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MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: October 2, 2017

RE: OPPOSITION TO HOUSE BILL 561 (SACCONE)

House Bill 561 removes the sunset provision for Act 151 of 2014. Act 151 removed the search warrant requirement for law enforcement agencies seeking to obtain personally identifying information about internet users from internet service providers in certain investigations. HB 561 will **permanently grant** unchecked government power to collect citizens' private data.

On behalf of the 53,000 members of the ACLU of Pennsylvania, I urge you to vote 'NO' on House Bill 561 for the following reasons:

Expands government access to personal information of internet users: Act 151 of 2014 removes courts from the review process, precluding their ability to consider, much less approve or deny, investigative actions of law enforcement. Act 151, advocated vigorously by former Attorney General Kathleen Kane, authorized the Attorney General, district attorneys, or their designated deputies to issue administrative subpoenas to internet service providers (ISPs) to obtain the name, address, telephone number, or other identity numbers of subscribers in investigations of certain offenses relating to sexual abuse of children. These subpoenas can require ISPs to disclose information that is not even related to the subject of the investigation. Moreover, court review of these subpoenas is only possible if 1) the ISP refuses to comply and then, 2) only if the investigators request enforcement. As a result, private user information, including information unrelated to an investigation, can be gathered by the government without review.

No check on administrative power: Third-party review by a court and the requisite probable cause standard are minimal checks on the powers afforded to investigators. Act 151 enables law enforcement to bypass accountability by limiting the power of the courts to check administrative power. Courts will likely never consider cases in which information is demanded – unchecked and beyond their own standard of review – by investigators, whether the subpoena meets with compliance or refusal. This flips the purpose of the courts on their head, using them as a shield for investigators rather than as a mechanism to ensure the proper balance between the state's interest in prosecuting criminal behavior and a private citizen's right to privacy.

Unfortunately, Act 151 already grants law enforcement this expansive subpoena power. The only remaining check lies in the sunset provision, which gives the General Assembly the power to revisit this law. HB 561 would remove the sunset provision and along with it, the opportunity for legislators to review the uses and, potentially, the abuses of this power.

For these reasons, we urge you to vote 'NO' on House Bill 561.