

**Senator Marsha Blackburn**

**Questions for the Record**

**Richard Eugene DiZinno, Executive Nominee to be a Board Member of the Privacy and Civil Liberties Oversight Board**

- 1. Big tech presents many challenges to keeping our nation secure while also maintaining the privacy of law-abiding citizens. At a recent Senate Judiciary Committee hearing on violence against police, we heard about the role social media companies like Twitter, Facebook, and Instagram play in spreading hateful rhetoric and promoting violence against law enforcement. Predators target our children on Snapchat and TikTok, and terrorist organizations use social media to recruit members around the world. Social media usage is not going to slow down or stop evolving any time soon.**

**What are some of the issues that you expect big tech will present to the Privacy and Civil Liberties Oversight Board, and what approach will you take to help the executive branch face those problems?**

If confirmed, I would take the opportunity to review what impact social media and other technology tools may have on our national security authorities and programs relating to terrorism. Any such review would include examining relevant classified information that may illuminate this issue. Consideration should also be given to First Amendment protections that citizens enjoy to speak openly and freely, with limited exceptions. In addition, the Board is actively pursuing projects reviewing certain aspects of social media and technology tools associated with counterterrorism programs. I would want to review those projects and work with fellow Board members to develop and prioritize any future projects.

**Questions for the Record for Richard Eugene DiZinno  
Nominee for the Privacy and Civil Liberties Oversight Board  
From Senator Mazie Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

- a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

Answer: No

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

Answer: No

**Sen. Jon Ossoff**  
**Questions for the Record for Mr. Richard DiZinno**  
**Nominee for the Privacy and Civil Liberties Oversight Board**

1. What should PCLOB's priorities be in the next 18 months? What are your priorities for PCLOB in the next 6 years?

If confirmed, I would work with my fellow Board members to identify the priorities for the Board and develop a plan to address those priorities. Areas where the Board has been active in the past and will likely remain active in the near future include: general oversight of the Intelligence Community's use of counterterrorism programs and authorities; general oversight of FISA authorities as Congress considers policy reforms to balance national security interests with protecting privacy and civil liberties, particularly in the lead up to the anticipated debates over reauthorizing Section 702 – which authorities are set to expire in December 2023; and providing oversight over, and advice on, ensuring the protection of privacy and civil liberty interests as the government considers increased federal tools to address domestic terrorism. The Board is also in the process of completing several projects that have been underway for some time.

2. What role, if any, should PCLOB serve with respect to foreign relations?

The Board's statutory mandate is to analyze and review proposed legislation, regulations, policies as well as actions the executive branch takes to protect the Nation from terrorism; and to ensure that those measures are properly balanced with the appropriate protections for privacy and civil liberties. In carrying out its mandate, the Board's actions hopefully have a positive impact on our relationships with foreign countries and how those countries view the United States' commitment to preserving individual privacy and civil liberties protections.

3. Please describe how you anticipate the use of emerging technologies like machine learning will impact Intelligence Community (IC) practices and PCLOB's ability to oversee these practices.

If confirmed, I am interested in understanding ways the IC may be using artificial intelligence and machine learning as applied to various counterterrorism programs, including through access to classified information. The Board has an important role to play in weighing the privacy and civil liberties impact of any AI or machine learning tools used in this context. These issues would be considered in the broader identification of priorities and strategic plan.

4. Do you believe that oversight of the IC's role in protecting the cybersecurity of the US is within the scope of PCLOB's jurisdiction? How would you describe the bounds of PCLOB's jurisdiction in the cybersecurity context?

The Board's jurisdiction, which is set by statute, is to analyze and review counterterrorism measures proposed by the executive branch and Congress and to ensure that those measures are properly balanced with the appropriate protections for privacy and civil liberties. To the extent particular cybersecurity programs or authorities cross that jurisdictional boundary, the Board

should have a role to play depending on its prioritization and allocation of resources. If confirmed, I would work with fellow Board members to identify any significant cybersecurity programs or authorities that fall within the Board's mandate and that may deserve prioritization given the Board's limited means.

5. The Board's mission is to ensure that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. Should PCLOB adhere to the definition of the term "domestic terrorism" in Section 802 of the USA Patriot Act (18 U.S.C. 2331(5)) for the purpose of defining its own jurisdiction? If not, how should PCLOB define "domestic terrorism"?

The Board recently conducted a public forum on domestic terrorism. As the government considers additional federal enforcement measures to address domestic terrorism, the Board has a particularly important role to play in ensuring the protection of privacy and civil liberty interests when more federal tools are considered to be applied to American citizens within our own borders.

#### **FISA Section 702:**

Section 702 of FISA collects millions of communications without a warrant. In 2016 then-Director of National Intelligence Clapper promised ODNI would provide a public estimate of how many Americans' communications are collected from warrantless FISA surveillance, but the following year his successor Dan Coats walked back this commitment, claiming it would be infeasible to provide an accurate count.

6. Section 702 is set to expire at the end of 2023. Should Congress reauthorize it? If so, please describe any changes Congress should consider making to the statute.

If confirmed, I would take the opportunity to engage in a comprehensive review of the programs being implemented under FISA authority, including obtaining access to and reviewing classified material associated with those programs. I would evaluate concerns of policymakers and privacy and civil liberties organizations relating to FISA authorities and programs. I would also look at FISA reforms that Congress debated in 2020, some of which were incorporated into reauthorization bills that passed each chamber. I would also examine certain FISA authorities which expired in 2020 and on which the Board made policy recommendations.

7. Do you believe that Congress and the American people should know how many Americans are impacted by Section 702 surveillance before we vote on whether to reauthorize the law next year?

If confirmed, I would want to understand what operational capabilities and challenges are associated with collecting information on the use of Section 702 authorities and various impacts those uses may have on American citizens. I would work with civil liberties groups and fellow Board members to determine whether modifications to increase privacy protections and transparency would be appropriate and weigh any modifications against the impact on the ability of the government to protect the Nation's security interests.

8. Do you believe obtaining such an estimate of Americans affected through a sample study is logistically feasible, worth the manpower and resources, and could be accomplished in a manner that is reasonably unobtrusive to the privacy of individuals within such a study?

If confirmed, I would want to examine the impact that Section 702 surveillance may have on American citizens, including through access to classified material that I am not currently privy to, before making any recommendations to Congress.

9. If confirmed, will you commit to working with the Intelligence Community, Congress, and privacy experts, and other stakeholders to help obtain such an estimate before the 2023 sunset of Section 702?

If confirmed, I will commit to working with the Intelligence Community, Congress and privacy experts before the 2023 sunset of Section 702 to understand the operational capabilities and challenges associated with protecting the privacy of American citizens in exercising authorities granted under Section 702. I will commit to working with civil liberties groups and fellow Board members to weigh those capabilities and challenges with potential modifications to increase privacy protections and transparency – balanced with the need to protect classified information – including whether current minimization procedures are sufficient to achieve those goals.

### **EO 12333:**

PCLOB has examined Executive Order 12333, which authorizes surveillance outside the United States pursuant to the President's Article II authority. However there is much that the public and even Congress still do not know about how EO 12333 surveillance operates, and how it might affect Americans' privacy and civil liberties.

10. Do you believe PCLOB can and should do more to provide public insights into how EO 12333 surveillance works and impacts Americans? Will you commit to working to provide such insights if you are confirmed?

The Board's work to examine EO 12333 was important both in terms of the Board's oversight and advice functions, but also with regard to the Board's role in analyzing and examining existing programs while providing scrutiny and public transparency – to the greatest extent possible – on those programs. The Board seeks to issue public findings to the maximum extent possible where appropriate. In this instance, the public report concluded a six-year examination of the government's use of Executive Order 12333. I commit to working with my fellow Board members to determine how and whether additional EO 12333 programs should be prioritized given the Board's limited resources; and continuing the Board's work in this regard.

11. Should the PCLOB's jurisdiction remain limited to oversight of the government's efforts to prevent terrorism, or should its mission also include oversight of the government's broader intelligence efforts?

Congress created the Board as well as the Board's jurisdictional scope. If Congress determines that the Board's jurisdiction should be expanded, that decision should be left to Congress' consideration. If a recommendation were requested by Congress from the Board -- and if confirmed -- I would consider that issue with fellow Board members and think carefully about what change in scope, if any, may look like before making any recommendation.

12. What are meaningful reforms that Congress could make — such as providing resources, broader jurisdiction, ability to more easily obtain records and testimony — to better ensure PCLOB has the ability to accomplish its goals of ensuring US counterterrorism policies are properly balanced with the need to protect privacy and civil liberties?

Although I am not yet a Board member, my understanding is that the Board faces significant hiring challenges given our statutory restraints. My understanding is that the Board has been working with Congress to address those deficiencies to provide more resources in order for the Board to maximize its ability to carry out its functions.

**Questions from Senator Thom Tillis**  
**for Richard E. DiZinno**  
**Nominee to be a Member of the**  
**U.S. Privacy and Civil Liberties Oversight Board**

1. The PCLOB's mission is to ensure that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.

a. What can PCLOB do better to ensure the protection of Americans' civil liberties?

Since its inception, the Board has played a significant role in protecting Americans' civil liberties as the government and Congress assess and debate various policies and programs that help shield the country from terrorist threats. The Board's role is to provide oversight and to ensure that privacy and civil liberties concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation against terrorism. The Board must continue that mission and tradition.

b. What are the challenges you see to fulfilling the mission of balancing public safety with protecting privacy?

Balancing the national security interests of the nation while protecting privacy is precisely the Board's central mission. The challenges the Board face include the Board's limited resources, which impacts the ability of the Board to address a broader range of important issues. Other challenges include identifying which programs and authorities may be negatively impacting privacy and civil liberties interests, particularly where those matters are classified. The Board has broad authority to seek access to classified information. When the Board reviews particular programs or authorities and raises concerns or makes recommendations for reform, the Board must

balance the interests of keeping those matters classified to protect the individuals and programs while providing as much transparency as possible for the public to be well-informed.

## 2. If confirmed, what do you think is the top issue that the PCLOB should address?

If confirmed, I would work with my fellow Board members to identify the priorities for the Board and develop a plan to address those priorities. Areas where the Board has been active in the past and will likely remain active in the near future include but are not limited to: general oversight of the Intelligence Community's use of counterterrorism programs and authorities; general oversight of FISA authorities as Congress considers policy reforms to balance national security interests with protecting privacy and civil liberties, particularly in the lead up to the anticipated debates over reauthorizing Section 702 – which authorities are set to expire in December 2023; and providing oversight over, and advice on, ensuring the protection of privacy and civil liberty interests as the government considers stronger federal tools to address domestic terrorism. The Board is also in the process of completing several projects that have been underway for some time.

## 3. If confirmed, what projects or priorities will you commit to pursuing as a commissioner?

If confirmed, I will commit to working with fellow Board members to develop the Board's priorities, including any policy recommendations as Congress considers the reauthorization of FISA Section 702 before authorities under that provision expire in December 2023; providing oversight over, and advice on, ensuring the protection of privacy and civil liberty interests as the government considers stronger federal tools to address domestic terrorism; and reviewing projects that the Board has undertaken and are in process.

## 4. Do you believe we should make any updates to the Foreign Intelligence Surveillance Act?

If confirmed, I would take the opportunity to engage in a more comprehensive review of the programs being implemented under FISA authority, including obtaining access to and reviewing classified material associated with those programs. I would evaluate concerns of policymakers and privacy and civil liberties organizations relating to FISA authorities and programs. I would also look at FISA reforms that Congress debated in 2020, some of which were incorporated into reauthorization bills that passed each chamber. I would also examine certain FISA authorities which expired in 2020 and on which the Board made policy recommendations.