

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

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Senate President Drew Perkins
Wyoming Senate
Cheyenne, WY

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RE: Unconstitutional Issues of SF 76 – Warrants for digital records

Dear Senator Perkins and members of the Wyoming state senate:

We recognize the importance of enabling law enforcement's access to court ordered records. However, SF 76 likely violates constitutional protections against government seizure of documents. We outline these legal concerns below.

While we recommend you not advance SF 76, we welcome the opportunity to work with you and law enforcement to ensure swift processing of warrants.

By requiring that providers comply with requests for records pursuant to search warrants within ten business days, SF 76 not only leaves providers with insufficient time to produce the requested information with reasonable care, but furthermore threatens to circumvent the privacy protections ensured by the Fourth Amendment to the United States Constitution.

Fourth Amendment jurisprudence has long enshrined reasonableness as the touchstone in balancing government and law enforcement interests against the protection of citizens' constitutional right to privacy. *See U.S. v. Place*, 462 U.S. 696, 703 (1983). A reasonableness standard necessarily requires a fact-based analysis. *See Scott v. Harris*, 550 U.S. 372, 383 (2007) ("In the end we must still sash our way through the factbound morass of 'reasonableness.'").

Imposing a mandatory ten-day time limit for providers to comply with requests to produce records pursuant to search warrants is a departure from the case-by-case treatment required by the Fourth Amendment's reasonableness standard.

First, due to the case-by-case nature of the test, any bright line rules for what is or is not reasonable under the Fourth Amendment are generally determined in an ex post fashion through litigation and precedent. Instead, this bill seeks to establish a sweeping and rigid ex ante requirements with no opportunity to assess whether compliance is reasonable for a particular set of circumstances.

Second, limitations on search warrants generally serve as a check on the government by preventing law enforcement from gaining unfettered access to citizens' private property. The targets of the time limit in this bill, however, are third-party platforms and providers. Therefore, the time limit serves more as a

tool to ensure timeliness and efficiency rather than a restraint on law enforcement to protect citizens' privacy interests.

While efforts to maintain efficiency in warrant processing and evidence-gathering are likely well-intentioned, doing so at the potential expense of Fourth Amendment safeguards is misguided. The ten-day time limit treats all requests for records equally without regard for the underlying circumstances or practical concerns providers may face in providing the requested records while still heeding their independent duty to protect users' data—all of which should appropriately factor into a reasonableness evaluation.

Furthermore, any future litigation relating to requests subject to the this bill is likely to center on failure to comply with these specific ex ante requirements, thus shifting the focus on litigation away from the reasonableness standard. This will impede the development of jurisprudence on the question of what is reasonable in an emerging area of the law such as compliance with search warrants by third-party technology providers and platforms.

Finally, we worry that if SF 76 is found unconstitutional, legal verdicts could be reopened if based on SF 76 evidence requests.

To that end, we ask that you not move SF 76. Nonetheless, we welcome the opportunity to work with you on reasonable requirements.

Sincerely,

Carl Szabo

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