will be presenting The Constitution Project's (TCP) annual awards to David A. Keene, former chairman of the American Conservative Union, and to the Digital Due Process Coalition (DDP), a diverse coalition of technology companies, privacy advocates, and think tanks. Both awardees are highly deserving of our recognition and gratitude.

We are honoring Dave for his tireless efforts to preserve individual freedoms by defending the rule of law and reforming the nation's criminal justice system. TCP is saluting the members of DDP for working together to advance legislation providing fundamental privacy protections for electronic communications and data in a world of rapidly evolving technology.

We are grateful that the Jones Day law firm has agreed to host our gala once again this year. If you or your organization would like information about sponsorship opportunities and program advertising, please contact Kelly Davies at 202-580-6942 or kdavies@constitutionproject.org.

Sincerely,

Virginia Sloan
President, The Constitution Project



Senate Passes Controversial Detainee Provisions

Detention and Prosecution of Terrorism Suspects

On December 1st, the Senate passed the National Defense Authorization Act (NDAA), which unfortunately included [several controversial provisions](#) governing the treatment of suspected terrorists. Efforts to strip these



provisions failed even though many lawmakers and high-level officials had come out against the provisions. The detainee provisions would require mandatory military detention even for suspects arrested on U.S. soil, as well as indefinite detention of terrorist suspects without trial or charge. In addition, the provisions would limit the president's ability to rely on our domestic law enforcement agencies and federal courts, and would make the transfer of detainees from Guantanamo, even for trial, close to impossible.

Prior to the vote, *The Washington Post* [expressed grave concern](#) about legislators' apparent determination to "unacceptably [limit] the president's flexibility to thwart attacks and react to terrorism threats." On November 25th, the *Post* published a [letter to the editor](#) by TCP President Virginia Sloan further describing the dangers of unnecessary rigidity when it comes to our counterterrorism efforts, an opinion echoing her sentiments expressed in an [earlier public statement](#). Following Senate passage of the NDAA, Ms. Sloan reiterated her concerns, noting that if the bill is not fixed in conference, President Obama should [veto the legislation](#), as he has indicated he will do.

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Skinner Execution Stayed to Address Claims Regarding DNA Testing

Death Penalty

Ever since his arrest and conviction for the 1993 murder of Twila Busby and her sons, Elwin Caler and Randy Busby, Henry "Hank" Skinner has maintained his innocence. Several items from the crime scene containing DNA evidence could confirm or deny his innocence claim, yet Texas officials have repeatedly denied requests to test the evidence. Skinner was scheduled to be executed on November 9th without these DNA tests ever having been conducted, but on November 7th, the Texas Court of Appeals granted a stay until legal claims related to the testing of DNA evidence can be addressed.

In an op-ed in the *Austin American-Statesman* prior to the stay, "[No Good Reason for State to Deny DNA Testing](#)," TCP Death Penalty Committee members Mark White (former Texas governor) and William S. Sessions (former FBI director and federal judge in Texas) called on the courts or the governor to stay the execution in order to allow the testing to take place. They wrote that, while "the death penalty is an appropriate punishment for certain crimes," they were "united in [their] deep conviction that when it comes to the death penalty, there is no room for uncertainty." In addition, a number of prominent Texas officials and former prosecutors, including TCP Death Penalty Committee members Sam Millsap and James Fry, also [called on the prosecutor and governor](#)

A DNA-Related Victory in Florida

Death Penalty

Paul Hildwin was convicted in 1986 for the rape and murder of Vronzettie Cox. However, in 2003, testing was performed on these DNA samples found at the scene



of the murder conclusively showing that neither sample matched Hildwin's DNA profile. Hildwin petitioned the Florida courts for relief, but despite the new evidence, the Florida Supreme Court denied his request for a new trial. Hildwin's more recent petition requests the Court to order the unidentified DNA samples be uploaded into a national (CODIS) and state (FDLE) DNA database, so that the samples can be compared to the other profiles there. On November 10th, the Florida Supreme Court [granted](#) Hildwin's petition and ordered the State of Florida to upload the DNA samples.

In June 2010, TCP filed an [amicus brief](#) in the Florida Supreme Court in support of Hildwin's petition. TCP's brief, drafted *pro bono* by the national law firm Holland & Knight, was joined by William S. Sessions, former director of the FBI when CODIS was developed and member of TCP's Board of Directors (and a partner at Holland & Knight); Harry L. Shorstein, former five-term state attorney for the Fourth Judicial

to test the DNA before proceeding with the execution.

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five-term state attorney for the Fourth Judicial Circuit of Florida; and Sandy D'Alemberte, past president of the American Bar Association and former dean of Florida State University College of Law.

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TCP Urges Caution on Campaign Finance Constitutional Amendment

Constitutional Amendments

On November 18th, TCP President Virginia Sloan sent a letter to Senate Judiciary Chairman Patrick Leahy (D-VA) and Ranking Member Charles Grassley (R-IA) urging them, as well as other committee members, to consult TCP's Constitutional Amendments Committee's report, [Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change](#), before considering any proposed constitutional amendments, on this or any other issue.

The letter noted that a constitutional amendment that would empower Congress and states to regulate political contributions and expenditures was currently before the Senate. Ms. Sloan wrote, "...[A]s our report demonstrates, a constitutional amendment is an appropriate instrument for only a rare and extraordinary task, and the profound consequences of amending the Constitution demand the utmost restraint."

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Oregon Governor Halts Executions

Death Penalty

Calling Oregon's capital punishment system "a perversion of justice," Governor John Kitzhaber announced his decision on November 22nd to delay the pending execution of a convicted murderer. Kitzhaber said, "I refuse to be a part of this compromised and inequitable system any longer and I will not allow further executions while I am governor."

TCP takes no position on whether the death penalty should remain a part of our criminal justice system, but insists that where it does exist, there must be robust safeguards that help ensure a fair trial and appeals process and protect people from being wrongfully convicted and executed. In a [letter](#), TCP applauded the governor's commitment to ensuring that capital punishment is as fairly administered as possible.

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TCP Newsmakers in Brief

Current Events

- TCP Senior Counsel **Sharon Bradford Franklin** was quoted in a November 4th [Federal Times](#) story about the release of a new government registry for controlled unclassified information. Controlled unclassified information describes documents and other data that are sensitive for privacy, security, or proprietary reasons, but that do not warrant being classified.

- On October 31st, **TCP** submitted [public comments](#) in "strong support" of new state indigent defense system standards proposed by the Washington State Supreme Court. TCP's comments and recommendations were based on our well-received 2009 report, [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#).

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