



July 13, 2017

**Re: Vote YES on Rep. Yoder's Amendment to the Financial Services
Appropriations Bill**

Dear Representative,

On behalf of the American Civil Liberties Union, we strongly urge you to vote "Yes" on Representative Yoder's amendment to the Financial Services and General Government Appropriations bill, which would prohibit covered agencies, including the Securities and Exchange Commission, Internal Revenue Service, and Consumer Financial Protection Bureau, from expending funds to demand access to communications content from third party providers without a warrant. **The ACLU urges a YES vote on the amendment**

The proposed amendment is consistent with H.R. 387, the Email Privacy Act, which has passed the House unanimously in the last two Congresses.

- In *United States v. Warshak*¹, the Sixth Circuit ruled that emails held by third party providers are protected by the Fourth Amendment's prohibition against unreasonable searches and seizures.
- Consistent with the decision in *Warshak*, in the last two Congresses², the House has passed the Email Privacy Act, which makes clear that the government must obtain a warrant (absent certain limited exceptions) to obtain content information from third party providers.
- Since *Warshak*, as a matter of practice, major providers generally require the government to obtain a warrant before they will disclose customers' content information.

The proposed amendment would ensure that covered agencies comply with the requirements of the Fourth Amendment and obtain a warrant in order to demand disclosure of content information from third party providers.

- Recently, the SEC has sought to compel Yahoo to disclose email content using only an administrative subpoena.³ Unlike a warrant which requires probable cause, a subpoena must only establish that the requested information is "relevant" to the agency's investigation.

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¹ U.S. v. Warshak et. al., 631 F.3d 266 (6th Cir. 2010), available at <http://www.opn.ca6.uscourts.gov/opinions.pdf/10a0377p-06.pdf>.

² See H.R. 699 (Roll Call vote 167 On Motion to Suspend the Rules and Pass, as Amended), 114th Cong. (2016) <http://clerk.house.gov/evs/2016/roll167.xml>; H.R. 387, 115th Cong., Cong. Rec. H992 (Feb. 6, 2017), <https://www.congress.gov/crc/2017/02/06/CREC-2017-02-06-pt1-PgH988.pdf>.

³ See S.E.C. v. North Star Finance, LLC, 2017 WL 476602 (D. Md. 2017).

Covered civil agencies will suffer no injury to their investigative authority as a result of the proposed amendment.

- Under existing authorities, civil agencies may go directly to a user and subpoena his or her information – be they papers in a file cabinet or emails stored on the cloud. If a person or entity fails to comply with such a request, the agency may seek an order forcing the user to disclose the data under threat of civil or criminal contempt. The proposed amendment would not impact these authorities.
- The proposed amendment would not affect agencies' authority to issue preservation orders to prevent a third party provider from deleting or altering relevant material.

We strongly urge you to vote YES on Rep. Yoder's amendment to prohibit covered agencies from using funds to require content disclosure from third parties without a warrant.

For more information, please contact Neema Guliani, Legislative Counsel, at (202) 675-2322 or nguliani@aclu.org

Sincerely,



Faiz Shakir
Director



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Legislative Counsel