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**Memorandum in Support of the New York Electronic Communications Privacy Act**

**Bill Number:** A1895a/S6044

**Sponsor:** Assemblyman Jeffery Dinnowitz/Senator Tony Avella

**Title:** New York Electronic Communications Privacy Act

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

**Statement of Support:**

The Brennan Center for Justice at NYU School of Law strongly supports A1895a/S6044 – the New York Electronic Communications Privacy Act (NY ECPA), which would update New York’s antiquated privacy laws to keep pace with modern technologies.

New York’s electronic surveillance laws are older than the World Wide Web. Under current law, a warrant is required to open postal mail or intercept a telephone call, but e-mail, text messages, and other electronic data stored in the “cloud” do not receive the same level of protection. This is out of step with the way New Yorkers communicate today. Updating the law would respond to New Yorkers’ deeply held concerns about privacy and clarify that a search warrant is required for access to personal data, just as it would be for private papers stored in a desk drawer.

Assembly Bill A1895a and Senate Bill 6044 would prohibit law enforcement from compelling the production of, or access to, electronic communications and metadata from individuals or service providers, except pursuant to an eavesdropping warrant or search warrant. The bill also includes thoughtful exceptions for owner consent, locating a lost device, and emergencies involving imminent danger of death or serious physical injury.

Assembly Bill A1895a and Senate Bill 6044 clarify that data about the location of communicants and their electronic devices is equally private information that should require a

warrant for law enforcement to access under normal circumstances. This is an important provision that is in line with state legislatures around the country that have recognized the need to update privacy laws to account for the realities of the digital age. California, Colorado, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, New Hampshire, Tennessee, Utah, Virginia, Washington, and Wisconsin have all enacted laws requiring a warrant for location information.

New York law is in need of an upgrade. The Assembly must account for a new world in which nearly every call or click online leaves a digital trail that can be stored, searched, and stitched together to reveal an intimate portrait of private life. Indeed, the Supreme Court has repeatedly recognized the need for the law to keep pace with rapid changes in technology. *See Riley v. California*, 134 S. Ct. 2473 (2014) (requiring a warrant to search the contents of a cell phone incident to arrest); *United States v. Jones*, 132 S. Ct. 945 (2012) (requiring a warrant for GPS tracking a car). As the Court said in *Riley*, “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.” 134 S. Ct. at 2495. The same should hold true for data stored in the cloud, and that is what A1895a/S6044 would do.

The Brennan Center is a 501(c)(3) nonprofit organization affiliated with the New York University School of Law, focusing on the fundamental issues of democracy and justice in American society. The Center’s Liberty and National Security program is particularly concerned with domestic surveillance and related law enforcement policies, including the warrantless collection of Americans’ communications and personal data, and the concomitant effects on privacy and First Amendment freedoms.

As an organization committed to effective law enforcement policies that respect constitutional values, we endorse the changes put forward in this legislation. New Yorkers should be confident that their private data will remain private absent a lawful search warrant, regardless of whether it is stored by a service provider in the “cloud,” on a device in the palm of their hands, or saved on a hard drive at home. Assembly Bill A1895a and Senate Bill 6044 would eliminate these outdated discrepancies in the law and bring New York into the twenty-first century.

**The Brennan Center for Justice supports the passage of A1895a/S6044 and urges your support of this legislation.**

*Please contact Michael Price at (646) 292-8335 with any questions.*