

**LAROUCHE PAC**

## Georgetown Law Professor: The NSA Surveillance Program Is Unconstitutional

July 14th, 2013 • 12:10 PM

The NSA surveillance program, which has been revealed in leaks of classified documents by Edward Snowden, violates both the Fourth and Fifth Amendments to the US Constitution and must be stopped. This is the argument of Randy E. Barnett, a professor of constitutional law at Georgetown University and the author of the 2005 book "Restoring the Lost Constitution: The Presumption of Liberty," in an op-ed posted by the Wall Street Journal on July 11. Barnett applies his critique not only to the warrantless NSA program, but also the Consumer Financial Protection Bureau, which compiling a massive database of citizens' personal financial information to, supposedly, protect consumers from abuses by financial institutions.



NSA headquarters, Fort Meade, MD.

All of this data collection, Barnett writes, "dangerously violates the most fundamental principles of our republican form of government." The Fourth Amendment's ban on unreasonable "seizures" of a person's papers, Barnett argues "clearly protects what we today call 'informational privacy,' that is, the private business that individuals conduct through commercial enterprises via "terms of service." These terms of service do not, in fact, authorize data-sharing with the government, and these private companies "have insisted that they be compelled by statute and warrant

to produce their records so as not to be accused of breaching their contracts and willingly betraying their customers' trust." In fact, as we now know, many of the largest telecommunications companies have indeed betrayed their customers, as was most recently exposed by the Guardian in the case of Microsoft, and Barnett likely knows this though he doesn't directly address it. He also likely knows that the defenders of the NSA's massive data collection programs argue that private communications through third-party service providers are not protected by the Fourth Amendment. Barnett doesn't address this, either, but clearly he doesn't buy it.

He does note, however, that the Fourth Amendment prohibition against unreasonable

seizures has been eroded over time, but the worst erosion has come from the secret Foreign Intelligence Surveillance Court. The secret approvals of the blanket seizure of metadata on all Americans "are the epitome of 'unreasonable,' akin to the 'general warrants' issued by the Crown to authorize searches of Colonial Americans."

These programs also violate the Fifth Amendment's due process clause. "Secret judicial proceedings adjudicating the rights of private parties, without any ability to participate or even read the legal opinions of the judges, is the antithesis of due process of law," Barnett writes.

"The secrecy of these programs make it impossible to hold elected officials and appointed bureaucrats accountable," Barnett continues. "Relying solely on internal governmental checks violates the fundamental constitutional principle that the sovereign people must be the ultimate external judge of their servants' conduct in office," a judgement which is impossible to make without the information that these programs conceals. Therefore, "Congress must put a stop to these unreasonable blanket seizures of data and end the jurisdiction of the Foreign Intelligence Surveillance Court to secretly adjudicate the constitutional of surveillance programs," Barnett concludes. "Both practices constitute a present danger to popular sovereignty and the rights retained by the people."

W W W . L A R O U C H E P A C . C O M

Paid for by the Lyndon LaRouche Political Action Committee  
P.O. Box 6157, Leesburg, VA 20178, [www.larouchepac.com](http://www.larouchepac.com)  
and Not Authorized by Any Candidate or Candidate's Committee