



Written by [Joe Wolverton, II, J.D.](#) on April 27, 2014

Minnesota Senate Passes Crackdown on Cellphone Tracking

The Minnesota state Senate voted April 22 to place severe restrictions on the tracking of individuals using cellphone data.

By a vote of 56-1, state senators voted to “require a special tracking warrant when a device is used to find a person’s location by their cell phone or other electronic devices.”

Specifically, the bipartisan-backed SF 2466 mandates:



A government entity may not obtain the location information of an electronic device without a tracking warrant. A tracking warrant granting access to location information must be issued only if the government entity shows that there is probable cause the person who possesses an electronic device is committing, has committed, or is about to commit a crime.

One of the sponsors of the legislation, state Senator Brandon Petersen, is “working on a comprehensive, nation-leading regulatory framework around how government manages people’s personal data,” the *Minnesota Post* reported.

“I think the encouraging thing is it’s an issue that resonates on both sides of the aisle,” the *Post* quoted Petersen saying. “There are a lot of questions that need to be answered. In the 21st-century, what does the Fourth Amendment look like?”

This is a critical question and one that many state legislators are beginning to answer.

For example, in a story published on February 5, the Associated Press reported, “State lawmakers around the nation are proposing bills to curtail the powers of law enforcement to monitor and track citizens.”

The message from these states to Capitol Hill, the story says, is “if you don’t take action to strengthen privacy, we will.”

AP reported that 14 states are currently considering surveillance-nullifying bills, a figure also reported by the Tenth Amendment Center.

It’s this problem of data collection and sharing by and among law enforcement that troubles many constitutionalists and civil libertarians. As the AP wrote:

Supporters say the measures are needed because technology has grown to the point that police can digitally track someone’s every move.

Devices such as license plate readers and cellphone trackers “can tell whether you stayed in a motel that specializes in hourly rates, or you stopped at a tavern that has nude dancers,” said David Fidanque, director of the American Civil Liberties Union of Oregon.

“It’s one thing to know you haven’t violated the law, but it’s another thing to know you haven’t had every one of your moves tracked,” he said.



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The tracking is rampant. Based on reports of the number of domestic phone calls being recorded by the National Security Agency, the Obama administration must have probable cause to suspect millions of us of threatening national security.

As *The New American* [reported](#) last year, documents obtained by former NSA contractor-turned-whistleblower Edward Snowden reveal that, in a 30-day period in 2013, the NSA recorded data on 124.8 billion phone calls, about three billion of which originated within the United States.

The program, first reported by *The Guardian*, is appropriately code-named “Boundless Informant,” and it involves the monitoring and recording of phone calls and Internet communication. *The Guardian* revealed that Boundless Informant “allows users to select a country on a map and view the meta data volume and select details about the collections against that country.”

While it is unlikely that the actual conversations themselves were recorded by the NSA, the fact that any information on a phone call was recorded without conforming to the Constitution is alarming. Regardless of the volume of recordings or the amount or type of data stored, a single act of warrantless surveillance violates the Constitution and everyone who ordered or participated in the program should be held accountable.

Among the most disturbing disclosures found within the reams of Edward Snowden’s revelations was the surrender by major telecommunications companies of the otherwise private phone records of millions of Americans — none of whom was, as required by the Constitution, suspected of committing any sort of crime.

According to a court order labeled “TOP SECRET,” federal judge Roger Vinson ordered Verizon to turn over the phone records of millions of its U.S. customers to the NSA.

The order, issued in April 2013 by the U.S. Foreign Intelligence Surveillance Court and leaked on the Internet by *The Guardian*, compels Verizon to provide these records on an “ongoing daily basis” and to hand over to the domestic spy agency “an electronic copy” of “all call detail records created by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls.”

This information includes the phone numbers involved, the electronic identity of the device, the calling card numbers (if any) used in making the calls, and the time and duration of the call.

In other words, millions of innocent Americans have had their call records shared with a federal spy agency in open and hostile defiance of the Fourth Amendment’s guarantee of the right of the people to be free from such unreasonable searches and seizures.

Even if the reasonableness threshold is crossed, though, there must be a warrant and suspicion of commission of or intent to commit a crime. Neither the NSA nor Verizon has asserted that even one of the millions whose phone records were seized fits that description.

On this point, state senator Petersen said that the version of his bill passed by his colleagues was a compromise and did not contain the language he preferred. The *Minnesota Post* reports:

Petersen originally wanted to pass a bill that required law enforcement to obtain a search warrant to employ cell-phone tracking, which has more specific use requirements than a tracking warrant. In a last-minute move, Petersen accepted the tracking warrant amendment as part of a compromise with law enforcement.

“I still prefer my original bill, my original position. Unfortunately most of the Democrat votes were



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going to be lost at the behest of law enforcement,” Petersen said. “We had to accept the amendment to keep the bill moving forward.”

Petersen is commended for his commitment to upholding constitutional standards.

The rights protected by the Constitution are natural rights that are the birthright of all people — American citizens or otherwise — and the Bill of Rights should be sufficient to restrain the government, but, it is not.

In 1798, Thomas Jefferson, a man familiar with fighting tyranny, explained how and why states can stop unconstitutional acts of the federal government at the state borders. In the Kentucky Resolution he wrote:

In cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy.

Whenever the federal government does anything not listed in the limited roster of its enumerated powers, those acts are unconstitutional and don’t merit state sponsorship or support. Alexander Hamilton wrote in *The Federalist* that such acts are not the law at all and called them “merely acts of usurpation” that “deserve to be treated as such.”

It is important to note that Boundless Informant doesn’t record phone conversations. There is evidence, however, that the NSA records every one of those, as well, and stores the content in one of its many data warehouses, such as the one in Utah that goes online within weeks.

The Minnesota Senate has stepped into the breach, protecting the rights of residents of that state to enjoy their rights as protected by the Fourth Amendment. The state House of Representatives is scheduled to vote for the final time on its version of the bill on April 29.

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