



# Congratulations to TCP Board Members on Successful Elections

Current Events

Congratulations to two members of The Constitution Project's Board of Directors, who were elected to office on November 4. Former GOP Congressman Asa Hutchinson, who also served on several TCP committees and as co-chair of our Task Force on Detainee Treatment before resigning from the board to run, was handily elected as governor of Arkansas. And California voters chose to retain Mariano-Florentino (Tino) Cuellar as an associate justice on the state's Supreme Court. Under California law, Justice Cuellar, who was appointed to the court earlier in the year, is required to stand for an up-or-down retention election once every 12 years. He will be stepping down from the board in January.

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# Poll Shows Strong Bipartisan Support for Release of Senate Report on CIA Torture

Counter-Terrorism Policies and Practices

An overwhelming [bipartisan majority](#) of Americans thinks that the Senate Select Committee on Intelligence should make public its comprehensive report on the CIA's detention and torture of terrorism suspects after 9/11, according to a poll released by The Constitution Project on October 1.

Nearly 70% of all registered voters think a declassified version of the report should be made public so we can learn from past mistakes, while only 22% think the report might be so damaging or embarrassing that the committee should not release it. Support for releasing the report cuts across party lines, with 71% of independents, 69% of Democrats, and 67% of Republicans saying the report should be made public. [The Intercept](#) reported on the poll's findings.

"President Obama came into office promising unprecedented government transparency, and has said repeatedly that he supports declassifying the Senate Intelligence Committee's report so that the American people can understand what was done in their name. His administration's apparent efforts to obscure key portions of the report through redactions undermine both commitments," said TCP President Virginia Sloan in a [press release](#).

In April 2013, TCP's own [bipartisan blue-ribbon](#) Task Force on Detainee Treatment [found](#) that the treatment of many suspected terrorists in U.S. custody after 9/11 constituted torture, and that this treatment was authorized at the highest levels of government. The Task Force called for declassification of the SSCI report with minimal redactions.

The [survey](#) of 898 registered voters was conducted by Public Policy Polling from September 26 to September 28. The margin of error is +/-3.3%.

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# Former Judges Ask Courts to Stay Execution of Missouri Man

Death Penalty

More than a dozen former state and federal district judges asked the U.S. Supreme Court to stay the execution of Missouri death row inmate Mark Christeson so that the federal courts could have an opportunity to hear his appeals. In a "[friend of the court](#)" [brief](#) organized by The Constitution Project and submitted to the Court, the judges argued that Christeson had been abandoned by his court-

appointed counsel and, as a result, had never received federal review of his sentence. To proceed with the execution absent federal review would "cast a pall over the [judicial] process," the brief claims.

Christeson was convicted of a 1998 murder of a woman and her two children in rural Missouri. At his trial, jurors never heard significant evidence relating both to Christeson's culpability for the crime and on the appropriateness of a death sentence in his case. Christeson was denied federal court review because his court-appointed attorneys missed a deadline by four months in 2005. He is the only inmate on Missouri's death row who has not received any federal review of his conviction.

The judges first filed an [amicus brief](#) in the 8th Circuit Court of Appeals, supporting Christeson's request for a stay. The [Kansas City Star](#) carried an Associated Press story on the Circuit Court brief, [The Guardian](#) featured the brief in its story on Christeson's pending execution, and [MissouriNet](#) ran an extensive interview with Sarah Turberville, TCP's senior policy counsel who organized the brief.

When the 8th Circuit rejected the request, he appealed to the U.S. Supreme Court. On October 27, the judges [filed a brief](#) in support of Christeson's request for the Supreme Court to hear the case. [The Associated Press](#) reported on the appeal to the Supreme Court. We are grateful to Goldstein & Russell P.C., which wrote both briefs on a pro bono basis.

On October 28, just hours before his scheduled execution, the U.S. Supreme Court granted Christeson a temporary stay with three justices dissenting. The fact that a strong majority of the court at least wants to consider Christeson's writ of certiorari is a welcome sign. However, there is no guarantee the court will accept the case, and Christeson's road to appeal remains blocked by the lower courts.

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## Groups Question Use of State Secret Privilege to Block Private Lawsuit

### Transparency & Accountability

Several civil society organizations have joined The Constitution Project in asking a federal judge to require the Department of Justice to explain why it wants to shut down a lawsuit between two private parties. The groups filed a "[friend of the court](#)" brief on October 31, questioning the broad assertion of the state secrets privilege in a defamation lawsuit brought by a Greek businessman against United Against Nuclear Iran, an advocacy group that pushes for tough sanctions against Tehran.

"Never before has the government sought dismissal of a suit between private parties on state secrets grounds without providing the parties and the public any information about the government's interest in the case" the groups wrote in their brief. They called on the court to determine "whether the government has properly asserted the privilege in this matter-including by requiring meaningful adversarial testing of the government's claim of privilege."

As explained in the brief, the state secrets privilege is a legal doctrine that should be applied only in the narrowest of circumstances to block the release of information in a lawsuit that, if publicly disclosed, would harm national security. Under both the George W. Bush and Obama administrations, however, the government has increasingly used the state secrets privilege not only to shield particular information from disclosure, but to keep entire cases out of court. This [report](#) from TCP's Liberty and Security Committee offers more detailed information on the use and abuse of the privilege.

Typically, an assertion of the state secrets privilege is accompanied by a sworn public statement from a senior official to help explain the government's interest. In this instance, however, the

Department of Justice claimed even a circumspect disclosure of the government's interest, such as identifying the agency affected or the bases for the demand, would itself jeopardize national security, leaving the public completely in the dark.

The case is *Restis v United Against Nuclear Iran*. Other groups that joined TCP in filing the brief are the ACLU, the Brennan Center for Justice, the Center for Constitutional Rights, the Electronic Frontier Foundation, and the Sunlight Foundation.

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## D.C. Courts Tosses Convictions Based on False Evidence

Criminal Discovery

On October 23, the D.C. Court of Appeals [reversed the convictions](#) of Gary Gathers and Keith Mitchell, who were convicted of first-degree murder in 1994. The court found that prosecutors had knowingly introduced false testimony from a police detective about the defendants' alleged motive for committing the crime, thereby violating their constitutionally guaranteed rights to due process. In the course of establishing the government's constitutional violations, Gathers and Mitchell introduced substantial evidence of their own innocence, including a corroborated recantation of the testimony of the government's lone eyewitness, as well as evidence showing that other individuals had the motive to kill the victim.

TCP filed an [amicus brief](#) in the case on behalf of former federal judges and prosecutors in support of Gathers and Mitchell. The brief was prepared with generous pro bono assistance from Crowell & Moring LLP.

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## Coalition Wants to Meet with Justice Department on Government Watchlisting

Government Surveillance & Searches

TCP joined a coalition of more than 60 civil rights, human rights, privacy rights, and religious groups asking to meet with Department of Justice officials to discuss alternatives for reforming the U.S. government's watchlisting system. In an October 15 [letter](#) to the officials, the groups noted that the standards for inclusion in the FBI's Terrorist Screening Database, which provides the foundation for other government watchlists, are broad, vague and "riddled with loopholes and exceptions that permit watchlisting without even a showing of reasonable suspicion." The problem is compounded by the government's failure to provide wrongly or mistakenly watchlisted individuals with an effective mechanism of redress, the letter said.

"The government's watchlisting system amounts to an unchecked exercise of power over innocent citizens and non-citizens alike. Such a system is inimical to national security. Watchlists saturated with innocent persons divert attention from real, genuine threats and waste scarce resources," the groups wrote.

A [report](#) from TCP's Liberty and Security Committee provides more information on problems with government watchlisting, and provides several policy recommendations for improving accuracy and fairness in their administration.

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# Sloan Named Finalist for Excellence in Advocacy

## Current Events

On October 6, organizers of the Professional Women in Advocacy Conference announced that TCP President Virginia Sloan is one of three finalists for an Excellence in Advocacy Award in a Federal Campaign. She was selected from among 47 nominees in the category for her leadership efforts last year in securing improved funding for federal public defenders. These defenders provide the vital "right to counsel" required by the Sixth Amendment to the U.S. Constitution, ensuring that those too poor to hire their own lawyers have quality legal representation.

In 2013, mandatory reductions in the federal budget, known as sequestration, resulted in heavy layoffs in many federal defender offices. Given that 90 percent of federal defendants qualify for court-appointed counsel, the impact of these cuts was felt throughout the federal criminal justice system, including delays in criminal cases because a public defender was unavailable.

Sloan organized a campaign to reverse these draconian cuts. She helped [convince](#) Senator Chris Coons (D-Del.) to hold a Senate Judiciary subcommittee hearing on the effects of sequestration on the federal judiciary. TCP [coordinated messaging](#) for the hearing with federal defenders and [submitted a statement](#) from more than 40 former prosecutors and judges in support of full funding. TCP also obtained positive media coverage in papers and magazines throughout the country, such as the [Washington Post](#), the [Wall Street Journal](#), the [Huffington Post](#), and regional media outlets.

In the end, the efforts paid off: in January, 2014, Congress adopted a [spending bill](#) that spared federal public defenders from further cuts; in February, the Judicial Conference [restored the rates](#) for private attorneys representing indigent federal defendants; and in March, many federal defender offices were able to replace some of their lost staff. Without TCP's concerted efforts, these results would not have been possible.

Judging for the award is conducted by the esteemed Bryce Harlow Foundation. Winners will be [announced](#) at the Excellence in Advocacy Reception on Thursday, November 20th at 6pm at the Capital Hilton in Washington, D.C.

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## Newsmaker in Brief

### Current Events

A [Newsweek](#) article on the recently released memoirs of former CIA Director Leon Panetta quotes extensively - and approvingly - from the [report](#) of TCP's Task Force on Detainee Treatment.

On October 21, TCP Senior Counsel Sarah Turberville participated in a panel discussion on the death penalty at the residence of the Ambassador of the Kingdom of the Netherlands. The panel was part of an EU Rendez-Vous event examining trends within the United States towards abolishing the death penalty - especially in light of the EU ban on trade in medical drugs used for lethal injections and recent exonerations. Video of the event is [available](#) on YouTube.

On October 23, TCP Scholar-in-Residence Louis Fisher and Bruce Fein conducted a Hill briefing on Congressional responsibilities under the War Powers Act. The briefing, attended by approximately 125 staffers, was cosponsored by TCP, the ACLU and the Ron Paul Institute. TCP Senior Counsel Scott Roehm moderated the panel. Materials from the briefing are [available online](#).

Fisher was also quoted in a [Washington Diplomat](#) article on the legality of the war against the Islamic State.

Articles in [Foreign Policy](#), [The Hill](#) and [Huffington Post](#) all featured remarks by TCP Senior Counsel

Scott Roehm on the potential effects of mid-term elections on the makeup and work of the Senate Intelligence Committee.

TCP President Virginia Sloan [presented](#) Dr. Azizah al-Hibri with the RUMI Forum Peace and Dialogue Awards at RUMI's annual celebration of its 15 years of work committed to peacebuilding, interfaith and intercultural dialogue and the importance of understanding people from different worldviews and backgrounds. Dr. al-Hibri, who served on TCP's Task Force on Detainee Treatment and has worked with TCP in a variety of other ways, received the award for her commitment to service to women and human rights through KARAMAH, the organization she founded.

The Constitution Project | 1200 18th Street, N.W. | Suite 1000 | Washington | D.C. | 20036

T: 202.580.6920 | F: 202.580.6929  
[www.constitutionproject.org](http://www.constitutionproject.org)

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