

1 NATIONAL CAPITOL CONTRACTING

2 RPTS DAVIES

3 HJU104000

4 H.R. 699, "EMAIL PRIVACY ACT"; S. 125,

5 "BULLETPROOF VEST PARTNERSHIP GRANT

6 PROGRAM REAUTHORIZATION"

7 Wednesday, April 13, 2016

8 House of Representatives,

9 Committee on the Judiciary,

10 Washington, D.C.

11 The committee met, pursuant to call, at 10:30 a.m., in
12 Room 2141, Rayburn House Office Building, Hon. Bob
13 Goodlatte, [chairman of the committee] presiding.

14 Present: Representatives Goodlatte, Smith, Chabot,
15 Issa, Forbes, Franks, Jordan, Poe, Chaffetz, Marino,
16 Farenthold, Collins, Walters, Buck, Ratcliffe, Trott,
17 Bishop, Conyers, Nadler, Lofgren, Jackson Lee, Cohen,
18 Johnson, Chu, DelBene, Jeffries, Cicilline, and Peters.

19 Staff Present: Shelley Husband, Staff Director; Branden
20 Ritchie, Deputy Staff Director/Chief Counsel; Zachary
21 Somers, Parliamentarian & General Counsel; Kelsey Williams,

22 Senior Legislative Clerk; Caroline Lynch, Chief Counsel,
23 Subcommittee on Crime, Terrorism, Homeland Security, and
24 Investigations, Chris Grieco, Counsel, Subcommittee on
25 Crime, Terrorism, Homeland Security, and Investigations;
26 John Manning, Professional Staff; Minority Chief Counsel,
27 Chief of Staff, Staff Director; Danielle Brown, Minority
28 Parliamentarian and Chief Legislative Counsel; Arron Hiller,
29 Minority Chief Oversight Counsel; Joe Graupensperger,
30 Minority Chief Counsel, Subcommittee on Crime, Terrorism,
31 Homeland Security and Investigations; and Veronica Eligan,
32 Minority Professional Staff.

33 Chairman Goodlatte. The Judiciary Committee will come
34 to order, and without objection, the chair is authorized to
35 declare recess of the committee at any time. Pursuant to
36 notice, I now call up H.R. 699 for purposes of markup and
37 move that the committee report the bill favorably to the
38 House. The clerk will report the bill.

39 Ms. Williams. H.R. 699, to amend Title 18 United
40 States Code, to update the privacy protections for
41 electronic communications information that is stored by
42 third party service providers in order to protect consumer
43 privacy interests while meeting law enforcement needs and
44 for other purposes.

45 [The bill follows:]

46 ***** INSERT 1 *****

47 Chairman Goodlatte. Without objection the bill is
48 considered as read and open for amendment at any point, and
49 I will begin by recognizing myself for an opening statement.

50 Today this committee has an opportunity to lead in
51 reforming and modernizing the Electronic Communications
52 Privacy Act, or ECPA. When ECPA was first enacted nearly 30
53 years ago, Congress declared that the law's purpose was to
54 achieve a fair balance between the privacy expectations of
55 American citizens and the legitimate needs of law
56 enforcement agencies. Reforming this decades-old, outdated
57 law has been a priority for me as chairman of this
58 committee, and I have been working with members of Congress,
59 advocacy groups, and law enforcement agencies for years on
60 many complicated nuances involved in updating this law.

61 While technology has undoubtedly outpaced the law in
62 the last three decades, the purpose of the law remains
63 steadfast. I am confident that we can again strike that
64 balance and do so in a way that continues to promote the
65 development and use of new technologies and services, and
66 create a statutory framework that will modernize the law to
67 reflect how people communicate with one another today and
68 into the future.

69 ECPA reform has broad sweeping implications. ECPA, and
70 more specifically, the Stored Communications Act, governs
71 Federal, State, and local government access to stored email,

72 account records, and subscriber information from telephone,
73 email, and other service providers.

74 H.R. 699, at its core, establishes for the first time
75 in Federal statute, a uniform warrant requirement for stored
76 communication content in criminal investigations, regardless
77 of the type of service provider, the age of an email, or
78 whether the email has been opened. The core of H.R. 699 is
79 a significant reform, and should not be dismissed as trifle.
80 It establishes a standard that embodies the principles of
81 the Fourth Amendment and reaffirms our commitment to
82 protecting the privacy interests of the American people.

83 But H.R. 699 goes beyond the creation of a uniform
84 warrant standard in criminal investigations. It
85 dramatically expands the reach of the warrant requirements
86 and imposes new requirements on law enforcement that could
87 impede criminal investigations and threaten public safety.
88 And despite the number of House cosponsors, the bill, as
89 introduced, is opposed by virtually every law enforcement
90 and prosecutorial association in the country. The Stored
91 Communications Act is as complex as it is outdated.

92 The committee has worked for months with members of
93 Congress, advocacy groups, and law enforcement agencies on
94 the many complicated nuances involved in updating the law.
95 I am a strong advocate for enhancing American's privacy.
96 However, reforms are needed to the Email Privacy Act to

97 protect crime victims and minimize unintended consequences
98 of some of the provisions in the bill.

99 In a few moments, I will offer a substitute amendment
100 that makes several reforms to the Email Privacy Act, while
101 preserving the core goal of the bill. This carefully
102 negotiated amendment is the product of years of work on this
103 important issue. And I urge my colleagues to join me in
104 support of the amendment.

105 At this time, I would like to thank Representative
106 Yoder for introducing the underlying legislation, and for
107 working with the committee on this substitute amendment. I
108 would also like to specifically thank Chris Calabrese and
109 Greg Nojeim of CDT for their leadership and hard work on
110 behalf of the coalition of outside supporters of the bill to
111 help craft this amendment.

112 I would also like to thank the law enforcement
113 organizations for their cooperation on this bill. And last,
114 but certainly not least, I want to thank Caroline Lynch,
115 Ryan Breitenbach, and Jason Herring of my staff for their
116 tireless efforts on behalf of the committee over the past
117 months, and in some cases over the past years, to negotiate
118 and deliver this substitute amendment today.

119 I would also like to thank the gentleman from Michigan,
120 Mr. Conyers, and his staff for their diligent work on this
121 matter as well.

122 Finally, I would like to say a word about geolocation.
123 We must continue to work to ensure that we protect
124 Americans' privacy, including ensuring sufficient
125 protections for information that reveals the location of
126 individuals. The committee continues to be committed to
127 working on the geolocation issue, and we plan to hold a
128 hearing on the issue. If the short legislative calendar
129 does not allow for a hearing this year, we will hold such a
130 hearing at the beginning of the new Congress.

131 And now, it is my pleasure to recognize the ranking
132 member of the committee, the gentleman from Michigan, Mr.
133 Conyers, for his opening statement.

134 [The statement of Chairman Goodlatte follows:]

135 ***** COMMITTEE INSERT *****

136 Mr. Conyers. Thank you Chairman Goodlatte. I want to
137 take a moment first to thank Stephanie Baez for her service
138 here on the committee. She has worked faithfully as the
139 communications director for the House Judiciary Committee,
140 and today is her last committee markup. Raise your right
141 hands. Okay. Good.

142 Thank you. Stephanie joined our staff nearly 2 years
143 ago and she immediately impressed us with her excellent work
144 ethic, dedication, energy, and kindness. As the committee
145 spokesperson for our side of the committee, she developed
146 strong relationships with the press and also spearheaded a
147 long-term effort to update the Web site.

148 After 6 years on Capitol Hill, Stephanie is
149 unfortunately returning to New York to serve as the vice
150 president of communications for the New York Economic
151 Development Corporation. We appreciate your service,
152 Stephanie, to the Judiciary Committee, and to the House of
153 Representatives, and we wish you well.

154 Chairman Goodlatte. Will the gentleman yield?

155 Mr. Conyers. Of course.

156 Chairman Goodlatte. I thank the gentleman for
157 yielding, and I would also like to take the opportunity to
158 thank Stephanie for her hard work. I know from the
159 communications team on our side of the aisle, that they have

160 worked closely and cooperatively with you on many occasions.
161 And we appreciate your willingness to work with us and
162 everyone else here on the committee. And we also, on our
163 side, join in wishing you the best in your endeavors; even
164 if they may be in New York.

165 Mr. Conyers. Thank you. Mr. Chairman and members of
166 the committee, in 2014, in a unanimous ruling delivered by
167 Chief Justice Roberts, the Supreme Court concluded that the
168 police may not search a cell phone without first
169 demonstrating probable cause. Citing an obvious Fourth
170 Amendment interest in the vast amount of data we stored on
171 and access from our personal devices, the court wrote, and I
172 quote, "The fact that technology now allows an individual to
173 carry such information in his hand, does not make the
174 information any less worthy of the protection for which the
175 Founders fought. Our answer to the questions of what police
176 must do before searching a cell phone seized incident to an
177 arrest is accordingly simple -- get a warrant."

178 With that decision, the court took a bold step towards
179 reconciling our Fourth Amendment values with the advent of
180 modern communications technology. Now today, this committee
181 takes a similar step to reconcile our interests in privacy
182 and due process with the realities of modern computing.

183 H.R. 699, the Email Privacy Act, recognizes that the
184 content of our communications, although often stored in

185 digital form these days, is still worthy of Fourth Amendment
186 protections. So to the investigators and government agents
187 who seek access to our email, our advice is accordingly
188 simple, "Get a warrant." It is an idea whose time has come;
189 and this bill will allow us to move to a clear, uniform
190 standard for law enforcement agencies hoping to access the
191 content of our communications: namely, a warrant based on
192 probable cause.

193 In addition, 699 would codify the right of the
194 providers to give notice of this intrusion to their
195 customers, subject to certain exigent circumstances that
196 also must be validated by the court. And the measure would
197 accomplish these goals without any significant interruption
198 to the way our law enforcement agencies investigate criminal
199 activity. It is no wonder, then, that the Email Privacy Act
200 enjoys more support than any bill that has not yet seen
201 action on the floor of the House of Representatives.

202 At last count, it enjoys 314 cosponsors, including 196
203 of my Republican colleagues, 118 Democrats, and a majority
204 of this committee. The legislation to me is long overdue,
205 and I am glad that we could work out our remaining
206 differences and bring it to consideration today. And so I
207 urge my colleagues and thank them for their support of 699
208 as amended by the proposal before us today. And I also
209 thank the chairman, and yield back the balance of my time.

210 [The statement of Mr. Conyers follows:]

211 ***** COMMITTEE INSERT *****

212 Chairman Goodlatte. Thank you, Mr. Conyers, and
213 without objection, all other members' opening statements
214 will be made a part of the record.

215 [The information follows:]

216 ***** COMMITTEE INSERT *****

217 Chairman Goodlatte. I now recognize myself for
218 purposes of offering an amendment in the nature of a
219 substitute. The clerk will report the amendment.

220 Ms. Williams. The amendment in the nature of the
221 substitute to H.R. 699, offered by Mr. Goodlatte of
222 Virginia, Mr. Conyers of Michigan, Mr. Issa of California,
223 Mr. Nadler of New York, Mr. Forbes of Virginia, Ms. Jackson
224 Lee of Texas, Ms. DelBene of Washington, and Mr. Bishop of
225 Michigan. Strike all after the enacting clause and insert
226 the following --

227 [The amendment of Mr. Goodlatte follows:]

228 ***** INSERT 2 *****

229 Chairman Goodlatte. Without objection, the amendment
230 in the nature of the substitute is considered as read, and I
231 will recognize myself to explain the amendment.

232 This substitute is a carefully negotiated agreement to
233 update the procedures governing government access to stored
234 communications content and records. This amendment retains
235 the core goal of H.R. 699, to establish a uniform warrant
236 requirement for stored communications content in criminal
237 investigations while also protecting and preserving privacy
238 and public safety interests. The amendment removes from the
239 bill a requirement that law enforcement serve the warrant on
240 the target of the investigation.

241 For three decades, ECPA warrants have been executed
242 with the provider because, as with any other third party
243 custodian, the information sought is stored with them. This
244 proposal raised profound public safety and operational
245 concerns with a myriad of potential negative consequences.
246 Instead, the substitute amendment authorizes the provider to
247 notify its customers of receipt of a warrant, court order,
248 or subpoena, unless the provider is court-ordered to delay
249 such notification. The substitute reinstates a provision
250 from current law that delineates which remote computing

251 service providers, or cloud providers, are subject to the
252 warrant requirement for content in a criminal investigation.

253 ECPA has traditionally imposed heightened legal process
254 and procedures to obtain information for which the customer
255 has a reasonable expectation of privacy, namely emails,
256 texts, photos, videos, and documents stored in the cloud.
257 The substitute amendment preserves this treatment by
258 maintaining in the statute-limiting language regarding remote
259 computing services. The substitute amendment authorizes the
260 court to require a date for return of service of the
261 warrant. In the absence of such a requirement, email and
262 cloud providers must promptly respond to warrants for
263 communications content. ECPA currently makes no distinction
264 between content disclosed to the public, like an
265 advertisement on a web site, versus content disclosed only
266 to one or a handful of persons, like an email or text
267 message.

268 The result is that law enforcement is required to
269 obtain a warrant even for publicly disclosed content. The
270 substitute clarifies that commercial public content can be
271 obtained with process other than a warrant.

272 Lastly, the substitute amendment clarifies that nothing
273 in the law limits Congress's subpoena authority to obtain
274 information from third parties in furtherance of a
275 Congressional investigation or oversight and makes a number

276 of technical and conforming improvements to the law. This
277 substitute amendment represents months of work to ensure
278 that reforms to such a broad sweeping law reflect Congress'
279 responsibility to make sure our laws keep pace with
280 advancing technology, and it does so in a way that enhances
281 privacy protections without sacrificing public safety.

282 I urge all members to support this amendment and
283 without objection a letter from the coalition of civil
284 society groups, trade associations, and private industry,
285 and letters from Federal, State, and local law enforcement
286 and prosecutorial organizations, will be made a part of the
287 record.

288 [The information follows:]

289 ***** COMMITTEE INSERT *****

290 Chairman Goodlatte. And it is now my pleasure to
291 recognize the gentleman from Michigan, Mr. Conyers, for his
292 remarks on this amendment.

293 [The statement of Chairman Goodlatte follows:]

294 ***** COMMITTEE INSERT *****

295 Mr. Conyers. Thank you Chairman Goodlatte. Thanks to
296 you and your staff for working with me and my staff for
297 working together to develop the amendment before us now. I
298 also want to recognize and appreciate the members of the
299 Digital Due Process Coalition, many of whom are represented
300 here today for their tireless dedication to the work of
301 modernizing Federal statutes for the Internet age.

302 Over the last few weeks, my colleagues, as we have
303 worked out our few remaining differences on this bill, we
304 crafted what I believe to be an effective compromise. This
305 amendment addresses many of the concerns expressed to us by
306 local, State, and Federal law enforcement agencies; and it
307 does so while preserving the privacy and due process
308 interests at the core of the original bill.

309 Wherever possible, we have retained the important
310 changes proposed by the underlying bill; and central to
311 these changes is the elimination of the so-called "180 day
312 rule," and any distinction between opened and unopened email
313 in that statute.

314 We have always agreed that a simple warrant for content

315 standard is a better approach to protecting our privacy. I
316 should also note that the absence of a special carve out for
317 the civil agencies. This committee quickly reached
318 consensus that those proposals were unworkable,
319 unconstitutional, and sometimes both. I would have
320 preferred to keep the notice provisions of the original bill
321 which are absent from the substitute. In the digital world,
322 no amount of due diligence necessarily tells us that the
323 government has accessed our electronic communications. The
324 government should have an obligation to provide us with some
325 form of notice when intruding on a record of our most
326 private conversations. But I understand that not everyone
327 shares this view, and I am willing to compromise, for now,
328 in order to advance the important reforms that we will adopt
329 today.

330 I am proud of the work that we have done. This
331 legislation is 6 years in the making, and it should not be
332 delayed any further. And accordingly, I thank my colleagues
333 for their support for the manager's amendment, and I yield
334 back the balance of my time, Mr. Chairman. Thank you.

335 [The statement of Mr. Conyers follows:]

336

337 ***** COMMITTEE INSERT *****

338 Chairman Goodlatte. The chair thanks the gentleman.
339 For what purpose does the gentleman from Utah seek
340 recognition?

341 Mr. Chaffetz. I move to strike the last word.

342 Chairman Goodlatte. The gentleman is recognized for 5
343 minutes.

344 Mr. Chaffetz. I thank the chairman and I want to thank
345 him profusely for his good work and commitment on this bill.
346 I stand in support of the manager's amendment and the
347 underlying bill. This is an issue that desperately needs to
348 be addressed, and I think we have done so in a good
349 bipartisan way.

350 I want to thank our colleague, Mr. Yoder, who has
351 worked tirelessly to put together a broad coalition of
352 people on both sides of the aisle; both on this committee
353 and outside this committee. But, Mr. Chairman, you have
354 truly brought together people with disparate thoughts and
355 perspectives and come up with something I think is very

356 palatable, very fair, will give a great update to the law,
357 and as it is needed.

358 And I also want to thank you for your commitment on the
359 geolocation issue which does need to be addressed. To have
360 a candid hearing about what is happening and what is not
361 happening, I look forward to that hearing. I thank you for
362 always having an open ear, and knowing that we have to
363 address that issue as well. Look forward to doing that in
364 the future. So with that, I will yield back the balance of
365 my time.

366 Chairman Goodlatte. The chair thanks the gentleman.
367 For what purpose does the gentlewoman from California seek
368 recognition?

369 Ms. Lofgren. Mr. Chairman, I move to strike the last
370 word.

371 Chairman Goodlatte. The gentlewoman is recognized for
372 5 minutes.

373 Mr. Lofgren. I think that codifying the Rorschach work
374 requirement for email and clarifying that Congress believes
375 -- just like the rest of the public -- that there is an
376 expectation of privacy for things stored in the cloud is an
377 important change; and I am glad the committee is moving on
378 this bill, and I applaud the chairman for doing so, as well
379 as the ranking member for his diligent work.

380 I also wanted to recognize, however, the chairman's

381 statement on the importance of reforming the disclosure and
382 interception of geolocation information because that is an
383 important issue to both of us, and I am welcoming the
384 prospect of hearings on this measure.

385 Now, the courts are moving in the right direction on
386 geolocation, but there is still a void when it comes to
387 historical geolocation information, and that is really a
388 very large problem, because protecting information about
389 where you are goes beyond the Fourth Amendment. It impacts
390 the First Amendment. If you are afraid you are being
391 watched, it impacts your right to free speech, your right to
392 assembly, even potentially your right to practice your
393 religion. People act and think differently when they know
394 or suspect that they are being watched.

395 And so, we know from the data from AT&T and Verizon
396 that this is a huge issue. I will just give you some stats
397 that I recently received. AT&T received a total of 9,776
398 warrant requests for wiretaps and stored communications. I
399 do not have the subpoena information. Verizon received a
400 little over 5,500 in the last 6 months.

401 However, in those same time periods, AT&T received over
402 76,000 requests for geolocation information, and Verizon
403 over 24,000. So, this is a very large issue. Many States
404 have taken the lead on this. California just passed a law
405 protecting geolocation information with a warrant

406 requirement. And I believe, Mr. Chairman, your own State of
407 Virginia also requires a warrant for geolocation
408 information. So, I look forward to working with you in the
409 hearing in the near future, and I support this bill, and I
410 yield back the balance of my time.

411 Mr. Goodlatte. The chair thanks the gentleman. For
412 what purpose does the gentleman from New York seek
413 recognition?

414 Mr. Nadler. Mr. Chairman, to strike the last word.

415 Mr. Goodlatte. The gentleman is recognized for 5
416 minutes.

417 Mr. Nadler. Thank you, Mr. Chairman. It has long been
418 evident that we need an update to the laws impacting
419 electronic communications and privacy, and I am pleased
420 today that the House Judiciary Committee will take a major
421 step forward to do just that, with the long overdue passage
422 of the Email Privacy Act.

423 Back in 2009 and 2010, when I was the chair of the
424 Subcommittee on the Constitution, we held multiple hearings
425 on ECPA and began to seriously consider reform to the
426 country's electronic communication and privacy laws. During
427 the 112th Congress, Ranking Member Conyers and I introduced
428 the Electronic Communications Privacy Modernization Act of
429 2012, which would have required law enforcement to obtain a
430 warrant based on probable cause before searching email.

431 That approach, now embodied in the unopposed Email
432 Privacy Act and in the chairman's mark is what we are here
433 to consider in the Judiciary Committee today.

434 The Email Privacy Act requires the government to obtain
435 a warrant in order to access an individual's electronic
436 communications from a third-party provider, protecting
437 Americans' privacy rights while still enabling law
438 enforcement to do its job. Current law is inconsistent and
439 unclear regarding the standards for government access to the
440 content of communications, and a single email is potentially
441 subject to multiple different legal standards. Clarifying
442 the laws will help industry stakeholders who currently
443 struggle to apply the existing outdated categories of
444 information to their products and services, and it will
445 provide a clear standard for law enforcement, one that
446 ensures that ECPA conforms with the Fourth Amendment
447 protections we are guaranteed under the Constitution.

448 In an era where government access to people's private
449 information held by third-party providers has become far too
450 easy, Congress is finally taking steps to update our laws to
451 reflect a new understanding of what it means for people to
452 be, "secure in their persons, houses, papers, and effects
453 against unreasonable searches and seizures," close quote.

454 I applaud this landmark legislation, and I am proud to
455 cosponsor the chairman's mark in what is a critical step

456 forward to ensure that our laws strike the right balance
457 between the interests and needs of law enforcement and the
458 privacy of the American people. And I also want to say I
459 appreciate the chairman's commitment to holding hearings on
460 geolocation, because that is obviously the next step in this
461 ongoing campaign to update our laws regarding electronic
462 communications.

463 Mr. Goodlatte. The chair thanks the gentleman.

464 Mr. Nadler. I yield back.

465 Mr. Marino. Chairman?

466 Mr. Goodlatte. For what purpose does the gentleman
467 from Pennsylvania, Mr. Marino, seek recognition?

468 Mr. Marino. I move to strike the last word.

469 Mr. Goodlatte. The gentleman is recognized for 5
470 minutes.

471 Mr. Marino. Thank you, Chairman. Mr. Chairman, I want
472 to thank you and your staff for all the work you put into
473 the bill we are considering today. I know that you and your
474 staff have worked tirelessly to draft language that balances
475 the many interests and issues created by a legal revamp that
476 is 30 years in the making. I greatly appreciate this effort
477 and your constant cooperation with me and my staff.

478 In 1986, the original drafters of ECPA could not have
479 envisioned the interconnected lives we live in today's
480 digital world. New technologies present new opportunities

481 and experience for users. Electronic communications are a
482 daily necessity for American citizens and businesses to
483 send, receive, and store their most important information.
484 Many of these innovations have been developed and driven by
485 U.S. based companies, providing good paying jobs here, and
486 the use of American-made electronic communications and
487 remote computing services across the globe.

488 At the same time, however, new technology presents new
489 challenges for law enforcement in their obligation to
490 protect us and keep us safe. As a former district attorney
491 and United States attorney, I personally understand the
492 complexities of modern-day investigations and criminal
493 prosecutions. Yet, from the founding of our Nation, we have
494 cherished our privacy. The Fourth Amendment's "papers and
495 effects" are today's emails, Tweets, and posts. We must
496 keep this charge in mind. The intent behind ECPA, to
497 protect privacy while balancing the legitimate needs of the
498 law enforcement access to information, must be preserved.

499 Today's bill marks thoughtful steps in the direction by
500 ensuring the requirement that law enforcement must obtain a
501 warrant for the electronic content it seeks. But for over a
502 year now, I have worked with my colleague, Representative
503 Susan DelBene, on an issue related to one we consider today.
504 How do we address the issue of law enforcement access to
505 data that happens to be stored abroad? Ms. DelBene and I

506 are proud of the progress we have made bringing attention to
507 this question, and the need to answer it in a thoughtful,
508 balanced way. Over 130 bipartisan members have cosponsored
509 our bill, the Law Enforcement Access to Data Stored Abroad
510 Act, or known as LEADS.

511 Mr. Chairman, I am grateful for your support on this
512 issue and the opportunity this committee had to explore
513 during the hearing earlier this year on the conflict of law
514 question faced by cross-border data flows and law
515 enforcement requests for that data. We look forward to
516 working with you, our colleagues on the Judiciary Committee,
517 and stakeholders from both industry and law enforcement to
518 ensure we address the critical issue related to ECPA reform.
519 I also want to thank Ranking Member Conyers for his support
520 as a cosponsor of our bill as well.

521 The dual interests of user privacy and access to this
522 information are just as important when data is stored in
523 foreign countries as when it is stored in the United States.
524 Adding to the complexity of the issue are existing legal
525 assistance agreements with foreign countries.

526 Unfortunately, the current MLAT process is inefficient
527 and cumbersome. I am encouraged by efforts already underway
528 at the Department of Justice to improve this. Under the
529 leadership of this committee, we in Congress should continue
530 to explore ways to reform the MLAT process while keeping an

531 open mind to alternatives, including prospects for new
532 bilateral agreement being negotiated with the United
533 Kingdom. We have an opportunity to set the standard for
534 policies that allow for balanced and efficient access to
535 information for law enforcement while simultaneously
536 protecting privacy, civil liberties, and human rights.

537 Mr. Chairman, as we move ahead, I am sure I can look
538 for you for assistance as we continue to explore ways to
539 achieve these goals. And thank you. I look forward to --

540 Mr. Goodlatte. Will the gentleman yield?

541 Mr. Marino. Yes.

542 Mr. Goodlatte. I want to thank the gentleman for his
543 work on the LEADS Act and related issues, and look forward
544 to working with him as we move forward.

545 Mr. Marino. Excellent, thank you so much. And with
546 that, thank you. And I yield back.

547 Mr. Goodlatte. The chair thanks the gentleman. For
548 what purpose does the gentlewoman from Texas seek
549 recognition?

550 Ms. Jackson Lee. Mr. Chairman, to strike the last
551 word.

552 Mr. Goodlatte. The gentlewoman is recognized for 5
553 minutes.

554 Ms. Jackson Lee. Mr. Chairman, thank you. And let me
555 thank the cooperative spirit and the hard work of the

556 ranking member working with you, Mr. Chairman, on resolving
557 some of the issues that have been expressed by the
558 stakeholders. I support this bill, the underlying bill, to
559 update the Electronic Communications Privacy Act, a law that
560 both protects the privacy of our email communication and
561 provides a critical tool for law enforcement to investigate
562 crime.

563 I am pleased to have been an original cosponsor of this
564 bill, which has 314 cosponsors, enjoying overwhelming
565 bipartisan support, and I am pleased the committee has
566 worked on it to improve it so that it could be brought up
567 today.

568 The Electronic Communications Privacy Act, or ECPA, was
569 enacted in 1986. The statute is outdated and provides
570 unjustifiably inconsistent standards for law enforcement
571 access to stored communications. The law was designed at a
572 time when few of us used email or could have imagined a
573 world in which we would securely share information, edit
574 electronic documents online with others, or our business
575 could input, store, process, and access all data related to
576 their operation.

577 However, it is important to have, as a premier point,
578 is that of privacy; and we are very much in line with the
579 organizations that provided us with a letter expressing
580 their concerns.

581 The law was designed, as I said, when we were not using
582 email as much. The outdated, inconsistent, unclear aspects
583 of the statute undermine both our privacy interests and law
584 enforcement interests. It is critical that we enact the
585 central reforms provided by this bill. For instance, a
586 probable cause standard should apply to the government's
587 ability to compel a communications provider to disclose a
588 customer's email message, no matter how old the message is.
589 Currently, the statute requires the government to obtain a
590 warrant based on probable cause to compel disclosure of an
591 email that is in storage for 180 days or less.

592 However, the statute only requires a subpoena for the
593 government to obtain email messages that are older than 180
594 days. This makes no sense, because citizens have the same
595 reasonable expectation that these stored communications are
596 private. Therefore, we must change the law so that the
597 higher standard applies, regardless of the age of these
598 communications, and H.R. 699 would accomplish this.

599 In addition, the law does not adequately protect
600 communications stored in the cloud by third parties on
601 behalf of consumers, and a probable cause warrant should be
602 required for government access.

603 ECPA additionally provides a lesser standard for some
604 cloud storage than it does for many communications stored by
605 electronic communications services. To further complicate

606 matters, many companies provide both communications services
607 and remote storage, making the services to the same customer
608 difficult to separate for purposes of determining which
609 standard applies.

610 Applying inadequate and unclear standards to government
611 access to cloud communications undermines consumer
612 confidence in cloud privacy, threatens to hamper the
613 development of this important engine of economic growth.
614 And H.R. 699 addresses this issue by providing clear,
615 consistent, probable cause standard for access to contents
616 of stored communications, for which customers have
617 reasonable expectation.

618 The substitute, which I am supporting, again, answers
619 concerns, and I am glad that it provides responses to some
620 of the questions that have been raised. In particular, it
621 adds language authorizing the court to include a date by
622 which providers must disclose information sought in the
623 warrant.

624 Among other things, it removes language requiring the
625 government to serve a copy of the warrant on the subscriber
626 or customer, and allows the provider to provide a notice,
627 which I think is very important. It removes the language
628 which would have limited the scope of non-content records
629 available with a warrant or court order to only those
630 records available via subpoena, and removes the outdated

631 provision that authorized disclosure of non-content records
632 in cases of telemarketing, as well as the rule of
633 construction clause, preserving the ability of the
634 government to obtain public commercial content with a
635 process other than a warrant.

636 It removes the requirement of government to seek
637 delayed notice against itself. It clarifies that nothing in
638 the Email Privacy Act precludes acquisition of wired
639 electronic communications.

640 I think the main point is, after noting the letter that
641 was sent, for any number of individuals and stakeholders,
642 including Amazon, American Civil Liberties, American Library
643 Association, which the ranking member has included in the
644 record, I think we have come to at least an understanding of
645 the balance of importance of investigations, but also the
646 right to privacy. I support the underlying bill, and am
647 glad to cosponsor the manager's amendment and ask for
648 support of the bill and the manager's amendment. With that,
649 I yield back.

650 Mr. Goodlatte. The chair thanks the gentlewoman. For
651 what purpose does the gentleman from Texas, Mr. Farenthold,
652 seek recognition?

653 Mr. Farenthold. I would like to strike the last word

654 Mr. Goodlatte. The gentleman is recognized for 5
655 minutes.

656 Mr. Farenthold. Thank you, Mr. Chairman. And I would
657 like to applaud the efforts of Mr. Yoder and Mr. Polis with
658 the underlying bill; it had 314 cosponsors, as written. I
659 understand that the manager's amendment paves the way for
660 stopping some of the folks who were opposed to it from
661 raising too much of a stink. I guess we have got the
662 situation here that compromise and getting something done is
663 ending up with something not everybody loves, but is
664 something everybody can live with.

665 I do think that ECPA definitely needs reform, and this
666 goes a long way to doing it, though I join with some of the
667 concerns my colleagues have expressed, with the lack of
668 notice requirements, the failure to include geolocation
669 protection, and the lack of a suppression remedy in this.
670 But again, nothing is perfect. We have got commitments to
671 move forward on a lot of these. So, I am really happy that
672 we are going to get this done. And thank you for hard work
673 on it. And I look forward to voting for it here and on the
674 floor. I yield back.

675 Mr. Goodlatte. The chair thanks the gentleman. For
676 what purpose does the gentlewoman from Washington seek
677 recognition?

678 Ms. DelBene. I move to strike the last word.

679 Mr. Goodlatte. The gentlewoman is recognized for 5
680 minutes.

681 Ms. DelBene. Thank you. I want to thank you, Mr.
682 Chair, for holding this markup. This has been a top
683 priority of mine since I was elected to Congress, to make
684 sure we reform the Electronic Communications Privacy Act.
685 It addresses such a core issue, in terms of protecting the
686 privacy of people's personal information and upholding that
687 in our digital world, and this is a great first step. And
688 as many of my colleagues have said, it is a good first step.

689 I want to thank Congressman Yoder and Congressman Polis
690 for introducing the Email Privacy Act. But I also agree
691 with my colleagues, we need to address other issues going
692 forward, including geolocation, as Mr. Chaffetz and Ms.
693 Lofgren have posted out. And I want to thank you, Mr.
694 Chairman, for your commitment on moving forward on
695 geolocation.

696 I also agree with my colleague, Mr. Marino, that we
697 have got to continue the discussion this committee has begun
698 about the conflicts of law and accessing data stored
699 overseas by American companies. I want to thank Mr. Marino
700 and our Republican colleagues who have been supportive and
701 part of this effort, as well as my colleagues on this side:
702 Ranking Member Conyers, Mr. Jeffries, Mr. Johnson, Mr.
703 Peters, Mr. Pierluisi, Ms. Bass, Mr. Cohen, and Mr.
704 Gutierrez for all of their support in this conversation.
705 That is another area we need to move on.

706 So, again, this is a great first step, and I look
707 forward to working with you as we move forward. And I yield
708 back the remainder of my time.

709 Mr. Goodlatte. The chair thanks the gentlewoman. For
710 what purpose does the gentleman from Texas, Mr. Poe, seek
711 recognition?

712 Mr. Poe. Mr. Chairman, I move to strike the last word.

713 Mr. Goodlatte. The gentleman is recognized for 5
714 minutes.

715 Mr. Poe. I want to thank the chair for bringing this
716 legislation up. In the big scheme of things, we have a lot
717 of committees in Washington, D.C., in the House of
718 Representatives. We have got the committee that deals with
719 taxes, and energy, and agriculture, transportation. A lot
720 of committees doing a lot of good things. But this is the
721 only committee in the House of Representatives that deals
722 with the Constitution and protecting the constitutional
723 rights of Americans. That is why I think that this
724 committee is very important, because we are it. We are the
725 last ones standing, in my opinion, on protecting the rights
726 in the Constitution.

727 And we are talking about today the Fourth Amendment.
728 You look at countries all throughout the world, even
729 democracies. They do not have the Fourth Amendment. The
730 United States is unique in its establishment of the Fourth

731 Amendment, protection of privacy of citizens and individuals
732 in this country; and we ought to continue to make sure we
733 fight for that, because we are the last ones who are going
734 to fight for the Fourth Amendment.

735 This legislation protects the right of privacy. That
736 is good. As mentioned before, I hope we move forward with
737 some others: the right of privacy dealing with drones flying
738 over our head, both civilian and government drones. We have
739 to handle that. That is our responsibility. It is not the
740 FAA's responsibility.

741 There was a book written in 1948, that some of us
742 studied in high school, called "1984," written by Orwell.
743 And I remember, I actually -- as I mentioned last week, I
744 have no life, so I read the book again over the weekend.
745 And I had remembered how, when we discussed this in English
746 literature, how absurd students like myself thought this
747 would ever be, that 1984 would actually come to pass. Well,
748 it is worth the read again. It talks about the thought
749 police. It talks about surveillance by government on the
750 citizens, where there is a camera on every corner, like
751 maybe they have in England today. It talks about hidden
752 microphones and telescreens, surveillance of government on
753 the people.

754 That is what this committee has to fight against:
755 surveillance of government on the people; and I think that

756 this is a good step forward in doing that. It is our
757 responsibility. Bipartisanship is, I think, good. That is
758 good, for members of the House, to have so many people
759 support this idea, of the Fourth Amendment protections. I
760 do think we need to go a little further.

761 Ms. Lofgren has introduced legislation on geolocation.
762 I think that is something -- I am glad the chairman has said
763 we are going to deal with that -- but the idea that
764 government can follow the citizens around, wherever they go
765 in the whole U.S.? I have got a problem with that. That is
766 kind of 1984. And I am not the first one who said that.

767 In the U.S. v. Jones, back in 2011, a case about
768 government putting a tracking device on a car, the Supreme
769 Court Justice Breyer made the comment to the government
770 about this geolocation device. He said, "If you win this
771 case, then there is nothing to prevent police or government
772 from monitoring 24 hours a day the public movement of every
773 citizen of the U.S." So, if you win, suddenly, we produce
774 1984 all over again.

775 So, I think this legislation is important. We need to
776 move forward to protect the Fourth Amendment; we have it;
777 other countries do not. We have an obligation as a
778 committee and members of the House of Representatives to
779 protect the Fourth Amendment against government intrusion.
780 And I will yield back to the chairman.

781 Chairman Goodlatte. The chair thanks the gentleman.
782 For what purpose does the gentleman from New York seek
783 recognition?

784 Mr. Jeffries. I move to strike the last word.

785 Chairman Goodlatte. The gentleman is recognized for 5
786 minutes.

787 Mr. Jeffries. I will thank you, Mr. Chairman, for your
788 leadership, and I want to thank the ranking member, all my
789 colleagues in government, committee staff, for their hard
790 work in moving this important piece of legislation forward.
791 Advances in technology often outpace existing law, and the
792 Electronic Communications Privacy Act has been no exception.

793 We know that the Fourth Amendment protects individuals
794 from unreasonable government searches, and courts have
795 guaranteed this protection by requiring the government to
796 obtain a warrant supported by probable cause and criminal
797 proceedings. Yet, the existing law allowed the government
798 to legally circumvent the Fourth Amendment and its warrant
799 requirement if it sought the content of electronic
800 communications through a third party. The Electronic
801 Communications Privacy Act contains distinctions between
802 types of computing services and stored electronic
803 communications that failed to fully recognize and uphold
804 Fourth Amendment protections in the modern digital era.
805 While the privacy protections contained in current law may

806 have been adequate in the 1980s, they no longer reflect the
807 reality of today's technology.

808 As technology advanced, the law did not protect the
809 privacy rights of everyday Americans. The distinctions
810 between opened and unopened emails, communications stored
811 for more than 180 days, or the type of computing service at
812 issue, permitted the government to obtain almost the entire
813 record of email communications and its content from any
814 American citizen through a third party without obtaining a
815 warrant supported by probable cause. That was wholly
816 inconsistent with the Fourth Amendment and the intentions of
817 our Founding Fathers.

818 For several years, members on both sides of the aisle,
819 the technology industry and privacy advocates, have noted
820 the need to reform the Electronic Communications Privacy
821 Act, so that the Fourth Amendment rights of all Americans
822 could be fully protected. I am thankful today that we are
823 doing exactly that.

824 H.R. 699, of course, eliminates the archaic and
825 outdated 180 day rule: any distinction between opened and
826 unopened emails, and establishes a more robust single legal
827 standard to which the government can obtain the contents of
828 electronic communication from a third party. The bill's
829 warrant requirement ensures that the privacy rights of
830 American citizens are duly protected in the modern

831 technology and innovation era, and upholds the Fourth
832 Amendment in a manner consistent with its original intent.

833 Moving forward as other members have indicated, I look
834 forward to working together with all of my colleagues in the
835 committee to address other outstanding issues, such as
836 geolocation, access to overseas data, with the leadership of
837 Mr. Marino and Ms. DelBene, encryption and other privacy
838 concerns related to the modern technology era. I look
839 forward to addressing these issues as comprehensively as we
840 have addressed this one. And I yield back.

841 Chairman Goodlatte. The chair thanks the gentleman.
842 Are there any amendments to the amendment in the nature of a
843 substitute?

844 The question is on the amendment in the nature of a
845 substitute to H.R. 699.

846 All those in favor, respond by saying aye.

847 Those opposed, no.

848 In the opinion of the chair, the ayes have it, and the
849 amendment is agreed to. A reporting quorum being present,
850 the question is on the motion to present the bill H.R. 699,
851 as amended, favorably to the House.

852 Those in favor will say aye.

853 Those opposed, no.

854 The ayes have it. And the bill, as amended --

855 Mr. Conyers. Chairman, may I have a recorded vote?

856 Chairman Goodlatte. A recorded vote has been
857 requested, and the clerk will call the roll.

858 Ms. Williams. Mr. Chairman?

859 Chairman Goodlatte. Aye.

860 Ms. Williams. Mr. Chairman votes aye.

861 Mr. Sensenbrenner?

862 [No response.]

863 Mr. Smith?

864 Mr. Smith. Aye.

865 Ms. Williams. Mr. Smith votes aye.

866 Mr. Chabot?

867 Mr. Chabot. Aye.

868 Ms. Williams. Mr. Chabot votes aye.

869 Mr. Issa?

870 Mr. Issa. Yes.

871 Ms. Williams. Mr. Issa votes yes.

872 Mr. Forbes?

873 Mr. Forbes. Aye.

874 Ms. Williams. Mr. Forbes votes aye.

875 Mr. King?

876 [No response.]

877 Mr. Franks?

878 Mr. Franks. Aye.

879 Ms. Williams. Mr. Franks votes aye.

880 Mr. Gohmert?

881 [No response.]
882 Mr. Jordan?
883 Mr. Jordan. Yes.
884 Ms. Williams. Mr. Jordan votes yes.
885 Mr. Poe?
886 Mr. Poe. Yes.
887 Ms. Williams. Mr. Poe votes yes.
888 Mr. Chaffetz?
889 Mr. Chaffetz. Aye.
890 Ms. Williams. Mr. Chaffetz votes aye.
891 Mr. Marino?
892 Mr. Marino. Yes.
893 Ms. Williams. Mr. Marino votes yes.
894 Mr. Gowdy?
895 [No response.]
896 Mr. Labrador?
897 [No response.]
898 Mr. Farenthold?
899 Mr. Farenthold. Aye.
900 Ms. Williams. Mr. Farenthold votes aye.
901 Mr. Collins?
902 Mr. Collins. Aye.
903 Ms. Williams. Mr. Collins votes aye.
904 Mr. DeSantis?
905 [No response.]

906 Ms. Walters?
907 [No response.]
908 Mr. Buck?
909 Mr. Buck. Aye.
910 Ms. Williams. Mr. Buck votes aye.
911 Mr. Ratcliffe?
912 Mr. Ratcliffe. Yes.
913 Ms. Williams. Mr. Ratcliffe votes yes.
914 Mr. Trott?
915 Mr. Trott. Aye.
916 Ms. Williams. Mr. Trott votes aye.
917 Mr. Bishop?
918 Mr. Bishop. Yes.
919 Ms. Williams. Mr. Bishop votes yes.
920 Mr. Conyers?
921 Mr. Conyers. Aye.
922 Ms. Williams. Mr. Conyers votes aye.
923 Mr. Nadler?
924 Mr. Nadler. Aye.
925 Ms. Williams. Mr. Nadler votes aye.
926 Ms. Lofgren?
927 Ms. Lofgren. Yes.
928 Ms. Williams. Ms. Lofgren votes yes.
929 Ms. Jackson Lee?
930 Ms. Jackson Lee. Aye.

931 Ms. Williams. Ms. Jackson Lee votes aye.
932 Mr. Cohen?
933 [No response.]
934 Mr. Johnson?
935 Mr. Johnson. Aye.
936 Ms. Williams. Mr. Johnson votes aye.
937 Mr. Pierluisi?
938 [No response.]
939 Ms. Chu?
940 [No response.]
941 Mr. Deutch?
942 [No response.]
943 Mr. Gutierrez?
944 [No response.]
945 Ms. Bass?
946 [No response.]
947 Mr. Richmond?
948 [No response.]
949 Ms. DelBene?
950 Ms. DelBene. Aye.
951 Ms. Williams. Ms. DelBene votes aye.
952 Mr. Jeffries?
953 Mr. Jeffries. Aye.
954 Ms. Williams. Mr. Jeffries votes aye.
955 Mr. Cicilline?

956 Mr. Cicilline. Aye.

957 Ms. Williams. Mr. Cicilline votes aye.

958 Mr. Peters?

959 Mr. Peters. Aye.

960 Ms. Williams. Mr. Peters votes aye.

961 Chairman Goodlatte. The gentlewoman from California,
962 Ms. Chu?

963 Ms. Chu. Aye.

964 Ms. Williams. Ms. Chu votes aye.

965 Chairman Goodlatte. The gentlewoman from California,
966 Ms. Walters?

967 Ms. Walters. Aye.

968 Ms. Williams. Ms. Walters votes aye.

969 Chairman Goodlatte. The gentleman from Tennessee?

970 Mr. Cohen. Very aye.

971 Ms. Williams. Mr. Cohen votes aye.

972 Chairman Goodlatte. Has every member voted who wishes
973 to vote? The clerk will report.

974 Ms. Williams. Mr. Chairman, 28 members voted aye.
975 Zero members voted no.

976 Chairman Goodlatte. The ayes have it, and the bill, as
977 amended, is ordered reported favorably to the House.
978 Members will have 2 days to submit views, and without
979 objection, the bill will be reported as a single amendment
980 in the nature of a substitute, incorporating all adopted

981 amendments, and staff is authorized to make technical and
982 conforming changes. S. 125, the Bulletproof Vest
983 Partnership Grant Program Reauthorization, will be marked up
984 next week.

985 That concludes the business of the committee today. I
986 want to thank all other members for the very cooperative
987 nature in which we have brought this bill out of the
988 committee. I want to congratulate the gentleman from
989 Kansas, Mr. Yoder, and I thank all of you for your
990 participation. The meeting is adjourned.

991 [Whereupon, at 11:35 a.m., the committee adjourned
992 subject to the call of the chair.]

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