

December 17, 2024

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

The Honorable Cynthia Lummis
United States Senate
Washington, D.C. 20510

Re: ABA Support for the Effective Assistance of Counsel in the Digital Era Act

Dear Senators Wyden and Lummis:

The American Bar Association (ABA) applauds your leadership in introducing the Effective Assistance of Counsel in the Digital Era Act in support of the attorney-client privilege and the Sixth Amendment's right to counsel. Extending protection to electronic communications between attorneys and their clients incarcerated in Bureau of Prisons (BOP) facilities has been a longstanding priority for the ABA. We urge Congress to enact this important bipartisan bill as soon as possible.

The attorney-client privilege is fundamental to our system of justice and critical to the work of lawyers who must rely on candid, confidential communications with their clients to render competent legal advice under law. While unmonitored telephone calls, U.S. mail, and in-person meetings between attorneys and their incarcerated clients in BOP facilities are already protected communications, these often take days and weeks to arrange. Your bill would ensure the same protection is guaranteed for electronic messages, too: the most common, rapid, and cost-effective means of communication. The BOP's current practice of requiring a "voluntary" waiver of confidentiality as a condition of using its network must end.

The ABA recognizes that there are certain narrow exceptions to the attorney-client privilege and that the BOP must monitor activity on its servers to ensure system security and integrity. We share your view, however, that while it may be appropriate for the BOP to monitor and retain nonprivileged messages sent or received by an incarcerated person, a warrant should be required before law enforcement officers can access legal messages. We also appreciate that your bill would ensure that even with a warrant, messages protected by the attorney-client privilege would not be reviewable, thereby striking a better balance between protecting legitimate government interests and the countervailing importance of attorney-client confidentiality.

Thank you for introducing and prioritizing this important bipartisan legislation. We urge Congress to enact it using any appropriate bill, and we stand ready to work with you in the current Congress and next if needed to get this done. If you have questions, please contact Ken Goldsmith, ABA Governmental Affairs Office at (202)662-1789 or kenneth.goldsmith@americanbar.org.

Sincerely,



William Bay

cc: Members of the Senate Committee on the Judiciary