

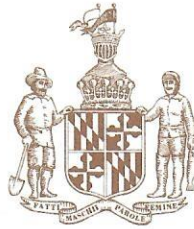
DANIEL L. COX
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Frederick and Carroll Counties

Judiciary Committee

Subcommittees

Family Law

Public Safety



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

March 2, 2020

TESTIMONY IN OPPOSITION TO SB 664

Declaration of Rights – Right to Privacy

Dear Honorable Chairman Smith, Senator Lee, and Members of the Senate Judicial Proceedings Committee:

This letter is to respectfully urge your withdrawing or “unfavorable” report of SB 664 – Declaration of Rights – Right to Privacy.

The constitutional amendment as proposed does nothing for privacy in our private or personal data, or a corporation’s data, and instead repeals the Second, Fifth and Fourteenth Amendments rights to life, and to keep and bear arms, and repeals the privacy doctrine in constitutional law as to businesses.

Although the bill section (B) is laudable in its inclusion of protection from unauthorized collection of data of individuals, the bill is fatally flawed constitutionally.

Only 11 states have passed constitutional right to privacy-type provisions, but since 1974 only Missouri and New Hampshire have passed a constitutional provision for privacy for data only – the Missouri amendment passed in 2014 and New Hampshire’s passed in 2018. However, both of those constitutional amendments explicitly limit the amendment to “information” only, and in Missouri’s case, refused to use the words “right to privacy”. Indeed, Missouri instead protected data privacy in its search and seizure portion of the existing constitution. New Hampshire expressly limits its right to “live free from governmental intrusion in private or personal information” only.

Yet, in SB 664 Maryland seeks to take a first-in-the-nation approach to broadly make Abortion enshrined forever in the first clause of Article 48 of our Declaration of Rights. “Guaranteeing freedom from government intrusion on grounds of natural rights” denies the right to life, since the laws of nature and the 5th and 14th amendments of the United States Constitution mandate protection of the right to life under law. This bill goes even farther to limit the natural and God-given right to keep and bear arms, and exposes corporations to a total loss of privacy and speech. In short, it repeals these rights by claiming to support a natural privacy right which will supersede and change the definition of person, which under the *Citizens United* Supreme

Letter of opposition to SB 664

Delegate Dan Cox

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Court ruling demonstrated a long precedent of artificial persons being distinct from natural individuals and both having the Constitutional protections of fundamental liberties.

Not only does SB 664 exclude “persons” and inserts “individuals”, it does not protect private or personal data from being spied upon and collected as its clause (B) purports to do.

First, individuals are natural persons, not corporations. Thus businesses stand to lose their protected status in Maryland as persons guaranteed liberty interests if this were to pass.

Second, the freedom from intrusion language only limits a cause or “directly traceable” link for collection of data. If the data intrusion is untraceable via any direct action, it can be argued that it is lawful under this bill. Most spyware applications use third party access to cover their tracks so no “direct access” can ever be easily proven.

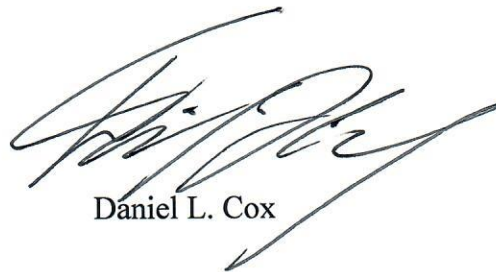
Third, the bill completely allows authorized collection of data – which is undefined. Authorized by whom? The United States government? What about foreign governments? Clearly the federal government has authorized data collection to be gathered without a warrant. This is why the Missouri amendment targeted this practice with a mandate under the search and seizure section of its constitution, requiring a warrant.

Also, the use of language “appropriate” for the Governor to enforce the bill or the Legislature to pass enabling legislation is overly broad and too vague.

Finally, the fact that firearms and the right to keep and bear arms is expressly included means that Maryland citizens will lose their right to privacy under the 14th amendment in regards to the seizure and regulation of firearms and ammunition. This is patently unconstitutional.

I respectfully ask you to firmly oppose this language and report unfavorably on this bill.

Very respectfully,

A handwritten signature in black ink, appearing to read 'Daniel L. Cox', written in a cursive style.

Daniel L. Cox

Cc: House GOP Caucus