



TO: House State Government & Elections Committee
FROM: Carrie L. Davis, Staff Attorney, ACLU of Ohio
DATE: December 4, 2008
RE: HB 648 – Proponent Testimony

Representatives:

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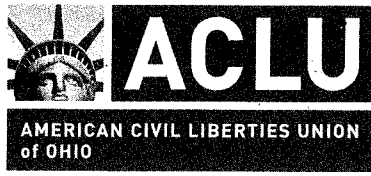
My name is Carrie Davis. I am the Staff Attorney and Legislative Counsel for the American Civil Liberties Union of Ohio (“ACLU of Ohio”), the Ohio Affiliate of the ACLU, the oldest and largest civil liberties organization in the world with over 550,000 members nationwide and nearly 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans.

For a long time now, the ACLU has been concerned by the rapidly growing scope of personal information being collected and stored in government databases with few if any rules governing the use of all this data. (ACLU reports on the growing surveillance culture may be found online at www.aclu.org/privacy.)

For example, the ACLU has been calling on state governments to reject the federal takeover of state drivers license databases created in the Real ID Act. That federal law, which has not yet taken full effect, imposes an unfunded mandate on states to turn over mass amounts of private personal information on its citizens to the federal government and other state governments without any standards governing how to protect all that data. Several states have enacted laws refusing to comply with Real ID. Representative Diana Fessler introduced a bill this session, HCR 18, in opposition to Real ID.

When the nation learned last month that Mr. Samuel “Joe the Plumber” Wurzelbacher’s personal information was improperly accessed by various state agencies, there was a sudden outcry of “How can this be allowed?” “Why isn’t this illegal?” and “Could this happen to me?”

After the revelation that what happened to Mr. Wurzelbacher was not expressly prohibited by law and could happen to any one of us, the public demanded a change in Ohio law to make sure that it does not happen again.



House Bill 648 is a good first step in the direction of protecting the privacy of all of our personal information kept by the state.

- It strikes an important balance in placing limits on access to personal information, while not obstructing citizens' right to access public records. We sincerely hope that any amendments to this bill or any additional privacy legislation also respects this balance of protecting individual privacy while preserving open government.
- The bill lays out a framework for agency rulemaking to ensure that personal information is only accessible to select employees, for valid reasons, and password protected.
- We would also suggest that, in addition to being password protected, any records containing confidential personal information be encrypted. That would help guard against unauthorized access both within and without the agency, including in cases of loss or theft of agency computers or disks.
- The bill includes a provision that would allow a person who is harmed by an intentional violation of this law to file a cause of action against the persons at fault to recover damages. This private means of enforcement is very important to protect the public and allow them to assert their rights and be compensated for harm.
- While it is important that government employees who violate this privacy law can be penalized for doing so, the ACLU takes no position on what that punishment ought to be.
- Finally, there is one critical element missing from this bill that we hope will be added: whistleblower protection. Government employees will not report unauthorized access or use of data if they fear for their job or other consequences. Thus, for this privacy law to be effective, it is critical to add protections against retaliation for whistleblowers.

For all of these reasons, the ACLU of Ohio encourages this Committee to expand government database privacy protections and vote for HB 648.

Respectfully submitted,

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