



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

Memorandum in Support — The New York Electronic Communications Privacy Act

IN SUPPORT OF: A.09235 (Dinowitz)

SUBJECT: Relates to creating the New York electronic communications privacy act; relates to the search and seizure of electronic devices and electronic communications.

The Electronic Frontier Foundation (EFF) supports this bill, which would require law enforcement agencies to use a search warrant to access the wealth of digital information contained in our electronic devices and stored on the web in email inboxes and social media profiles, because it becomes even more important to protect privacy as technology increasingly permeates everyday life.

Two years ago, the U.S. Supreme Court's groundbreaking decision in *Riley v. California*, 134 S. Ct. 2473 (2014), confirmed that electronic devices like cell phones, and the digital data stored on the phone, differ in both "a quantitative and a qualitative sense" from other things that we may possess. Cellphones, laptops and similar electronic devices are "not just another technological convenience" but, given "all they contain and all they may reveal...hold for many Americans 'the privacies of life.'" Indeed, when the government argued that searching a cellphone was "materially indistinguishable" from searching a wallet or other physical item on the person, Chief Justice Roberts retorted: "That is like saying a ride on horseback is materially indistinguishable from a flight to the moon." *Riley*, 134 S. Ct. at 2488.

Last year, California Governor Jerry Brown signed SB 178 into law, which like A.09235 creates a meaningful warrant requirement for electronic communication information and electronic device information. EFF was not only a sponsor of SB 178 but part of a coalition of civil liberties groups and tech companies that worked to bring California law into the 21st century. Indeed, our state supreme court long ago understood that the California Constitution's privacy provision is specifically aimed at "the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society." *White v. Davis*, 13 Cal.3d 757, 774 (1975).

We urge the legislature to bring New York law into the 21st century as well.

Sincerely,

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