

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

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June 10, 2014

The Honorable John Barrow  
Rayburn House Office Building, 2202  
Washington, DC 20515-1012

Dear Representative Barrow,

I write to ask you to consider cosponsoring H.R. 1852, the Email Privacy Act. This legislation would require law enforcement officials to obtain a warrant before accessing the contents of private electronic communications, which is essential to preserve the Fourth Amendment's privacy safeguards in the digital age.

When it was enacted in 1986, the Electronic Communications Privacy Act (ECPA) was cutting-edge legislation that established rules for law enforcement access to private electronic communications. Today, nearly 30 years later, it is clear that the law has failed to keep pace with the changes in technology. For example, ECPA has different rules for law enforcement access to emails depending on how old they are and where they are stored. Under ECPA, law enforcement officials are required to obtain a warrant only when an email is less than 180 days old, and do not have to obtain a warrant at all in order to access documents most people store "in the cloud." Today, when everyone uses email for so many aspects of everyday life, and we have the ability to store seemingly unlimited amounts of information online, the old rules of ECPA no longer make sense. These changes in technology were recognized by the U.S. Court of Appeals for the Sixth Circuit when it held in 2010 in *U.S. v. Warshak* that the Fourth Amendment protects email even if it is over 180 days old, and struck down the current ECPA standards for government access to email.

H.R. 1852 would simply extend to private online communications and documents stored "in the cloud" the same protections already enjoyed by documents produced and stored offline. It is time for Congress to act to reform ECPA and apply fundamental constitutional safeguards uniformly throughout the country.

This long-overdue reform is supported by a coalition of major tech companies and public interest groups spanning the political spectrum. Companies in support of H.R. 1852 include Amazon, AT&T, Google, eBay, Facebook, Intel, IBM, Microsoft, and Twitter. In addition to The Constitution Project, civil liberties and public policy advocates in support of the bill include the ACLU, Americans for Tax Reform, CDT, the Electronic Frontier Foundation,

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FreedomWorks, Heritage Action, and the U.S. Chamber of Commerce.

H.R. 1852 now has 214 co-sponsors, with broad bipartisan support. Democratic supporters include Reps. Conyers, Nadler, Eshoo, and Speier. I urge you to join them. Please let me know if I may provide you with further information, or if you would like to discuss any concerns you may have.

Thank you,

A handwritten signature in black ink, appearing to read "Virginia E. Sloan". The signature is written in a cursive, flowing style.

Virginia E. Sloan  
President, The Constitution Project