

Rep. Foster offered the following resolution:

House Resolution No. 30.

A resolution to urge Congress to enact amendments to the federal Electronic Communications Privacy Act to require law enforcement authorities to have a warrant to access e-mail, no matter the age or location of the e-mail.

Whereas, the Electronic Communications Privacy Act (ECPA) allows law enforcement to access electronic information that is more than 180 days old and stored on a server with only a subpoena. A warrant is not needed if there are "reasonable grounds to believe" that the information would be useful in a law enforcement investigation. Thus, law enforcement are accessing users' private information—including stored e-mails and backup files—without showing probable cause; and

Whereas, Warrants are required for e-mails and other electronic communications that are less than six months old. ECPA also covers phone calls and letters, which cannot be accessed without a warrant, no matter the amount of time that has elapsed; and

Whereas, More and more citizens rely on electronic mail communication to conduct both private and professional business. Our ability to store communications at locations other than where the communication originated, such as "in the cloud," has contributed to new challenges in protecting individual's privacy. ECPA fails to adequately protect Americans from unreasonable searches of their private information stored with cloud and mobile providers; and

Whereas, The 6th U.S. Circuit Court of Appeals has ruled that law enforcement must have a valid warrant to access e-mail stored on a provider's server, no matter the age of the e-mail. However, rulings in the lower courts have limited jurisdiction. E-mail providers and storage location can be anywhere in the United States and possibly the world; and

Whereas, Google, Inc. has stated that it will not release any e-mails, regardless of age, without a warrant. Google officials note that the U.S. Constitution's Fourth Amendment protects against unreasonable searches and seizures and that Amendment takes priority over ECPA;

Whereas, The United States Senate had before it an amendment last November that would have required warrants for all e-mail seizures. However, that amendment was stripped from the vehicle bill before passage; and

Whereas, The legislature finds that, in an era where technology dominates communication and increasingly more business-related and sensitive information is being stored via cloud-based email, more than ever, it is important for government to protect the rights of privacy and due process afforded to all of our state's residents; now, therefore, be it

Resolved by the House of Representatives, That we urge Congress to enact amendments to the federal Electronic Communications Privacy Act to require law enforcement authorities to have a warrant to access e-mail, no matter the age or location of the e-mail; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.