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## **Memorandum in Support – The New York Electronic Communications Privacy Act**

May 15, 2017

### **IN SUPPORT OF: A1892a/S6044**

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

Defending Rights & Dissent supports NYECPA because its protections will allow New Yorkers to participate fully in civil society, free to debate, dissent, and organize without fear that their mobile phones, email, text messages, social media, metadata, and geolocation information will be accessed by law enforcement without a warrant.

Not only are our private lives increasingly being lived online, but the internet and social media have become a dominant forum for political dissent. The Supreme Court has long noted<sup>1</sup> that privacy is fundamental to free expression. The UN Special Rapporteur on Freedom of Opinion and Expression has repeatedly stressed the importance<sup>2</sup> of the ability for journalists, civil society and individuals to be able to engage in private and secure online communications free from government surveillance. But, as technology has advanced, the law has lagged woefully behind, putting our privacy and our right of free expression in jeopardy, and, because of greater reliance on cell phones<sup>3</sup>, minorities and low-income people are most at risk.

The statistics on the amount of our private information law enforcement agencies are demanding from technology companies is alarming: for example, Verizon reported that in the first half of 2015, the company received over 134,000 law enforcement requests for customer data without a warrant<sup>4</sup>. The low bar for access to our private communications allows law enforcement to conduct fishing expeditions to

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<sup>1</sup> NAACP v Patterson, 347 U.S. 229 (1959), see <https://supreme.justia.com/cases/federal/us/357/449/case.html>

<sup>2</sup> Presentation of David Kaye at the World Press Freedom Day International Conference, 3 May 2015, available at <http://www.ohchr.org/ch/NewsEvents/Pages/DisplayNews.aspx?NewsID=15922&LangID=E>

<sup>3</sup> "U.S. Smartphone Use in 2015," Pew Research Center, available at <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>

<sup>4</sup> Verizon Transparency Report, available at <http://transparency.verizon.com/us-report>

uncover information about people for whom they have no probable cause to believe are engaged in criminal activity.

Throughout US history, law enforcement agencies have engaged in surveillance and monitoring of minorities and political dissidents. With new technologies at their disposal, there are now expanded opportunities for such history to repeat itself creating a chilling effect. Without strong protections, individuals who have historically been the targets of unjustified surveillance will refrain from using electronic communications. Evidence of this chilling effect has already emerged, with journalists and writers reporting self-censoring themselves due to perceived government intrusion into electronic communications, and in at least one academic study<sup>5</sup>. This bill will play a vital role in counteracting that chilling effect and thus strengthening the type of free expression that is essential for our democracy.

Defending Rights & Dissent (formerly the Bill of Rights Defense Committee/Defending Dissent Foundation) is a national civil liberties organization whose mission is to protect the right of political expression to strengthen participatory democracy, and to fulfill the promise of the Bill of Rights for everyone.

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<sup>5</sup> “The Chilling Effect of Mass Surveillance Quantified,” available at <https://www.techdirt.com/articles/20160429/07512934314/chilling-effect-mass-surveillance-quantified.shtml>