

Concerns Arise Over Maine's Data Privacy Legislation

The bill would add privacy as a natural right and protect electronic data and communication from unreasonable seizure by government. Opponents include advocates for the First Amendment as well as religious groups.



(TNS) — New concerns over a bill that was crafted to safeguard Mainers' right to privacy have emerged, leaving its status in the Legislature uncertain.

The bill would add privacy as a natural right in Maine and protect electronic data and communication from unreasonable seizure by the government. The opponents, who filed objections recently, include advocates for the First Amendment as well as the Christian Civic League of Maine.

Members of the Legislature's Judiciary Committee met virtually with the bill's chief sponsor, Rep. Maggie O'Neil, D-Saco, on Thursday, nine months after the legislation was first introduced. A public hearing on L.D. 1529, an amendment to Maine's Constitution to create a right to privacy, was held in May 2021, but no action was taken.

O'Neil came before the Judiciary Committee in an effort to advance the legislation. But committee members voted to table action on the bill, giving the committee's chairwoman, Sen. Anne Carney, D-Cumberland, more time to determine whether there should be a second public hearing. Committee members did not set a date for a workshop or a second public hearing on the bill.

"It has been a year and I wanted to take this opportunity to refresh everyone's memory a bit," Carney said before O'Neil made her presentation.

O'Neil's right-to-privacy proposal has been amended since it was first drafted last year, but until now had not faced any opposition. A similar constitutional amendment was proposed last year by a Republican lawmaker, former Rep. Justin Fecteau of Augusta. O'Neil said she worked with Fecteau to combine the bills, producing the amended version.

L.D. 1529 is supported by the American Civil Liberties Union of Maine, among others. To be enacted, it would need the approval of two-thirds of the Legislature and a majority of Maine voters.

Constitutions in 13 states — including Alaska, Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, New Hampshire, South Carolina and Washington — contain specific provisions related to a right to privacy.

Constitutions in Michigan and Missouri also provide protection from unreasonable searches and seizures for electronic communications or data.

The real world impact of the right to privacy amendment is unclear. But advocates like O'Neil said it would lay the legal foundation to begin setting limits on the types of personal information that can be collected and who can access it, including law enforcement.

There is no explicit right to privacy in the U.S. Constitution.

SEEKING A BACKSTOP

The proposed constitutional amendment would add privacy as a natural right in Maine and states that law enforcement must secure a warrant before searching or seizing an individual's electronic data or electronic communications. "All natural persons have an inherent right to privacy that is free from intrusion, including privacy of a natural person's personal life, personal communications, private affairs and personal thoughts or inner life," it reads.

"We want this (amendment) to be a backstop. We want to make it more explicit," O'Neil said of the constitutional amendment.

O'Neil said that advancements in technology, such as mobile phone apps, virtual reality, social media and wiretaps have exposed everyone's personal data to abuse.

"The privacy risks we face today are more complex and more impactful than ever," she said.

Shoshana Zuboff, a Harvard business professor and author, was invited by O'Neil to address the Judiciary Committee. Zuboff said a person's posts on Facebook are just one example of why an amendment protecting a person's privacy is needed.

"This is a very fraught arena," Zuboff said, adding that social media sites like Facebook are connected to a much broader and organized personal data collection system.

Zuboff's book, "The Age of Surveillance Capitalism," offers a picture of how Silicon Valley and other corporations are mining users' information to predict and shape their behavior.

"We need to codify a person's right to privacy," Zuboff said.

Though O'Neil's bill generated no opposition last year, new concerns were raised recently by First Amendment advocates and a group concerned that the legislation would expand abortion protections.

FIRST AMENDMENT CONCERNS

Judith Meyer, representing the Maine Press Association, the New England First Amendment Coalition, the New England Newspaper & Press Association, the Maine Association of Broadcasters and the Society of Professional Journalists Maine, filed an objection to the bill on Thursday.

"We understand the need for personal privacy, particularly from government intrusion, but we have grave concerns that the language contained here is overly broad and will implicate First-Amendment protected activities and entitlements under the Freedom of Access Act. Logistically, it will create

havoc for businesses and organizations that collect and use personal information," Meyer wrote in Thursday's filing with the Judiciary Committee.

Meyer said her groups recommend the legislation be revised to address "only governmental intrusion upon one's privacy," and not private intrusion. The term "private intrusion" can be interpreted to include the First Amendment-protected activities of news organizations, she said. Journalists rely on personal information, personal communications and a person's thoughts as a standard part of news gathering.

Mike McClellan, policy director for the Christian Civic League of Maine, also filed an objection to L.D. 1529. McClellan said that the bill's text regarding a person's personal life and private affairs is "almost exactly the kind of constitutional language" used by the U.S. Supreme Court to "enshrine abortion rights in the U.S. Constitution." The league said the bill needs to be reworked to make sure that the language is limited to a right to preserve personal communications and will not extend to abortion.

"The world is changing, and technology has become an integral part of our day-to-day lives," McClellan said. "While we see the need and desire of the sponsors to stay ahead of these changes, the Christian Civic League of Maine is unsure if this bill would help or will just move the balance in a different direction. There are already laws that govern our rights to privacy. Perhaps, instead of adding another law ... we should better enforce the ones we have."

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