

Testimony of Judith Meyer

In opposition to LD 1529, “RESOLUTION: Proposing an Amendment to the Constitution of Maine to Create a Right to Privacy”

Joint Standing Committee on Judiciary
Work Session January 27, 2022

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Sen. Carney, Rep. Harnett, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I represent the Maine Press Association, the New England First Amendment Coalition, the New England Newspaper & Press Association, the Maine Association of Broadcasters, the Society of Professional Journalists Maine, and SPJ New England, which are all news organizations and nonprofit public access and First Amendment organizations and advocates.

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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 also create havoc for businesses and organizations that collect and use personal information.

According to the Brechner Center for Freedom of Information, which is an organization that fosters open government and a participatory democracy, the language in this bill is the broadest of any privacy language in the country and is [far out of step with what other states have done or are doing](#).

We suggest that the legislation is revised to address only governmental intrusion upon one’s privacy. If “private intrusion” remains a focus of the legislation, however, we hope you’ll take the following concerns into consideration:

- In 2018, Florida voters approved a constitutional amendment to add a privacy clause, known as Marsy’s Law. The amendment was intended to protect victim privacy but, according to Florida’s News Channel 8, “since its passage, some Florida law enforcement agencies have obscured the identities of police officers involved in deadly-force cases, shielding them by saying the officers themselves were victims of a crime while responding in the line of duty.” The City of Tallahassee sued the Florida Police Benevolent Association over newly scrubbed records, and the case [is on its way to be heard in the state’s Supreme Court](#). LD 1529 is written so broadly that it too could be used as a pretext to withhold information about government and public employees that citizens have the right to know.

- The term “private intrusion” can be interpreted to include the First Amendment-protected activities of news organizations. Journalists rely on personal information, personal communications and a person’s thoughts as a standard part of their newsgathering. Individuals often share their personal information with journalists directly, through social media channels or through communications with other parties, such as public officials. The language contained in this bill bans access and use of that information. It also raises genuine First Amendment concerns about the information already collected as part of this newsgathering and which is archived by news organizations. LD 1529 puts all past and future reporting at risk if individuals can demand the removal of any story they find objectionable on privacy grounds.

Our organizations, which are staffed and supported by people who value their privacy as much as anyone, appreciate and understand the desire to block data brokers from collecting – and misusing – personal information. But, when we hit data brokers we also hit journalists, researchers, educators, employers, historians, and numerous other entities that use data for public good.

- Private individuals communicate extensively with government officials and provide a vast amount of information to government entities, much of which is discussed at public meetings and incorporated into public records that fall under the jurisdiction of Maine’s Freedom of Access Act. The language in this bill defies public access, creating an instant and certain path to legal challenges.

People deserve privacy, but there must be a balance between privacy and public access, between shielding personal information and allowing businesses to use that information to serve customers, between privacy and First Amendment freedoms, and between blocking access to all private communications and thoughts – even if a person chooses to make private thoughts public on social media or other forums.

Those are balances extremely difficult to strike. As I mentioned earlier, the most prudent way to avoid these tensions are to limit the scope of LD 1529 to government intrusion. This is what South Carolina did when it adopted constitutional protection of privacy in 1971. The language it used has so far well served residents there and we ask that this Committee consider following that state’s lead:

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.”

If LD 529 moves forward as written, and goes to referendum and is adopted, the Constitution can’t be overridden through legislation and the damage would be real, as we are seeing in Florida. We ask that this Committee compare this overly broad language with the work being

done in other states to protect individual privacy, and proceed with a more balanced approach, perhaps doing so through legislation that could be amended if or as needed.

Thank you.