

ACLU

Michigan

House Judiciary Committee

RE: HB 4430

Position: Support

November 28, 2017

Over the last several years, numerous intelligence disclosures by the news media and government shed light on the highly pervasive and intrusive surveillance of individual communication. The ACLU of Michigan supports HB 4430 because we believe there is a reasonable expectation of privacy in a person's data and metadata that must be extended adequate Fourth Amendment protection.

Government agencies have taken advantage of weak protections for data and metadata, building huge databases about ordinary Americans (with no connection to terrorism). Federal law has been misused and extorted to provide a guise for massive collection of personal data about calls made by Americans to other Americans—whom we call, who calls us, where we're calling from, and for how long we talk—all without ever obtaining a warrant based upon probable cause from a court. This sort of surveillance has profound consequences for our rights to free speech and association.

Despite claims to the contrary, data and metadata surveillance can be extremely intrusive and revealing about the patterns of our lives, including our habits, our associations, our interest, and our personal struggles. Metadata reveals the identities of the sender and recipient, and the time, date, duration and location of a communication. The "who," "when" and "how frequently" of communications are as if not more revealing than what is said or written. In thousands of cases, this information has been inappropriately accessed, potentially exposing a vast array of information about individuals: their attendance at a gay rights rally or addiction support group, their purchase of a home pregnancy test or a dating service subscription, or their calls to a suicide hotline or a job recruiter. Metadata could reveal your political or religious associations, your infidelities, your medical conditions, and more. A 2009 Massachusetts Institute of Technology (MIT) study found that reviewing a person's social networking contacts alone was sufficient to determine their sexual orientation and metadata has been used to identify romantic relationships and preferences. There is certainly a reasonable expectation to privacy to many of this sensitive information and it should be subject to the same procedural safeguards for a search and seizure as a person's physical property.

The Supreme Court ruled that the warrantless use of a tracking device on a vehicle to monitor its movements on public streets violates the Fourth Amendment (*see U.S. v. Jones*) and the courts have repeatedly recognized the importance of articulating individualized and specific reasons as probable cause to support accessing cell phone records (*see ACLU v. Clapper*). Allowing and assisting the government to track a person's data and metadata without any Fourth Amendment protections infringes upon the rights of free speech and association guaranteed by the First Amendment. It is critical to place limitations around the collection of data and metadata to ensure protection of individual's rights.

Respectfully Submitted,

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