



April 25, 2016

Support H. R. 699, the Email Privacy Act

Dear Representative:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national advocacy organizations, we urge you to support H. R. 699, the Email Privacy Act, which amends the Electronic Communications Privacy Act (ECPA) to provide digital information like email, text messages, and photos with many of the same protections as letters or information held by individuals in their homes. The original version of this bill was preferable for the reasons noted below. Nonetheless, we support the current version as a step in the right direction for privacy protection and we pledge to advocate for the restoration of additional protections as the bill advances.

Privacy laws have not kept pace as technology has changed the way Americans store personal information. ECPA has not been updated to protect Americans' online records and communications in areas as varied as email, cloud computing, social networking posts, and smart phones. In many circumstances, the absence of clear statutory direction has had a disproportionate impact on racial and religious minorities. Recognizing this, civil rights, media justice, and privacy groups have endorsed [Civil Rights Principles for the Era of Big Data](#), which call for, among other things, updating constitutional protections like ECPA to address new and widely used technologies.

Under the Email Privacy Act, the government would be required to meet a constitutional probable cause standard to access the content of individuals' electronic information stored by third parties, with limited exceptions. We are pleased that the bill has advanced out of committee without an exemption for administrative agencies. Such an exemption would have vastly expanded government access to private information and offered law enforcement an easy work-around in many cases to avoid the probable cause standard. Passage of this bill, without an administrative loophole, will be an important step toward removing a roadblock created by agencies interested in weakening the legislation as a way to expand their investigative authorities.

However, we are concerned the committee removed core notice requirements. Because of this change, there is no assurance that an individual will know that government has access to his or her private communications, thus shielding the government from legal challenges to their actions. Such notice would also have facilitated oversight, to ensure that the government did not use its authority in a biased or unlawful manner. We are also disappointed the legislation omits a suppression remedy that would bar use of unlawfully obtained information in legal proceedings and fails to require a warrant for access to location information.

On balance, however, this bill is a solid step in the right direction and would, with limited exceptions, ensure that the government obtains a probable cause warrant to gain access to

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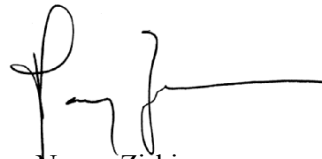
personal electronic communications held by online providers. Accordingly, we urge your support for H. R. 699.

We are committed to working with Congress to ensure that technological change does not erode core civil rights and constitutional protections. Thank you for considering our views. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, UCC Office of Communication, Inc., at 202-904-2168, Michael Macleod-Ball, ACLU, at 202- 675-2309, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670, if you would like to discuss the above issues.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President