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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.

Law enforcement agencies often operate in a legal environment established in the era of landline telephones and written communication. Many of the rules don't make sense in our digital age, or don't exist at all. Failure to pass legislation addressing electronic data collection places law enforcement in the position of having to make up rules as they go along, or having to guess at what is reasonable. This not only opens the door to privacy abuses, but can also jeopardize investigations. A.09235 establishes proper judicial oversight and a reasonable framework for law enforcement to work within. This will help protect the privacy rights of New York residents and visitors, and prevent legal ambiguities from hindering prosecutions.

As technology rapidly develops, provisions to protect basic privacy rights often lag behind. While evolving technology provides law enforcement with valuable crime-fighting tools, this same technology also opens the door for privacy abuses scarcely imagined when the founding generation adopted the Fourth Amendment. The provisions in A.09235 strike a balance between protecting the privacy rights of your constituents and allowing law enforcement agencies to collect information necessary to prosecute criminals.

We've already seen the potential for abuse inherent in stingray technology. As the Baltimore Sun reported last fall, the federal government often funds stingrays and advises police departments on their use, generally mandating non-disclosure agreements. This makes it difficult to regulate or even monitor their use. The feds sell the technology in the name of "anti-terrorism" efforts. With non-disclosure agreements in place, most police departments refuse to release any information on the use of stingrays. But information obtained from the Tacoma Police Department revealed it uses the technology primarily for routine criminal investigations. Information gathered by these devices can easily find its way into federal databases. The feds share and tap into vast amounts of information gathered at the state and local level through a system known as the "information sharing environment" or ISE. In other words, unregulated stingray use creates the potential for the federal government to track the movement of millions of Americans with no warrant and no probable cause.

In 1975, Sen. Frank Church warned about the growing surveillance state in America, saying it had the potential for "total tyranny." That was before widespread public access to the Internet, before everybody used cell phones, and before the widespread use of email and text messaging. If the threat to privacy was that real 40 years ago, imagine what it is today.

By passing A.09235, you can put into place reasonable restrictions and oversight that will protect the privacy of New Yorkers while allowing law enforcement to do its job.

With this in mind, the Tenth Amendment Center urges you to vote YES on A.09235.