

AMERICANS *for* TAX REFORM

Statement of

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House Committee on the Judiciary
Hearing on H.R. 699, the Email Privacy Act

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Chairman Goodlatte, Ranking Member Conyers, and Members of the House Judiciary Committee, thank you for the opportunity to submit written testimony in favor of the Email Privacy Act, H.R. 699.

My name is Grover Norquist. I am the president of Americans for Tax Reform. Americans for Tax Reform advocates on behalf of taxpayers for a system in which taxes are simpler, flatter, more visible, and lower than they are today.

The Email Privacy Act will bring the law into line with the advances of technology by reforming the Electronic Communications Privacy Act (ECPA). ATR supports this legislation, and urges the committee to expedite a mark-up following the hearing, so the bill can receive a floor vote. We would like to add our voice of support to that of more than 300 Congressmen already co-sponsoring this legislation.

Technology changes. The Fourth Amendment does not.

Most Americans believe that our Fourth Amendment right “to be secure in [our] persons, houses, papers, and effects against unreasonable search and seizure” already applies to private communications sent or stored electronically, just as it applies to telephone calls or letters sent through the mail.

The principle behind ECPA reform is simple: if any government agency wants access to a person’s emails or other private documents stored online, it should demonstrate to a judge that there is probable cause to believe the person is committing a crime, and the judge should issue a warrant.

The Fourth Amendment guarantees Americans protection against warrantless search and seizure. H.R. 699 outlines a simple procedure to ensure that email and cloud documents receive the same protection as paper documents stored in a local file cabinet. The warrant-for-content standard does not impede law enforcement. The U.S. Justice Department already follows this as a rule.

The IRS exceeded its own rules to harass people because of their political affiliation, and their training handbook explicitly said they did not need a warrant to go to a service provider for private documents or communications. As these policies came to light, the IRS quickly changed its policies. However, civil regulatory agencies continue pursue expanded power. They want an exemption from ECPA reform that would allow them to obtain the content of customer documents and communications directly from a service provider. The Securities and Exchange Commission, and the Federal Trade Commission are the faces of the push, but an exemption would apply to all agencies: OSHA, CFPB, FCC, DOE, EPA, etc...

As civil agencies ask for a carve-out from this legislation, saying that their investigations should only require a subpoena, we urge Congress to assert its authority over these agencies. Neither side of the aisle can deny that agencies have

expansively interpreted the definitions of their jurisdiction. Agency actions should be “more visible.” The warrant requirement in the Email Privacy Act will enhance transparency and bring agency actions in line with the Fourth Amendment.