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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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Senate Judicial Proceedings Committee

SB 664 – Declaration of Rights – Right to Privacy

Senate Bill 664 proposes an amendment to the Maryland constitution that enshrines Marylanders right to privacy and freedom from government intrusion as Article 48 of the Declaration of Rights. The language broadly provides that each individual has a natural, essential, and inherent right to privacy that guarantees freedom from government intrusion. The proposed amendment specifically enumerates Marylanders right to live free from government and non-government **intrusion caused by the unauthorized collection of personal data.**

An individual's right to privacy has been recognized as a fundamental human, social and political right by the international community. Article 12 of the Universal Declaration of Human Rights enumerates a right to privacy, as does the International Covenant on Civil and Political Rights, to which the U.S. is a signatory and a party.

Further, 11 state Constitutions have an explicit provision regarding the right to privacy. Six of these states explicitly enumerate privacy as an individual right separate from protections against unreasonable searches and seizures. Those six states run the gambit of ideological diversity from California to Montana to Florida to Alaska. The deep purple state of New Hampshire added an individual right to privacy to their Constitution in 2018 with bipartisan backing in the both legislative chambers and over 80% support from voters on a subsequent referendum. The broad right to individual privacy is accepted as the norm across the world and in many states around the country; it should be an explicit right of all Marylanders.

The novelty of this proposed amendment is, in addition to the broad right to privacy, the inclusion of specific right to privacy as it relates to personal data. Data recently surpassed oil as the most valuable asset in the world; the personal data that businesses and governments collect about us allow them to peer into even the most intimate and sensitive facets of our lives. The

value and sensitivity of such information gives those with access to it immense power to infringe on our basic privacy rights. As such, if we are serious about protecting privacy broadly, data privacy specifically should be addressed in our bedrock legal framework, the Maryland Constitution.

Maryland currently has protections for search and seizure in the Declaration of Rights, but those protections do not extend subpoenas of private companies that collect vast troves of information about us, nor does it apply to other invasive government measures that invade our privacy in ways unforeseen by the founders. Government surveillance around the world is a growing threat to individual liberty. The authoritarian surveillance hardware, software and philosophy that the People's Republic of China has developed to monitor the population and suppress dissent is already being exported around the world to countries like Ecuador, the UAE, Kenya and dozens of others. While interpretations of the federal constitution in the United States provide some protection against this sort of government data collection and surveillance by the federal government, such protections are not explicitly spelled out in our state constitution.

Adopting the proposed language into the Maryland Declaration of Rights would provide a constitutional legal basis for the types of laws our state has already embraced and will need to continue to adopt to protect Marylander's data, and therefore their privacy, from being exploited by governments, businesses and individuals. Existing Maryland code would be strengthened by this amendment and privacy laws like the Maryland Personal Information Protection Act and the Maryland Consumer Protection Act would have a more solid foundation. Moreover, legislation pending this session ranging from Del. Love's efforts to reign in private-sector misuse of geolocation data, to Sen. Lam's bill to prohibit federal immigration agents from accessing State databases choc-full of sensitive personal information, to my own efforts to allow Maryland consumers to opt-out of third-party disclosure of their personal data, would be legally bolstered by this amendment.

While we do our best to stay ahead of the curve on privacy issues through legislation and regulation, the pace of change in the data collection and usage space is such that our legal framework is often behind the technological realities. That's why we need a broad constitutional privacy protection to underlie and augment our more specific legislative and regulatory efforts.

I'm sure that all of our constituents have raised concerns that they seem to have no choice but to compromise their privacy in order to participate in 21st century social and economic life. What better message could we send to voters **than to allow them** the opportunity, via a referendum, to enshrine a basic individual right to privacy and a specific right to data privacy in our constitution.

As the sponsor, I felt it necessary to clarify that the privacy of owning a firearm should not be read into the broad right to privacy; the protections of the 2nd amendment in the federal constitution still apply and this bill does nothing to limit, nor broaden, those protections. There is however no broad right to privacy enshrined in the U.S. Constitution, so I feel it necessary to push this vehicle despite some opposition that I have been made aware of regarding a feared applicability to abortion issues. Since this proposed amendment does not reference women's

health issues, I assume the connection is made broadly with the Griswold decision allowing married couples to obtain birth control as an implied federal right to privacy. As that decision is from our highest federal court, it is confusing why a debate from the 1960s is being rehashed here. This Right to Privacy, if approved by the voters, may have broad implications at the state level for governmental privacy protections, but it does not overturn an interpretation of the U.S. Constitution, nor would it, in any way, prevent the state from maintaining reasonable restrictions on abortion that are already in place.

For all these reasons, I respectfully urge a favorable report on SB664.