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March 28, 2016

The Honorable Jeffrey Dinowitz  
Assembly Member  
New York State Assembly  
Albany, NY 12224

Dear Assembly Member Dinowitz:

I am writing today regarding A 09235, a bill relating to the creation of the New York electronic communications privacy act and the search and seizure of electronic devices and electronic communications.

Although the benefits of cloud and mobile computing have become more obvious and widespread, the outdated technology assumptions baked into our laws do not reflect users' reasonable expectation of privacy. This is an unfortunate and unintended consequence of technological advancement. A 09235 represents a unique opportunity for New York to capitalize on the growing consensus that warrants should be required to obtain electronic data stored by third party service providers and on electronic devices.

A 09235 requires the government to obtain a warrant before it can compel third party service providers to disclose users' communications content. (Notably, the bill with the largest number of co-sponsors pending before the U.S. Congress - the Email Privacy Act (H.R. 699) - would also codify a warrant-for-content standard. The Email Privacy Act currently has 312 co-sponsors in the House of Representatives.)

In 2010, the Sixth Circuit opined in [United States v. Warshak](#), 631 F.3d 266 (6th Cir. 2010), that the Electronic Communications Privacy Act (ECPA) violates the Fourth Amendment to the extent that it does not require law enforcement to obtain a warrant for email content. *Warshak* is effectively the law of the land today. It is embraced by companies and observed by governmental entities. With respect to electronic communications content, A 09235 is a modest effort to codify the status quo and implement the Sixth Circuit's conclusion that the Fourth Amendment requires a warrant in all cases where the government seeks to compel a provider to disclose communications content from a company covered under ECPA.

A 09235 extends the warrant requirement to communications metadata (e.g. who you email and who emails you), location information, and information stored on electronic devices. Increasingly, courts and legislative bodies are recognizing that warrants should be required for

the universe of electronic communication information and electronic device information covered by A 09235.

In 2014, the Supreme Court issued a landmark decision in [Riley v. California](#), 134 S.Ct. 2473 (2014), where it unanimously held that officers must generally obtain a warrant before searching the contents of a cell phone incident to an arrest. In his opinion, Chief Justice Roberts underscored the Supreme Court's "general preference to provide clear guidance to law enforcement through categorical rules." To reinforce the constitutional imperative for clear rules in this area, Chief Justice Roberts concluded his opinion with unambiguous direction to law enforcement:

"The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to arrest is accordingly simple - get a warrant."

Just last year, California enacted a landmark statute - colloquially referred to as CalECPA - that requires governmental entities to obtain a warrant before compelling third party service providers to disclose electronic communication data or electronic device information. The passage of CalECPA is only the latest effort by state legislatures to update government access statutes for the Internet era. Since 2013, Colorado, Illinois, Indiana, Texas, Maine, Montana, Minnesota, Tennessee, Virginia, and Wisconsin have enacted statutes that have heightened the privacy protections afforded to electronic communication information and electronic device information.

We urge the Assembly and Senate to enact A 09235 into law. Thank you for your time and consideration.

Sincerely,

William Floyd  
Head of External Affairs, New York

cc: Assembly Committee on Codes