

Exhibit 19

From: Julie Palmeri
Sent: Thursday, June 13, 2024 4:17 PM
To: Heather Sargent
Subject: RE: 001 Flyer

No because the extra units are just to hang the smoking monitors which are two screws and should take approximately one minute each. I already talked to Darragh about that.



Julie Palmeri

Executive Director
23 Green Street
Concord, NH
03301
Tel: 603-224-4059
Fax: 603-250-0912

From: Heather Sargent <hsargent@concordhousing.org>
Sent: Thursday, June 13, 2024 4:06 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: 001 Flyer

Stupid question....if Irish is only planning their time for 12 units and they now have to go into 21 will that screw up this schedule?



Heather Sargent

Director of Administration

23 Green Street

Concord, NH 03301

603.224.4059

Fax 603.250.3139

www.concordha.com



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From: Julie Palmeri <jpalmeri@concordhousing.org>

Sent: Thursday, June 13, 2024 3:54 PM

To: Heather Sargent <hsargent@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>; Tom Buckman <tbuckman@concordhousing.org>

Subject: RE: 001 Flyer

Perfect! Are you going to make others that say the other days of the week for those floors and take out the section that mentions shelving for Friday at Ceriello?



Julie Palmeri

Executive Director

23 Green Street

Concord, NH

03301

Tel: 603-224-4059

Fax: 603-250-0912

From: Heather Sargent <hsargent@concordhousing.org>

Sent: Thursday, June 13, 2024 3:53 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>; Tom Buckman <tbuckman@concordhousing.org>

Subject: 001 Flyer

Suggestions for improvement??



Heather Sargent

Director of Administration

23 Green Street

Concord, NH 03301

603.224.4059

Fax 603.250.3139

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Exhibit 20

Thank you,

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



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2 associations

August 2024

Email - RE: Installations from Julie Palmeri

Pin Copy Hw: Aug 13, 2024 at 2:49 PM CDT



Julie Palmeri

Executive Director

Wonderful, we appreciate it!

JULIE PALMERI

Executive Director



23 Green Street
Concord, NH 03301

Ph: 603-224-4058 Fax: 603-250-0912

jpalmeri@concordhousing.org

www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Thursday, August 15, 2024 2:43 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

Hi Julie,

Great! I've requested our product team to ship a router for you. Since this is a custom product, it should be ready to ship by September 2nd. I'll keep you updated if we can get it to you any sooner.

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Fri, Aug 9, 2024 at 11:48 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Yes, that sounds great.

23 Green St. Concord, NH 03301

Thank you!

JULIE PALMERI

Executive Director



23 Green Street
Concord, NH 03301

Ph: 603-224-4058 Fax: 603-250-0912

jpalmeri@concordhousing.org

www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Friday, August 9, 2024 11:07 AM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

Hi Julie,

That good news is that we're testing this new custom router, and there are a few things we need to check to make the process smoother for you. One router can connect about 10 to 15 sensors. We can send you one router to try out at no extra cost to see if it meets your needs. If this solution proves effective, we can then discuss future plans and rates for additional routers. Initially, this trial will help us get started with installing the sensors.

- The router needs to be plugged into a power source; it can be located in a storage room or a unit.

- The router should be set up and activated within a few days of arrival. Do you think this would be feasible?

Please let me know if you have any questions. Also, could you provide the address, phone number, and name of the recipient for where to send the router?

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Wednesday, August 7, 2024 12:55 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

Hi Julie,

Sorry to hear about the issues you're experiencing with Comcast. Would you be interested in trying out a router we've developed? It's a custom router I mentioned earlier that could be a great solution for you, as it wouldn't require an upgrade to your WiFi. This router comes equipped with a SIM card and is designed specifically for connecting Minut devices without needing an external connection. We could start with one to see how it performs and connect around 10 to 15 devices.

Please let me know your thoughts. I'm here to help!

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Wed, Aug 7, 2024 at 9:53AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:
We are still dealing with this issue. Comcast has had to upgrade us three times now and our internet bills have quadrupled as a result. It's quite the debacle.

JULIE PALMERI

Executive Director

23 Green Street
Concord, NH 03301
Ph: 603-224-4050 Fax: 603-250-0912
jpalmeri@concordhousing.org
www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Wednesday, August 7, 2024 9:38 AM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

Hi Julie,

I hope all is well with you. I'm following up on my previous email to see if you've had a chance to upgrade the wifi and if there's anything we can assist you with. If you're available today, I'd be happy to give you a quick call to discuss the options we have to help you install the sensors. Please let me know of any progress, I'd really appreciate it.

Best,

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Tue, Jul 16, 2024 at 12:17PM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Hi Marianne,

We're in the midst of attempting to upgrade our internet. Once that's completed, I'll be in touch to discuss the need for extenders, should it exist.

Thank you!



Julie Palmeri

Executive Director

23 Green Street

Concord, NH

03301

Tel: 603-224-4050

Fax: 603-250-0912

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Tuesday, July 16, 2024 1:13 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

Hello Julie,

I hope you are doing well. As we move closer to finding a solution for you, I wanted to touch base in case my previous email was missed amidst busy schedules. Could you kindly share the layout, buildings, and units where you need more coverage and explain your plans for distributing the devices? We are working on a Minut router that we're currently testing, which could be a great fit for your needs on the higher floors. If you could share this information, I would be grateful, as it would greatly assist our product team in their ongoing efforts.

All the best,

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Mon, Jul 8, 2024 at 12:18PM Marianne Martinez <marianne.martinez@minut.com> wrote:

Hi Julie,

Could you please share the layout, number of communities, buildings, and units, and explain how you plan to distribute the 800 devices? Additionally, is there a main building nearby that has wifi, possibly an office? This information will help me include you in this pilot test and assist you in finding a solution soon!

Best,

MINUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Fri, Jul 5, 2024 at 7:55 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

I'd love more information on this extender option.

Thank you,



Julie Palmeri

Executive Director

CHA000280

22 Green Street
Concord, NH
03301
Tel: 603-224-4059
Fax: 603-250-0912

From: Marianne Martinez <marianne.martinez@minut.com>
Sent: Wednesday, July 3, 2024 4:20 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: Installations

Hi Julie, thank you for the update. Have you considered using a WiFi extender to connect the sensors in areas where the signal is weak for now? I've shared this with my team, and they are currently working on a solution. If all goes well, we might be able to offer you a custom-made extender, instead of having to purchase one yourself. I just wanted to present this as an optional plan, the current timeline I'm receiving from them is about two weeks and will keep you updated if we have these extenders ready before then.

Best,

MINUT Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español



On Wed, Jul 3, 2024 at 7:45 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

We're trying to sort out our internet. The wifi we currently have isn't strong enough to connect to all these devices.



Julie Palmeri

Executive Director
23 Green Street
Concord, NH
03301
Tel: 603-224-4059
Fax: 603-250-0912

From: Marianne Martinez <marianne.martinez@minut.com>
Sent: Tuesday, July 2, 2024 5:11 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: Installations

Hi Julie,

I just wanted to quickly check in and see how the installation is going. Is there anything you need help with?

Best,

MINUT Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español



On Tue, Jun 25, 2024 at 12:16 PM Marianne Martinez <marianne.martinez@minut.com> wrote:

Hi Julie,

Thank you for your patience while we worked on finding the best solution. The team has been testing a few options, but what you requested isn't available at the moment. However, we are actively working on making it easier to assign WiFi. Please let us know if you have any other questions or need further assistance.

Best,

MINUT Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español



On Thu, Jun 20, 2024 at 1:28 PM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Hi Jason,

We're running into an issue with the wifi. I don't think we have a good enough signal in the higher floors of our buildings.

Question: If we install them all, is it possible for you to bulk assign wifi name and password to a specific community? That might be the easiest bet for some of these large properties.



Julie Palmeri

Executive Director
23 Green Street
Concord, NH
03301
Tel: 603-224-4059
Fax: 603-250-0912

From: Jason Trainer <jason.trainer@minut.com>
Sent: Thursday, June 20, 2024 1:23 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Cc: Marianne Martinez <marianne.martinez@minut.com>
Subject: Installations

Hi Julie,

I wanted to check in and see how things are progressing this week with your installations.

CHA000281

Is there anything you need from me? How has the team found the process?

Speak soon

Jason

MINUT

Jason Trainer
Head of Customer Success

Email: jason.trainer@minut.com

Web: www.minut.com

Office: Minut Home Ltd, Runway East Bloomsbury, 24 - 28
Bloomsbury Way, London, WC1A 2SN



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Email - Re: Installations from Marianne Martinez

[Pin](#) [Copy link](#) Aug 13, 2024 at 2:43 PM CDT



Marianne Martinez

to Julie Palmeri

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Hi Julie,

Great! I've requested our product team to ship a router for you. Since this is a custom product, it should be ready to ship by September 2nd. I'll keep you updated if we can get it to you any sooner.

MINUT

Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



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[2 associations](#)

Email - RE: Installations from Julie Palmeri

[Pin](#) [Copy link](#) Aug 9, 2024 at 10:48 AM CDT



Julie Palmeri

to Marianne Martinez

Yes, that sounds great.

23 Green St. Concord, NH 03301

Thank you!

JULIE PALMERI

Executive Director

[Home](#) 23 Green Street

Concord, NH 03301

[Phone](#) Ph: 603-224-4050 Fax: 603-250-0912

[Email](#) jpalm@concordhousing.org

www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Friday, August 9, 2024 11:07 AM

To: Julie Palmeri <jpalm@concordhousing.org>

Subject: Re: Installations

Hi Julie,

That good news is that we're testing this new custom router, and there are a few things we need to check to make the process smoother for you. One router can connect about 10 to 15 sensors. We can send you one router to try out at no extra cost to see if it meets your needs. If this solution proves effective, we can then discuss future plans and rates for additional routers. Initially, this trial will help us get started with installing the sensors.

- The router needs to be plugged into a power source; it can be located in a storage room or a unit.

- The router should be set up and activated within a few days of arrival. Do you think this would be feasible?

Please let me know if you have any questions. Also, could you provide the address, phone number, and name of the recipient for where to send the router?

MINUT

Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Wed, Aug 7, 2024 at 1:47 PM Julie Palmeri <jpalm@concordhousing.org> wrote:

Yes, that would be great!

JULIE PALMERI

Executive Director

[Home](#) 23 Green Street

Concord, NH 03301

[Phone](#) Ph: 603-224-4050 Fax: 603-250-0912

[Email](#) jpalm@concordhousing.org

www.concordhousing.org



Sent: Wednesday, August 7, 2024 12:55 PM

To: Julie Palmeri <jpalm@concordhousing.org>

Subject: Re: Installations

Hi Julie,

Sorry to hear about the issues you're experiencing with Concord. Would you be interested in trying out a router we've

CHA000282

developed? It's a custom router I mentioned earlier that could be a great solution for you, as it wouldn't require an upgrade to your WiFi. This router comes equipped with a SIM card and is designed specifically for connecting Minut devices without needing an external connection. We could start with one to see how it performs and connect around 10 to 15 devices.

Please let me know your thoughts, I'm here to help!

MINUT **Marianne L. Martinez**
Customer Success Manager

Email: marianne.martinez@minut.com
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English | Español

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We are still dealing with this issue. Comcast has had to upgrade us three times now and our internet bills have quadrupled as a result. It's quite the debacle.

JULIE PALMERI
Executive Director

23 Green Street
Concord, NH 03301
Ph: 603-224-4059 Fax: 603-250-0912
jpalmeri@concordhousing.org
www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>
Sent: Wednesday, August 7, 2024 9:38 AM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: installations

Hi Julie,

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Best,

MINUT **Marianne L. Martinez**
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español

Hi Marianne,

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Thank you!



Julie Palmeri

Executive Director
23 Green Street
Concord, NH
03301
Tel: 603-224-4059
Fax: 603-250-0912

From: Marianne Martinez <marianne.martinez@minut.com>
Sent: Tuesday, July 16, 2024 1:13 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: installations

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All the best,

MINUT **Marianne L. Martinez**
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español

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I'd love more information on this extender option.

Thank you,



Julie Palmeri

Executive Director
23 Green Street
Concord, NH
03301

Tel: 603-224-4059

Fax: 603-250-0912

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Wednesday, July 3, 2024 4:26 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

Hi Julie, thank you for the update. Have you considered using a WiFi extender to connect the sensors in areas where the signal is weak for now? I've shared this with my team, and they are currently working on a solution. If all goes well, we might be able to offer you a custom-made extender, instead of having to purchase one yourself. I just wanted to present this as an optional plan, the current timeline I'm receiving from them is about two weeks and will keep you updated if we have these extenders ready before then.

Best,

MİNUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Wed, Jul 3, 2024 at 7:48AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

We're trying to sort out our internet. The wifi we currently have isn't strong enough to connect to all these devices.



Julie Palmeri

Executive Director
23 Green Street
Concord, NH
03301

Tel: 603-224-4059

Fax: 603-250-0912

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Tuesday, July 2, 2024 5:11 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

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Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



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Question: If we install them all, is it possible for you to bulk assign wifi name and password to a specific community? That might be the easiest bet for some of these large properties.



Julie Palmeri

Executive Director

CHA000284

23 Green Street,
Concord, NH
03301
Tel: 603-224-4059
Fax: 603-250-0922

From: Jason Trainer <jason.trainer@minut.com>
Sent: Thursday, June 20, 2024 1:23 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Cc: Marianne Martinez <marianne.martinez@minut.com>
Subject: Installations

Hi Julie,

I wanted to check in and see how things are progressing this week with your installations.

Is there anything you need from me? How has the team found the process?

Speak soon!

Jason

MINUT Jason Trainer
Head of Customer Success
Email: jason.trainer@minut.com
Web: www.minut.com
Office: Minut Home Ltd, Runway East Bloomsbury, 24 - 28
Bloomsbury Way, London, WC1A 2SN



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Email - Re: Installations from Marianne Martinez

[Pin](#) [Copy link](#) Aug 7, 2024 at 3:07 AM CDT



Marianne Martinez

to Julie Palmeri
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Hi Julie,

That good news is that we're testing this new custom router, and there are a few things we need to check to make the process smoother for you. One router can connect about 10 to 15 sensors. We can send you one router to try out at no extra cost to see if it meets your needs. If this solution proves effective, we can then discuss future plans and rates for additional routers. Initially, this trial will help us get started with installing the sensors.

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MINUT Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español



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Email - RE: Installations from Julie Palmeri

[Pin](#) [Copy link](#) Aug 7, 2024 at 12:47 PM CDT



Julie Palmeri

to Marianne Martinez

Yes, that would be great!

JULIE PALMERI

Executive Director

23 Green Street

Concord, NH 03301

Ph: 603-224-4059 Fax: 603-250-0912

jpalmeri@concordhousing.org

www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Wednesday, August 7, 2024 12:55 PM

To: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Installations

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Please let me know your thoughts, I'm here to help!

MINUT Marianne L. Martinez
Customer Success Manager

Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español



On Wed, Aug 7, 2024 at 9:53 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

CHA000285

Exhibit 21

CONCORD HOUSING & REDEVELOPMENT
Board of Commissioners
Meeting Minutes
September 4th, 2024

The Concord Housing & Redevelopment's Board of Commissioners met on September 4th, 2024 at 23 Green Street, Concord, NH 03301.

- I.** The Chair called the meeting to order at 8:34am and asked for roll call. The response was as follows:

PRESENT	ABSENT
Chairperson Jackie Watmough	
Vice Chair Peter Burger (via phone*)	
Commissioner Jim Fowler	
Commissioner Jerry Madden (via phone)	
Commissioner Dana Adams	

Also present at the meeting was Executive Director, Julie Palmeri, Director of Finance, Keri Pasek and Director of Administration, Heather Sargent.

- II.** The Chairperson called for a motion on the June 5th, 2024, meeting minutes. Commissioner Adams moved the motion and Commissioner Fowler seconded it. All were in favor and the motion passed unanimously.
- III.** The Chair called for a review of General Correspondence. There was none so the period was declared closed.
- IV.** The Chair then opened the floor for Public Comment. There was none so the Public Comment period was declared closed.
- V.** The Chair then called attention to the Old Business portion of the agenda. Ms. Palmeri reported:





VI. The Chair then called attention to the New Business portion of the agenda.



Special Projects Update

Ms. Palmeri reported that the smoking monitors have not yet been installed due to issues with the internet. Comcast is actively working to install additional routers and extenders.





The Chair asked for a motion to adjourn. Commissioner Fowler moved the motion and Commissioner Adams seconded it. The motion to adjourn passed unanimously and the meeting was declared over at 9:12am.

* Peter Burger left the meeting at 9:01am.

Exhibit 22

From: Julie Palmeri
Sent: Tuesday, November 19, 2024 4:08 PM
To: Heather Sargent; Tom Buckman; Jason Johnston
Subject: RE: Boucher

Ooh, maybe. Tom can investigate.



From: Heather Sargent <hsargent@concordhousing.org>
Sent: Tuesday, November 19, 2024 4:03 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>; Tom Buckman <tbuckman@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>
Subject: RE: Boucher

It all appears to be on?? I just see a weak signal. Could that be affecting the communication to us?

From: Julie Palmeri <jpalmeri@concordhousing.org>
Sent: Tuesday, November 19, 2024 3:50 PM
To: Heather Sargent <hsargent@concordhousing.org>; Tom Buckman <tbuckman@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>
Subject: RE: Boucher

Someone must have turned the monitoring off...?



From: Heather Sargent <hsargent@concordhousing.org>

Sent: Tuesday, November 19, 2024 3:45 PM

To: Tom Buckman <tbuckman@concordhousing.org>; Julie Palmeri <jpalmeri@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>

Subject: RE: Boucher

Not anymore! The sensor is mounted and showing levels way above 75 but we're getting no reports

From: Tom Buckman <tbuckman@concordhousing.org>

Sent: Tuesday, November 19, 2024 3:44 PM

To: Heather Sargent <hsargent@concordhousing.org>; Julie Palmeri <jpalmeri@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>

Subject: Re: Boucher

No 24-a is actually b and 24-b is actually a

Get [Outlook for iOS](#)

From: Heather Sargent <hsargent@concordhousing.org>

Sent: Tuesday, November 19, 2024 3:41:20 PM

To: Tom Buckman <tbuckman@concordhousing.org>; Julie Palmeri <jpalmeri@concordhousing.org>; Jason Johnston <jjohnston@concordhousing.org>

Subject: Boucher

I updated 24 A and B in Minut so they are accurate now. However why aren't we getting noise notifications for 24-A??

Exhibit 23

From: Marianne Martinez <marianne.martinez@minut.com>
Sent: Tuesday, January 28, 2025 1:12 PM
To: Julie Palmeri
Cc: Tom Buckman
Subject: Re: Mesh connection

Follow Up Flag: Follow up
Flag Status: Completed

Hi Julie and Tom,

I noticed the routers were delivered yesterday, so for the next steps, Tom, we'll follow the same process as the initial test. Please place the routers in the other building on a floor with more units available where there's currently no Wi-Fi coverage. Ideally, choose a floor where the sensors can be placed in consecutive units for optimal results.

For this step, start by plugging in the routers and connecting 5 sensors to each router, just like before. Please ensure the sensors are left online near each router, and I recommend fully charging the sensors before connecting them.

Once that's done, please let me know so we can move forward. Additionally, if you could share more details about the layout of this building and how many units are available on these floors, that would be helpful.

MÎNUT **Marianne L. Martinez**
Customer Success Manager
Email: marianne.martinez@minut.com
Web: www.minut.com
English | Español



On Tue, Jan 28, 2025 at 8:45 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Wonderful, thank you Marianne!

JULIE PALMERI

Executive Director



23 Green Street
Concord, NH 03301



Ph: 603-224-4059 Fax: 603-250-0912



jpalmeri@concordhousing.org



www.concordhousing.org



From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Friday, January 24, 2025 4:36 PM

To: Tom Buckman <tbuckman@concordhousing.org>

Cc: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Mesh connection

Hi Tom,

I'm back with an update—apologies for the delay! The good news is that I'm sending you two additional routers free of charge to help you continue testing in the other building. You should receive them by next week; [HERE](#) is the tracking number for your reference.

Let's move forward with testing in the building you mentioned, and with these routers, hopefully we can get everything up and running smoothly soon.

Please let me know if you have any questions, enjoy your weekend!

MÎNUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Fri, Jan 17, 2025 at 5:36 PM Marianne Martinez <marianne.martinez@minut.com> wrote:

Hi Tom,

I hope you're doing well! If you could please allow me until Tuesday to get back to you with an answer, I would appreciate it. I have a meeting scheduled with the team to discuss this, and I may be able to send the other two routers to continue testing.

Thank you for your patience and I'll follow up with you soon.

MÎNUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Fri, Jan 17, 2025 at 12:42 PM Tom Buckman <tbuckman@concordhousing.org> wrote:

We were wondering what the cost to get the Mesh WIFI will be per month.

Thanks Tom



Tom Buckman

Facilities Director

23 Green street

Concord, NH 03301

603.224.4059

Fax 226.2941

www.concordha.com



From: Marianne Martinez <marianne.martinez@minut.com>
Sent: Thursday, January 9, 2025 11:37 AM
To: Tom Buckman <tbuckman@concordhousing.org>
Cc: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: Mesh connection

Hi Tom,

Thank you. I've forwarded the idea of testing the other building to our team to determine the best way to assist you. Since the routers come with a cost and we're currently covering the subscription for the router we provided for testing, I'd like to explore the most effective solution for this situation.

Let me ask you something—considering all the buildings and the need for approximately one router per floor due to the concrete walls, how many routers do you estimate would be required to complete the installation of all 300 sensors? This will give us a better idea.

Looking forward to your thoughts, I'm here to help.

MÎNUT **Marianne L. Martinez**

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com



On Wed, Jan 8, 2025 at 2:17 PM Tom Buckman <tbuckman@concordhousing.org> wrote:

Basically 902,904,906,908, 910, 911 and 912

Tom Buckman

Facilities Director

23 Green street

Concord, NH 03301

603.224.4059

Fax 226.2941

www.concordha.com

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Wednesday, January 8, 2025 2:16 PM

To: Tom Buckman <tbuckman@concordhousing.org>

Cc: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Mesh connection

That's good news! Could you please share the names of the additional 7 units you connected to the router? I'll coordinate with the team to upgrade the mesh on those sensors to enhance the coverage.



Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Wed, Jan 8, 2025 at 2:09 PM Tom Buckman <tbuckman@concordhousing.org> wrote:

I have installed 12 sensors on the 9th floor on the mesh connection with no issues so can we get 7 more for the Kennedy building. I would like to do a trial run at Crutchfield because how the building is set up. Basically there is a south wing and a north wing with roughly 9 units per wing. Again it's a concrete building so my thought is to install basically under cover in the center of each hallway.

Tom Buckman

Facilities Director

23 Green street

Concord, NH 03301

603.224.4059

Fax 226.2941

www.concordha.com

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Tuesday, January 7, 2025 4:28 PM

To: Tom Buckman <tbuckman@concordhousing.org>

Cc: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Mesh connection

Hi Tom and Julie,

Happy New Year! I hope you're doing well. I wanted to follow up to see how the installation of the 5 sensors connected to the router went and if you have plans to complete the installation of the remaining sensors. So far, I see 69 sensors are online out of a total of 318. Are the remaining units experiencing Wi-Fi coverage issues as well? Please let me know about your experience with the first test of the 5 sensors and the router.

Thank you,

MÎNUT **Marianne L. Martinez**

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Wed, Dec 18, 2024 at 4:19 PM Marianne Martinez <marianne.martinez@minut.com> wrote:

Hi Tom,

That's great, then mesh should work for all units on the same floor where the router is located.

MÎNUT **Marianne L. Martinez**

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Tue, Dec 17, 2024 at 11:39 AM Tom Buckman <tbuckman@concordhousing.org> wrote:

Only concrete is floors and exterior walls

Tom Buckman

Facilities Director

23 Green street

Concord, NH 03301

603.224.4059

Fax 226.2941

www.concordha.com

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Tuesday, December 17, 2024 11:21 AM

To: Tom Buckman <tbuckman@concordhousing.org>

Cc: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Mesh connection

Hi Tom,

This took less time than expected, so the good news is that the 5 devices have been updated with

a mesh network and are now ready for you to place inside the units. You mentioned that the building has concrete walls. Are all the side walls concrete? including the interior ones?

Here are a few recommendations to help optimize the setup:

- You can leave the router on the 9th floor and bring the sensors into each apartment to check if the coverage reaches inside the units.
- Alternatively, you could place the router in storage within one apartment to see if the signal improves through the interior walls.

Please feel free to test a few options and see what works best. Since the 5 sensors are on a mesh network, they will help boost the signal to the next sensor, improving overall coverage which depends entirely on the environment, such as these walls but up to 50m /150ft indoors should be possible.

Let me know how it goes,

MÎNUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Tue, Dec 10, 2024 at 4:20 PM Tom Buckman <tbuckman@concordhousing.org> wrote:

What is the range of the WiFi on that

Get Outlook for iOS

From: Marianne Martinez <marianne.martinez@minut.com>

Sent: Tuesday, December 10, 2024 4:19:22 PM

To: Tom Buckman <tbuckman@concordhousing.org>

Cc: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Mesh connection

Thank you, Tom. I've informed my product team to proceed with the necessary updates. This process will take a few days, and I'll let you know once the sensors are ready for testing.

Best,

MÎNUT Marianne L. Martinez

Customer Success Manager

Email: marianne.martinez@minut.com

Web: www.minut.com

English | Español



On Tue, Dec 10, 2024 at 1:50 PM Tom Buckman <tbuckman@concordhousing.org> wrote:

Monitors are set up. Units 901,903,905,907 and 909 at Kennedy

Sent from my iPhone

On Dec 10, 2024, at 12:40 PM, Marianne Martinez
<marianne.martinez@minut.com> wrote:

- The ****Wi-Fi**** antenna connects to "Wi-Fi."
- Once the antennas are secured, connect the power cable and plug in the device. The router will create a Wi-Fi network called **Minut_IoT** with the password **5e79d6a9c3a2**

Exhibit 24



December 14th, 2024

R [REDACTED] K [REDACTED]
[REDACTED]

Dear Tenant,

In the very early hours of December 14th, the Minut monitor was removed and placed back on the plate several times. Please be reminded that tampering with the device will lead to eviction action. Please do not touch the sensor under any circumstances.

If you disagree with this information, please put your grievance in writing and return it to the Main Office within 10 days.

Sincerely,

VI
K2

Heather J. Sargent
Director of Administration

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23 Green Street Concord, NH 03301

Phone: (603) 224-4059 Fax: (603) 250-3139

www.concordhousing.org



CHA000355

Exhibit 25

NOTICE

Concord Housing will be installing the Minut Monitors in your apartments on Monday 6/9. It should take about 2 minutes to do the whole process. You will not need to be home for this. We will be doing this whether you are home or not. Please secure all pets.

Schedule is attached

701thru 709 -----9am to 10am

601 thru 609 ----- 10am to 11am

510 thru 518 -----11am to 12pm

401 thru 409 -----1pm to 2pm

301 thru 309 -----2pm to 3pm

Thank you for your
cooperation

Exhibit 26

From: Julie Palmeri
Sent: Tuesday, July 1, 2025 7:21 AM
To: Jason Johnston
Subject: FW: Kennedy 802: Empty battery in Living room



From: Minut <noreply@minut.com>
Sent: Tuesday, July 1, 2025 7:21 AM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Kennedy 802: Empty battery in Living room



Charge your sensor

It's time to charge your Minut sensor: Living room at Kennedy 802.

This sensor has a rechargeable battery. To charge it, simply remove the sensor from its mounting plate, open the charging port cover and connect it to the USB-C charger.

You can follow the charging progress by looking at the battery indicator at the back of the device. The lights will blink when charging, and turn solid when charged. A full charge should take about 1-4 hours.

Once the sensor has charged, secure the port cover and reattach it to the mounting plate. It will automatically reconnect to Wi-Fi.

You can view and manage your units in our web and mobile apps.

[View unit](#)

Questions? Check out our [Help Center](#).

Follow us



Minut, Baltzarsgatan 23, Malmo, Skane 211 36, Sweden

Exhibit 27

From: Minut <noreply@minut.com>
Sent: Saturday, January 17, 2026 5:12 PM
To: Julie Palmeri
Subject: Parmenter 11: device attached



Device attached

Your device **Living room** at Parmenter 11 has been attached to the mounting plate.

You can view and manage your units in our web and mobile apps.

[View unit](#)

Questions? Check out our [Help Center](#).



Minut, Baltzarsgatan 23, Malmö, Skåne 211 36, Sweden

[Manage your Minut account notifications](#)

From: Minut <noreply@minut.com>
Sent: Saturday, January 17, 2026 3:25 PM
To: Julie Palmeri
Subject: Parmenter 11: device removed



Device removed

Your device **Living room** at Parmenter 11 has been removed from its mounting plate.

You can view and manage your units in our web and mobile apps.

[View unit](#)

Questions? Check out our [Help Center](#).



Minut, Baltzarsgatan 23, Malmö, Skåne 211 36, Sweden

[Manage your Minut account notifications](#)

Exhibit 28

From: Julie Palmeri
Sent: Tuesday, January 13, 2026 2:46 PM
To: 'Jessie [REDACTED]'
Subject: RE: Fw: Minut Monitors

You're welcome. Have a nice day.



From: Jessie [REDACTED] <j[REDACTED]@gmail.com>
Sent: Tuesday, January 13, 2026 2:30 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: Fw: Minut Monitors

Thank you so much.

On Tue, Jan 13, 2026 at 10:36 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:



JULIE PALMERI

Executive Director



23 Green Street
Concord, NH 03301



Ph: 603-224-4059 Fax: 603-250-0912



jpalmeri@concordhousing.org



www.concordhousing.org

From: Jessie [REDACTED] <[j\[REDACTED\]@gmail.com](mailto:j[REDACTED]@gmail.com)>
Sent: Tuesday, January 13, 2026 9:32 AM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: Fw: Minut Monitors

-Jessie

On Tue, Jan 13, 2026 at 7:51 AM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Good morning,



Regarding the monitoring system, access is restricted to management due to our per-user licensing structure. These devices only notify us if a noise threshold is exceeded or if smoking is detected within the unit.

Please let me know if you have any questions.

JULIE PALMERI

Executive Director



23 Green Street
Concord, NH 03301



Ph: 603-224-4059 Fax: 603-250-0912



jpalmeri@concordhousing.org



www.concordhousing.org

From: Jessie [REDACTED] <[j\[REDACTED\]@gmail.com](mailto:j[REDACTED]@gmail.com)>
Sent: Monday, January 12, 2026 7:06 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Re: Fw: Minut Monitors

Thank you for the info and getting back to me. Will we have the info to set up our own app to track our own device since it will be in our homes?

-Jessie

On Mon, Jan 12, 2026 at 6:11 PM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Good evening,

Please see below.

Thank you,

Julie Palmeri

Get [Outlook for iOS](#)

From: Nathan Smith <nathan.smith@minut.com>
Sent: Monday, January 12, 2026 5:31 PM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Cc: Dawn LaClair <dlaclair@concordhousing.org>
Subject: Re: Fw: Minut Monitors

Julie,

Minut can automatically turn on security alarms based on motion, but this is either manually enabled or enabled via a connecting to Airbnb. Obviously, this isn't applicable in your case, so it's not configured.

Thanks,

Nathan

On Mon, Jan 12, 2026, 3:47 PM Julie Palmeri <jpalmeri@concordhousing.org> wrote:

Hi Nathan,

Minut monitors don't track motion do they?

Get [Outlook for iOS](#)

From: Dawn LaClair <dlaclair@concordhousing.org>

Sent: Monday, January 12, 2026 2:55:39 PM

To: Jessie [REDACTED] <[j\[REDACTED\]@gmail.com](mailto:j[REDACTED]@gmail.com)>

Cc: Julie Palmeri <jpalmeri@concordhousing.org>

Subject: Re: Minut Monitors

We have the monitors in several of our properties and have since 2024. Parmenter is the last one of our properties to have them installed. You can call Julie Palmer's the Executive Director at

603-224-4059 if you have further questions regarding the monitors.

Thank you

Get [Outlook for iOS](#)

From: Jessie [REDACTED] <[j\[REDACTED\]@gmail.com](mailto:j[REDACTED]@gmail.com)>

Sent: Monday, January 12, 2026 2:49 PM

To: Dawn LaClair <dlaclair@concordhousing.org>

Subject: Re: Minut Monitors

Unless I am missing something you are incorrect. A minut monitor cannot function without the motion sensor.

No, a Minut monitor cannot function intended without its built-in (PIR) sensor, as this sensor is used for motion and occupancy. PIR sensor detects heat energy to track movement and occupancy in a safe manner without using cameras or audio. 

The Minut device is designed as a smart home alarm that integrates multiple sensors into a single unit: 

On Mon, Jan 12, 2026 at 2:03 PM Dawn LaClair <dlaclair@concordhousing.org> wrote:

This is to clarify that the system does not monitor motion. An informational letter outlining the details will be delivered to your door tomorrow.

Get [Outlook for iOS](#)

From: Jessie [REDACTED] <[j\[REDACTED\]@gmail.com](mailto:j[REDACTED]@gmail.com)>
Sent: Monday, January 12, 2026 1:58:48 PM
To: Dawn LaClair <dlaclair@concordhousing.org>
Subject: Re: Minut Monitors

Correct it does not record or video but minut monitors have IR motion sensors. There is not an option to shut that off. A landlord needs tenant permission to install anything with IR.

On Mon, Jan 12, 2026 at 1:48 PM Dawn LaClair <dlaclair@concordhousing.org> wrote:

The minute monitors are to notify us if someone is smoking in their unit and the decimal of noise level. It does not record audio or video, it's illegal. I'm sorry no one clarified with you what they were. I will make sure they send an informative sheet to everyone.

Get [Outlook for iOS](#)

From: Jessie [REDACTED] <[j\[REDACTED\]@gmail.com](mailto:j[REDACTED]@gmail.com)>
Sent: Monday, January 12, 2026 12:38:52 PM
To: Dawn LaClair <dlaclair@concordhousing.org>
Subject: Minut Monitors

Good afternoon,

I am emailing regarding the notice we received on our doors today. It is very unprofessional to send a notice out like this without sending any other information regarding what a minut monitor is. What will you be monitoring on this. Will it monitor motion? If there is an app that housing can track then we are entitled to also have that app so we can monitor our homes when we are not there. Historically to install something like this you need consent and to have tenants sign something saying we approve of this. That has not been sent out and therefore I believe this is illegal at this time.

-Jessi [REDACTED]

Exhibit 29

PLEASE BE ADVISED

Wednesday, June 19th

between 8am-5pm

Contractors with Irish Electric will be entering your unit to install new smoke detectors. At the same time, they will be installing a Minut monitor. This new monitor will measure noise levels, temperature, and smoking inside your unit.

Under no circumstances should you touch this monitor.

If you remove the monitor, you will be fined \$30 for each occurrence.

If you break the monitor, you will be charged \$300 for its replacement.

More information will be communicated regarding this technology.

Please watch for flyers!

The top shelf in your closet(s) that are under a sprinkler head will be removed during this time by maintenance staff. Please make closets accessible and remove items from the shelving that is affected by this requirement.

This work will be performed whether you are home or not!

NOTICE

Concord Housing will be installing the Minut Monitors in your apartments on **Friday November 7th** starting at 9am. The process will take about 2 minutes to do. We will be doing this whether you are home or not. Please secure all pets. **Schedule is below** and times a subject to change.

8th floor -----9:00am to 9:30am

7th floor -----9:30am to 10:00am

6th floor -----10:00am to 10:30am

5th floor ----- 10:30am to 11:00am

4th floor ----- 11:00am to 11:30am

3rd floor ----- 11:30am to 12:00pm

2nd floor ----- 12:30pm to 1:00pm

1st floor -----1:00pm to 1:30pm

Thank you for your

Cooperation

Exhibit 30

From: Julie Palmeri
Sent: Thursday, July 24, 2025 8:13 AM
To: Michelle Magee; Dawn LaClair
Subject: RE: Minut monitor lease addendum

Oh sorry, I ended up making this yesterday 🟡 - - ~



From: Michelle Magee <mmagee@concordhousing.org>
Sent: Thursday, July 24, 2025 7:57 AM
To: Julie Palmeri <jpalmeri@concordhousing.org>; Dawn LaClair <dlaclair@concordhousing.org>
Subject: RE: Minut monitor lease addendum

Michelle Magee

Administrative Assistant
Concord Housing Authority
23 Green Street
Concord, NH 03301

603-224-4059

mmagee@concordhousing.org



From: Julie Palmeri <jpalmeri@concordhousing.org>
Sent: Wednesday, July 23, 2025 7:56 AM

To: Michelle Magee <mmagee@concordhousing.org>; Dawn LaClair <dlaclair@concordhousing.org>

Subject: Minut monitor lease addendum

I don't see this in PHA Web or in Heather's folder. Do either of you have a copy of it?



Exhibit 31

From: Julie Palmeri
Sent: Tuesday, August 19, 2025 9:36 AM
To: Jessica Beaulieu
Subject: RE: Minut Monitoring Addendum

Awesome! We can update the charge list too.



From: Jessica Beaulieu <JBeaulieu@concordhousing.org>
Sent: Tuesday, August 19, 2025 9:30 AM
To: Julie Palmeri <jpalmeri@concordhousing.org>
Subject: Minut Monitoring Addendum

I am sending this with all my annual recerts and flat rent form and lease addendums for triennials for Crutchfield just so you know if anyone calls or emails you.

Thanks
Jess



Jessica Beaulieu
Housing Specialist
23 Green Street
Concord, NH 03301
603.224.4059
Fax 603-250-2929
www.concordha.com



WARNING: The information contained in this message may be confidential and protected from disclosure under applicable law. These materials are intended only for use of the intended recipient. If you are not the intended recipient, you are hereby notified that dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this message in error, please notify us immediately by replying to this message and then delete it from your computer.

Exhibit 32

January 30, 2026

VIA EMAIL

Gilles Bissonnette, ACLU-NH, Legal Director
gilles@aclu-nh.org
ACLU
18 Low Avenue
Concord, NH 03301

**RE: Concord Housing & Redevelopment
RSA 91-A Right-to-Know Request**

Dear Gilles:

Enclosed please find documents marked CHA000353-CHA000355 which are responsive to your December 22, 2025 letter requesting certain information pursuant to RSA 91-A. The documents are responsive to one or more of the following requests:

CHA000353: Request No. 11
CHA000354-CHA000355: Request No. 13

Additionally, Concord Housing responds to the following requests as follows:

Request No. 7: There are no documents responsive to this request.

Request No. 12: All tenants except one have signed the Lease Addendum. We believe it is unduly burdensome to produce all signed addendums as there are over 300 tenant files that will need to be manually reviewed to search for a signed Addendum.

Request No. 13: No tenants faced eviction due to noise complaints. Administrative action notices are produced.

Request No. 14: There are no documents responsive to this request.

With this response and the corresponding document production, Concord Housing has fully responded to the request for information.

If you have any questions or concerns, please let me know.

PRETI FLAHERTY

January 30, 2026
Page 2

Sincerely yours,

A handwritten signature in black ink, appearing to read 'PGC', with a stylized flourish at the end.

Peter G. Callaghan

PGC:mem
Enclosures

Exhibit 33

6:04

99



Concord Housing + Redevelopment

320 Units | 294 Devices

Ongoing events

28

Unmonitored units

9

Low battery

0

Noise monitoring

0

Presence &
Crowd detect

0

Smoking detection

3

Indoor climate

Events in the last 30 days

Noise events

8

6

4

2



Overview



Units



Inbox



Tasks



More

CHA000349

6:05



Standard noise monitoring

[Edit](#)



Settings apply to 320 units

Noise thresholds

Indoor noise 90 dB >

Outdoor noise 100 dB >

Duration 10 minutes

Quiet hours 10:00 PM - 7:0... >

Select when you want to be alerted to noise.

First alert

SMS Hi there! We ho... >

Autocall Off >

Flash & sound Off >

Select how to contact the people staying in your property when noise is detected. You and your team will be notified automatically.

Second alert



Overview



Units



Inbox



Tasks



More

CHA000350



Standard noise monitoring

[Edit](#)

Settings apply to 320 units

property when noise is detected. You and your team will be notified automatically.

Second alert

SMS

Hi there! We ho... >

Autocall

Off >

Flash & sound

Off >

Select how to contact the people staying in your property 10 minutes after the first alert. You and your team will be notified automatically.

Third alert

SMS

Hi there! We ho... >

Autocall

Off >

Flash & sound

Off >

Have a trained expert call your guests  >

Select how to contact the people staying in your property 20 minutes after the first alert. You and



Overview



Units



Inbox



Tasks



More



Standard noise monitoring

[Edit](#)

Settings apply to 320 units

Select how to contact the people staying in your property 10 minutes after the first alert. You and your team will be notified automatically.

Third alert

SMS

Hi there! We ho... >

Autocall

Off >

Flash & sound

Off >

Have a trained expert call your guests  >

Select how to contact the people staying in your property 20 minutes after the first alert. You and your team will be notified automatically.

Security alarm

Instantly turn on alarm

Off >

Grace period

45s

The security alarm will trigger after the grace period has expired.



Overview



Units



Inbox



Tasks



More

Exhibit 34

MINUT MONITORS

There has been some misleading information communicated regarding the Minut Monitors. The sensor contains no radioactive material and emits no ionizing radiation of any kind. There is nothing nuclear in it, and it does not measure radiation either.

The only thing it transmits is standard 2.4 GHz Wi-Fi, the same non-ionizing radio used by laptops, wireless thermostats and baby monitors. Its other sensors are all passive: the motion sensor detects infrared heat that people already give off, the microphone measures sound levels, and the temperature and humidity sensors read ambient conditions. None of those emit anything.

Three points make the sensor's radio output very small in practice:

1. Power. The Wi-Fi radio peaks at a fraction of a watt. A mobile phone can transmit at roughly ten to twenty times that, and a microwave oven runs at around 1,000 watts (contained inside a shielded cavity).
2. Duty cycle. The sensor runs about a year on a battery, which is only possible because the radio is asleep almost all of the time. It wakes to send a small amount of data and goes quiet again. A phone or router transmits more or less continuously.
3. Distance. Radio energy falls off with the square of the distance. The sensor is mounted on a ceiling or wall metres away from anyone. A phone is held against the head. That difference alone is orders of magnitude.

The device is certified to FCC Part 15 and CE/RED requirements, which include radio frequency exposure limits. We can provide the FCC ID and Declaration of Conformity if it helps to have documentation on file or posted.

TL;DR: It's harmless.

Exhibit 35

AFFIDAVIT OF ALBERT SCHERR, ESQ.

I. INTRODUCTION

I, Albert Scherr swear as follows:

1. I have been a law professor at University of New Hampshire School of Law for 32 years.
2. Prior to that, I was an attorney at the New Hampshire Public Defender for 13 years.
3. I have been a State Representative from Portsmouth (Ward 3) since November 2024. I serve on the House Criminal Justice & Public Safety Committee. I also have been an elected Police Commissioner in Portsmouth, NH since 2021.
4. As a law professor, my responsibilities have included teaching courses in Constitutional Criminal Procedure and Genetics and the Law, both of which include detailed examinations of the intersection of the Fourth and Fifth Amendments and privacy.
5. My scholarship has also focused on the intersection of the Fourth and Fifth Amendments and privacy, including A Scherr, *Genetic Privacy & The Fourth Amendment: Unregulated Surreptitious DNA Harvesting*, 47 Ga. L. Rev. 445 (2013); A. Scherr, "Privacy in Public Spaces: The Problem of Out-of-Body DNA," in *Privacy in Public Space: Regulatory and Legal Challenges*, Timan, Newell & Koops, eds., Edward Elgar Publishing, 2017.
6. I am the co-author with former State Representative Neal Kurk of the seminal article on Part I, Article 2b of the New Hampshire Constitution entitled *A New State Constitutional Right to Information Privacy: The Origins Speak*, 75 Syracuse L. Rev. 837 (2025) (Attached in Appendix I).
7. I have also lectured at a number of conferences and institutions on issues surrounding privacy, including "A Constitutional Right to Information Privacy" at the 8th Annual Conference on *Governing Emerging Technology & Science* at Arizona State University School of Law (May, 2022) and a Syracuse University School of Law Symposium on "State Constitutional Law" (March 2025).
8. As a Police Commissioner, I function as a member of the "board of directors" for the Portsmouth Police Department, setting and reviewing policy, including in areas of privacy.

9. The views and/or information expressed in this affidavit are my own and do not reflect the views of either UNH School of Law, UNH, or the Portsmouth Police Commission.

10. Prior to my election as a state representative, I worked as an advocate for criminal justice reform in the New Hampshire legislature in my individual capacity.

11. In that capacity, I testified many times in support of or in opposition to legislation affecting the criminal justice system, particularly those affecting the privacy of New Hampshire citizens.

12. As an advocate, I frequently drafted proposed legislation for legislators from across the political spectrum, including successful legislation about debtors' prisons, bail reform, "ban-the-box," notice of the right-to-decline-to-consent-to-a-car-search, and revisions in the Office of Cost Control eligibility and processes.

II. THE ORIGINS OF PART I, ARTICLE 2B

13. During the 2017 – 2018 legislative session, I began working with then Representative Neal Kurk (R) on a variety of privacy legislation.

14. We shared a common interest in the need for additional privacy regulation in the 21st century. Each of us was very aware of the ability of 21st century technology to create new kinds of information and to much more easily access information previously inaccessible.

15. We also shared concerns about commercial and governmental entities accessing, collecting, retaining and using information without the consent of the individual with whom the information originated.

16. We also shared concerns about the inadequacies of the reasonable-expectation-of-privacy standard used by the New Hampshire Supreme Court in interpreting Part I, Article 19 and by the U.S. Supreme Court in interpreting the Fourth Amendment, particularly in light of 21st century technology.

17. Representative Kurk had made several unsuccessful efforts in past legislative sessions to capture a foundational principle about privacy in an overarching constitutional amendment.

18. He asked me to draft a version of a constitutional amendment that captured that which we had been covering in our conversations. From that conversation came the language of Part I, Article 2b (hereinafter "2b.")

19. 2b passed both the state House of Representatives and the state Senate by three fifths vote. On the November, 2018 state ballot, it received the support of over 81% of those voting.

20. 2b reflects the shared intent of the drafters that, in New Hampshire, “*ordinary peoples' expectation of information privacy is the norm, not the exception, and government “snooping” into our personal and private information is prohibited.*”[1]

21. This affidavit reflects the meaning of the drafters’ language in 2b. My personal knowledge of the intent and meaning behind 2b is corroborated by contemporaneous records, including testimony and other records contained in the legislative history.

III. THE MEANING OF PART I, ARTICLE 2B, AS INTENDED BY THE DRAFTERS

22. Part I, Article 2b: “*An individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.*”

23. Most broadly, 2b is intended to liberate the consideration of the privacy of information from the constraints of Part I, Article 19 which focuses a court’s analysis on containers and locations of information rather than on the information itself. 2b intentionally creates much broader constitutional protection for personal or private information by its language. *See, e.g.,* LEG078, at 20:12-22 (Rep. Kurk explaining that 2b “goes beyond” the protections of Article 19).

A. “...GOVERNMENTAL INTRUSION...”

24. The two drafters of 2b (the undersigned and the amendment’s prime sponsor in the legislature, then-Representative Neal Kurk) intended that “governmental intrusion” include:

- (1) the observation of the personal or private information, wherever it is located;
- (2) the collection of the personal or private information, however collected;
- (3) the retention of the personal or private information, however retained; and
- (4) the use of the personal or private information, however used.

25. The drafters intended that the observation, collection and retention of personal or private information need not actually be used in any way for it to count as an “intrusion.”

26. That the government is collecting one's personal or private information just to have it in their possession whether they use it now, in the future or not at all, offends the protection intended by the drafters.

27. The drafters recognized that consent of the individual may allow for observation, collection, retention or use of the personal or private information. Consent must exist for each type of intrusion as observation, collection, retention and use represent different, albeit overlapping, types of governmental intrusions.

28. The drafters intended that any so-called blanket consent must include notice of all of these types of intrusions as well as possible multiple uses of the personal or private information. Consent for one use is not consent for all uses.

29. The drafters also intended that the requirements for consent must include the procedural requirements for any waiver of a constitutional right. *E.g.*, *Faretta v. California*, 422 U.S. 806 (1975); *Miranda v. Arizona*, 384 U.S. 436 (1966).

B. "... PERSONAL ... INFORMATION..."

30. The drafters of 2b intended that the coverage offered by the amendment be expansive.

31. It was the drafters' intent to use language that made the scope of protection of information under 2b much broader than the protection offered by Part I, Article 19 (Art. 19) or the Fourth Amendment.

32. Art. 19 and the Fourth Amendment in the first instance offer protection for information based primarily on container and location: homes, bodies, personal effects. In the last 60 years, that protection was further refined to include protection for searches that invaded a reasonable expectation of privacy. And so the inquiry became whether the search invaded this kind of property or this particular sense of privacy. That inquiry has become more challenging with 21st century information technology, which has dramatically expanded the means and goals of searches.

33. 2b takes a different approach. It identifies information, rather than property, as the primary focus by using the expansive language of "personal or private information."

34. The drafters had two particular definitions of personal information in mind, those of the National Institute of Standards and Technology (NIST) in the United States and of the General Data Protection Regulations (GDPR) in Europe.

35. The NIST definition: “Personally Identifiable Information (PII): any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.”[2]

36. The two GDPR definitions:

A. “[P]ersonal data’ means any information relating to an identified or identifiable natural person ...; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”[3]

B. “Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited.”[4]

37. The drafters intended an understanding of what is personal information to be expansive because the trend of 21st century technology has been to evolve newer and newer types of information and, even more importantly, newer and newer ways to access that information.

38. The drafters understood that these new types of information and methods for accessing information were unknown in previous centuries and some are only creatures of one’s imagination even today, as yet undeveloped. 2b is both a present-day and future-looking statement of a foundational constitutional principle about information privacy.

39. For example, personal information will include common-place data like records of: books withdrawn from the library; commercial transactions; Venmo transactions; financial transactions; whether one voted; for whom one voted; political contributions; social media conversations; data generated by one's car; physical manifestations of a person; other geo-location data; other private political activity; phone conversations; e-conversations; other digital information etc.

40. The drafters also understood that understanding that which is private can depend on the context within which the information exists. *See*, Helen Nissenbaum, *Privacy in Context: Technology, Policy and The Integrity of Social Life*, Stanford Law Books, (2009).

C. "... PRIVATE INFORMATION..."

41. It may be that some information is not, on its face, personal but, nonetheless, has been deemed private by a statute, regulation or other mechanism, given the particular circumstances in which that information exists. The drafters intended that that kind of information also be protected by 2b.

42. Under 2b, personal information need not be private and private information need not be personal. It was not the goal of the drafters to anticipate every possible circumstance in which information may exist and be subject to intrusion. Instead, the drafters' goal was to lay down a foundational principle tailored to the 21st century and beyond.

D. "... NATURAL, ESSENTIAL AND INHERENT..."

43. The drafters intended that the language of 2b create a fundamental right to live free from intrusion by the state on the personal or private information, therein the description of the right as natural, essential and inherent.

44. The "natural, essential and inherent" language is taken directly from Part I, Article 2 itself.[5] It is the first and the most foundational description of protected rights in the New Hampshire Constitution.

45 Unlike Article 19, 2b does not use a modifier to condition the right, like "unreasonable." It also does not mention search warrants supported by probable cause. It is an unconditioned and unambiguous fundamental right.

46. The drafters intended that courts view any intrusion on personal or private information as directly affecting the fundamental right vested in that information. Any such intrusion deprives one of a fundamental right: the freedom from governmental intrusion on personal or private information.

47. Analytically, the drafters understood and intended that, as to 2b, directly affecting a fundamental right always brings with it a strict scrutiny analysis. “To comply with strict judicial scrutiny, the governmental restriction must ‘be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose.’”[6]

48. This drafters’ intent is made clear in the legislative history of CACR 16, the legislation capturing Part I, Article 2b.

49. In written testimony to the Senate, I stated that, “CACR 16 does not prohibit any and all access to personal and private information Instead, it effectively would change the balancing a court already does when deciding whether the governmental interest in gaining such access outweighs the nature and degree of intrusion on an individual’s privacy interest. Specifically, it would require the government to now show a compelling state interest in obtaining access to personal and private information before a court would order such access. Sometimes, the state will be able to meet that burden, particularly when public safety is at risk.” [7] *See also* LEG068. This standard is tantamount to a strict scrutiny standard.

50. Under this strict scrutiny standard, it may well be that the government has a compelling interest in gathering certain kinds of personal or private information. If so, then the particular kind of intrusion must also be *necessary* to accomplish that purpose. It is not sufficient that the intrusion is one way to accomplish the purpose but that other ways also exist. If that is the case, the intrusion is not necessary.

51. Others similarly conveyed to the legislature how CACR 16 imposed a strict scrutiny standard—a standard both the legislature, and then the people, ultimately adopted when this CACR was approved. For example, Representative Kurk testified before the Senate Rules & Enrolled Bills Committee, as to medical records, “... that if the government wants a woman’s medical records, it’s got to show that there’s an exceptional interest in public health to get that.” (emphasis added) [8] *See* LEG079, at 25:1-4; *see also*

LEG078, at 21:13-16 (Rep. Kurk: “[W]hat we’re doing is not barring government, but requiring government to meet a higher standard than it currently must in order to protect this information.”).

52. Jeanne Hruska, the Policy Director of the ACLU-NH, also testified that, “[a]s Representative Kurk said, instead it would effectively change the balancing that a court already does when deciding whether government interest in gaining access to information outweighs the nature and degree of intrusion on an individual’s privacy interest. So specifically, it would require the Government to now show a compelling State interest in obtaining access to personal and private information before a court would order such access.” [9] See LEG081, at 33:11-15 (emphasis added).

53. Further, when CACR 16 was being considered by the people in advance of the November 2018 election, the people too were informed that this new provision would impose a strict scrutiny standard. See LEG099 (in Oct. 15, 2018 op-ed from Neal Kurk and the national ACLU, stating: “Q2 would require that the government obtain a judicial warrant, supported by probable cause, before accessing any personal information. If contested, the government would need to show a compelling state interest in obtaining access to that information before a court would allow the government access.”) (emphasis added).

54. Thus, the intrusion in question in this case must survive a strict scrutiny analysis. The intrusion must present a circumstance in which the only way to accomplish its compelling purpose is through the intrusion itself. For example, if another way exists but it is more cumbersome or expensive, then the interest justifying the intrusion is not sufficiently compelling to survive constitutional strict scrutiny: this is because the intrusion is not necessary. Nor is a justification that the intrusion would be useful in accessing the personal or private information be sufficient in itself to merit identification as a *compelling* interest. Any intrusion on the fundamental right to be free of governmental intrusion on personal or private information must be constitutionally significant enough to require a *compelling* governmental interest implemented in a way that is necessary, not merely convenient, useful or helpful.

FURTHER THE AFFIANT SAY NOT

Dated: May 28th, 2026

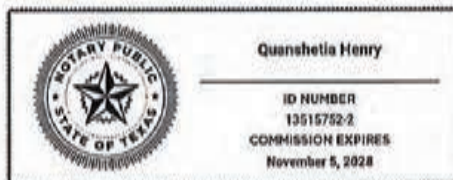
Albert Edward Scherr

Albert Scherr, Esq.

STATE OF Texas

COUNTY OF Collin

Albert Scherr personally appeared before me, this 28th day of May, 2026, and made oath that the facts contained in this Affidavit are true and accurate, to the best of his knowledge and belief.



Before me, 
Notary Public/Justice of the Peace
My Commission Expires: 11/05/2028

ELECTRONIC NOTARY PUBLIC

Electronically signed and notarized online using the Proof platform.

[1] Neal Kurk, *Vote for Your Privacy on Question 2*, Union Leader (Nov. 2, 2018), <https://perma.cc/A2EJ-UT5U>.

[2] NIST Special Publication 800-122, csrc.nist.gov/publications.

[3] General Data Protection Regulation, Article 4 (1), European Union. Note that, while these definitions identified here did not go into formal effect until May, 2018, the language quoted here had been available at the time of the drafting of 2

[4] General Data Protection Regulation, Article 9, (1), European Union.

[5] "All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin." Part I, Article 2, New Hampshire Constitution.

[6] *Akins v. Secretary of State*, 154 N.H. 67, 73 (2006) quoting *Follansbee v. Plymouth Dist. Ct.*, 151 N.H. 365, 367, 856 (2004).

[7] Written testimony of Professor Albert (Buzz) Scherr before the Senate Rules & Enrolled Bills Committee, entitled "The Need for CACR 16 - A Gap in Privacy Protection," March 29, 2018.

[8] Testimony of Representative Neal Kurk before the Senate Rules & Enrolled Bills Committee on March 29, 2018.

[9] Testimony of Jeanne Hruska, ACLU-NH, before the Senate Rules & Enrolled Bills Committee, March 29, 2018.

Appendix 1

A NEW STATE CONSTITUTIONAL RIGHT TO INFORMATION PRIVACY: THE ORIGINS SPEAK

Albert Scherr

Neal Kurk[†]

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ABSTRACT

When the Supreme Court issued its sweeping decision in *Dobbs v. Jackson Women’s Health Organization*,¹ it sent the fate of abortion rights to the states and in turn, brought renewed focus to state constitutional rights. In its *Dobbs* opinion, the Court’s majority made abundantly clear that it is interested in reconsidering several landmark decisions related to civil rights. This has ignited discussion about how state constitutions could potentially step up to fill the void that the

[†] Albert Scherr is a Professor of Law at UNH School of Law and a New Hampshire State Representative. Representative Neal Kurk is a retired state representative in the New Hampshire House of Representatives. Professor Scherr and Republican Representative Kurk (now retired) were the drafters of Part I, Article 2b and Representative Kurk was the prime sponsor of the constitutional amendment (CACR 16) that became Article 2b. Thanks to Jeanne Hruska for her editorial prowess.

1. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

Supreme Court is in the midst of creating when it comes to federal constitutional rights.

This heightened interest in state constitutions is not without merit. Over the decades, many states have developed stronger civil rights protections than those provided by the U.S. Constitution. This has been achieved through a combination of constitutional amendments and state court jurisprudence.² There are states that have gone in the reverse direction, cutting back on civil rights protections, making the U.S. Constitution more of a ceiling than a floor in those respective states.³ This feeds into the notion of state courts and constitutions as a laboratory for experiments in constitutional law.⁴ Put differently, state bills of rights have been viewed as “ordinance(s) of the people.”⁵ Or, amplifying that idea: “a dynamic set of substantive instructions and limitations on government that is adopted and jealously maintained by the people themselves.”⁶

Lawyers across the country have begun to put their respective state constitutions under a more powerful microscope. The *Dobbs* Court noted that the word “abortion” does not appear in the U.S. Constitution⁷ The word “privacy” also does not appear in the U.S. constitution; however, it does appear in a number of state constitutions.⁸ And while the U.S. Supreme Court increasingly has been skeptical of the expanse of the Fourth Amendment’s privacy protections, state courts have taken differing approaches to their own state constitution’s privacy protections.

This article occupies the space between the ongoing, newly energized development of state constitutional law and the fraught public

2. One can find a partial survey of such cases in ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* 119–27 (2d ed. 2009). For example, the New Hampshire Supreme Court has developed a robust body of law over the past several decades more protective of criminal defendants’ rights under the New Hampshire State Constitution. *See, e.g.*, *State v. Phinney*, 370 A.2d 1153, 1154 (N.H. 1977); *State v. Settle*, 447 A.2d 1284, 1286 (N.H. 1982); *State v. Ball*, 471 A.2d 347, 351–53 (N.H. 1983); *State v. Canelo*, 653 A.2d 1097, 1105 (N.H. 1995); *State v. Bushey*, 453 A.2d 1265, 1267–68 (N.H. 1982); *State v. Goss*, 834 A.2d 316 (N.H. 2003).

3. *See* Jonathan L. Marshfield, *America’s Misunderstood Constitutional Rights*, 170 U. PA. L. REV. 853, 869–70 (2022).

4. *See* JEFFREY S. SUTTON, *WHO DECIDES? STATES AS LABORATORIES OF CONSTITUTIONAL EXPERIMENTATION* (2022).

5. Wesley W. Horton, *Annotated Debates of the 1818 Constitutional Convention*, 65 CONN. BAR J. 3, 17 (1991).

6. Marshfield, *supra* note 3, at 859–60.

7. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 225 (2022).

8. *See infra* Part II(B)(2).

policy field of privacy protections. It analyzes a new state constitutional provision that is explicitly and exclusively about information privacy. The provision, Part I, Article 2b⁹ of the New Hampshire Constitution,¹⁰ reads as follows:

*An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.*¹¹

The provision extends an individual's privacy right significantly beyond that of both the federal and New Hampshire state constitutions. It operates at the intersection of privacy and of 21st century technology, state and federal constitutional law and jurisprudence, as well as state and federal laws and regulations. Historically, the mix of law addressing this challenging intersection was primarily a patchwork quilt that tended to favor technology over privacy.

Article 2b is a model for prioritizing privacy in this digital age. As its history reflects, it is both a 21st century "ordinance of the people" and "a dynamic set of substantive instructions and limitations on government that is adopted and jealously maintained by the people themselves."¹² Analysis of that ordinance of the people is the goal of this article. While Article 2b was enacted in 2018, four years before *Dobbs*, it is all the more relevant in a post-*Dobbs* world when lawyers and the public will increasingly turn to state constitutions to protect themselves from the prying eye of government, or the even more invasive eye of Big Tech.

INTRODUCTION

When the Framers of our 18th century federal constitution wrote the amendments that came to constitute the Bill of Rights, privacy was about one's physical possessions and dwelling. In the 21st Century, privacy is also about our personal information. The problem: 18th century law was not written for 21st century information privacy. Needless to say, defending privacy rights in the 21st century with 18th century law is often a losing battle. One need only look at Big Tech's infiltration of the barriers to collecting our personal and private data to understand this.

9. *Hereinafter*, Article 2b.

10. N.H. CONST. pt. I, art. 2-b (2018) [hereinafter Article 2b].

11. *Id.* (emphasis added).

12. Marshfield, *supra* note 3, at 859–60.

Part of this problem is that 21st century technology has exponentially expanded the ways that our personal data can be—and is—accessed, collected, consolidated and analyzed, often without notice or permission. Some of those ways have simplified access to previously biologically locked data, like relatively routine access to genetic information.¹³ Some have turned that which was previously not regarded as data¹⁴ into accessible data, like facial recognition’s technology rendering of human faces into accessible data points.¹⁵ Some of it has amassed previously scattered, difficult-to-collect data into revealing mosaics of data, like GPS technology’s collection of public-whereabouts data.¹⁶ More broadly, information is being accessed and collected into innumerable types of databases. Private and public medical research often create databases with a wealth of personal information beyond genetic “types.” Cellphone and internet providers act as repositories for vast amounts of geo-locational information; cellphone behavior and internet activity. Private businesses not infrequently have security cameras for their establishments and retain the videos. Larger businesses collect vast amounts of data about customer behavior that they both store and sell. Only some of the above occurred during most of the 20th century, let alone the 18th century.

The federal constitution’s focus is directly on the container or location of information. The Fourth Amendment speaks of “persons, houses, papers, and effects” as does Part I, Art. 19 of the New Hampshire Constitution.¹⁷ It misses the mark in the 21st century when privacy is about the information itself, which in digital form can be readily transferable, multiplied, and shared. The product of 21st century technology—information—exists independent of physical location, be it geographically, or in a container. By contrast, in the 18th century, information existed in containers and in some physical form (with the

13. See Albert E. Scherr, *Genetic Privacy & the Fourth Amendment: Unregulated Surreptitious DNA Harvesting*, 47 GA. L. REV. 445, 447 (2013).

14. We use the terms “data” and “information” interchangeably in this essay.

15. See Kashmir Hill, *New Jersey Bars Police From Using Clearview Facial Recognition App*, N.Y. TIMES (Jan 24, 2020, 5:39 PM), <https://www.nytimes.com/2020/01/24/technology/clearview-ai-new-jersey.html?searchResultPosition=4>; Alan Rappeport & Kashmir Hill, *I.R.S. to End Use of Facial Recognition for Identity Verification*, N.Y. TIMES (Feb 7, 2022, 12:45 PM), <https://www.nytimes.com/2022/02/07/us/politics/irs-idme-facial-recognition.html?searchResultPosition=9>; Sahil Chinoy, *The Racist History Behind Facial Recognition*, N.Y. TIMES (July 10, 2019, 10:11 AM) <https://www.nytimes.com/2019/07/10/opinion/facial-recognition-race.html?searchResultPosition=15>.

16. See, e.g., *U.S. v. Jones*, 565 U.S. 400 (2012).

17. U.S. CONST. amend. IV; see N.H. CONST. pt. I, art. 19.

exception of information contained in one's thoughts, which was addressed by the right against self-incrimination in the Fifth Amendment). Though, arguably, the essence of Art. 19's and the Fourth Amendment's focus on containers is to protect the information contained therein, their language does so indirectly, at best.

Fourth Amendment jurisprudence has long sought to address this discrepancy between the 18th and 21st century challenges to privacy and the changing nature of the information through the "reasonable-expectation-of-privacy" standard from *Katz v. United States*.¹⁸ *Katz*, taking place in 1967, involved information in the form of one end of a two-way conversation occurring in what would now be considered an old-fashioned a traditional phonebooth,¹⁹ and yet even such an old-fashioned setting could not have been a circumstance anticipated by the drafters of the Fourth Amendment. *Katz* recognized that what merited privacy with regards to the conversation in question was the content of the relevant phone conversation in that phonebooth in which the speaker had shown an expectation of privacy, an expectation the court also decided was worthy of societal recognition. While location was still important to that decision, the court was beginning to analytically distinguish information from its container.

This analytical change continued in fits and starts over the next few decades in Supreme Court cases like *Kyllo v. United States* (reasonable expectation of privacy in potentially intimate information from the inside of a house gained without even entering the house using a thermal imaging device on public property)²⁰ and *California v. Greenwood* (no reasonable expectation of privacy in contents of garbage bag left at end of driveway for collection).²¹ The Court was balancing the nature of the container, the nature of the information in that container and the nature of the circumstances in applying the reasonable-expectation-of-privacy standard.

The *Katz* standard provided a lot of flexibility and discretion for the courts, for better and for worse. This resulted in the outcome being very much dependent on a judge's own sense of "privacy." For example, a number of state courts have come out differently on the "garbage" question of whether someone has a "reasonable expectation of privacy" to their garbage under their state constitutions. New

18. See *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring).

19. *Id.* at 353–54.

20. See *Kyllo v. United States*, 533 U.S. 27, 34–35 (2001).

21. See *California v. Greenwood*, 486 U.S. 35, 41 (1988).

Hampshire, New Jersey, Iowa, Washington and others have found a reasonable expectation of privacy in the contents of a garbage bag.²² Each of these courts effectively had a difference of opinion with the Supreme Court over whether a reasonable expectation of privacy existed in the “papers and effects” in garbage or in the “information” in garbage.

As we’ve moved further into the 21st century, our lives are increasingly lived online and our most private information increasingly digitized. The Supreme Court’s struggle to establish clear and consistent jurisprudence using the reasonable-expectation-of-privacy standard has faltered. In *United States v. Jones*,²³ for example, the police put a GPS tracking device on the underside of Jones’s SUV while it was parked in a public space. They then used the device to track his whereabouts over several days, gathering a wealth of data from this surveillance. The government contended that such tracking did not constitute a search as the police had not entered Jones’s SUV and they had merely acquired otherwise publicly available data²⁴

What is interesting about the Court’s 9-0 opinion concluding that the surveillance constituted a search within the meaning of the Fourth Amendment is not the outcome. It is the three different opinions that aspire to place the use of this particular 21st century technology within the Court’s now somewhat outdated Fourth Amendment jurisprudence. Four justices centered their analysis on a property paradigm, using 18th century tort law to characterize the placement of the GPS on the SUV as a trespass. One judge agreed that the property paradigm was a minimum starting point for a Fourth Amendment analysis but ultimately relied more heavily on an expansive reasonable-expectation-of-privacy analytical framework, focusing on the breadth of the information collected.²⁵ Finally, four other judges acknowledged that the property-paradigm and reasonable-expectation-of-privacy approaches each had deficiencies in light of technological developments. They relied on a far more restrained reasonable-expectation-of-privacy analysis to agree on the outcome in this particular case with no

22. See, e.g., *State v. Goss*, 834 A.2d 316, 319 (N.H. 2003); *State v. Hempele*, 576 A.2d 793, 810 (N.J. 1990); *State v. Wright*, 961 N.W.2d 396, 418–19 (Iowa 2021); *State v. Boland*, 800 P.2d 1112, 1116 (Wash. 1990).

23. See *United States v. Jones*, 565 U.S. 400 (2012).

24. *Id.* at 402–03.

25. See *id.* at 954–57 (Sotomayor, J., concurring).

predictions as to future outcomes regarding new surveillance technology.²⁶

A recent and more telling example of the jurisprudential struggle over 21st century technology's intersection with the Fourth Amendment is *Carpenter v. United States*.²⁷ There, the Court considered whether records of cell-site location information (CSLI) were protected by the Fourth Amendment.²⁸ Interestingly, such information was a 21st century version of data akin to 20th century telephonic pen registers. In *Smith v. Maryland* and *United States v. Miller*, the Court applied the third-party doctrine to pen registers and bank records, respectively, in finding that an individual has a reduced expectation of privacy in information knowingly shared with another and considering the nature and content of the documents at issue. In those circumstances the individual thereby had no Fourth Amendment protection.²⁹

In *Carpenter*, the Court dodged whether to abandon the third-party doctrine. Instead, it focused on the breadth and extent of the information collected from "12,898 location points cataloging Carpenter's movements over 127 days."³⁰ It was a 5-4 decision with four separate dissents. The majority distinguished their holding from *Smith v. Maryland* and *U.S. v. Miller* not by abandoning the third-party doctrine, but by focusing on the more comprehensive nature of the information gathered.

One dissent captured the sentiment of all four dissents well in criticizing the majority opinion as a "stark departure" from *Smith* and *Miller*.³¹ Combined, the four dissents took the majority opinion to task for its mistaken reliance on the reasonable-expectation-of-privacy standard; for fracturing two fundamental pillars of Fourth Amendment law; and for failing to harken back to the text and original understanding of the Fourth Amendment. The variety of approaches in the majority and the dissents reflected the serious jurisprudential struggle in applying the Fourth Amendment, and the Court's own container/location dependent precedent, to 21st century technology.

26. See *id.* at 957–64 (Alito, J., Ginsburg, J., Breyer, J., & Kagan, J., concurring).

27. See *Carpenter v. United States*, 585 U.S. 296 (2018).

28. See *id.* at 300.

29. See *Smith v. Maryland*, 442 U.S. 735, 744–45 (1976); *United States v. Miller*, 425 U.S. 435, 442 (1979).

30. See *Carpenter*, 585 U.S. at 296.

31. *Id.* at 321 (Kennedy, J., Thomas, J., & Alito, J., dissenting)

The Court's jurisprudential struggle also produced noteworthy inconsistencies in a broader context. For example, in *Riley v. California*,³² the police gained possession of Riley's cellphone through a search incident to arrest and proceeded to search the contents of the phone without obtaining a search warrant. The Court's ruling required the police to get a search warrant in such circumstances, given the nature of the digital information in a cell phone. The Court emphasized the potential multi-dimensional nature of the digital data: that it had vast storage capacity for a variety of texts, videos and pictures; that it could have data dating back several years; and that it contained a digital record of nearly every aspect of a person's life.³³

The opinion is noteworthy here for three reasons. First, it was a unanimous opinion on what is perhaps the classic representation of 21st century technology, a smartphone. Second, Justice Alito in his concurrence explicitly referred to the Court's ongoing challenge with new technology:

I agree that we should not mechanically apply the rule used in the predigital era to the search of a cell phone. Many cell phones now in use are capable of storing and accessing a quantity of information, some highly personal, that no person would ever have had on his person in hard-copy form. This calls for a new balancing of law enforcement and privacy interests.³⁴

Third, the Court's decision, which focused on the nature and extent of the *digital* information in a cellphone, stands in stark contrast to a sequence of decisions by lower courts regarding *genetic* information in surreptitious DNA harvesting cases. This developing potential conflict again reflects that the Court's 20th century jurisprudence was a bad fit for much 21st century technology. In one such case, the police developed a genetic profile of a crime scene sample of unknown origin. Though they had a suspect, they did not have probable cause for a search warrant to get saliva or blood from the suspect so they could generate their genetic profile for comparison. Instead, the police acquire the necessary bodily fluid surreptitiously from the suspect, be it from the back of a stamp or an envelope on returned mail,³⁵ from a

32. See *Riley v. California*, 573 U.S. 373, 378–79 (2014).

33. See *id.* at 393–95.

34. *Id.* at 406–07 (Alito, J., concurring).

35. See *State v. Athan*, 158 P.3d 27, 32 (Wash. 2007).

cigarette butt, or from a soda can offered to the suspect in a non-custodial interview at the police station.³⁶

By contrast, virtually every court, state and federal, has found that surreptitious DNA harvesting does not implicate Fourth Amendment interests though, in concept, a cell phone containing personal information is essentially identical to a biological cell containing personal information. Most often, courts rely on some version of a property-based analysis: the suspect abandoned the stamp, the coffee cup, or the cigarette butt voluntarily and, thereby, relinquished a Fourth Amendment interest in their DNA.³⁷ Ironically, in 2014, the Supreme Court found that the *digital* contents of one kind of cell (a cell phone) merited Fourth Amendment protection³⁸ but, in 2015, declined certiorari in a case in which the Maryland Court of Appeals did not give Fourth Amendment protection to the *genetic* contents of another kind of cell (the cells in the saliva in a soda can left by the suspect at a police station).³⁹

Courts' indirect distinction between digital cell content and biological cell content presages a likely ongoing jurisprudential struggle with 21st century technology. It may well be that a thoughtful distinction exists between the reasonable expectation of privacy in the digital information in a cell phone and the genetic information within a biological cell. For example, genetic information in a cell is much more profoundly locked up, through a number of not easily unlocked biological barriers, than is digital information. Additionally, people are generally more cognizant of the private nature of certain cell phone content (pictures, lurid texts, passwords, etc.) than they are of their DNA. But, the prism of the Fourth Amendment has substantially muddled and sidetracked this important discussion about 21st century technology with too much attention to property and container-based analogies and analysis. Part I, Article 2b clears up that muddle for New Hampshire.

I. PART I, ARTICLE 2B⁴⁰

If we look to literature, it is nearly impossible to find a common understanding of privacy other than perhaps the notion that context

36. See Scherr, *supra* note 13, at 450–51.

37. See *id.* at 454–58.

38. See *Riley v. California*, 573 U.S. 373, 403 (2014).

39. See *Raynor v. State*, 99 A.3d 753 (Md. 2014) (emphasis added).

40. Part II represents a comprehensive description of the intent of Professor Scherr and Representative Kurk when they drafted Part I, Article 2b. Rather than

matters.⁴¹ Privacy itself is a multi-dimensional, personal, and often amorphous concept that has meant many different things to many different people. Many of the conceptions relate to information and control of information. Daniel Solove has suggested a number of different conceptions that frequent legal and philosophical discourses about privacy:

- (1) the right to be let alone—Samuel Warren and Louis Brandeis’s famous formulation of the right to privacy;
- (2) limited access to the self—the ability to shield oneself from unwanted access by others;
- (3) secrecy—the concealment of certain matters from others;
- (4) control over personal information—the ability to exercise control over information about oneself;
- (5) personhood—the protection of one’s personality, individuality, and dignity; and
- (6) intimacy—control over, or limited access to, one’s intimate relationships or aspects of life.⁴²

The protection of information from government intrusion is only a part of privacy. For example, the mere presence of the government in one’s life, with or without the knowledge of the individual, is itself often viewed as a separate “dignitary” privacy violation, regardless of what the government does with that presence. But, it is an essential part and has been bogged down by the various Fourth Amendment iterations of the property paradigm, by the reasonable-expectation-of-privacy debate, and by 18th century property and tort law.

Solove’s list reflects much of the essence of what bothers people in the 21st century about governmental intrusions or, for that matter, commercial intrusions. Particularly with modern technology, so much of one’s identity is captured in personal information: medical, genetic, financial, political, biometric, social etc. Privacy in personal information has taken on a heightened importance amidst the explosion of tools for harvesting personal information. The instincts remain the

repeat in each sub-section of Part II that the description therein reflects the intent of the drafters, the reader should understand with certainty that Part II accurately describes the intent of the drafters of Article 2b.

41. See, e.g., HELEN NISSENBAUM, *PRIVACY IN CONTEXT: TECHNOLOGY, POLICY, AND THE INTEGRITY OF SOCIAL LIFE* (2010) (arguing that privacy must be seen in a social context); see also DANIEL J. SOLOVE, *UNDERSTANDING PRIVACY* 12–13 (2008).

42. See SOLOVE, *supra* note 41, at 12–13. Solove argues persuasively that none of these conceptions capture the common denominator of privacy. *Id.* at 14. He goes on to propose a “taxonomy of privacy” that seeks to provide a better understanding of privacy. *Id.* at 101–02.

same: “Stay out of my personal information unless I consent to let you in. It’s mine and not the government’s to control.”

Part I, Article 2b of the New Hampshire Constitution honors these instincts for notice, consent, and control by constitutionalizing them. It frees 21st century technology from the unwieldy property paradigm of 18th century privacy. Article 2b places information—also known as data when digitized—at the core of the analysis, a shift that is meaningful in practice while still honoring the deep meaning of constitutional privacy under Part I, Article 19 of the New Hampshire Constitution or the Fourth Amendment of the U.S. Constitution because it addresses directly that which underlies each of those amendments: the privacy of information.

Article 2b modernizes the constitutional protection of information sought by the New Hampshire government. That is its point and its effect. As one witness before the Senate Rules and Enrolled Bills Committee said in her written testimony:

New Hampshire never had a need to address information privacy protection until the late 20th and early 21st Century. Before then, statutory protection and the state’s libertarian spirit were by and large adequate to manage the occurrences of intrusions on personal information and data. That is no longer true. The onslaught of governmental and commercial intrusions into our informational privacy is an overwhelming and unstoppable tide. Increasingly, our statutory protections are more patchwork than comprehensive as the potential intrusions diversify and multiply. This CACR would remedy that for New Hampshire by enshrining in our state constitution a specific right to governmental non-interference in which our state firmly believes.⁴³

It does this by shedding the overwrought concerns about locations and containers. At best, locations and containers of information may, in some cases, add some secondary or tertiary meaning under Article 2b as to whether the information is personal or private, but that is all. It renders irrelevant considerations of 18th century property and tort law.

43. *Constitutional Amendment Concurrent Resolution 16: Hearing on 2018-1936e Before the Senate Rules and Enrolled Bills Committee*, 2018 (N.H. 2018) (written testimony of Jeanne Hruska, Policy Director, ACLU-NH).

Article 2b's legislative history reflects this shift. The exchange between Senator Kevin Avar and Representative Renny Cushing at the Senate Rules and Enrolled Bills Committee Hearing reflects the importance of then CACR 16:

Representative Cushing introduced the bill. "The essence of liberty is the right to be left alone. This amendment will clarify that liberty includes the right to privacy."

Senator Avar – "I thought this was already assumed?"

Representative Cushing – "As technology evolves over time and because privacy is the essence of liberty, this makes it more explicit."⁴⁴

A further exchange between Senator Avar and Representative Dan McGuire on the NH Liberty Alliance reinforced how Article 2b marks the change in focus from location to information:

Senator Avar – "Would this prevent the government from seeking out that information from third parties?"

Representative McGuire – "Yes, because it is about the individual's information, it doesn't matter where it is."⁴⁵

Article 2b comprises unique state constitutional provisions that address privacy directly. Ten states have constitutional provisions that use the word "privacy" in some way.⁴⁶ Some invest an individual with a general "right to privacy."⁴⁷ Some prohibit "invasions of privacy."⁴⁸ Some protect "private affairs" or "private life."⁴⁹ One also directly

44. *Constitutional Amendment Concurrent Resolution 16: Hearing on 2018-1936e Before the Senate Rules and Enrolled Bills Committee*, 2018 (N.H. 2018) (testimony of Sen. Kevin Avar and Rep. Renny Cushing).

45. *Constitutional Amendment Concurrent Resolution 16: Hearing on 2018-1936e Before the Senate Rules and Enrolled Bills Committee*, 2018 (N.H. 2018) (testimony of Sen. Kevin Avar and Rep. Dan McGuire).

46. See ALASKA CONST. art. 1, § 22; see also ARIZ. CONST. art. 2, § 8; CAL. CONST. art. 1, § 1; FLA. CONST. art. 1, § 23; HAW. CONST. art. 1, § 6; ILL. CONST. art. 1, § 6; LA. CONST. art. 1, § 5; MONT. CONST. art. 2, § 10; S.C. CONST. art. 1, § 10; WASH. CONST. art. 1, § 7.

47. ALASKA CONST. art. 1, § 22; see CAL. CONST. art. 1, § 1; see also HAW. CONST. art. 1, § 6; MONT. CONST. art. 2, § 10.

48. ILL. CONST. art. 1, § 6; see LA. CONST. art. 1, § 5; see also S.C. CONST. art. 1, § 10.

49. ARIZ. CONST. art. 2, § 8; see FLA. CONST. art. 1, § 23; see also WASH. CONST. art. 1, § 7.

protects “interceptions of communications by eavesdropping devices or other means.”⁵⁰

Article 2b is the only state constitutional provision that focuses explicitly and directly on information and intrusions on “personal or private” information rather than on privacy more broadly. And this focus is intentional. The provision specifically addresses the realities of 21st Century privacy, namely by focusing specifically and exclusively on and to address government intrusions on information. Thus, the goal was to switch the legal analysis from “which locations or containers” and “what counts as private” to “what intrusions” and “which information is personal or private?”

II. THE LANGUAGE OF PART 1, ARTICLE 2B

A. “Governmental Intrusion”

The consideration of whether governmental conduct is an intrusion on an individual’s personal or private information is different than the Part I, Article 19 consideration of whether a governmental search is an intrusion on “his person, his houses, his papers, and all his possessions.”⁵¹ “Governmental intrusion” is intended to contemplate (1) observation of the defined (“personal or private”) information, wherever it is located; (2) the collection of the defined information, however collected; (3) the retention of the defined information, however retained; and (4) the use of the defined information, however used.

(1) The mere *observation* of personal or private information is as a governmental intrusion under Article 2b, whether the governmental intruder goes on to collect, retain or otherwise use the information or not. This is due to the realities of 21st century information, whereby it is not only the possession of it that is intrusive, it’s the mere observation of it. Think of a digital photograph, or the information on an electronic medical record. As soon as the government observes that

50. ILL. CONST. art. 1, § 6.

51. N.H. CONST. pt. 1, art. 19 (stating “[e]very subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases and with the formalities, prescribed by law.”) [hereinafter Article 19].

information, it has intruded on the respective person's privacy, regardless of whether the government goes on to collect or retain the information in digital or physical form. For example, if a police officer views of information, irrespective of location, is an intrusion. It may be that the information does not have to meet the definition of "personal and private" information or that it survives a strict scrutiny analysis to trigger Article 2b. The observation in and of itself was intended by the drafters to count as an intrusion.

(2) The *collection* of personal or private information is also a governmental intrusion under Article 2b. For example, it does not matter whether the governmental collector goes on to use the particular personal or private information they collected or not. The collection, in and of itself, violates the provisions of Article 2b. That the government collects one's personal or private information, whether they use it or not, offends the protection provided by the amendment. As a result, the creation of a database, whether for current or future use, is prohibited under Article 2b unless the information collected is not personal or private or there is consent. For example, the collection by the government of digital representations of people's faces, an important piece of facial recognition technology, represents the collection of information. Depending on the circumstances, it may or may not survive an Article 2b analysis.⁵²

(3) The *retention* of the defined information is also an intrusion under Article 2b. 2b intentionally does not allow the government to retain personal or private information even if it was collected consensually and even if it is never used. Very often, the collection may be consensual but, if the retention goes beyond the bounds of the specific and explicit consent given, it is prohibited by Article 2b.

For example, police may collect a biological sample from the victim of a sexual assault for purposes of creating a genetic profile to compare to the genetic profiles within the biological sample taken vaginally from the victim. Under Article 2b, they may not retain the victim's genetic profile in any statutory or other database or in any other way once they have used it for the consented-to purpose. As recent events reveal, this is not a hypothetical example.⁵³

52. A digital representation of someone's face may have been placed in a location by that person after they explicitly read and signed a consent form.

53. See Azi Paybarah, *Victim's Rape Kit Was Used to Identify Her as a Suspect in Another Case*, N.Y. TIMES (Feb. 15, 2022), <https://www.nytimes.com/2022/02/15/us/san-francisco-police-rape-kit-dna.html>. "[T]he San Francisco Police Department identified a woman who was recently arrested on a felony

(4) The use of personal or private information is also an intrusion under Article 2b. Note that, in many instances, use of the defined information will have been preceded by either observation, collection or retention of the information. However, it may be that the defined information was observed, collected and/or retained with the consent of the individual whose personal or private information it is. From an Article 2b perspective, unless that individual has also consented to its use and the specific use in question the use of the information constitutes a governmental intrusion.

B. “Personal or Private Information”

The crux of Article 2b is understanding what is meant by “personal or private information.” The unmodified definition of information is immensely broad. One need only look at the terms used by Webster’s Dictionary:

knowledge obtained from investigation, study, or instruction; intelligence; news; facts, data . . . a signal or character (as in a communication system or computer) representing data; something (such as a message, experimental data, or a picture) which justifies change in a construct (such as a plan or theory) that represents physical or mental experience or another construct, [etc] . . .⁵⁴

The two modifiers in Article 2b narrow that broad scope down but they remain quite expansive in order to give the leeway necessary in the twenty-first century when technology is constantly expanding the types and uses of information.

The legislative history of Article 2b reflects the intended breadth of the provision. In his Statement of Intent to the full House of

property crime charge based on DNA samples that she had given earlier when she reported that she had been sexually assaulted. Her DNA had been collected by investigators in order to identify her attacker.” *Id.* The practice of using DNA from a rape kit to possibly identify the victim as a potential suspect in another matter is apparently widespread...” *Id.* Rachel Marshall, a spokeswoman for the district attorney’s office, “said that using DNA from rape kits in this way might date back to 2015, when crime databases in the region were revamped.” *Id.* She “said in an email on Wednesday that the office had dropped charges in the case, citing a violation of the Fourth Amendment, which protects people from unreasonable searches and seizures by the government.” *Id.*

54. *Information*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/information> (last visited Mar. 14, 2025).

Representatives on behalf of the House Judiciary Committee, Representative Kurt Wuelper wrote:

CACR 16 formally recognizes our right to privacy in our personal information. We've long protected our privacy in our "person, houses, papers and effects", but this omits the modern ability to collect/analyze personal information, things like health data, information from our DNA, etc. Our personal information, today, is perhaps more important than those items already protected, and CACR 16 will provide the same protection to our personal data that we have for our physical things.⁵⁵

During the Senate hearing on then CACR 16, Senator Bradley said:

When I read this language and I see information, you may think that is digital but one's personal, medical history is also information. I think you are enshrining that right of your personal medical information into the constitution.⁵⁶

Dan McGuire of the NH Liberty Alliance spoke in support of CACR 16 at that same hearing and gave an example:

When the 4th amendment was adopted and section 19 of our constitution was put in physical private things was located somewhere papers, notes etc. They were visible to the eye. This constitutional provision is updating that kind of provision but for the modern world where there is a lot of information about people and it is not visible. Also things like your DNA, if you go to Starbucks and drink a cup of coffee and throw away that cup, it has your DNA on it. The police could pick that cup up and no search warrant is needed.⁵⁷

1. "personal information"

As to the scope of protection of information, the language of Article 2b is much broader than the protection offered by Part I, Art. 19

55. H.R. COMM. REP. ON CACR 16, 2018 Sess. (N.H. 2018) (the proposal that became Part I, Article 2b passing with a vote of 15-2).

56. *Bill as Amended: Hearing on CACR 16 Before the S. Rules & Enrolled B. Comm.*, 2018 Sess. 2 (2018) (statement of Sen. Bradley, Member, S. Rules & Enrolled B. Comm.).

57. *Bill as Amended: Hearing on CACR 16 Before the S. Rules & Enrolled B. Comm.*, 2018 Sess. 2 (2018) (statement of Dan McGuire, Rep. of NH Liberty All.).

or the Fourth Amendment. After all, the very purpose of Article 2b is to provide privacy protections in the 21st century not currently provided by Article 19 or even by the Fourth Amendment, as it has been interpreted by the Supreme Court. As noted above, Article 19 and Fourth Amendment in the first instance offer protection for information based primarily on where it is located or in what it is contained. In the last sixty years, that protection was further refined to include protection for searches that invaded a reasonable expectation of privacy. And so, the inquiry has become whether the search invaded this kind of property or this sense of privacy. That inquiry has become more challenging with 21st century technology, which has dramatically expanded the means and goals of searches.⁵⁸

Article 2b takes a different approach. It identifies the information itself as the primary focus. Definitions of personal information like those of the National Institute for Science & Technology (NIST) and the General Data Protection Regulations (GDPR) in Europe were considered. Both are internationally recognized and well-accepted definitions.

The NIST definition:

Personally Identifiable Information (PII): any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.⁵⁹

This definition is expansive as compared to that which might be covered by any reasonable-expectation-of-privacy analysis. It includes biometric records such as genetic information, digital representations of faces, eye scans, etc. It also includes school records, medical records and the like; information that may already be protected to some extent by statute but will now have constitutional protection.

58. Consider, for example, the issues surrounding privacy in public. See *PRIVACY IN PUBLIC SPACE: REGULATORY AND LEGAL CHALLENGES* (Tjerk Timan, Bryce C. Newell & Bert-Jaap Koops eds., 2017).

59. ERIKA MCCALLISTER, TIM GRANCE & KAREN SCARFONE, *GUIDE TO PROTECTING THE CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION (PII)*, NAT'L INST. OF STANDARDS & TECH., U.S. DEP'T OF COMMERCE, at 2-1 (2010).

The GDPR provides an even more detailed set of definitions:

‘[P]ersonal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.⁶⁰

Article 9 of the GDPR drills down even more specifically with regard to certain types of data:

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited.⁶¹

Article 9 data, commonly referred to as sensitive personal data, gets particularly strong protection under the GDPR.⁶² The term “personal information” is intended to have this kind of broad meaning because the nature of 21st century technology is to develop more and more types of information and, even more importantly, more and more ways to observe, collect, store and use that information. These new types of information and methods for accessing information were unknown in previous centuries and some are still only creatures of the imagination even today.

An obvious example, as Shoshanna Zuboff details in her magisterial book, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, is the ability of tech companies like Google, Facebook and Amazon to collect vast amounts of

60. Regulation 2016/679 of the European Parliament and of the Council of Apr. 27, 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), art. 4(1), 2016 O.J. (L 119) 33 (EU) [hereinafter GDPR]. Note that while these definitions identified here did not go into formal effect until May 2018, the language quoted here had been available at the time of the drafting of Article 2b.

61. GDPR, art. 9(1).

62. *See id.*

data about specific individuals.⁶³ As another modern and increasingly common example, one private company has collected massive collections of digital representations of people's faces into a database that it sells to governments for identification purposes.⁶⁴

More generally, personal information will include common-place data like records of: books withdrawn from the library; shows ordered on Netflix, Amazon Prime, Hulu etc.; commercial transactions; Venmo transactions; financial transactions; whether one voted; for whom one voted; political contributions; social media conversations; data generated by one's car; geo-location data; personal medical data; other private political activity; phone conversations; e-conversations and other digital information.⁶⁵

The purpose of Article 2b's foundational principle was for privacy rights to stop playing catch up with technology and instead to build a right to privacy that could endure generations of technology not yet developed. To accomplish that purpose, Article 2b takes a very different approach to the kind of intrusion on personal information than currently existed under the New Hampshire Constitution, therein the expansive use of the term "personal information," which lies at the core of the foundational principle.

2. "or private information"

It may be that some information is not, on its face, personal but, nonetheless, has been deemed private by a statute, regulation or other mechanism, given the particular circumstances in which that information exists.⁶⁶ That kind of information is also protected by Article 2b. Notably, under Article 2b, personal information need not be private and private information need not be personal. Article 2b does not anticipate every possible circumstance in which information may exist and be subject to intrusion. Instead, the goal was to lay down a foundational principle tailored to the 21st century and beyond.

63. SHOSHANA ZUBOFF, *THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER* (2019).

64. See Kashmir Hill, *The Secretive Company That Might End Privacy as We Know It*, N.Y. TIMES (Nov. 2, 2021), <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>.

65. If the entity with whom records these varieties of information are kept has included an appropriate notice requirement delineating observation, collection, retention and use policies and a explicit and clear consent provision, then the requirements of Article 2b may effectively have been met. See Section III.C(3) below.

66. See, e.g., N.H. REV. STAT. ANN. § 644:9 (2024).

C. “natural, essential, and inherent.”

The Article 2b analysis does not end with the application of the definition of “personal or private information.” The analysis must also consider whether the intrusion survives a strict scrutiny analysis in light the right to be free of intrusion on the defined information is “natural, essential, and inherent.”

1. Analytical Framework

The language of Article 2b creates a fundamental right, thus the description of the right as natural, essential, and inherent. The “natural, essential, and inherent” language is taken directly from Part I, Article 2 itself.⁶⁷ It is the first and the most foundational description of protected rights in the New Hampshire Constitution.

Unlike Art. 19, it does not use a modifier to condition the right, like “unreasonable.” It also does not mention search warrants supported by probable cause. It creates an unconditioned and unambiguous fundamental right. Consequently, courts should view any intrusion on personal or private information as directly affecting a fundamental right in freedom from intrusion on that information. Any such intrusion deprives one of that fundamental right.

It is not the case that any governmental intrusion on personal information is absolutely prohibited in every circumstance. Instead, Article 2b should invoke a strict scrutiny analysis. “To comply with strict judicial scrutiny, the governmental restriction must ‘be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose.’”⁶⁸

The written testimony of one of the authors before the Senate Rules and Enrolled Bills Committee captures this intention:

CACR 16 does not prohibit any and all access to personal and private information. Those who say so are either misunderstanding its legal effect or greatly exaggerating its effect.

Instead, it would effectively change the balancing a court already does when deciding whether the

67. “All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.” Article 2b.

68. *Akins v. Sec’y of State*, 904 A.2d 702, 707–08 (N.H. 2006) (quoting *Follansbee v. Plymouth Dist. Ct.*, 856 A.2d 740, 743 (N.H. 2004)).

governmental interest in gaining such access outweighs the nature and degree of intrusion on an individual's privacy interest. Specifically, it would require the government to now show a compelling state interest in obtaining access to personal and private information before a court would order such access. Sometimes, the state will be able to meet that burden, particularly when public safety is at risk.⁶⁹

It may well be that the government has a compelling interest in gathering certain kinds of personal information. If so, the particular kind of intrusion must be *necessary* to accomplish that purpose. It is not sufficient that the intrusion is one way to accomplish the purpose but that other ways also exist. Bluntly, it must be the only way. For example, if another way exists but it is more cumbersome or expensive, then the intrusion on the compelling interest is not enough, that is, it is not necessary. Nor is the justification that it would be useful to have the personal information enough to merit identification as a *compelling* interest. Any intrusion on the direct fundamental right is constitutionally significant enough and so requires a *compelling* governmental interest implemented in a way that is *necessary*, not merely convenient or most practical.

At first blush, this burden may seem onerous and prone to invalidate any number of well-established government efforts to collect personal information. It may well be that the government has been what will now be viewed as over-reaching in some of its efforts to collect personal information. Article 2b means that society, via the courts, must take a fresh look at the extent to which government collects personal information. Again, an individual's control of their personal information is constitutionally prioritized over the interests of the government.

2. Intersection with Part I, Article 19

Article 19 is also a privacy amendment. As noted above, it indirectly protects personal information in certain locations and containers, using a reasonable-expectation-of-privacy analysis. This requires: "first, that a person have exhibited an actual (subjective) expectation

69. *Constitutional Amendment Concurrent Resolution 16: Hearing on 2018-1936e Before the Senate Rules and Enrolled Bills Committee*, 2018 (N.H. 2018) (written testimony of Albert (Buzz) Scherr).

of privacy and, second, that the expectation be one that society is prepared to recognize as reasonable.”⁷⁰

With Article 2b now adopted, it has the effect of constitutionalizing “personal information” as something in which an individual has a reasonable expectation of privacy. That is, by virtue of the popular support for Article 2b,⁷¹ society has said both that one has an expectation of privacy in personal information and that society views that expectation as reasonable.

For example, in 2011 (seven years before Article 2b was enacted), the New Hampshire Supreme Court concluded that one does not have a reasonable expectation of privacy in one’s internet service subscriber information. Thus, the government’s collection of that information does not count as a search under Article 19 and a warrant (or an exception) is not necessary.⁷² With Article 2b now in the Constitution, not only a new, Article 2b analytical framework is in effect concerning the internet service subscriber information; but also the question *under Article 19* now becomes whether internet service subscriber information is “personal information.” If it is, then the reasonable-expectation-of-privacy requirement has been met. Note that this does not end that kind of police investigation, it simply requires that the government obtain a search warrant supported by probable cause or meet an established warrant exception. And, this analysis occurs separately from any Article 2b strict scrutiny analysis.

In addition, the adoption of an Article 2b analytical framework must not involve the adaptation of Art. 19’s analytical framework. Article 2b and Art. 19 are very differently worded. Article 2b contains no reference to a search warrant supported by probable cause. The reasonable-expectation-of-privacy standard was not intended to be a part of any Article 2b analysis. One drafter and the prime sponsor of Article 2b has said:

So why do we need this amendment? The U.S. Supreme Court has established a two-part test to determine whether personal information can be seized by the government. First, the individual must demonstrate an expectation of privacy, i.e. do something, like closing a door, to show that privacy is desired, and second the expectation of privacy must be reasonable.

70. *State v. Goss*, 834 A.2d 316, 319 (N.H. 2003).

71. Over 81% voted in favor of the amendment.

72. *See State v. Mello*, 27 A.3d 771, 774–75 (N.H. 2011).

Unfortunately, courts and ordinary people don't think the same things are reasonable. Most people would think that they haven't surrendered their DNA by dining out and they haven't made their personal thoughts public by sending texts and emails. Courts think those things are not private. Texts and emails are not encrypted, so anyone with the right equipment can read them. Similarly, you didn't take that fork to the bathroom and wash it.

We need this amendment so that, at least in New Hampshire, *ordinary peoples' expectation of information privacy is the norm*, not the exception, and government "snooping" into our personal and private information is prohibited.⁷³

The analytical framework for Article 2b must start with a clean slate. Otherwise, the adoption of an Article 19 framework renders Article 2b a mere sub-set of Article 19, a result specifically not intended as shown by its separate and primary placement in the constitution

3. *Consent*

Practically, Article 2b's power is not absolute. The government has the ability to build consent provisions into personal-information collection. If the government were to include opt-in provisions in personal-information-gathering statutes, it will have effectively obtained consent for the collection of that information. Done correctly under Article 2b, an opt-in provision would need to provide explicit notice of what the government specifically intended by the observation, collection, retention and use of the information. The subsequent observation, collection, retention, and/or use must also not exceed that to which consent was given.

The New Hampshire legislature has shown the capability of making this adaptation to governmental information-collecting processes. In the 2021–2022 legislative session, it amended RSA 141-C:20-f to add the following new paragraph:

II-a. Each patient, or the patient's parent or guardian if the patient is a minor, shall be given the opportunity to opt-out or opt-in to the immunization registry. No patient's personal data, such as name, address, date of birth, immunization, or vaccination information, shall

73. Neal Kurk, *Vote for Your Privacy on Question 2*, UNION LEADER (Nov. 2, 2018), <https://perma.cc/A2EJ-UT5U>.

be entered into the registry without the explicit, written or electronic consent of the patient, or the patient's parent or guardian.⁷⁴

In the 2020–2021 session, the legislature added an explicit consent requirement to consensual car searches. It required that a police officer who has requested to search an individual's car both inform the driver that they have a constitutional right to refuse to consent and obtain documentation of the driver's consent to have the car searched. Without such proof, the results of a consensual search would be inadmissible.⁷⁵ Prior to passage of this provision, an officer did not have to either inform the driver of this constitutional right or document any such consent. Though the driver already had that constitutional right, the legislature saw fit to amend the statute to embed a much more explicit set of consent requirements, effectively a documented opt-in provision.

Thus, the legislature has shown that it is capable of making whatever adaptations are necessary to meet the kind of constitutional requirement imposed by Article 2b. Going forward, Article 2b effectively *requires* constitutionally sufficient respect for an intrusion on personal or private information. To paraphrase then Representative Kurk's statement: the state must respect that *ordinary peoples' expectation of information privacy is now the norm, not the exception*.⁷⁶

CONCLUSION

21st century information is not 18th century information. The types and nature of information and the ways to access information are ever-expanding. They are profoundly different from that which existed or was even contemplated in the 18th century when Part I, Article 19 of the New Hampshire Constitution was written. Individuals are losing ground in their ability to keep control of their personal information as Article 19 and the Fourth Amendment remain too frequently bound in by the limits of the location/container paradigm even amidst the reasonable-expectation-of-privacy analysis. And even today, we cannot even conceive of the forms and types of access to information that the future holds.

74. N.H. REV. STAT. ANN. § 141-C:20-f (passed June 24, 2022; effective date July 1, 2023.)

75. N.H. REV. STAT. ANN. § 595-A:10 (2021).

76. GDPR, art. 4(1).

Article 2b is a statement of principle about information privacy for the present and the future. It updates New Hampshire citizens' right to be "left alone;" to be the ones in control of their personal information in the first instance, not the state. Different people draw different lines when it comes to which of their information should be private. Therein lies much of the essence of privacy—it is intensely personal. Part I, Article 2b gives the individual, in the first instance, the right to draw those lines, not the government. It exists as a forward-looking principle designed for the individual.

More broadly, Article 2b operates as a 21st century "ordinance of the people" and "a dynamic set of substantive instructions and limitations on government that is adopted and jealously maintained by the people themselves."⁷⁷ The constitutional amendment process in New Hampshire is a difficult one. Yet, Article 2b reflects a strong popular will to rein in government conduct regarding personal and private information. Rather than an experiment in the laboratory of state constitutional jurisprudence, Article 2b stands as a model statement of principle sensitive to both current and a forward-looking perspective.

77. Marshfield, *supra* note 3, at 859–60.

Exhibit 36

CACR16

LEGISLATIVE HISTORY

LEG001

CACR 16 - VERSION ADOPTED BY BOTH BODIES

22Feb2018... 0118h
10May2018... 1936-EBA

2018 SESSION

18-2643
06/10

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION **16**

RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental intrusion is natural, essential, and inherent.

SPONSORS: Rep. Kurk, Hills. 2; Rep. Cushing, Rock. 21

COMMITTEE: Judiciary

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a natural, essential, and inherent right to live free of governmental intrusion.

Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears ~~[in brackets and struckthrough]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

22Feb2018... 0118h
10May2018... 1936-EBA 18-2643
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

CONCURRENT RESOLUTION PROPOSING CONSITUTIONAL AMENDMENT

RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental intrusion is natural, essential, and inherent.

*Be it Resolved by the House of Representatives, the Senate concurring, that the
Constitution of New Hampshire be amended as follows:*

- I. That the first part of the constitution be amended by inserting after article 2-a the following new article:
[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.
- II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2018.
- III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2018 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2018 session of the general court shall be approved.
- IV. That the wording of the question put to the qualified voters shall be:

LEG002

“Are you in favor of amending the first part of the constitution by inserting after article 2-a a new article to read as follows:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.”

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote “Yes” or “No.” If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words “Questions Relating to Constitutional Amendments proposed by the 2018 General Court” shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

General Court of New Hampshire - Bill Status System

Docket of CACR16[Docket Abbreviations](#)

Bill Title: (New Title) Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Official Docket of **CACR16**:

Date	Body	Description
11/6/2017	H	Introduced 01/03/2018 and referred to Judiciary HJ 1 P. 25
1/3/2018	H	Public Hearing: 01/10/2018 01:00 PM LOB 208
2/7/2018	H	Executive Session: 02/06/2018 LOB 208
2/14/2018	H	Majority Committee Report: Ought to Pass with Amendment #2018-0118h (NT) for 02/22/2018 (Vote 15-2; RC) HC 7 P. 19
2/14/2018	H	Minority Committee Report: Refer for Interim Study
2/22/2018	H	Amendment #2018-0118h : AA VV 02/22/2018 HJ 5 P. 38
2/22/2018	H	FLAM #2018-0757h (NT) (Rep. T. Smith): AF DV 79-255 02/22/2018 HJ 5 P. 39
2/22/2018	H	Ought to Pass with Amendment 0118h: MA DV 235-96 By Necessary Three-Fifths Vote 02/22/2018 HJ 5 P. 39
3/13/2018	S	Introduced 03/08/2018 and Referred to Rules and Enrolled Bills; SJ 7
3/21/2018	S	Hearing: 03/29/2018, Room 103, SH, 10:00 am; SC 14
4/25/2018	S	Committee Report: Ought to Pass, 05/02/2018; SC 19
5/2/2018	S	Ought to Pass, RC 15Y-9N, MA, by Necessary 3/5; OT3rdg; 05/02/2018 SJ 15
5/15/2018	S	Enrolled Bill Amendment #2018-1936e Adopted, VV, (In recess of 05/10/2018); SJ 18
5/15/2018	H	Enrolled Bill Amendment #2018-1936e : AA VV 05/10/2018

 NH House

 NH Senate

HOUSE FILE

Committee Report

REGULAR CALENDAR

February 6, 2018

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Judiciary to which
was referred CACR 16,

AN ACT relating to privacy. Providing that an
individual's right to live free of governmental
interference is fundamental. Having considered the
same, report the same with the following amendment,
and the recommendation that the bill OUGHT TO PASS
WITH AMENDMENT.

Rep. Kurt Wuelper

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

LEG007

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	CACR 16
Title:	relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental.
Date:	February 6, 2018
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 0118h

STATEMENT OF INTENT

CACR 16 formally recognizes our right to privacy in our personal information. We've long protected our privacy in our "person, houses, papers and effects", but this omits the modern ability to collect/analyze personal information, things like health data, information from our DNA, etc. Our personal information, today, is perhaps more important than those items already protected, and CACR 16 will provide the same protection to our personal data that we have for our physical things.

Vote 15-2.

Rep. Kurt Wuelper
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

LEG008

REGULAR CALENDAR

Judiciary

CACR 16, relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: REFER FOR INTERIM STUDY.**

Rep. Kurt Wuelper for the Majority of Judiciary. CACR 16 formally recognizes our right to privacy in our personal information. We've long protected our privacy in our "person, houses, papers and effects", but this omits the modern ability to collect/analyze personal information, things like health data, information from our DNA, etc. Our personal information, today, is perhaps more important than those items already protected, and CACR 16 will provide the same protection to our personal data that we have for our physical things. **Vote 15-2.**

Original: House Clerk
Cc: Committee Bill File

LEG009

COMMITTEE REPORT

Majority
SPLIT

COMMITTEE:

Judiciary

BILL NUMBER:

CACR 16

TITLE:

relating to privacy

DATE:

2.6.18

CONSENT CALENDAR:

YES ☐

NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS W/ AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

0118h

STATEMENT OF INTENT:

REGULAR CALENDAR

Majority

Judiciary

CACR 16, relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental. **MAJORITY: OUGHT TO PASS WITH AMENDMENT.**
MINORITY: REFER FOR INTERIM STUDY.

Rep. Kurt Wuelper for the Majority of Judiciary. CACR 16 formally recognizes our right to privacy in our personal information. We've long protected our privacy in our "person, houses, papers and effects", but this omits the modern ability to collect/analyze personal information, things like health data, information from our DNA, etc. Our personal information, today, is perhaps more important than those items already protected, and CACR 16 will provide the same protection to our personal data that we have for our physical things. Vote 15-2.

12/13/17

COMMITTEE VOTE:

15-2

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep.

K. Wuelper

For the Committee

COMMITTEE REPORT

COMMITTEE: _____

BILL NUMBER: CACK 16

TITLE: _____

DATE: 2/6/18 CONSENT CALENDAR: YES ☐ NO ☒

☒ OUGHT TO PASS

☒ OUGHT TO PASS W/ AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

2018-0118h

STATEMENT OF INTENT:

COMMITTEE VOTE: 16 15-2

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. _____

For the Committee



Amendment to CACR 16

1 Amend the title of the resolution by replacing it with the following:

2

3 RELATING TO: privacy.

4 PROVIDING THAT: an individual's right to live free of governmental intrusion is natural,
5 essential, and inherent.

6

7 Amend the resolution by replacing paragraph I with the following:

8

9 I. That the first part of the constitution be amended by inserting after article 2-a the
10 following new article:

11 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in
12 private or personal information is natural, essential, and inherent.

13

14 Amend the resolution by replacing paragraph IV with the following:

15

16 IV. That the wording of the question put to the qualified voters shall be:

17 "Are you in favor of amending the first part of the constitution by inserting after article 2-a new
18 article to read as follows:

19 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in
20 private or personal information is natural, essential, and inherent."



2018-0118h

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a natural, essential, and inherent right to live free of governmental intrusion.

REGULAR CALENDAR

February 6, 2018

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Judiciary to which
was referred CACR 16,

AN ACT relating to privacy. Providing that an
individual's right to live free of governmental
interference is fundamental. Having considered the
same, and being unable to agree with the Majority,
report with the recommendation that the bill be
REFERRED FOR INTERIM STUDY.

Rep. Timothy Horrigan

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

LEG014

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	CACR 16
Title:	relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental.
Date:	February 6, 2018
Consent Calendar:	REGULAR
Recommendation:	REFER FOR INTERIM STUDY

STATEMENT OF INTENT

The minority agrees with the majority that people have a natural right to privacy. The proposed language, however, was vague and subject to misinterpretation by the courts. The minority is also concerned that the amendment might interfere with legitimate law enforcement activities. This amendment is not ready to be placed on the general election ballot.

Rep. Timothy Horrigan
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

LEG015

REGULAR CALENDAR

Judiciary

CACR 16, relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental. **REFER FOR INTERIM STUDY.**

Rep. Timothy Horrigan for the **Minority** of Judiciary. The minority agrees with the majority that people have a natural right to privacy. The proposed language, however, was vague and subject to misinterpretation by the courts. The minority is also concerned that the amendment might interfere with legitimate law enforcement activities. This amendment is not ready to be placed on the general election ballot.

Original: House Clerk
Cc: Committee Bill File

LEG016

MINORITY REPORT

COMMITTEE: House Judiciary

BILL NUMBER: CACR 16

TITLE: relating to privacy

DATE: 2-6-18 CONSENT CALENDAR: YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☒ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

REGULAR CALENDAR

Judiciary

CACR 16, relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental. **REFER FOR INTERIM STUDY.**

Rep. Timothy Horrigan for the **Minority** of Judiciary. The minority agrees with the majority that people have a natural right to privacy. The proposed language, however, was vague and subject to misinterpretation by the courts. The minority is also concerned that the amendment might interfere with legitimate law enforcement activities. This amendment is not ready to be placed on the general election ballot.

is not ready to be placed on the general election ballot.

COMMITTEE VOTE: 15-2 OTV

• Copy to Committee Bill File

RESPECTFULLY SUBMITTED,

Rep. Timothy Horrigan
For the Minority

Voting Sheets

LEG018

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION on CACR 16

BILL TITLE: relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental.

DATE: February 6, 2018

LOB ROOM: 208

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Janvrin

Seconded by Rep. Rouillard

AM Vote: 16-1

Amendment # 2018-0118h

Moved by Rep. Wuelper

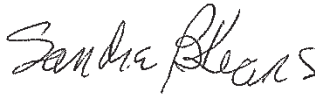
Seconded by Rep. Rouillard

Vote: 15-2

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep Sandra Keans, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/29/2018 1:55:35 PM
Roll Call Committee Registers
Report

2018 SESSION

JUDICIARY

Bill #: LACR 16

Title:

*Relating to privacy. Providing that an individual's
right to live free of governmental interference is
fundamental.*

PH Date: 01 / 10 / 2018

Exec Session Date: 2 / 6 / 18

Motion: OTPA

Amendment #: 2018-0118h

MEMBER

YEAS

NAYS

Hagan, Joseph M. Chariman	✓	
Rouillard, Claire A. Vice Chairman	✓	
Hopper, Gary S.	✓	
Sylvia, Michael J.	✓	
Hull, Robert <i>Emerick, Tracy</i>	✓	
Wuelper, Kurt F.	✓	
Graham, Robert V.	✓	
Hynes, Dan	✓	
Janvrin, Jason A.	✓	
Leavitt, John A.	96	
Wall, Janet G.	✓	
Horrigan, Timothy O.		✓
Berch, Paul S.		✓
Smith, Suzanne J.	✓	
Kenison, Linda B.	✓	
Keans, Sandra B. Clerk	✓	
DiLorenzo, Charlotte I.	✓	
Altschiller, Debra	✓	
TOTAL VOTE:		

15

-2

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on CACR 16

BILL TITLE: relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental.

DATE: 2/6/9

LOB ROOM: 208

MOTION: (Please check one box)

☒ OTP ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # 2018 0118h
(if offered)
☐ Interim Study (2nd year)

Moved by Rep. JANVRIN Seconded by Rep. ROUILLARD Vote: 16-1

MOTION: (Please check one box)

☐ OTP ☒ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment #
(if offered)
☐ Interim Study (2nd year)

Moved by Rep. WELPER Seconded by Rep. ROUILLARD Vote: 15-2

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment #
(if offered)
☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment #
(if offered)
☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES ☒ NO

Minority Report? ☒ Yes _____ No If yes, author, Rep: HERRIGAN Motion: ITL

Respectfully submitted: _____

Rep Sandra Keans, Clerk

LEG021



Amendment to CACR 16

1 Amend the title of the resolution by replacing it with the following:

2

3 RELATING TO: privacy.

4 PROVIDING THAT: an individual's right to live free of governmental intrusion is natural,
5 essential, and inherent.

6

7 Amend the resolution by replacing paragraph I with the following:

8

9 I. That the first part of the constitution be amended by inserting after article 2-a the
10 following new article:

11 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in
12 private or personal information is natural, essential, and inherent.

13

14 Amend the resolution by replacing paragraph IV with the following:

15

16 IV. That the wording of the question put to the qualified voters shall be:

17 "Are you in favor of amending the first part of the constitution by inserting after article 2-a new
18 article to read as follows:

19 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in
20 private or personal information is natural, essential, and inherent."



2018-0118h

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a natural, essential, and inherent right to live free of governmental intrusion.

Hearing Minutes

LEG024

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON CACR 16

BILL TITLE: relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental.

DATE: January 10, 2018

LOB ROOM: 208

Time Public Hearing Called to Order: 1:00 pm

Time Adjourned: 2:05 pm

Committee Members: Reps. Hagan, Rouillard, Hopper, Sylvia, Wuelper, R. Graham, Wall, Horrigan, Berch, Kenison, Altschiller, Sullivan and Keans

Bill Sponsors:

Rep. Kurk

Rep. Cushing

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Kurk, prime sponsor, introduced the bill to the committee and spoke to the bill.

- New Hampshire Constitution, Article 19, Search and physical seizure, applies to government only
- Important protection - This CACR enhances in terms of personal information ie DNA sample
- Could have statute but this is higher level of protection.
- It is not unique to California, Florida and Montana
- New Hampshire Supreme Court has gone further than the Federal

Rep. Berch: Q. Parameters -- dossier maintenance by, for example, law enforcement? Ans. Not applicable. State has compelling interest in protecting society from crime. Applicability example? Go to stockbroker or neighbor that's been collected. Can victim go to court to get information on you?

Rep. Hagan: Q. Where will it apply? Ans. Collecting information from public record and compiling.

Rep. Kenison: Q. Apply to background checks? Ans. Generally must give permission if you want the job.

Rep. Berch: Q. Health data during an outbreak or traveler? Ans. Must show need.

Rep. Hopper: Q. Cameras throughout Manchester? Ans. At current law, New Hampshire may not set up and identify face on highways. Nothing is stored. Concord has crosswalk that observes lights/shadows not people specific.

Rep. Renny Cushing, co-sponsor - support
Complete support of bill, to be left alone.

Rep. Kenison: Q. Personal information is being collected all the time. Ans. Agreed.

Rep. Berch: Q. Accomplishes? Does this add to privacy, what does this currently do?
Ans. With advance of technology --- Yes.

Professor Albert Buzz Sch err, University of New Hampshire Law – support

- 25 years ago no cell phone, DNA, Internet expansion; hardly any information to collect.
- Generally, haphazard approach to protect through statutes.
- This plants a definitive flag for court to look at.
- When information is seized by police, did person have a reasonable expectation of privacy?

Rep. Rouillard: Q. Collection but also dissemination? Ans. Depends on how it is gathered -- balancing act. If volunteered, not covered. If shared with others.

Rouillard: Q. Info filed in court case, courts do release (Douglas Case) would this effect? Ans. Adds extra weight to balance. Much of information given to court is voluntary to advance.

Rep. Keans: Q. Difficulty of getting search warrant? Ans. Depends

Rep. Berch: Q. Claim this raises the bar? Ans. No. Police all the time get personal information. "expectation of privacy". Adds personal information just as search of home, car or body. Would prevent DNA from abandoned coffee cup at restaurant. Many districts then file results even if not pertinent to crime or not a party.

Rep. Rouillard: Q. Criminal DNA in system from previous crime can they share with another jurisdiction. Ans. May or may not.

***Rep. Dan McQuire, - support**

Submitted written testimony from ACLU. Websites, Internet, etc are new expectations.

Rep. Ian Freeman, Keene, NH New Hampshire Liberty Party - support

Supports original bill, but not the amendment.

Harriet Cady, Deerfield, NH, representing self - support

Respectfully submitted,



Rep. Sandra B. Keans,
Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON CACR 16

BILL TITLE: relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental.

DATE: 1-10-18

ROOM: 208

Time Public Hearing Called to Order: 1:00

Time Adjourned: 2:05

(please circle if present)

Committee Members: Reps. Hagan, Rouillard, Hopper, Sylvia, Hull, Wuelper, R. Graham, Hynes, Janvrin, Leavitt, Wall, Horrigan, Berch, Kenison, DiLorenzo, Mulligan, Altschiller and Keans

Bill Sponsors:

Rep. Kurk

Rep. Cushing

AMENDMENT # 2018-0067 KURK REPEALED IN

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

① REP KURK: SPONSOR: NH CONSID. ART 19. SEARCH & SEIZURE. ^{PHYSICAL} ^{APPLIES TO GOVT. ONLY}

IMPORTANT PROTECTION - THIS CACR ENHANCES IN TERMS OF PERSONAL INFORMATION - IE DNA SAMPLE. COULD HAVE STATUTE BUT THIS IS HIGHER LEVEL OF PROTECTION. NOT UNIQUE TO CA, FL, MONT. NH SUPREMACY HAS GONE FURTHER THAN FEDERAL.

② BERCH 2 PARAMETERS - DOSSIER MAINTENANCE - BY FOR EXAMPLE LAW ENFORCEMENT? ANS. NOT APPLICABLE STATE HAS COMPELLING INTEREST IN PROTECTING SOCIETY FROM CRIME.

APPLICABILITY EXAMPLE? GO TO STOCK BROKER OR NEIGHBOR THATS BEEN COLLECTED - CAN VICTIM GO TO COURT TO GET INFO ON YOUR.

③ HAGAN? WHERE IT WILL APPLY? ^{ANS} COLLECTING INFO FROM PUBLIC RECORD & COMPILE.

④ KENISON? - APPLY TO BACKGROUND CHECKS - GENERALLY ^{ANS.} MUST GIVE PERMISSION IF YOU WANT JOB.

LEG027

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # CA 16 Date January 10, 2008
Committee Judiciary

**** Please Print All Information ****

[illegible]

Testimony



Written Testimony by Jeanne Hruska, ACLU-NH
House Judiciary Committee
CACR16
January 10, 2018

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over forty-five years. I am here today to ask that this Committee recommend that the House *ought to pass* CACR16, *as amended with the word "information."*

New Hampshire never had a need to comprehensively address information privacy protection until the late 20th and early 21st Century. Before then, statutory protection and the state's libertarian spirit were by and large adequate to manage the occurrences of intrusions on personal information and data. That is no longer true. The onslaught of governmental and commercial intrusions into our informational privacy is an overwhelming and seemingly unstoppable tide. Increasingly, our statutory protections are more patchwork than comprehensive as the potential intrusions diversify and multiply. This CACR would remedy that for New Hampshire by enshrining in our state constitution a specific right in which our state firmly believes. While our federal and state constitutions' substantive due process protections have been interpreted by the courts as encompassing a right to privacy, it is important, as a reflection of our libertarian principles, to affirmatively and explicitly memorialize these protections in our state constitution. We respectfully urge the Committee to recommend that the House *ought to pass* CACR 16, *as amended.*

Amendments

Rep. Kurk, Hills. 2
January 9, 2018
2018-0067h
06/10



Amendment to CACR 16

*Revised 1.12.18
2018-0118h*

1 Amend the title of the resolution by replacing it with the following:
2

3 RELATING TO: privacy.

4 PROVIDING THAT: an individual's right to live free of governmental interference is natural,
5 essential, and inherent.
6

7 Amend the resolution by replacing paragraph I with the following:
8

9 I. That the first part of the constitution be amended by inserting after article 2-a the
10 following new article:

11 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental interference
12 in private or personal matters is natural, essential, and inherent.
13

interference

14 Amend the resolution by replacing paragraph IV with the following:
15

16 IV. That the wording of the question put to the qualified voters shall be:

17 "Are you in favor of amending the first part of the constitution by inserting after article 2-a new
18 article to read as follows:

19 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental interference
20 in private or personal matters is natural, essential, and inherent."



2018-0067h

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a natural, essential, and inherent right to live free of governmental interference.

Bill as Introduced

LEG034

CACR 16 - AS INTRODUCED

2018 SESSION

18-2643
06/10

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION **16**

RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental interference is fundamental.

SPONSORS: Rep. Kurk, Hills. 2; Rep. Cushing, Rock. 21

COMMITTEE: Judiciary

ANALYSIS

This constitutional amendment concurrent resolution provides that there is a fundamental right to live free of governmental interference.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears ~~[in brackets and struck through]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

LEG035

CACR 16 - AS INTRODUCED

18-2643
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT

RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental interference is fundamental.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

1 I. That the first part of the constitution be amended by inserting after article 2-a the
2 following new article:

3 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental interference
4 in private or personal matters is fundamental.

5 II. That the above amendment proposed to the constitution be submitted to the qualified
6 voters of the state at the state general election to be held in November, 2018.

7 III. That the selectmen of all towns, cities, wards and places in the state are directed to
8 insert in their warrants for the said 2018 election an article to the following effect: To decide
9 whether the amendments of the constitution proposed by the 2018 session of the general court shall
10 be approved.

11 IV. That the wording of the question put to the qualified voters shall be:
12 "Are you in favor of amending the first part of the constitution by inserting after article 2-a new
13 article to read as follows:

14 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental interference
15 in private or personal matters is fundamental."

16 V. That the secretary of state shall print the question to be submitted on a separate ballot
17 or on the same ballot with other constitutional questions. The ballot containing the question shall
18 include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made
19 in either of the squares, the ballot shall not be counted on the question. The outside of the ballot
20 shall be the same as the regular official ballot except that the words "Questions Relating to
21 Constitutional Amendments proposed by the 2018 General Court" shall be printed in bold type at
22 the top of the ballot.

23 VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment,
24 it becomes effective when the governor proclaims its adoption.

LEG036

Floor Amendment to CACR 16

1 Amend the title of the resolution by replacing it with the following:

2
3 RELATING TO: privacy.

4
5 PROVIDING THAT: an individual's right to live free of unauthorized interference is natural,
6 essential, and inherent.

7
8 Amend the resolution by replacing paragraph I with the following:

9
10 I. That the first part of the constitution be amended by inserting after article 2-a the
11 following new article:

12 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from unauthorized interference
13 in private or personal information is natural, essential, and inherent.

14
15 Amend the resolution by replacing paragraph IV with the following:

16
17 IV. That the wording of the question put to the qualified voters shall be:
18 "Are you in favor of amending the first part of the constitution by inserting after article 2-a a new
19 article to read as follows:

20 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from unauthorized interference
21 in private or personal information is natural, essential, and inherent."

Floor Amendment to CACR 16
- Page 2 -

2018-0757h

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a fundamental right to live free of unauthorized interference.



State of
New Hampshire

HOUSE RECORD

Second Year of the 165th General Court

Calendar and Journal of the 2018 Session

Web Site Address: www.gencourt.state.nh.us

Vol. 40

Concord, N.H.

Friday, February 16, 2018

No. 7

Contains: Legislative Ethics Advisory Opinion 2017-3; House Deadlines; Bills Laid on Table; House Bills Amended by Senate; Revised Fiscal Notes; Reports and Amendments; Meetings and Notices

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

The House will meet on Thursday, February 22nd, at 10:00 a.m.

Future sessions will be scheduled for March 6th (if necessary); March 7th (and 8th if necessary); March 21st (and 22nd if necessary).

There will not be a House session during the week of February 26th, so that week may be used as a break for those committees which have already met the March 1st deadline of reporting House bills not in a second committee.

Please note that a recording of the webinar on sexual harassment prevention which was offered online last week by the National Conference of State Legislatures can now be accessed at <http://bit.ly/2E21erm> by clicking on the box entitled VIEW THE WEBINAR.

Last week, I was asked about the ability of a member to speak on the floor and what our practice is and has been. I stated at that time that I would clarify the matter for the entire membership. Our House Rules speak to the fact that members may file their names with the Clerk, who shall then supply the list to the Speaker (Rule 12). It has always been the preference of presiding officers to have that information in a timely manner, as there is no accounting for the length of time a bill may take on the floor. If a member hasn't signed up ahead of time, the bill will likely be taken up without debate. That isn't to say a member is not entitled to approach the Clerk at the time a bill is being taken up and ask to speak. However, if any presiding officer does not hear the Clerk or the request being made, it will likely be overlooked. For as long as I have been a member, the practice of this House has been that the person defending the committee position has the last word. If a member approaches and asks to speak at that point on a contrary position, he or she has been turned away. I will also state that practice has been at various times, if asked for, that the Speaker has accepted the previous question on a bill which limits additional members from signing up to speak on a bill. It is a fundamental principle of parliamentary law that a member has a right to speak; it is also a fundamental principle that the presiding officer is supposed to be fair in making rulings on the floor during session. That principle is one I seek to strive for at all times.

State offices will be closed on Monday, February 19th, in observance of Presidents' Day. I wish all legislators and staff a safe and relaxing holiday weekend.

Gene G. Chandler, Speaker

NOTICE

There will be a meeting of chairs and vice chairs on Tuesday, February 20th, at 9:00 a.m. in Rooms 202-204 of the Legislative Office Building.

Gene G. Chandler, Speaker

NOTICE

LEGISLATIVE ETHICS COMMITTEE

The Legislative Ethics Committee has voted to issue the following advisory opinion, which is printed below in its entirety.

HB 1659, establishing a committee to study possible health and safety impacts of the alkali-silica reaction on the seacoast. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. William Marsh for the **Majority** of Health, Human Services and Elderly Affairs. This bill is duplicative of ongoing oversight by the Nuclear Regulatory Commission. Further, the short time frame of the proposed committee is highly unlikely to accomplish anything of significance before the November 2018 expiration. Therefore, this should be found Inexpedient to Legislate. **Vote 14-5.**

Rep. Mindi Messmer for the **Minority** of Health, Human Services and Elderly Affairs. The minority of the committee feel that this bill would provide an important function to oversee serious concerns about concrete degradation at Seabrook Nuclear Power Plant. We heard in testimony from Nextera that more than half of the concrete structures have degraded to stage 3, the most serious. The minority of the committee is concerned that the situation represents a serious public health risk to the entire Northeast and specifically to the seacoast where there is a CDC-defined double pediatric cancer cluster and more than two times the expected rate of pediatric brain cancer.

JUDICIARY

CACR 12, relating to the election of judges. Providing that judges be elected for specific terms. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kurt Wuelper for the **Majority** of Judiciary. This resolution changes the way we select judges from appointment for life to election for a term to be specified by the General Court. This change will give the voting public a voice about who will be making crucial decisions that have deep and wide impact on all our lives. This resolution will add a measure of accountability for judges that is currently absent. Under the existing system, judges serve as long as they exhibit “good behavior.” In practice, this amounts to forever. This resolution would empower the people to remove a judge when they consider his/her decisions outrageous. Opponents argue that this resolution will “politicize” the judicial selection process, but our system is already political, as one political party typically holds both the Governor’s office and control of the Executive Council and thereby the appointment process. Thirty eight states have some type of judicial elections for their supreme court and 39 states hold elections for trial courts without issue, further refuting the “politicization” argument. This resolution puts our faith in our voters and offers those who know the person best to evaluate his/her performance. **Vote 9-8.**

Rep. Paul Berch for the **Minority** of Judiciary. The proposed constitutional amendment would end New Hampshire’s current and widely admired system of judicial selection – utilizing a selection commission, consisting of lawyers and non-lawyers from all Executive Council districts, which evaluates and recommends qualified candidates. From the group of qualified nominees, the Governor selects a nominee, who must then be approved by the Executive Council. Thus, our present system supports a merit selection system, which includes major roles for popularly elected officials. There appear to be remarkably few complaints about the quality of N.H. judges. Election of judges, widely used in the past, has become increasingly disfavored. Judicial elections impair the administration of justice because judges no longer appear to be unbiased and impartial – they seek money and votes in order to be elected. Judges, due to our campaign disclosure laws, will know who contributed financially and who refused. Judges will no longer be perceived as neutral arbiters of cases and controversies. The people who lose out will be the little guys and the politically powerless – the ones who cannot compete with big business and big money. The American ideal has been that our courts are the last place that big money should decide the results. If it is not broke, don’t fix it! The minority believes we don’t need the best justice that money can buy.

CACR 16, relating to privacy. Providing that an individual’s right to live free of governmental interference is fundamental. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: REFER FOR INTERIM STUDY.**

Rep. Kurt Wuelper for the **Majority** of Judiciary. This constitutional amendment formally recognizes our right to privacy in our personal information. We’ve long protected our privacy in our “person, houses, papers and effects,” but this omits the modern ability to collect/analyze personal information, things like health data, information from our DNA, etc. Our personal information, today, is perhaps more important than those items already protected, and this resolution will provide the same protection to our personal data that we have for our physical things. **Vote 15-2.**

Rep. Timothy Horrigan for the **Minority** of Judiciary. The minority agrees with the majority that people have a natural right to privacy. The proposed language, however, was vague and subject to misinterpretation by the courts. The minority is also concerned that the amendment might interfere with legitimate law enforcement activities. This amendment is not ready to be placed on the general election ballot.

HB 1576, creating managed asset trusts for real property. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Gary Hopper for the **Majority** of Judiciary. This bill creates a new type of trust for people to acquire property such as a home or business. The trust could be set up by an employer for an employee; the employer would buy a house, set it up in a trust, and, over time, the employee would gain equity in the property by paying the trust and eventually be able to buy the home. We heard from the Rockingham County Register

LEG040

NEW HAMPSHIRE GENERAL COURT



JOURNAL of the HOUSE OF REPRESENTATIVES

Containing the 2018 Session
January 3, 2018
through
September 13, 2018
and
the Special Session of
July 25, 2018

GENE G. CHANDLER
SPEAKER

PAUL C. SMITH
CLERK

WALTER SWORD
SERGEANT-AT-ARMS

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Rep. Berch moved the minority committee report of Inexpedient to Legislate. Minority committee report was adopted.

CACR 16, relating to privacy. Providing that an individual's right to live free of governmental interference is fundamental. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: REFER FOR INTERIM STUDY.**

Rep. Kurt Wuelper for the Majority of Judiciary. This constitutional amendment formally recognizes our right to privacy in our personal information. We've long protected our privacy in our "houses, papers and effects," but this omits the modern ability to collect/analyze personal information, things like health data, information from our DNA, etc. Our personal information, today, is perhaps more important than those items already protected, and this resolution will provide the same protection to our personal data that we have for our physical things. Vote 15-2.

Rep. Timothy Horrigan for the Minority of Judiciary. The minority agrees with the majority that people have a natural right to privacy. The proposed language, however, was vague and subject to misinterpretation by the courts. The minority is also concerned that the amendment might interfere with legitimate law enforcement activities. This amendment is not ready to be placed on the general election ballot.

Majority Amendment (0118h)

Amend the title of the resolution by replacing it with the following:

RELATING TO:

privacy.

PROVIDING THAT:

an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Amend the resolution by replacing paragraph I with the following:

I. That the first part of the constitution be amended by inserting after article 2-a the following new article:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.

Amend the resolution by replacing paragraph IV with the following:

IV. That the wording of the question put to the qualified voters shall be:

"Are you in favor of amending the first part of the constitution by inserting after article 2-a a new article to read as follows:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a natural, essential and inherent right to live free of governmental intrusion. Majority committee amendment was adopted.

The question now being adoption of the majority committee report of Ought to Pass with Amendment. Rep. Timothy Smith offered floor amendment (0757h).

Floor Amendment (0757h)

Amend the title of the resolution by replacing it with the following:

RELATING TO:

privacy.

PROVIDING THAT:

an individual's right to live free of unauthorized interference in private or personal information is natural, essential, and inherent.

Amend the resolution by replacing paragraph I with the following:

I. That the first part of the constitution be amended by inserting after article 2-a the following new article:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from unauthorized interference in private or personal information is natural, essential, and inherent.

Amend the resolution by replacing paragraph IV with the following:

IV. That the wording of the question put to the qualified voters shall be:

"Are you in favor of amending the first part of the constitution by inserting after article 2-a a new article to read as follows:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from unauthorized interference in private or personal information is natural, essential, and inherent."

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a fundamental right to live free of unauthorized interference.

Rep. Timothy Smith spoke in favor.

Rep. Kurk spoke against.

On a division vote, with 79 members having voted in the affirmative, and 255 in the negative, floor amendment (0757h) failed.

The question now being adoption of the majority committee report of Ought to Pass with Amendment.

Rep. Horrigan spoke against.

Rep. Wuelper spoke in favor and yielded to questions.

On a division vote, with 235 members having voted in the affirmative, and 96 in the negative, the majority committee report was adopted by the necessary three-fifths vote and the bill was ordered to third reading.

MOTION TO PRINT DEBATE

Rep. Timothy Smith moved that the debate on **CACR 16**, Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent, be printed in the Permanent Journal.

Motion was adopted.

DEBATE ON CACR 16

Speaker Chandler: The question is on the adoption of the majority committee amendment, 0118h, and printed in House Record 7 on pages 33-34. Are you ready for the question? All those in favor of adopting the committee amendment, signify by saying Aye; opposed, Nay. The Ayes have it and the committee amendment is adopted. The bill is on second reading open to further amendment. Rep. Tim Smith moves the adoption of floor amendment 0757h, which is in your seat pockets. Rep. Smith is recognized to speak in favor of his floor amendment.

Representative Timothy Smith: Thank you, Mister Speaker. So, who doesn't like a right to privacy? I certainly do. I almost introduced a right to privacy amendment a couple of terms ago myself. The issue is the specific language in this amendment. It says that the individual has a right to live free from government intrusion, blah, blah, blah. That's fine. The problem is that language opens up the State of New Hampshire to a flood of lawsuits from people who say that their right to privacy protects them from the DMV knowing whether or not they wear glasses. From the town welfare office knowing how much income they have and they want their benefits anyway. The unintended consequences of making that special carve-out from government intrusion are enormous, never mind all of the federal things people might need to do, like filing your taxes with the IRS that you have to put your social security number on. We already have some carve-outs in New Hampshire laws, like if you want to keep your social security number out of the DMV records and stuff. We're capable of processing specific exemptions like that, but if we're going to do a line item right to privacy, which I'll be voting for, I certainly think that we deserve to get it right. The reason the language needs to be really specific and really correct, just look at the national debate going on right now about the meaning of the 2nd amendment. I think everyone in this room would absolutely love it if there were some extra footnotes from the founding fathers that maybe cleared up exactly what they were talking about one way or the other. This is going to be the subject of case law and judicial examination decades after all of us have gone on to other things. We deserve to do it right. This amendment makes the simple change swapping the word "government" for the word "unauthorized." The reason for this is that if you need to sign a form or something like that, I'm not going to go into all the background, but I checked up on this. There is precedent that if you sign a form at the DMV or you sign an insurance contract or something, you are authorizing the other party of that form to have the information on it. That alone will stop a bunch of the lawsuits. The other reason is that I take exception to having the right to privacy only from government intrusion. I want a right to privacy from commercial intrusion and from creepy stalker intrusion. The language as written in the underlying bill would allow some creepy stalker to raid your trashcan for a hairbrush, send it to that 23 & Me Company and put your genetic history out on the internet. You don't have any right to privacy against that with the existing language. I think you should have a right to privacy against that because you are not authorizing that person to have your personal information and make it public. Hence the change we have there. I want you to think for a second before you vote on this about all of the unintended consequences it would have without this one simple change. What if somebody wants to apply

vant to claim that their right under the information exempts them from having to get security clearance anyway. What if a father of children in their family is private? If they sue the state to get their benefits, I promise that if you talk to a police officer there's probably at least one or two filed in court would blow your mind. I don't intrude, and without fixing it, the intrusion in the coming decades will blow your mind. I really like the idea of a careful with. I honestly, I think this is one of the best chance at getting ratified by the state. This one right and close the loopholes. I request a division vote. The Chair recognizes the member from Strafford, Rep. Smith's floor amendment. The Chair

remind members that we are dealing with Constitutional Amendments establish very important amendment and all of the protection of the continental congress or some of the amendments we would have the 1st or 2nd amendment kinds of provisions. I don't know the examples he did in the time that it was taken care of currently by statute. I think the committee adopted the amendment that the committee adopted and vetted by a professor from the state. It's supported by the majority. The amendment creates a real problem. It can overturn the constitutional practice with respect to individual information. If interference is prohibited which is not what I want in the entire panoply of information about the important body that I think many of the information about us and might use the other privacy protections against the amendment. I support the amendment on the privacy of individual information from the amendment and in favor of the amendment. The Speaker.

option of floor amendment 0757h. The members will remain in their seats. The floor amendment 0757h. If you are opposed, you'll be pressing the red button. 11 members voted who were here of the vote, 79 in the affirmative. The question is on the motion of Ought to Pass with Amendment. The Chair recognizes the member from Durham, Rep. Horrigan.

Speaker. The minority actually agreed to the amendment that privacy is a right. The proposed Article, Part First, to give those of us in the majority support voting for a Constitutional Amendment. The proposed language uses a weak and old language, and it couples it with what is natural, essential and inherent. It's

unclear how this language will be interpreted by our states' lawyers and judges. I'm one of those that believe that CACR 16 language would likely have many unintended consequences. This resolution is literally not ready for primetime. The proposed language is not ready to go into 2018 general election ballot and it isn't ready to go into our State Constitution either. Please vote no on the Ought to Pass as Amended motion so that an alternative motion can be considered. Thank you very much. Speaker Chandler: The question before the House is on the adoption of the majority committee report of Ought to Pass with Amendment. The Chair recognizes the member from Strafford, Rep. Wuelper to speak in favor of the committee report.

Representative Wuelper: Thank you, Mister Speaker. After my last very persuasive speech, I hope this one will be better. I think we all recognize that we have a right to privacy in the information about us and our own personal information and it's just an omission from our constitution that it wasn't included in the first place. In the days when the constitution was written, information about you didn't go far from your immediate surrounds. Today, information about you is worldwide. It can be found out by anybody and never mind; I won't go there again. I got in trouble for that the last time, Russia, we'll say Russia. So the amendment is important that we adopt. The words, "inherent" or "essential" already appear in our constitution. These are the types of rights. Inherent, essential natural rights that our constitution and national constitution are written to support the principle as stated in the Declaration of Independence that we have inalienable rights not defined anywhere that are granted to us by God, so we codify within our constitution our own natural rights, rights that supersede and transcend the power of legislators and government in general. Mister Speaker, I argue these words are natural and essential to underscore the importance of our right to privacy. I urge everyone to support the amendment.

Speaker Chandler: Does the member yield to a question? The member yields, Rep. Almy you may inquire.

Representative Almy: Thank you, Mister Speaker. I have two visions in my head and I want you to tell me what happens if either of them was true after this was passed. The first is nine children severely malnourished chained in a house by a couple and the second one is a massive meth lab run by a couple. Do they have the right under this amendment, if it passes, to tell the authorities that they cannot come into that house?

Representative Wuelper: So, the short answer would be no. There was just a case recently in the news much like you describe where there were 17 children or something like that were captive, enslaved in their own house. The state has the inherent right to protect those children. Yes, you have a right to privacy of your own information, but those children are not your information. What you do to them is not your own information. Those are acts for which the legislature retains and the law enforcement retains the right to act and by doing the typical criminal process, they do that.

Speaker Chandler: The question before the House is on the majority committee report of Ought to Pass with Amendment. This will be a division vote. All members will remain in their seats. This is a division vote. The question before the House is on the majority committee report of Ought to Pass with Amendment. If you are in favor of that, you will be pressing the green button. If you are opposed, you will be pressing the red button. The Chair recognizes Rep. Horrigan for a parliamentary inquiry.

Representative Horrigan: Thank you very much, Mister Speaker. If I know that yes, it might be nice to have a constitutional provision with the header right to privacy, but if I also know that a constitutional amendment needs more than just a good phrase as the chapter heading. And, if I know that the proposed language is not ready to go into the state constitution and could have many unintended consequences and is incomplete, would I then press the red button in order to overturn the Ought to Pass motion?

Speaker Chandler: The question before the House is on the adoption of the majority committee report of Ought to Pass with Amendment. If you are in favor of that, you'll be pressing the green button. If you are opposed, you'll be pressing the red button. Chair recognizes Rep. Rouillard for a parliamentary inquiry.

Representative Rouillard: Thank you, Mister Speaker. If I know that our founding fathers did a great job hundreds of years ago in crafting the language of our constitution, but that they could not have known about the technology that we have today and the information and how it streams through our citizenry. And if I know that they perhaps had different meanings for the word twitter, snapchat, google or yahoo, that they would not have known to include them in the constitution. And if I know that the citizens of this state have a right to have their private information protected from government intrusion, delineated in our constitution would I now vote with the bipartisan majority of the Judiciary Committee and finally press the green button so we can get it done? Thank you, Mister Speaker.

Speaker Chandler: The question before the House is on the adoption of the majority committee report of Ought to Pass with Amendment. If you are in favor of that, you'll be pressing the green button. If you are opposed, you'll be pressing the red button. The voting stations are open for 30 seconds. The House will attend to the state of the vote. Just so you know, the Chair votes yes. 235 voted in the affirmative and 96 in the negative, the motion is adopted.

REGULAR CALENDAR CONT'D

HB 1576, creating managed asset trusts for real property. MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.

Rep. Gary Hopper for the Majority of Judiciary. This bill creates a new type of trust for people to acquire property such as a home or business. The trust could be set up by an employer for an employee. The employer would buy a house, set it up in a trust, and, over time, the employee would gain equity in the property by paying the trust and eventually be able to buy the home. We heard from the Rockingham County Register of Deeds that the Managed Asset Trust (MAT) would set up a deed recording system outside of the registry of deeds; the MAT is managed by the trust and the employee will act as the trust agent with the power to mortgage, transfer, assign, or perform other unidentified transactions without recording them at the registry of deeds. This bill is an interesting idea but it also could be creating a lot of problems. The bill's stated purpose was to create a vehicle so that an employer could help a prospective employee get in a home with little or no upfront expense to the employee. This can already be done by buying a home and letting the person rent with an option to buy. Vote 8-7. Rep. Debra Altschiller for the Minority of Judiciary. The minority believes Managed Asset Trusts (MAT) offer a financial tool to help New Hampshire's workforce grow real wealth through home ownership. MATs address the challenges low deposit borrowers face, many of whom are often young people in the beginning of their career and simultaneously managing massive student debt. We believe MATs offer an opportunity to build equity while encouraging investment in their homes, communities and our state. The support of the New Hampshire Housing Authority and Neighbor Works in participants with pre- and post-purchase council give us confidence in these programs. Supporting our next generation by offering financial tools to them is in the best interest of our state's growth.

MOTION TO LAY ON THE TABLE

Rep. White moved that **HB 1576, creating managed asset trusts for real property**, be laid on the table. On a division vote, with 181 members having voted in the affirmative, and 139 in the negative, the motion was adopted.

REGULAR CALENDAR CONT'D

HB 1301-FN, including the legislature as a public employer under the public employee labor relations act. INEXPEDIENT TO LEGISLATE.

Rep. Sherman Packard for Legislative Administration. This bill is a perennial attempt to create a collective bargaining unit (union) for our legislative employees. The prime sponsor disclosed in testimony that no member of the staff approached him to sponsor this legislation nor did anyone contact him to offer support during the hearing. The bill is flawed in that it would take away the authority of the presiding officers to deal directly with hiring and firing and instead place it in the hands of the respective subcommittee of the Joint Committee on Legislative Facilities. This bill has unintended consequences. The legislative branch is a political body and the leadership of both chambers, and both parties, must have the option of having the people around them that they need in order to be effective. Imagine having a division head who is actively working against the interests of a speaker and yet is bound to the speaker because he or she is a member of a union. The Public Employee Labor Relations Board (PELRB) stated in the fiscal note analysis that "costs would be incurred in connection with the filing of any unfair labor practice complaints at the PELRB and processing any employee grievances under the collective bargaining grievance procedure." Additional costs would be incurred by the need to respond to a petition to form a bargaining unit, and even more if the petitions were challenged. How much cost would be borne by our already meager legislative budget to accommodate this request that no one asked for? This bill is a solution looking for a problem that does not exist anywhere in the General Court. The bipartisan majority of the committee recommends defeating this legislation, once again; our employees in the General Court like their jobs, like the flexibility that comes with their jobs, and believe in the mission of our branch of government. Vote 6-2.

Rep. Hinch mov
employee labor
Rep. Cushing re

Ahear, Marc
Howard, Raymond
Widney, Herbert

Avellan, Lino
McConkey, Mark
Mench, William

Bordenet, John
McConnell, James
Teso, Bruce

Bohannan, John
Thomas, Yvonne

Almy, Susan
Ham, Bonnie
Mulligan, Mary Jane

Ammon, Keith
Barry, Richard
Moore, Craig
Danielson, David
Fetelli, Jim
Gagne, Larry
Helling, Steve
Belanger, James
Kee, Patricia
Lascelles, Richard
McCarthy, Michael
Natter, Jeanine
Pierce, David
Renzullo, Andrew
Sedel, Carl
Ulery, Jordan

Koch, Bill
Woff, Dan
MacKay, James
Marple, Richard
Seaworth, Brian
Wells, Natalie

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Full House Session: Debate on CAR16
February 22, 2018
Audio Transcription
Portion Transcribed: 4:00:40 - 4:42:40

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

2 1 (Recording begins) 2 MR. SPEAKER: The majority committee on 3 judiciary that wishes to refer CACR16, an act relating 4 to privacy providing that an individual's right to live 5 free of governmental interference is fundamental. 6 Having considered the same report, the same with the 7 following amendment, and the recommendations will be 8 allowed to pass of the amendment, Representative Kurt 9 Wuelper for the majority of the committee. 10 The minority of the committee having 11 considered the same, being unable to agree with the 12 majority report with the recommendation the bill be 13 referred for interim study. Representative Timothy 14 Horrigan for the committee. 15 The question is on the adoption of the 16 committee amendment, Majority Amendment 0118h, put in 17 House Record 7 on Pages 33 through 34. Are you ready 18 for the question? 19 All those in favor of adopting the committee 20 amendment signify by saying aye. 21 MEMBERS: Aye. 22 MR. SPEAKER: Opposed, nay. 23 MEMBERS: No. 24 MR. SPEAKER: The ayes have it. the 25 committee amendment is adopted.	4 1 Hampshire laws, like if you want to keep your Social 2 Security number out of the DMV records and stuff. 3 We're capable of processing specific exemptions like 4 that. But if we're going to do a line-itemed right to 5 privacy, which I'll be voting for, I certainly think 6 that we deserve to get it right, and the reason the 7 language needs to be really specific and really 8 correct, I mean, just look at the national debate going 9 on right now about the meaning of the Second Amendment. 10 I think everyone in this room would absolutely love it 11 if there were some like extra footnotes from the 12 founding fathers that maybe cleared up exactly what 13 they were talking about one way or the other. 14 All right. This is going to be the subject 15 of case law and judicial examination decades after all 16 of us have gone onto other things. We deserve to do it 17 right. This amendment makes the simple change swapping 18 the word government for the word unauthorized. The 19 reason for this is that if you need to sign a form or 20 something like that -- I'm not going to go into all the 21 background, but I checked up on this. There's 22 precedent that if you sign a form at the DMV or, you 23 know, you sign like an insurance contract or something, 24 you are authorizing the other party of that form to 25 have the information on it. That alone will stop a
3 1 The bills on second reading open to further 2 amendment. Representative Tim Smith moves the adoption 3 of Floor Amendment 0757, which is in your seat pockets, 4 and Representative Smith is recognized to speak in 5 favor of his floor amendment. 6 MR. SMITH: Thank you, Mr. Speaker. So who 7 doesn't like a right to privacy? I certainly do. I 8 almost introduced a right to privacy amendment a couple 9 of terms ago myself. 10 The issue is the specific language in this 11 amendment. It says that the individual has the right 12 to live free from government intrusion, blah, blah, 13 blah. That's fine. The problem is that language opens 14 up the State of New Hampshire to a flood of lawsuits 15 from people who say that their right to privacy 16 protects them from the DMV knowing whether or not they 17 wear glasses, from the town welfare office knowing how 18 much income they have, and they want their benefits 19 anyway. The unintended consequences of making that 20 special carve-out for government intrusion are 21 enormous. Never mind all of the federal things that 22 people might need to do, like filing your taxes with 23 the IRS, that, you know, you have to put your Social 24 Security number on. 25 We already have some carve-outs in New	5 1 whole bunch of the lawsuits. 2 The other reason is, you know, I take 3 exception to having a right to privacy only from 4 government intrusion. I want a right to privacy from 5 commercial intrusion and from creepy stalker intrusion. 6 The language as written in the underlying bill would 7 allow some creepy stalker to raid your trash can for a 8 hairbrush, send it to that 23andMe Company and put your 9 genetic history out on the internet. You don't have 10 any right to privacy against that with the existing 11 language. I think you should have a right to privacy 12 against that because you're not authorizing that person 13 to have your personal information and make it public. 14 Hence the change we have there. 15 You know, I want you to think for a second 16 before you vote on this about all of the unintended 17 consequences it would have without this one simple 18 change. What if somebody wants to apply for a security 19 clearance with the federal government, but they want to 20 claim that their right under the New Hampshire 21 Constitution to privacy with our personal information 22 exempts them from having to provide background 23 information about themselves. They want that security 24 clearance anyway. What if some person is applying for 25 SNAP benefits and, again, the number of children in

6 1 their family is private information? They don't feel 2 they should have to give that out, and they sue the 3 State to get their benefits anyway. 4 All right. Some of these might seem like 5 unlikely scenarios, but I promise, you know, if you 6 talk to a police officer, and we have some of you here 7 in the House, I'm pretty sure there's probably at least 8 one or two of you who've been a judge or something, you 9 know, the things that get filed in court would blow 10 your mind. I promise you that if we pass this with 11 that carve-out for government intrusion and without 12 fixing it, the lawsuits that are going to be filed 13 against the State of New Hampshire in the coming 14 decades would blow your mind. This is absolutely 15 something we have to be incredibly careful with. 16 I really like the idea of a right to privacy, 17 and I really hope that the amended resolution passes. 18 And, honestly, I think this is one of the few CACRs 19 we've heard in my entire time here that actually stands 20 a chance of getting ratified by the general public. 21 And if nothing else, that alone increases our duty to 22 get this one right and close the loopholes before 23 anyone tries to take advantage of them. 24 Thank you, Mr. Speaker, and I'd request a 25 division vote.	8 1 thoroughly researched. It's supported by the ACLU and 2 a whole variety of other individuals and groups. 3 This amendment creates a real problem because 4 it says unauthorized. Does that mean that the 5 legislature can overturn the constitutional amendment 6 in effect by saying we authorize a particular intrusive 7 practice with respect to individual personal 8 information, and the answer is yes. This says 9 unauthorized interference is prohibited, which means 10 authorized interference is allowed. That's not what we 11 want or certainly what I want in a constitutional 12 prohibition. 13 This applies to government, not the entire 14 panoply of information about us. It applies to 15 government because that's the first and most important 16 body that I think many of us are concerned about that 17 would have intrusive personal information about us and 18 might use it in ways that we don't approve. If there 19 is a desire to incorporate other privacy protections 20 against the private sector, I think those should be 21 considered in a different constitutional amendment on 22 another day. But for now, if you really want to 23 protect the privacy of individual information from 24 government intrusion, then I ask that you vote against 25 this floor amendment and in favor of the underlying
7 1 MR. SPEAKER: Question for the House is on 2 the -- Representative Smith's floor amendment. Chair 3 recognizes the member from Weare, Representative Kurk. 4 MR. KURK: Thank you, Mr. Speaker. I'd like 5 to remind members that we are dealing with a 6 constitutional amendment and not legislation. 7 Constitutional amendments establish very important 8 principles, such as the First Amendment and the Second 9 Amendment, and all of the protections that are in 10 there. 11 If the former speaker were a member of the 12 Continental Congress or some of the other bodies that 13 in fact amended our constitution, I don't think we 14 would have the First or Second Amendment because the 15 gentleman is attempting to put into the constitution 16 statutory kinds of provisions. 17 I don't think I can answer each one of the 18 comments he made and the examples he did in the time 19 that's reasonably available, but let me -- but suffice 20 it to say that most of them are taken care of currently 21 by statute and wouldn't be affected by this amendment. 22 The original amendment that the committee 23 adopted and that's before us, not the floor amendment, 24 was approved and vetted by a professor from the 25 University of New Hampshire law school. It's been	9 1 proposed constitutional amendment. Thank you, 2 Mr. Speaker. 3 MR. SPEAKER: Question for the House is on 4 the adoption of the Floor Amendment Number 0757h. Are 5 you ready for the question? A division. This is a 6 division vote. So all members will remain in their 7 seats. 8 Question before the House is on the motion to 9 approve Floor Amendment 0757h. If you're in favor of 10 that, you would be pressing the green button. If 11 you're opposed, you'd be pressing the red button. The 12 voting stations are open for 30 seconds. 13 (Pause) 14 MR. SPEAKER: All members voted here on the 15 question for -- the House will tender the state of the 16 vote: 79 in the affirmative, 255 in the negative. The 17 motion fails to get the necessary three-fifths. 18 Question before the House is on the motion 19 allowed to pass an amendment. Chair recognizes the 20 member from Durham, Representative Horrigan. 21 MR. HARRIGAN: Thank you very much, 22 Mr. Speaker. The minority actually agrees with the 23 majority and also with the two members who debated the 24 amendment, that privacy is a fundamental right, and we 25 definitely love the chapter heading for the proposed

10 1 article part first, 2-b, which is, quote, "[Right to 2 Privacy.], close quote" Unfortunately, that's just a 3 chapter heading. So those of us in the majority of the 4 committee, and hopefully many of my colleagues, won't 5 be able to support voting for constitutional amendment 6 just because we like the chapter heading. 7 The proposed language uses a weak and 8 incomplete definition of privacy, as we heard a couple 9 of minutes ago, and it couples it with what seems like 10 a random set of three admittedly beautiful adjectives: 11 natural, essential, and inherent. It's unclear how 12 this language would be interpreted by our states, 13 lawyers, and judges, and I'm one of those who believe 14 the CRC16's language would likely have many unintended 15 consequences. This resolution is literally not ready 16 for prime time. The proposed language is not ready to 17 go into 2018 general election ballot, and it isn't 18 ready to go into our state constitution either. So 19 please vote no on the ought to pass this amended motion 20 so an alternative motion can be considered -- thank you 21 very much. 22 MR. SPEAKER: Question before the House is on 23 the adoption of the majority committee report of ought 24 to pass the amendment. Chair recognizes the member 25 from Strafford, Representative Wuelper, to speak in	12 1 legislators, jurors like this, and government in 2 general. 3 All right. Mr. Speaker, I argue these words 4 are natural and essential to underscore the importance 5 of our right to privacy. I urge everyone to support 6 the amendment. 7 MR. SPEAKER: Remember your little question? 8 UNIDENTIFIED: Sure. 9 MR. SPEAKER: Anybody else, doesn't involve 10 me. (Indiscernible). 11 UNIDENTIFIED: Tell me what you got. 12 UNIDENTIFIED: Thank you, Mr. Speaker, 13 Representative. I have two visions in my head, and I 14 want you to tell me what happens -- what happens if 15 either of them was true after this was passed. 16 The first is nine children severely 17 malnourished chained in a house by a couple, and the 18 second one is a massive meth lab run by a couple. Do 19 they have the right under this amendment, if it passes, 20 to tell the authorities that they cannot come into that 21 house? 22 MR. WUELPER: So the short answer would be 23 no. We just -- there's a case been recently in news -- 24 in the news much like what you describe, where 17 25 children, or something like that, were captive,
11 1 favor of the committee report. 2 MR. WUELPER: Thank you, Mr. Speaker. After 3 my last very persuasive speech, I hope this one will be 4 better. 5 I think we all recognize that we have a right 6 to privacy in the information about us in our own 7 personal information, and it's just an omission from 8 our constitution that it wasn't included in the first 9 place. In the days when the constitution was written, 10 information about you didn't go far from your immediate 11 surrounds. Today, information about you is worldwide, 12 and it can be found out by anybody and -- never mind, I 13 won't go there again. I got in trouble for that the 14 last time. Russia. We'll say Russia. So the 15 amendment is important that we adopt. 16 The words of inherent, essential, these words 17 already appear in our constitution. These are the 18 types of rights. The inherent is essential natural 19 rights that our constitution and the national 20 constitution was written to support like the principle 21 as stated in the Declaration of Independence, that 22 our -- we are -- inalienable rights not defined 23 anywhere that are granted to us by God, so we codify 24 within our constitutions our own natural rights, rights 25 that supersede and transcend (phonetic) the power of	13 1 enslaved in their own house. The State has the 2 inherent right to protect those children and, yes, you 3 have an inherent right to privacy of your own 4 information, but those children are not your 5 information. Those -- and what you do to them is not 6 your own information. Those are acts for which the 7 legislature retains, and the law enforcement retains 8 the right to act and by doing the typical criminal 9 process they do that. 10 MR. SPEAKER: Question before the House on 11 the majority committee report of ought to pass the 12 amendment, where this would be a division vote, all 13 members will remain in their seats. This is a division 14 vote. 15 The question before the House on the adoption 16 of committee report of ought to pass the amendment, if 17 you're in favor of that, you'd be pressing the green 18 button. If you're opposed, you'll be pressing the red 19 button. The Chair recognizes Representative Horrigan 20 for a parliamentary inquiry. 21 MR. HERRIGAN: Thank you very much, 22 Mr. Speaker. If I know that it -- that, yes, it might 23 be nice to have a constitutional provision with the 24 header Right to Privacy. But if I also know a 25 constitutional amendment needs more than just -- more

14 1 than just a good phrase in the -- as the chapter 2 heading. And if I know that the proposed language is 3 not ready to go into the state constitution and could 4 have many unintended consequences and is incomplete, 5 would I then -- would then I not now wish to press the 6 red button in order to overturn the ought to pass as 7 amended motion on the floor? 8 MR. SPEAKER: Question before the House on 9 the adoption of the majority committee report of ought 10 to pass the amendment. If you're in favor of that, 11 should be pressing the green button. If you're 12 opposed, should be pressing the red button. Chair 13 recognizes Representative Rouillard for a parliamentary 14 inquiry. 15 MS. ROUILLARD: Thank you, Mr. Speaker. I 16 know that our founding fathers did a great job hundreds 17 of years ago in crafting the language of our 18 constitution, but that they could not have known about 19 the technology that we have today and the information, 20 and how it streams through our citizenry. And if I 21 know that they perhaps had different meanings for the 22 word Twitter, Snapchat, Google, or Yahoo, that they 23 would not have known to include them in the 24 constitution. 25 And if I know that the citizens of this state	16 1 MR. SPEAKER: The question before the House 2 is on Representative Smith's motion to print the entire 3 debate -- I'm sorry. It was the entire debate of the 4 previous issue in the permanent record, journal. Are 5 you ready for the question? 6 All those -- do you have a question? 7 UNIDENTIFIED: I have a question for the 8 Chair. 9 MR. SPEAKER: Okay. You may. 10 UNIDENTIFIED: Mr. Speaker, my understanding 11 is the Chair votes when there's a tie or when the 12 Speaker can break a tie. Is that not applicable in 13 this situation, or is it differently applied? On what 14 basis, in other words, did you cast this vote in this 15 situation? 16 MR. SPEAKER: I can vote at any time. I 17 don't -- I'm not required to vote, but I can, and I 18 chose to that time, so -- 19 Okay. The question is on the motion to print 20 the remarks in the permanent journal. Are you ready 21 for the question? All those in favor of printing the 22 remarks, signify by saying aye. 23 MEMBERS: Aye. 24 MR. SPEAKER: Opposed, no. 25 MEMBERS: No.
15 1 have the right to have their private information 2 protected from government intrusion delineated in our 3 constitution, would I now vote with the bipartisan 4 majority of the judiciary committee and finally press 5 the green button so we can get it done? Thank you, 6 Mr. Speaker. 7 MR. SPEAKER: The question before the House 8 is on the adoption of the majority committee report of 9 ought to pass the amendment. If you're in favor of 10 that, should be pressing the green button. If you're 11 opposed, should be pressing the red button. And the 12 voting stations are open for 30 seconds. 13 (Pause) 14 MR. SPEAKER: The -- so the House will attend 15 to the state of the vote. The 200 and -- there's going 16 to be -- I'll just -- they didn't do it. Just so you 17 know, the Chair votes yes, so it reaches -- there's 18 235 -- there we go. Okay. 235, the motion is adopted. 19 Oh, Representative Smith is recognized for 20 the purposes of a motion. 21 MR. SMITH: Thank you, Mr. Speaker. I'd like 22 to move that the entire debate on the CACR be placed 23 into the permanent record to remove any future 24 questions about legislative intent. Thank you, 25 Mr. Speaker.	17 1 MR. SPEAKER: The ayes have it. The remarks 2 will be printed. 3 (Recording ends) 4 * * * * * 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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1 CERTIFICATION

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3 I, Alicia Jarrett, transcriber, hereby

4 certify that the foregoing is a correct transcript from

5 the recording provided.

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10 ALICIA JARRETT, AAERT NO. 428 DATE: October 24, 2025

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SENATE FILE

LEG053

Bill as Introduced

LEG054

CACR 16 - AS AMENDED BY THE HOUSE

22Feb2018... 0118h

2018 SESSION

18-2643
06/10

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION **16**

RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental intrusion is natural, essential, and inherent.

SPONSORS: Rep. Kurk, Hills. 2; Rep. Cushing, Rock. 21

COMMITTEE: Judiciary

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that there is a natural, essential, and inherent right to live free of governmental intrusion.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

LEG055

CACR 16 - AS AMENDED BY THE HOUSE

22Feb2018... 0118h

18-2643

06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT

RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

1 I. That the first part of the constitution be amended by inserting after article 2-a the
2 following new article:

3 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in
4 private or personal information is natural, essential, and inherent.

5 II. That the above amendment proposed to the constitution be submitted to the qualified
6 voters of the state at the state general election to be held in November, 2018.

7 III. That the selectmen of all towns, cities, wards and places in the state are directed to
8 insert in their warrants for the said 2018 election an article to the following effect: To decide
9 whether the amendments of the constitution proposed by the 2018 session of the general court shall
10 be approved.

11 IV. That the wording of the question put to the qualified voters shall be:
12 "Are you in favor of amending the first part of the constitution by inserting after article 2-a new
13 article to read as follows:

14 [Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in
15 private or personal information is natural, essential, and inherent."

16 V. That the secretary of state shall print the question to be submitted on a separate ballot
17 or on the same ballot with other constitutional questions. The ballot containing the question shall
18 include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made
19 in either of the squares, the ballot shall not be counted on the question. The outside of the ballot
20 shall be the same as the regular official ballot except that the words "Questions Relating to
21 Constitutional Amendments proposed by the 2018 General Court" shall be printed in bold type at
22 the top of the ballot.

23 VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment,
24 it becomes effective when the governor proclaims its adoption.

LEG056

Committee Minutes

Senate Rules and Enrolled Bills Committee

Angela Leach 271-3077

CACR 16, Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Hearing Date: March 29, 2018

Members of the Committee Present: Senators Avar, Bradley, Daniels and Fuller Clark

Members of the Committee Absent : Senator Soucy

Bill Analysis: This constitutional amendment concurrent resolution provides that there is a fundamental right to live free of governmental interference.

Sponsors:

Rep. Kurk

Rep. Cushing

Who supports the bill: Representative Kurk, Representative Cushing, Representative Mindi Messmer, Representative Itse, Representative McConnell, Dan McGuire (NH Liberty Alliance), Darryl Perry (Liberty Lobby, LLC), Bill Alleman, Jeanne Hruska (ACLU-NH)

Who opposes the bill: Representative Horrigan

Who is neutral on the bill: Liz Tentarelli (League of Women Voters)

Summary of testimony presented:

Representative Cushing introduced the bill. The essence of liberty is the right to be left alone. This amendment will clarify that liberty includes the right to privacy.

Senator Avar- I thought this was already assumed?

Representative Cushing- As technology evolves over time and because privacy is the essence of liberty this make it more explicit.

Representative Horrigan (Opposed) Not totally opposed to an amendment similar in principal. The only reason this bill is here is because the Speaker cast the deciding vote to send it over here. I think the definition of privacy is weak and incomplete. I am worried about how this will be interpreted by our lawyers and judges and could have some unintended consequences. And this only speaks to governmental intrusion and excludes non-governmental intrusion such as Facebook. Not ready for primetime.

Senator Daniels- you mentioned that this could have unintended consequences, could you give us an example?

Representative Horrigan- Lots of legal cases involve the use of private information, could affect the operation of law enforcement. I don't think the three adjectives in the bill are clearly defined.

Representative Itse- What this does is state what has always been understood as a matter of common law which is your right to privacy in regards to the government is extensive and complete. In Article 15 or 17 of the constituent, it states the narrow circumstances of which that privacy may be breached

which is by warrant.

Senator Avar- If that is the case, why do we need this?

Representative Itse- the ability to broach is constitutional. When the constitution was written all of your information was physical and today it is electronic. It is important to remind the government they don't have the power to broach that.

Senator Bradley- In 1973 Roe V Wade was defined based on the right of privacy, how does this impact that?

Representative Itse- I don't think it impacts it adversely. What the federal case really did functionally was say that there was a certain class of murder for which the state could not obtain a warrant even if there was justification for it.

Senator Bradley- By putting this amendment in the NH Constitution, aren't you enshrining the precepts of Roe V. Wade in the NH Constitution?

Representative Itse- That was determined by the federal constitution rightly or wrongly, If Roe V. Wade were to disappear today and this amendment were to be adopted that would not change whether or not the state had the power. There would be nothing between this right of privacy and the power to obtain a warrant. I do not think it changes that.

Dan McGuire- NH Liberty Alliance- (Support) When the 4th amendment was adopted and section 19 of our constitution was put in physical private things was located somewhere, papers, notes etc. They were visible to the eye. This constitutional amendment is updating that kind of provision but for the modern world where there is a lot of information about people and is not visible. Also things like your DNA, if you go to Starbucks and you drink a cup of coffee and throw away that cup, it has your DNA on it. The police could pick that cup up, and no search warrant is needed. I do think the argument regarding Roe V. Wade is something to be concerned about. I don't think this applies because it is about information, the best way to inoculate against that is to make a speech on the Senate floor stating that this is not about abortion and if it ever became a court case there would be legislative precedent.

Senator Bradley- When I read this language and I see information, you may think that is digital but one's personal, medical history is also information. I think you are enshrining that right of your personal medical information into the constitution.

Senator Avar- Would this prevent the government from seeking out that information from third parties?

Dan McGuire- Yes, because it is about the individual's information, it doesn't matter where it is.

Senator Avar- That doesn't stop the third parties from handing it over. Would it prevent them from accepting it without a warrant?

Dan McGuire- There are cases where government has improperly obtained information, they bring a case against someone and that information is thrown out because it was improperly obtained.

Representative Kurk- In the last few decades, there has been the development of the internet, the cell phone which has allowed accumulation of information about us in private hands. In Article 19, part 1 of our constitution, it provides protection if the state is to get into a persons physical possession they must have a warrant. CACR 16 goes beyond that it deals with government and states that we have an expectation of privacy with respect to that information should government wish to obtain it. This does not prevent the government from obtaining a search warrant by proving there is a significant government interest in collecting the information that outweighs the constitutional right to have this information protected. We are requiring government to meet a higher standard then it currently must in order to protect this information. Currently the courts already do a balancing act in respect to cases and this simply requires them to do that it regards to information. This only applies to government conduct in relation to individuals, doesn't apply to commercial conduct. This wouldn't apply to Facebook but it would apply to Facebook if the government were to access Facebook to find out information about a certain individual.

Senator Fuller Clark- We heard previous testimony that words such as "natural essential and inherent" were vague and unenforceable?

Representative Kurk- They were copied from various sections of the Constitution. This is very simple and states a basic premise.

Senator Fuller Clark- Criticism has been raised that it could be perceived that it protects a women's right to choose?

Representative Kurk- The only thing this would protect is medical records, it has nothing to do with

Roe V Wade. It is certainly not intended.

Senator Fuller Clark- We heard that part of the decision of Roe V. Wade was the right to privacy?

Representative Kurk- I don't think Roe V. Wade was based on informational privacy, it was more of a privacy relationship between a woman and her doctor.

Senator Daniels- Anything in this legislation have an impediment to PDMP?

Representative Kurk- Perhaps, and if someone challenged it on the grounds that it violated this constitutional right, I think they could make a very strong case for public safety and public health reason this information was essential.

Senator Avard What does PDMP mean?

Representative Kurk- Prescription data monitoring program. This is the program we set up that all prescriptions regarding opioids were to go into a data base. And physicians are required to look at the database if they prescribe opioids.

Liz Tentarelli- League of Women Voters (Neutral) – It is important for us to help the public understand a constitutional amendment should this make it to the ballot. For the average voter, when this appears on the ballot, it says I have a right to live free of governmental inclusion. I fear this will be a problem and there will be confusion on the part of the voter.

Jeanne Hruska -ACLUNH (Support) When I moved to NH, I realized how much granite staters cared about privacy. For the last several decades, we have had a patchwork of statutory protections regarding privacy. CACR 16 is pretty limited, it does not prohibit any and all access to private information but would change the balancing of what a court already does when deciding when government interest in gaining access to information outweighs the nature of degree of intrusion on an individual's privacy interest. CACR 16 only applies to government conduct in relation to individuals but would also apply to commercial done on behalf of the government.

Senator Avard-Is probable cause the standard for a search warrant?

Jeanne Hruska –They would have the same standard to receive a search warrant, this would get factored into the balancing of the court's decision.

Future Action: Pending

AJL

Date Hearing Report completed: March 30, 2018

Speakers

Senate Rules and Enrolled Bills Committee

SIGN-IN SHEET

Date: 03/29/2018 Time: 10:00 a.m.

CACR 16 Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Name/Representing (please print neatly)

Rep. Timothy Howard St-5th	Support ☐	Oppose ☒	Speaking? ☐	Yes ☒	No ☐	✓
Rep. Jim McConnell Danville	Support ☒	Oppose ☐	Speaking? ☐	Yes ☐	No ☒	✓
Dan F. W. Berry Liberty Lobby, LLC	Support ☒	Oppose ☐	Speaking? ☐	Yes ☐	No ☒	
Benny Cushing Rock 21	Support ☒	Oppose ☐	Speaking? ☐	Yes ☒	No ☐	✓
Rep. Nicole Messner Rock 2A	Support ☒	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
Dan McGuire NH Liberty Alliance	Support ☒	Oppose ☐	Speaking? ☐	Yes ☒	No ☐	✓
Bill Atteaman Wear self	Support ☒	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
Jeanne Hruska ACLU-NH	Support ☒	Oppose ☐	Speaking? ☐	Yes ☒	No ☐	✓
Rep. [Signature]	Support ☒	Oppose ☐	Speaking? ☐	Yes ☒	No ☐	✓
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐	

LEG062

Senate Rules and Enrolled Bills Committee

SIGN-IN SHEET

Date: 03/29/2018 Time: 10:00 a.m.

CACR 16 Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Name/Representing (please print neatly)

Liz Tentarelli League of Women Voters	Support ☐	Oppose ☐	Speaking? ☐	Yes ☒	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
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	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐

LEG063

Senate Rules and Enrolled Bills Committee

SIGN-IN SHEET

Date: 03/29/2018 Time: 10:00 a.m.

CACR 16 Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Name/Representing (please print neatly)

Rep. KURK	Support ☒	Oppose ☐	Speaking? ☐	Yes ☒	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
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	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking? ☐	Yes ☐	No ☐

LEG064

Testimony



Testimony by Jeanne Hruska, ACLU-NH
Senate Rules and Enrolled Bills Committee
CACR16
March 29, 2018

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over forty-five years. I am here today to ask that this Committee recommend that the Senate *ought to pass* CACR16.

New Hampshire never had a need to comprehensively address information privacy protection until the late 20th and early 21st Century. Before then, statutory protection and the state's libertarian spirit were by and large adequate to manage the occurrences of intrusions on personal information and data. That is no longer true. The onslaught of governmental and commercial intrusions into our informational privacy is an overwhelming and seemingly unstoppable tide. Increasingly, our statutory protections are more patchwork than comprehensive as the potential intrusions diversify and multiply. This CACR would remedy that for New Hampshire by enshrining in our state constitution a specific right to governmental non-interference in which our state firmly believes. While courts have interpreted our federal and state constitutions' substantive due process protections as encompassing variations on some privacy rights, it is important, as a reflection of our libertarian principles, to affirmatively and explicitly memorialize this particular kind of privacy right in our state constitution. We respectfully urge the Committee to recommend that the Senate *ought to pass* CACR 16.

Testimony Against CACR 16:

“RELATING TO: privacy.

PROVIDING THAT: an individual's right to live free of governmental interference is fundamental.”

Senate Rules & Enrolled Bills Committee
Rep. Timothy Horrigan; March 29, 2018

I agree with the sponsors of CACR 16 that privacy is a fundamental right, and I love the chapter heading for the proposed [Art.] 2-b.: “[Right to Privacy.]” Unfortunately, that's just the chapter heading. I can't support a constitutional amendment just because I like the chapter heading.

The proposed language uses a weak and incomplete definition of privacy and couples it with a random set of three very nice adjectives: “natural, essential, and inherent.” It sounds like something out of a corporate mission statement— or worse yet, like something out of a political platform. I am worried about how this language would be interpreted by our state's lawyers and judges: CACR 16's language would likely have many unintended consequences.

On the other hand, in one respect, CACR 16's language is too specific. It speaks only of “governmental intrusion in private or personal information.” It specifically excludes NON-governmental intrusion into private or personal information— such as, to name just one random example, the 400-megabyte dossier about every aspect of my own personal life which I downloaded a few days ago from Facebook.

CACR 16 is literally not ready for primetime: the proposed language is not ready for the 2018 general election ballot and it certainly isn't ready to go into our state constitution.

The Need for CACR 16 – A Gap in Privacy Protection
(Professor Albert (Buzz) Scherr – UNH School of Law)

I am a professor of law at the University of New Hampshire School of Law. I have taught at UNH Law for almost 25 years in areas such as criminal procedure (crime, police investigation & the Constitution) and genetic privacy (commercial and governmental intrusions on one's genetic information) among many others. I have also consulted on and written about information privacy, genetic privacy, and other privacy topics.

I come before the Senate Rules and Enrolled Bills Committee in writing because I have a long-scheduled Easter trip starting on the date of the Committee's hearing.

When I graduated from law school in 1981, Facebook didn't exist and Mark Zuckerberg was yet to be born. Twitter, Google, Snapchat, Amazon etc. similarly did not exist. The Internet wasn't even in its infancy. Cellphones were an idea and information databases were of miniature capacity and much more limited scope compared to the present. Governmental and commercial tracking of browsing history, the ideas of drones and of visual data collection were more science fiction than reality.

Genetic research was proceeding in the medical arena, but the use of forensic DNA in court was almost a decade away and the creation of state and federal governmental genetic databases was almost 15 years away. Companies like 23andMe.com and ancestry.com that provide commercial ancestry and medical disorder testing did not exist.

The concern over discrimination based on one's genetic makeup in the provision of health and life insurance or in hiring was, if even occurring, based on something other than reliable genetic testing because neither commercial nor scientific tests for genetic disorders existed.

The list goes on and on. Today, all of the above are happening and much, much more. Put simply, we are awash in our own personal data, and the potential for the government, commercial, and rogue entities to access it grows almost daily.

CACR 16 is the necessary response to this technological and scientific era. It fills the gap in the New Hampshire Constitution regarding individual protection from governmental intrusion in personal and private information. While Part I, Article 19 of our state constitution provides some protection in the arena of police investigation, CACR 16 provides much broader protection against a wider array of governmental intrusion of private and personal information outside the criminal investigative context.

CACR 16 does not prohibit any and all access to personal and private information. Those who say so are either misunderstanding its legal effect or greatly exaggerating its effect.

Instead, it would effectively change the balancing a court already does when deciding whether the governmental interest in gaining such access outweighs the nature and degree of intrusion on an individual's privacy interest. Specifically, it would require the government to now show a compelling state interest in obtaining access to personal and private information before a court

would order such access. Sometimes, the state will be able to meet that burden, particularly when public safety is at risk.

The imposition of this burden will in no way cripple the government's ability to function. Access to personal and private information for which the government has probable cause to believe will help solve a crime will still be accessible via a search warrant. By contrast, random gathering of personal and private information by the government as part of a fishing expedition or just because nothing stops the government from doing so will be prohibited by virtue of the balancing test described above.

CACR 16 only applies to government conduct related to individuals. It does not apply to commercial conduct, unless done on behalf of the government. Part I of the New Hampshire Constitution (and, for that matter, the U.S. Constitution's Bill of Rights) only regulates interactions between the government and an individual. Generally, state and federal statutes regulate the interactions between commercial entities and individuals, and between individuals.

CACR 16 is a very necessary step to take back an individual's privacy in their personal and private information in response to the growing prevalence and capacity of technology used by the government. It puts in place an incremental but essential increase in an individual's protection from government interference, consistent with New Hampshire's legacy of cherishing individual liberty. To be sure, it is not a cure-all but it is a very important first step in that process. I urge the Committee to vote *ought to pass* on CACR 16.

I am more than willing to answer any questions Committee members may have in person, via telephone (603-513-5144) or via e-mail (albert.scherr@law.unh.edu).

Committee Report

LEG070

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, April 25, 2018

THE COMMITTEE ON Rules and Enrolled Bills
to which was referred CACR 16

AN ACT	Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.
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Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 3-0

Senator Martha Fuller Clark
For the Committee

Angela Leach 271-3077

RULES AND ENROLLED BILLS

CACR 16, Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Ought to Pass, Vote 3-0.

Senator Martha Fuller Clark for the committee.

Rules and Enrolled Bills Committee Hearing on CACR16

March 29, 2018

Audio Transcription

Total Runtime: 41 minutes 22 seconds

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

2 1 (Recording begins) 2 REPRESENTATIVE CUSHING: -- Rockingham, 21. 3 I'm here in support of CACR16, co-sponsor along with 4 Representative Kurk. I think to me the essence of 5 liberty is the right to be left alone, and let this 6 piece of -- this amendment to the Constitution will 7 enshrine and clarify that liberty includes the right to 8 privacy. It's pretty simple. It's straightforward. 9 I think in New Hampshire we've always had a 10 pretty strong part of our -- our cultural and political 11 tradition is that right to be just -- to be left alone, 12 to be free from, you know, government intrusion into 13 our personal lives. This kind of codifies it and I 14 would -- I would urge the Committee to support this and 15 pass it onto the Senate floor. It passed the House by 16 a substantial margin. 17 MR. CHAIRMAN: Sorry. Go ahead. 18 REPRESENTATIVE CUSHING That's okay. I'm 19 finished. 20 MR. CHAIRMAN: My first question -- are you 21 done with your testimony? 22 REPRESENTATIVE CUSHING Certainly. 23 MR. CHAIRMAN: My first question was I 24 thought this was already assumed that we had the right 25 to be left alone, but I take it there is a need for	4 1 MR. HARRIGAN: Okay. Well, I think I'm -- 2 I'm not totally opposed to amendment similar to this in 3 principle, but I -- I mean, I agree with the sponsors 4 that privacy is a fundamental right, and I love the 5 chapter heading for the Proposed Article 2B, which is, 6 quote, right square bracket, "[Right to Privacy]". 7 Unfortunately, that's just a chapter heading, 8 so I can't support a constitutional amendment just 9 because I like the chapter heading. And when it went 10 through the House about 90 -- almost 100 members agreed 11 with that. In fact, it's only here because the Speaker 12 had to cast a vote to send it over here. I think the 13 proposed language, at least in my opinion, uses a weak 14 and incomplete definition of privacy and also couples 15 with a random set of three very nice adjectives, 16 natural, essential, and inherent. So it sounds like 17 something out of a corporate mission statement, or like 18 something out of a political platform. So I'm worried 19 about how this language will be interpreted by states, 20 lawyers, and judges. I think CACR's language of any 21 unintended consequences if we actually put it in the 22 Constitution and start having some privacy-related 23 cases. Although, privacy is a very important right. 24 On the other hand, one respect, ironically, 25 the language is too specific. It speaks only of
3 1 this. 2 REPRESENTATIVE CUSHING I believe -- I 3 believe there is. I think as we are increasingly -- as 4 our technology, as our society evolves over time, what 5 I believe was always -- again, because I think that 6 privacy is the essence -- the right to be left alone 7 is -- which is privacy, it's the essence of liberty 8 which we're guaranteed. But I think this makes it even 9 more explicit that we're -- that we -- that an 10 individual has the right to be free from government 11 intrusion on our private or personal information. 12 MR. CHAIRMAN: Any questions from the 13 Committee? Thank you for stepping up to the plate. We 14 really appreciate it. 15 Representative Timothy Horrigan, are you 16 still here? 17 MR. HARRIGAN: Yes. 18 MR. CHAIRMAN: You're the first one to speak 19 on this in opposition. We'd love to hear from you. 20 MR. HARRIGAN: Okay. Mr. Chair? 21 MR. CHAIRMAN: Yes. 22 MR. HARRIGAN: Representative Kurk -- 23 apparently House Finances is exacting a bill right now, 24 but he'll be here as soon as he can. 25 MR. CHAIRMAN: Sure. Thank you.	5 1 governmental intrusion of private or personal 2 information. So that excludes non-governmental 3 intrusion, such as to name just one random example, the 4 400 megabyte dossier about every aspect of my own 5 personal life, which I downloaded a few days ago from 6 Facebook. Although I'm still using Facebook, so I 7 haven't like gotten off it just because of that. 8 Anyway this bill, I would say, it's literally 9 it's not ready for prime time, an expression we use a 10 lot around here, not ready for prime time so I think -- 11 MR. CHAIRMAN: There's 400 pages dossier on 12 you? 13 REPRESENTATIVE CUSHING 400 megabytes. It's 14 mostly just a list of every call I made on my cell 15 phone call since 2000 -- between, I think 2015 and 16 2017. 17 MR. CHAIRMAN: Maybe you could write a book 18 and sell it. 19 REPRESENTATIVE CUSHING Yes. Well, I could 20 try that. Maybe better luck than the other ones I've 21 written and tried to sell, but -- anyway, the proposed 22 language I don't think is ready for the 2018 general 23 election ballot, and I certainly don't think it's ready 24 as is into the State Constitution. If you want -- 25 you want to take stab at amending it, although there

6 1 isn't much time to do so, I might -- might feel 2 differently when it comes back to the House for the 3 Committee of Conference, but I think I just -- I just 4 don't -- I think the basic concept is good, but I think 5 what we produced, even though we worked hard on the 6 committee, just isn't something -- it just isn't 7 something that's ready to send to the voters, in my 8 opinion. 9 MR. CHAIRMAN: Thank you very much, 10 Representative. We appreciate your testimony. 11 REPRESENTATIVE CUSHING Thanks. 12 MR. CHAIRMAN: Is there a question? Senator 13 (Indiscernible)? 14 SENATOR: Yes, thank you. In your testimony 15 you mentioned that passage of this would likely have 16 many unintended consequences. Can you give us some 17 examples? 18 REPRESENTATIVE CUSHING Just lots of -- lots 19 of legal cases involve, you know, the use of private 20 information. I'm sure Representative Kurk will have 21 some examples, and I just think, you know, we get the 22 defense lawyers and the prosecutors and the judges 23 involved, and we put something that's -- sort of sounds 24 like it means something, but I certainly don't 25 understand what it means, so I'm like just hesitant	8 1 necessary to have a roll call vote. That's -- granted, 2 the practice -- I know that for the most time it's 3 usually a roll call vote. No one asked for a roll call 4 vote. A division was taken and that's how it came out. 5 But it's -- 6 MR. CHAIRMAN: Representative Itse -- 7 REPRESENTATIVE CUSHING -- it was sufficient 8 to meet the threshold to (indiscernible). 9 SENATOR: Well, I see that, but -- 10 UNIDENTIFIED: Could that be challenged? 11 REPRESENTATIVE CUSHING I believe that -- 12 UNIDENTIFIED: No. 13 REPRESENTATIVE CUSHING -- I believe that's 14 correct because what you're doing is you're looking for 15 the numerical and not (indiscernible) -- 16 UNIDENTIFIED: Okay. 17 REPRESENTATIVE CUSHING -- not the person -- 18 SENATOR: And 235 is the threshold right now? 19 REPRESENTATIVE CUSHING Yes. I believe our 20 clerk has left, but I -- that's my recollection that 21 that's what it was declared. 22 UNIDENTIFIED: The reason I commented on how 23 the Speaker voted is because he -- 24 REPRESENTATIVE CUSHING Can you just have him 25 come up here?
7 1 about how that's going to affect, you know, the 2 operation of law enforcement and, you know, there's 3 some -- like since there is the government sometimes 4 does have to use our personal information for all sorts 5 of purposes, so what's intrusion and what's proper use 6 and what's -- and then I don't know what those three 7 adjectives really mean exactly. Like if you start out, 8 I think, just saying it's a natural right and then 9 there's some concern about it so we added two more 10 adjectives to the list. 11 SENATOR: Thank you. 12 MR. CHAIRMAN: Thank you, Representative. We 13 appreciate you stepping up to the plate. Senator 14 (Indiscernible) 15 SENATOR: I think a question maybe of 16 Mr. Cushing or any -- any of the reps. I'm just 17 looking at the bill docket. 18 REPRESENTATIVE CUSHING Yes. 19 SENATOR: And it was certainly my 20 understanding, and I believe in the Senate that when we 21 take action on a constitutional amendment, it cannot be 22 by a division vote. It has to be by a recorded roll 23 call, and you didn't do that. 24 REPRESENTATIVE CUSHING Respectfully, I 25 believe a division is a recorded vote. It's not	9 1 MR. CHAIRMAN: We can't hear you. 2 UNIDENTIFIED: The -- I believe the Speaker 3 did have to vote on that to make it sufficient to pass 4 the threshold. I think he said so on the floor of the 5 House -- 6 UNIDENTIFIED: Right. It was pretty clear it 7 was for the record. It's in the House record. 8 MR. CHAIRMAN: And that's from Representative 9 Cushing and Representative -- just for clarification -- 10 UNIDENTIFIED: Both sides of the bill -- 11 UNIDENTIFIED: We were on both sides. We 12 will agree that there was sufficient votes to make the 13 constitutional requirement in order to pass it onto the 14 Senate for your action. 15 MR. CHAIRMAN: Thank you very much. 16 Representative Itse, do you want to comment on this 17 bill? 18 REPRESENTATIVE ITSE: Yes. Thank you. For 19 the record, thank you, Mr. Chairman, members of the 20 Committee. For the record, I'm Representative Dan 21 Iste, Rockingham County, District 10, the Town of 22 Freemont. What this does is state what has always been 23 understood as a matter of common law, which is that 24 your right to privacy in regards to the government is 25 extensive and complete.

10 1 The only thing that the Constitution does is, 2 I believe in -- because I don't have -- believe it or 3 not, don't have my copy with me. I believe it's 4 Article -- it's either 15 or 17 states the narrow 5 circumstances in which that privacy may be broached, 6 which is by warrant with an oath or affidavit. Without 7 that oath or affidavit, the government does not have 8 legitimate power to broach a privacy. 9 MR. CHAIRMAN: That being the case -- if I 10 could just interrupt you right there. That being the 11 case, why do we need this then? Does this affect that 12 broach, that ability to broach that? 13 REPRESENTATIVE ITSE: No. No, it does not 14 affect that ability to broach because the ability to 15 broach is in fact constitutional. The -- I think the 16 overriding issue is that when the Constitution was 17 written, all of your information was physical and today 18 a lot of our information, the mass majority of our 19 information is electronic. And it is much easier to 20 broach surreptitiously and, therefore, it is important 21 to remind the government that in fact they don't have 22 the power to broach that without an open and sworn 23 warrant. 24 MR. CHAIRMAN: They didn't have computers 25 back then, did they?	12 1 I can ask a follow-up question, putting this in my -- I 2 went into the New Hampshire Constitution and this is 3 why I'm asking you because I don't think you're a 4 supporter for Roe v. Wade. 5 REPRESENTATIVE ITSE: I understand. 6 UNIDENTIFIED: Aren't you enshrining the 7 precepts of Roe v. Wade and the New Hampshire 8 Constitution? 9 REPRESENTATIVE ITSE: No. I don't think so 10 and I'll tell you why. 11 UNIDENTIFIED: No, I don't think so -- 12 REPRESENTATIVE ITSE: No, I don't think so. 13 UNIDENTIFIED: -- is your answer? 14 REPRESENTATIVE ITSE: Seriously, I seriously 15 don't. Remember that, first of all, it was -- that was 16 determined vis a vis the Federal Constitution, rightly 17 or wrongly. If Roe v. Wade were to disappear today and 18 this amendment were to be adopted, that would not 19 change whether or not the State had the power to -- and 20 the State would then to reinstitute its laws then 21 existing regarding abortion, and the law regarding 22 abortion then was that anybody who killed a 23 (indiscernible) child was guilty of -- was liable for a 24 fine of \$10,000, because it really pertained to 25 physicians.
11 1 REPRESENTATIVE ITSE: No, they didn't. 2 MR. CHAIRMAN: Thank you. 3 REPRESENTATIVE ITSE: They didn't even have 4 ballpoint pens. 5 MR. CHAIRMAN: That's true, they didn't. 6 Questions from the Committee. Senator Bradley? 7 SENATOR BRADLEY: Thank you, Representative 8 Itse. I'm sure you recall in 1973 Roe v. Wade was 9 defined based on the right of privacy under the Federal 10 Constitution. How does this impact that? 11 REPRESENTATIVE ITSE: I don't think -- I 12 don't think it impacts it adversely, if that's -- 13 that's the question. I think it's important, when 14 looking at Roe v. Wade, that what the federal case 15 really did -- how do I say, functionally. We'll say 16 that there was a certain class of murder for which the 17 state could not obtain a warrant even if there was 18 otherwise justification for the -- the federal 19 government said you can't even look at it, remembering 20 that all those laws regarding abortion were state laws, 21 and the federal government said, no, in this case even 22 though somebody's broken this state law, you don't have 23 the power to broach that private and personal 24 information. 25 UNIDENTIFIED: Aren't you by virtue of -- if	13 1 There would be nothing between this right of 2 privacy and the right to obtain a warrant, or the power 3 to obtain a warrant I should say, that would say if the 4 State had reason to believe that a physician had 5 committed such an act that the State couldn't get a 6 warrant to do it, to make the investigation. I don't 7 think it changes that. That's a matter of whether or 8 not we make a law and whether a warrant can be sworn. 9 MR. CHAIRMAN: Follow-up? Any further 10 questions? Representative Itse, thank you very much. 11 Honorable McGuire, how are you sir? 12 MR. MCGUIRE: Very good, Mr. Chairman. Thank 13 you and thank you members of the Committee. For the 14 record, my name is Dan McGuire. I'm here representing 15 the New Hampshire Liberty Alliance, and we're very much 16 in support of this constitutional amendment. 17 Most of what I had to say is to echo what 18 Representative Itse said. When the Fourth Amendment 19 was put in and Section 19 of our -- Part 1 of our 20 Constitution was put in, which reads very similarly, 21 every subject has the right to be secure from all 22 unreasonable searches and seizures of this person, his 23 houses, his papers, and his possessions, et cetera. 24 And it talks about warrants. 25 When those things were put in, private --

14 1 private stuff or physical private stuff was located 2 somewhere, right? It was papers. It was notes, things 3 like that, and they would be located in your house, 4 possibly your business, maybe in the mail, things like 5 that, but they would all be visible to the eye and 6 physical. Today the -- what this constitutional 7 amendment is doing is updating that kind of a 8 provision, but for the modern world where there's lots 9 of information about people that while it's physical, 10 it's no longer -- it's infinitesimal, right? It's not 11 visible, right? 12 So for example, my emails, right, are 13 somewhere in Google, who knows where, right? 14 They're -- they could be in other countries. They 15 could be -- you know. And, you know, they're 16 physically somewhere, but they're -- they're tiny and 17 the idea of searching a place and looking for something 18 is really not -- not applicable, is not comprehensive 19 enough to cover those -- that private sort of 20 information. 21 Also, things like your DNA, right, that's -- 22 that's something that -- I don't know if Representative 23 Cushing mentioned this, but I know Representative Kurk 24 would make the point that if you go to Starbucks and 25 you drink a cup of coffee and you throw away the cup,	16 1 odd things, you never can tell, right? I mean -- 2 UNIDENTIFIED: I'll just say this. It's one 3 of those instances, be prepared for what you ask for. 4 MR. MCGUIRE: I understand. 5 UNIDENTIFIED: You might get it because I -- 6 you know, I read this language and I see information. 7 Well, you may think information is digital information, 8 but one's personal medical history or condition is also 9 information, and I think you're enshrining that right 10 into the Constitution. 11 MR. MCGUIRE: Sure. Yes, thank you. 12 UNIDENTIFIED: So enshrining that right of 13 privacy on your personal medical information into the 14 Constitution, and I suspect like Representative Itse, 15 you're not a supporter of Roe v. Wade, so that's what I 16 mean about being prepared for what you ask for because 17 I'm not -- who knows what will happen in the future. 18 MR. MCGUIRE: Thank you for that, but again I 19 would say -- suggest -- I would suggest that get into 20 the legislative record that we don't think it's about 21 that and then that would certainly help at least in the 22 long run. 23 MR. CHAIRMAN: I do have a question with 24 regards to -- this basically is limiting the government 25 from going into your personal whatever's in the Cloud,
15 1 your DNA is in that cup. And if the police is 2 following you and they want your DNA, they could pick 3 up the cup and say, well, you abandoned it. You know, 4 so no search warrant is needed, right? So that's the 5 kind of information that this bill is talking about. 6 It's about things that are -- that exist, but they're 7 tiny and they're -- they need to be stated as 8 information rather than things. 9 I'd like to also address Representative -- 10 I'm sorry, Senator Bradley brought up the issue of 11 abortion and Roe v. Wade and so on, and I heard this 12 argument recently, and I think it is something possibly 13 to be concerned about. The best way -- I don't -- I 14 agree with Representative Itse that this doesn't apply, 15 but is about information. But the best way to sort of 16 inoculate against that would be if you decide to pass 17 this, to make a speech on the Senate Floor stating that 18 this is not about abortion, this is not about Roe v. 19 Wade, and ask that to be put into the permanent 20 journal. And that way, if it ever became a court case 21 later on, there would be legislative precedent to say, 22 look, this is not about those kind of issues. That's 23 the -- that's the right way to handle those kind of 24 things where you think maybe somewhere -- you know, for 25 the courts -- you know, courts that have done things,	17 1 if you will. 2 MR. MCGUIRE: Yeah. 3 MR. CHAIRMAN: So whether it's Ancestry.com 4 or you surrender your DNA, it's a private corporation 5 that now owns that information, or Google that has a 6 dossier on you, which nobody permitted them not to 7 have. You know, who knows what's going on. 8 MR. MCGUIRE: Right. Undoubtedly, in the 9 fine print of the 15-page thing that you agreed to when 10 you click on it, it said that they could do whatever 11 they want with your information, right? 12 MR. CHAIRMAN: So that being said, and the 13 whole host of all the other social medias out there, 14 would this then prevent the government from seeking out 15 that information to those entities rather than directly 16 into your home files? Meaning, you've got your 17 computer. You got all your information. Yes, they 18 can't go into all that, but somebody else has it. Can 19 they solicit that from those private corporations, if 20 you will? Does this prevent them from doing so without 21 a warrant? 22 MR. MCGUIRE: Yes. I think the answer is 23 generally, yes, all right, because it's -- again, it's 24 about -- it's about the individual's information, but 25 not -- it doesn't regard to where it is, right? It

18 1 could be in the custody of Google. It could be in the 2 custody of whatever. So -- 3 MR. CHAIRMAN: So that being said, the courts 4 could say, or the government could say, well, we can't 5 do that, but that's not to stop corporations from 6 saying, hey, we got this, you want it. 7 MR. MCGUIRE: I see. 8 MR. CHAIRMAN: Would it prevent them from at 9 least accepting it without a warrant? If somebody else 10 owned the information, could they then say, hey, you 11 own this as well, this information. Ancestry.com, we 12 have your DNA because you surrendered it and you signed 13 a release form and we're just going to put a general 14 plea out there, we'd love this information if anybody 15 has any information -- 16 MR. MCGUIRE: Sure. 17 MR. CHAIRMAN: -- would you please surrender 18 it. Does this stop them from surrendering that 19 information? 20 MR. MCGUIRE: Okay. All right. So I'm 21 getting to the point where maybe it's -- this is the 22 beyond my pay grade type of question because I'm an 23 engineer. I'm not an attorney, okay? But certainly 24 there are cases where government has improperly 25 obtained information. They later bring it -- a case	20 1 accommodating. Finance just completed it the fastest 2 executive session it's ever had, in part, the impetus 3 to my need to be here. 4 There are a couple of very important things 5 that are going on in our lives over the past two 6 decades, and one of them, among others, are the 7 development of the internet, the cell phone, and all of 8 the things that we now have which have allowed, as we 9 know from the recent Facebook case, the accumulation of 10 vast amounts of information about us in private hands. 11 Not necessarily in government hands, although that too. 12 Our Constitution in Article 19, Part 1, 13 provides protection against -- or in the area of police 14 investigation. This is the Fourth Amendment in the 15 Federal Constitution. Our Article 19 makes sure that 16 if the State is going to get into a person's physical 17 possessions, information, whatever it is, in criminal 18 matters, that they must have a warrant or an exception 19 to the warrant requirement. And that's the kind of 20 protection the founders said that we needed, based on 21 their experience with the British. 22 CACR16 goes beyond that. It deals with 23 government, not the private sector, this is government, 24 and talks about non-criminal information, and says 25 basically that we have an expectation of privacy with
19 1 against somebody and that information is thrown out and 2 not considered by the Court in their trial because it 3 was improperly obtained, right? 4 So the examples -- I think what you're 5 getting at is sort of in that realm, right? So -- 6 MR. CHAIRMAN: It's just -- just thinking on 7 the surface, you know -- 8 MR. MCGUIRE: Sure. 9 MR. CHAIRMAN: -- because our information is 10 out there and who knows. 11 MR. MCGUIRE: But the point is we're better 12 off with it than without it, right? Certainly now 13 there's no -- no prohibition against that sort of 14 thing, and what you're proposing is, well, maybe they 15 could wiggle around, da, da, da, da, da, right? But -- 16 MR. CHAIRMAN: (Indiscernible). Any other 17 questions from the Committee? Thank you, sir. 18 MR. MCGUIRE: Thank you. 19 MR. CHAIRMAN: We really appreciate your 20 testimony. And now we'll hear from the prime sponsor. 21 I tried to hold it off as long as possible. 22 REPRESENTATIVE KURK: Thank you, Mr. 23 Chairman. For the record, I'm Neal Kurk representing 24 Hillsborough, District 2, the Towns of Deering and 25 Weare, and I appreciate the fact that you were	21 1 respect to that information should government wish to 2 obtain it. Now please understand this does not in any 3 way prevent the Government from entertaining it -- from 4 obtaining it, just as the Fourth Amendment does not 5 prevent the Government from searching your home or your 6 possessions. 7 What it does is to require the Government to 8 prove when it wants to get a warrant, for example, to 9 get this information, or simply to pass a law to access 10 this information, that there is a significant 11 government interest in collecting the information that 12 outweighs the now constitutionally right to have this 13 information protected. So what we're doing is not 14 barring government, but requiring government to meet a 15 higher standard than it currently must in order to 16 protect this information. 17 Basically, the courts already do a balancing 18 act in -- when it comes to deciding all sorts of cases 19 and this simply requires it to do that with respect to 20 information of privacy. Please note that this is 21 information. This includes all sorts of information 22 about us and the question is should government have 23 access to create a database, for example, of all of its 24 citizens' information, where we were born, what we do, 25 medical records, I heard that discussed as I was coming

22 1 in, or should it not. And the answer is we don't know. 2 Is there a case that can be made that the value of that 3 information is so important to protect public safety or 4 public health or whatever it is, that the Court feels 5 that the privacy interests of the individuals in their 6 information should be sacrificed to the greater public 7 good? So in no way is this bill -- is this amendment 8 going to cripple government's ability to function. 9 Please also note that this only applies to 10 government conduct related to individuals. It doesn't 11 apply to commercial conduct unless, obviously, the 12 Government hires a commercial outfit to act in its 13 stead. So this would have no impact, for example, on 14 the Facebook brouhaha that we're hearing about. That's 15 not related to this. At least as far as we know now, 16 there's no government involved in that. 17 CACR16 is -- 18 MR. CHAIRMAN: Representative, I'm sorry, 19 could you repeat that one more time for me? 20 REPRESENTATIVE KURK: That this doesn't apply 21 to commercial activities. It applies to individuals' 22 activities. So this wouldn't apply to Facebook, 23 because Facebook isn't a government. Now it would 24 apply to Facebook if the Government were trying to 25 access Facebook information about a particular senator,	24 1 MR. CHAIRMAN: Good answer. 2 REPRESENTATIVE KURK: One of the things that 3 I think is clear about this is it's very simple, and it 4 states a very basic premise. And I think your 5 questions really go to, well, what does this really 6 mean, and like so many of the other basic 7 constitutional principles, it will evolve over the 8 decades and centuries. But it's a necessary statement 9 of a value that we hold that information owned by or 10 about an individual is really not available to 11 government without a sufficient reason that justifies 12 it. 13 SENATOR FULLER CLARK: So -- 14 MR. CHAIRMAN: Follow-up? 15 SENATOR FULLER CLARK: -- follow-up question. 16 The other criticism that has been raised is that by 17 putting this into statute that it could be perceived 18 going forward in legal cases that it protects a woman's 19 right to choose. 20 REPRESENTATIVE KURK: The only thing this 21 would protect is medical records, which is information 22 about that person. It has nothing to do with Roe v. 23 Wade or abortion or anything like that. That wouldn't 24 be, as I can -- as I can intend -- certainly not 25 intended and that I don't understand it to have
23 1 for example. Then this would apply. 2 MR. CHAIRMAN: Thank you. 3 REPRESENTATIVE KURK: CACR16 is a necessary 4 step to take back an individual's privacy in his or her 5 personal or private information in response to the 6 growing prevalence and capacity of technology used by 7 government. And I think this is very much in keeping 8 with the New Hampshire tradition of placing the 9 individual in charge of government, rather than 10 government in charge of the individual. 11 With that, Mr. Chairman, I'd be pleased to 12 answer any questions. 13 MR. CHAIRMAN: Thank you very much for your 14 testimony. Senator Fuller Clark with a question. 15 SENATOR FULLER CLARK: Yes. Thank you very 16 much, Representative Kurk, and thank you for being 17 here. We heard testimony previously that such words as 18 natural, essential, and inherent, are they an 19 unenforceable, and would you be able to address that 20 criticism? 21 REPRESENTATIVE KURK: Yes. They were copied 22 from various other sections of the Constitution. 23 Whatever they mean in those other sections, they mean 24 here. 25 SENATOR FULLER CLARK: Thank you so much.	25 1 anything to do with it except to say that if the 2 Government wants a woman's medical records, it's got to 3 show that there's an exceptional interest in public 4 health to get that. I mean, if they can make that 5 showing, then those records will be available. 6 MR. CHAIRMAN: Follow-up? 7 SENATOR FULLER CLARK: Follow-up. We heard 8 that part of the decision in Roe v. Wade was based on 9 the right to privacy. I think that's where that 10 comment or concern came from. 11 REPRESENTATIVE KURK: I don't think Roe v. 12 Wade was based on informational privacy. I thought -- 13 and I'm not the expert on Roe v. Wade. I thought Roe 14 v. Wade was more the privacy relationship between 15 perhaps a woman and her doctor, but not on information. 16 I don't think information was the issue there. 17 SENATOR FULLER CLARK: Thank you. 18 MR. CHAIRMAN: Senator Daniels? 19 SENATOR DANIELS: Thank you. Would any -- 20 anything in this legislation have any impediment to the 21 PDMP discussions that we've been having in fiscal? 22 REPRESENTATIVE KURK: Perhaps, but I think if 23 somebody check -- let's assume this amendment were in 24 effect, we put in the PDMP, and somebody challenged it 25 on the grounds that it violated this constitutional

26 1 right. I think the case could -- the State could make 2 a very strong case that for public safety and public 3 health reasons this information was absolutely 4 essential to deal with the opioid crisis. 5 So again, while I think it would be -- the 6 amendment would apply, I think the case -- in my view, 7 the case -- the State has a very strong case for doing 8 this. I happen, personally, to oppose the PDMP for 9 privacy reasons, but even with this amendment I think 10 the State has a very strong case to do it. 11 MR. CHAIRMAN: For the public's interest, 12 could you define what PDMP means? 13 REPRESENTATIVE KURK: Oh, the prescription -- 14 PD -- Prescription Data Monitoring Program. This is 15 the one -- this is the program that we set up where all 16 prescriptions for opioids by name of person and doctor 17 prescribing go into a database, and physicians are 18 required, when they make future prescribing decisions, 19 to look at this database and to see if we have a serial 20 prescribing problem here. 21 MR. CHAIRMAN: Right. 22 REPRESENTATIVE KURK: People can look at the 23 database to see if there's a problem with the doctor. 24 Is Dr. Jones over prescribing? The purpose is to give 25 us information to prevent over prescriptions which lead	28 1 MS. TENTARELLI: You did, so I am correcting 2 that for the record. It is the League of Women Voters 3 of New Hampshire. And I did not sign in and -- that's 4 all right. I did not sign in in support or opposition, 5 rather I'm speaking as representing our non-partisan 6 organization that feels it's very important for us to 7 help the public understand constitutional amendments 8 should this make it to the ballot. 9 So I'm pretending to far more na ve than I 10 really am. I spend a lot of time here observing 11 hearings. But for the average voter, when this appears 12 on the ballot, it says I've got a right to live free of 13 governmental intrusion. They can't tell me to register 14 my dog, to license my dog, to register my car, to send 15 my children to school. I fear there will be a problem 16 and I know that on the ballot we have to go with 17 language. I have heard Representative Kurk say this 18 applies to information only. That is not in the 19 phrasing here. It's not going to be obvious to the 20 voters that that's what it means. 21 So when Senator Bradley talked about 22 unintended consequences, there could be huge ones in 23 the part of -- in the minds of the voting public. So I 24 would just encourage this committee and the bill's 25 sponsor -- and the sponsors of this CACR to figure out
27 1 to addiction and to deal with doctors who are involved 2 in this, and also to find out if there -- if there are 3 patients who are abusing the system. Again, we're 4 trying to save lives here and this is one mechanism to 5 do it. 6 MR. CHAIRMAN: That was a very good question. 7 Any further questions? 8 REPRESENTATIVE KURK: I'm sorry for the 9 acronym, but -- 10 MR. CHAIRMAN: No. 11 REPRESENTATIVE KURK: -- Senator Daniels -- 12 MR. CHAIRMAN: He did it. It's important. I 13 think we take for granted when all these things are put 14 out there and we have people in the audience are what 15 is that. So thank you very much for your testimony. 16 REPRESENTATIVE KURK: Thank you. 17 MR. CHAIRMAN: Any further questions? Seeing 18 none. I have two more speakers and we're going to hear 19 from the Women's Defense League, Liz, and then we'll 20 from Jeanne. 21 MS. TENTARELLI: Thank you for letting me 22 speak. My name is Liz Tentarelli. I'm president of 23 the League of Women Voters of New Hampshire, not the 24 Women's Defense League. 25 MR. CHAIRMAN: Did I say Defense League?	29 1 how to make this clear to the voting public of what it 2 includes and what it does not. 3 MR. CHAIRMAN: I think we had the Honorable 4 McGuire mention that we could define just through the 5 floor speech as to the intent of this, so that it is in 6 the permanent journal for clarification. But who has 7 the ultimate authority as to what is on the ballot and 8 how that will be defined is definitely an issue that we 9 need to address. I agree. 10 MS. TENTARELLI: And the last time we had a 11 constitutional amendment, the League did try to provide 12 information on both sides. We got blurbs, shall we 13 say, from both sides and tried to publish that. Many 14 people, however, came to the polls and we had League 15 members stationed at the polls trying to answer voters' 16 questions on their way in of what does this really 17 mean. So it is an issue, and thank you for recognizing 18 that. 19 MR. CHAIRMAN: Senator Fuller Clark with a 20 question. 21 SENATOR FULLER CLARK: No. 22 MR. CHAIRMAN: Oh, you don't. So that was 23 yes and then no, all right. Senator Daniels? 24 SENATOR DANIELS: Did I hear you correctly to 25 say that you did not feel that this would be

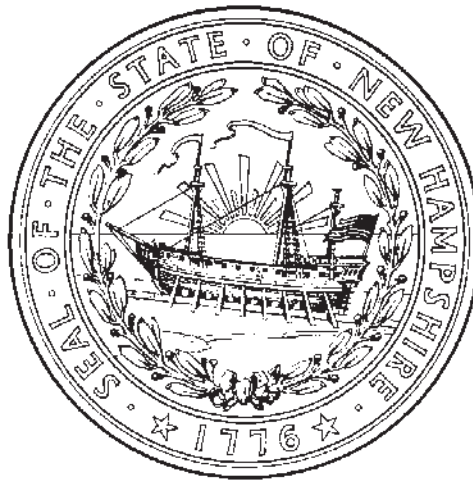
30 1 interpreted to apply to just information? 2 MS. TENTARELLI: Exactly. If I -- I'm 3 reading it here and it does -- you know, and the na ve 4 voter, I have no idea it means information. 5 MR. CHAIRMAN: Follow-up? 6 SENATOR DANIELS: Follow-up. So when we look 7 at the question that would be put on it or -- 8 MS. TENTARELLI: It's the wording in Lines 3 9 and 4 of the bill is apparently the wording that would 10 be on the ballot. 11 SENATOR DANIELS: Okay. 12 MS. TENTARELLI: Whether there would be 13 additional wording is unclear at this point. But 14 that's what would be on there and it says nothing 15 about -- I'm sorry. It says information there, doesn't 16 it? It does -- 17 SENATOR DANIELS: I guess that's what I was 18 going to point out. It does say government intrusion 19 in private or personal information. 20 MS. TENTARELLI: Okay. And I was looking at 21 the coversheet to the bill where the word information 22 is not there. So that's why I'm being cautious here. 23 SENATOR DANIELS: Okay. 24 MR. CHAIRMAN: Follow-up? 25 SENATOR DANIELS: No. I just want to point	32 1 MS. HRUSKA: Good job. 2 MR. CHAIRMAN: I did say that right, huh? 3 MS. HRUSKA: As long as I know what you're 4 saying, you said it right. I'm going to -- there's two 5 pieces of paper here. One is my testimony and one is 6 from Law Professor Buzz Scherr who helped with this 7 CACR, but unfortunately can't be here today. So I'm 8 going to provide testimony on my behalf and on his. 9 I want to echo everything that Representative 10 Kurk said about the bill and will just clarify perhaps 11 a couple of points. 12 I want to start with the interesting notion, 13 when I notion New Hampshire, I think one of the first 14 things that becomes very clear is how much Granite 15 Staters care about privacy. And to me it was 16 interesting to learn that the word doesn't actually 17 show up in our Constitution. To me, if New Hampshire 18 would have anything in its Bill of Rights, it would be 19 a right to privacy, given kind of our libertarian 20 spirit, and yet we don't. And perhaps that's because 21 for the last several decades we've had a patchwork of 22 statutory protections regarding privacy and that was 23 sufficient until today's modern digital age. We now 24 have Facebook. We have 23andMe. We have Ancestry.com. 25 Our information is far more accessible and prevalent
31 1 out that -- 2 MS. TENTARELLI: It is in those lines. 3 MR. DANIEL: -- I think the question would 4 indeed include the word information. 5 MR. CHAIRMAN: Senator Fuller Clark? 6 SENATOR FULLER CLARK: Just with that 7 notation, are you comfortable that with that reference 8 to information that the interpretation of this can be 9 made clear? 10 MS. TENTARELLI: I'm not sure. Again, I 11 wonder whether people will think that means I don't 12 have to participate in the Census in 2020. What kind 13 of information, for what uses, and I realize we're 14 talking about the Constitution and things are not 15 spelled out that way. I just fear there's going to be 16 confusion on the part of the voters. 17 SENATOR FULLER CLARK: Thank you. 18 MR. CHAIRMAN: Thank you for your testimony. 19 We appreciate it. 20 MS. TENTARELLI: Thank you for the 21 opportunity. 22 MR. CHAIRMAN: Does anybody else want to 23 speak on this? 24 Then we will hear from our final speaker, 25 Jeanne Hruska.	33 1 than it's ever been before. And increasingly, the 2 patchwork of statutory protections that we have are 3 just not sufficient. 4 I do want to note that CACR16 is actually 5 pretty limited. It does not prohibit any and all 6 access to personal and private information. As 7 Representative Kurk said, instead it would effectively 8 change the balancing that a court already does when 9 deciding whether government interest in gaining access 10 to information outweighs the nature and degree of 11 intrusion on an individual's privacy interest. So 12 specifically, it would require the Government to now 13 show a compelling State interest in obtaining access to 14 personal and private information before a court would 15 order such access. 16 Sometimes the State will be able to meet that 17 burden, particularly in instances of public safety. 18 Access to personal and private information for which 19 the Government has probable cause to believe will help 20 solve a crime will still be accessible by a search 21 warrant. By contrast, random gathering of personal and 22 private information by the Government as part of a 23 fishing expedition, or just because nothing stops the 24 Government from doing so, will be prohibited by virtue 25 of the balancing test described.

34 1 It's also important to know, as 2 Representative Kurk said, that CACR16 only applies to 3 government conduct related to individuals. The one 4 slight caveat to that is it would apply to commercial 5 conduct done on behalf of the Government. So there was 6 some question about kind of could the Government ask 7 companies to volunteer information, and I think there 8 would be a question there. If companies are acting on 9 behalf of the Government, it could get caught by this, 10 and rightfully so. 11 So on that, Part 1 of the New Hampshire 12 Constitution, as we all know, it only regulates 13 interactions between the Government and the individual. 14 It's not designed to manage relationships or exchanges 15 between private individuals or entities. So CACR16 is 16 absolutely needed to respond to the technological age 17 that we now live in, but it is also limited to respond 18 to people's concerns about law enforcement, about 19 public safety, and we think it strikes the right 20 balance between those two things. 21 With that said, I'm happy to answer 22 questions. 23 MR. CHAIRMAN: Probably a dumb one, but you 24 mentioned probable cause. Is that standard to generate 25 a warrant?	36 1 CERTIFICATION 2 3 I, Alicia Jarrett, transcriber, hereby 4 certify that the foregoing is a correct transcript from 5 the recording provided. 6 7 8 9 _____ 10 ALICIA JARRETT, AAERT NO. 428 DATE: October 24, 2025 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
35 1 MS. HRUSKA: Yeah, the same standards for a 2 search warrant that exist now would happen under this. 3 It just -- this would now get factored into the court's 4 balancing test. 5 MR. CHAIRMAN: Any questions? Going once, 6 going twice. Thank you very much for your testimony. 7 MS. HRUSKA: Thank you. 8 MR. CHAIRMAN: I put it out there and nobody 9 else wants to speak on this. I'm going to close the 10 hearing. 11 (Recording ends) 12 * * * * * 13 14 15 16 17 18 19 20 21 22 23 24 25	

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**Second Year of the 165th Session of the
New Hampshire General Court**

SENATE CALENDAR

HB 1347, relative to information to be included in the minutes under the right-to-know law.
Ought to Pass with Amendment, Vote 4-1.
Senator Gannon for the committee.

HB 1372, prohibiting the implanting of subcutaneous identification devices in individuals.
Ought to Pass with Amendment, Vote 4-1.
Senator French for the committee.

HB 1443, relative to a jury's determination as to the applicability of a law.
Inexpedient to Legislate, Vote 4-1.
Senator Lasky for the committee.

HB 1627-FN, prohibiting the transmission of images or sounds of another person who is on private property or to conduct surveillance activity.
Interim Study, Vote 2-1.
Senator Carson for the committee.

PUBLIC AND MUNICIPAL AFFAIRS

HB 1307, relative to the presentation of a default budget.
Inexpedient to Legislate, Vote 5-0.
Senator Birdsell for the committee.

RULES AND ENROLLED BILLS

CACR 15, relating to legal actions. Providing that taxpayers have standing to bring actions against the government.
Ought to Pass, Vote 3-0.
Senator Avar for the committee.

CACR 16, Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.
Ought to Pass, Vote 3-0.
Senator Fuller Clark for the committee.

HB 1243, relative to exemptions from property attachments.
Interim Study, Vote 3-0.
Senator Daniels for the committee.

TRANSPORTATION

HB 314, relative to autonomous vehicles.
Ought to Pass with Amendment, Vote 5-0.
Senator Birdsell for the committee.
HB 500, relative to organizations that are authorized to issue decals.
Inexpedient to Legislate, Vote 5-0.
Senator Birdsell for the committee.

HB 1549, relative to the availability of vehicle accident reports.
Ought to Pass, Vote 5-0.
Senator Watters for the committee.

HB 1595, relative to the use of the left lane of a multilane roadway.
Ought to Pass, Vote 5-0.
Senator Ward for the committee.

HB 2018, relative to the state 10-year transportation improvement program.
Ought to Pass with Amendment, Vote 5-0.
Senator Birdsell for the committee.

WAYS AND MEANS

HB 263, relative to facilities licenses for charitable gaming.
Ought to Pass with Amendment, Vote 3-2.
Senator Giuda for the committee.

HB 324, establishing a commission to study utility property valuation and recommend legislation to reform the current system of taxing utility property in New Hampshire.
Ought to Pass with Amendment, Vote 5-0.
Senator Feltes for the committee.

HB 1251, relative to indicia for payment of taxes on the transfer of real property.
Ought to Pass with Amendment, Vote 4-1.
Senator Feltes for the committee.

1

Full House Session: Debate on CAR16
May 2, 2018
Audio Transcription
Portion Transcribed: 5:32:59 - 5:39:36

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2 1 (Recording begins) 2 THE CLERK: Thank you, Mr. President. The 3 Committee on Rules and Enrolled Bills to which was 4 referred CACR16, an act relating to privacy providing 5 that an individual's right to live free of governmental 6 intrusion is natural, essential, and inherent. Having 7 considered the same, the Committee recommends that the 8 bill is ought to pass by a vote of three to zero. 9 Senator Fuller Clark for the Committee. 10 SENATOR FULLER CLARK: Thank you very much, 11 Mr. President. 12 I move CACR16 ought to pass. This 13 constitutional amendment is a necessary response to the 14 technological and scientific era of genetic research. 15 It fills the gap in the New Hampshire Constitution 16 regarding individual protection from government 17 intrusion in personal and private information. The 18 imposition of this burden will in no way hinder the 19 government's ability to function. Access to personal 20 and private information which -- for which the 21 government has probable cause will still be accessible 22 via a search warrant. 23 This amendment is necessary to take back an 24 individual's privacy in personal and private 25 information in response to the growing prevalence and	4 1 those three words. 2 Secondly, there was some concern raised about 3 the definitions of private or personal information. 4 Now, both of those terms, private information and 5 personal information -- now, you saw reference to 6 medical records and various things. And I -- you know, 7 of course, we do need to protect this. And we passed 8 some legislation about, you know, people's DNA samples 9 should be not distributed or given to other people 10 without the consent of the person whose sample it is. 11 I mean, these are the kinds of things we should and -- 12 attend to in legislation. 13 But "private or personal", just exactly what 14 does that cover? Something that's private or personal 15 to one person may be vastly expansive compared to what 16 it is to someone else. And I don't know what we do but 17 to invite incredible amounts of litigation here on each 18 of those. 19 And how is it, constitutionally, that we're 20 going to be able to determine that? I think in some 21 ways we -- you know, I do trust the voters. I voted 22 for the last one. I had some concerns about it. I -- 23 the voters are going to sort that one out. I don't 24 think we should send something to the voters which is 25 such a conundrum. We have a responsibility here to
3 1 capacity of technology, particularly with regard to the 2 internet and electronic information. Please join the 3 committee in voting CACR16 ought to pass. 4 Thank you, Mr. President. 5 SENATOR AVARD: Thank you, Senator Fuller 6 Clark. 7 The motion is ought to pass. The bill is now 8 on second reading. Is there any discussion? 9 Senator Watters? 10 SENATOR WATTERS: Thank you, Mr. President 11 and -- and colleagues. I rise to express the need for 12 some caution on this amendment. I know that it came 13 through the House by one vote. I think there are a lot 14 of concerns raised over there. And you read the 15 hearing report, and I think an essential point is made. 16 Despite the assurances about search warrants 17 and so forth, do note that the language that we're 18 using here -- "natural, essential, and inherent" -- 19 these are the strongest possible terms that go, you 20 know, back centuries in jurisprudent and constitutional 21 law, back particularly to John Locke. And I think that 22 this language really needs to be -- the consequences 23 need to be reconsidered because I think there's a 24 potential here for many, many necessary functions of 25 government to be preempted because of the inclusion of	5 1 answer those kinds of questions about what is private, 2 what is personal, especially if we're going to give 3 them the status of natural, essential, and inherent. 4 So I think we ought to have enough of us here 5 voting against this so that it can be considered more 6 thoroughly and see if we really aren't able to do this 7 in statute. 8 Thank you, Mr. President. 9 PRESIDENT MORSE: Senator Watters. 10 Senator Giuda. 11 SENATOR GIUDA: Thank you, Mr. President. I 12 would rise in support of this CACR. Although I do 13 share some of the concerns of my colleague from 14 District Number 4, I think, in the Constitution, we 15 establish a basis and a premise, and then we allow this 16 legislature and our comrades across the way to 17 establish in statute the meaning of those terms and 18 that when those statutes fall short, the courts will 19 adjudicate those meanings as well. And that's been the 20 history of our jurisprudence over time. So while I 21 would agree that we need caution, I also agree we have 22 the power to define those terms ourselves. And that 23 will flow from this amendment. 24 Thank you, Mr. President. 25 PRESIDENT MORSE: Question is on the adoption

6 1 of the committee recommendation of ought to pass on 2 CACR16. Further discussion? You ready for the 3 question? 4 UNIDENTIFIED: Roll call. 5 PRESIDENT MORSE: Roll call is required. 6 UNIDENTIFIED: Second. 7 UNIDENTIFIED: Third. 8 PRESIDENT MORSE: Question is on the adoption 9 of the committee recommendation of ought to pass on 10 CACR16. You ready for the question? The clerk will 11 call a roll. 12 THE CLERK: Senator Woodburn? 13 SENATOR WOODBURN: No. 14 THE CLERK: Senator Giuda? 15 SENATOR GIUDA: Yes. 16 THE CLERK: Senator Bradley? 17 SENATOR BRADLEY: Yes. 18 THE CLERK: Senator Watters? 19 SENATOR WATTERS: No. 20 THE CLERK: Senator Hennessey? 21 SENATOR HENNESSEY: No. 22 THE CLERK: Senator Gray? 23 SENATOR GRAY: Yes. 24 THE CLERK: Senator French? 25 SENATOR FRENCH: Yes.	8 1 THE CLERK: Senator D'Allesandro? 2 SENATOR D'ALLESANDRO: No. 3 THE CLERK: Senator Fuller Clark? 4 SENATOR FULLER CLARK: Yes. 5 THE CLERK: Senator Gannon? 6 SENATOR GANNON: Yes. 7 THE CLERK: Senator Innis? 8 SENATOR INNIS: Yes. 9 THE CLERK: Senator Morse? 10 PRESIDENT MORSE: Yes. 11 SENATOR AVARD: The ayes have it. The motion 12 ought to pass is adopted 15 to 9, and it's ordered to 13 third reading. 14 (Recording ends) 15 * * * * * 16 17 18 19 20 21 22 23 24 25
7 1 THE CLERK: Senator Ward? 2 SENATOR WARD: Yes. 3 THE CLERK: Senator Sanborn? 4 SENATOR SANBORN: Yes. 5 THE CLERK: Senator Kahn? 6 SENATOR KAHN: No. 7 THE CLERK: Senator Daniels? 8 SENATOR DANIELS: Yes. 9 THE CLERK: Senator Avar? 10 SENATOR AVARD: Yes. 11 THE CLERK: Senator Lasky? 12 SENATOR LASKY: No. 13 THE CLERK: Senator Carson? 14 SENATOR CARSON: Yes. 15 THE CLERK: I think that was a yes. All 16 right. Senator Feltes? 17 SENATOR FELTES: No. 18 THE CLERK: Senator Cavanaugh? 19 SENATOR CAVANAUGH: No. 20 THE CLERK: Senator Reagan? 21 SENATOR REAGAN: Yes. 22 THE CLERK: Senator Soucy? 23 SENATOR SOUCY: No. 24 THE CLERK: Senator Birdsell? 25 SENATOR BIRDSSELL: Yes.	9 1 CERTIFICATION 2 3 I, Alicia Jarrett, transcriber, hereby 4 certify that the foregoing is a correct transcript from 5 the recording provided. 6 7 8 9 _____ 10 ALICIA JARRETT, AAERT NO. 428 DATE: October 24, 2025 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Enrolled Bill Amendment to CACR 16

The Committee on Enrolled Bills to which was referred CACR 16

AN ACT Relating to privacy. Providing that an individual's right to live free of governmental intrusion is natural, essential, and inherent.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to CACR 16

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to CACR 16

Amend paragraph IV of the resolution by replacing line 2 with the following:

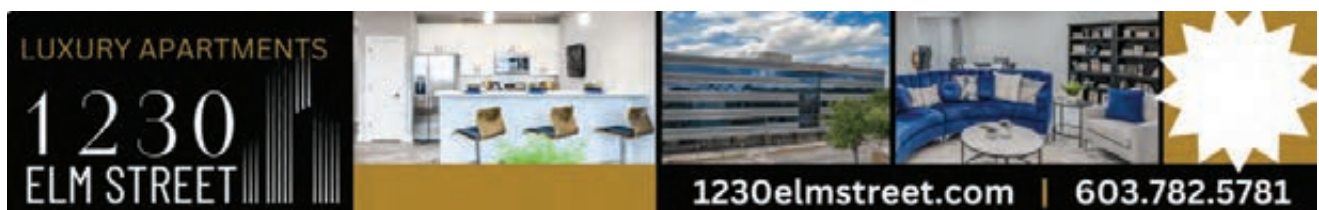
“Are you in favor of amending the first part of the constitution by inserting after article 2-a a new

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Those Constitutional Amendment questions on the ballot: What are they all about?

 Thursday, October 11, 2018

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On election day, New Hampshire ballots will include two measures to amend the state constitution:

- Question 1, CACR 15, would allow the public to sue against state spending in violation of the law.
 - Question 2, CACR 16, assures the right to privacy from the government.
-

Each measure must be approved by two-thirds of those voting in order to become part of the constitution.

Question 1, CACR 15, would allow the public to sue against state spending in violation of the law

The bill named CACR 15 was introduced in the House on January 3, sponsored by four representatives: **Bob Backus** (D-12), **Joseph Hagan** (R-Chester), **Claire Rouillard** (R-Goffstown), and **Paul Berch** (D-Westmoreland). It received an Ought to Pass vote in the House on March 6 with the necessary three-fifths vote. It then passed to the Senate where it received an Ought to Pass vote on May 2 with the necessary three-fifths vote. **Manchester Senators Lou D'Allesandro and Donna Soucy** were the only two to vote against it.

1. "Are you in favor of amending article 8 of the first part of the constitution to read as follows: [Art.] 8. [Accountability of Magistrates and Officers; Publics Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. ***The public also has a right to an orderly, lawful, and accountable government Therefore, any individual taxpayer eligible to vote in the State shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer. However, this right shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding.***" (Passed by the N.H. House 309 Yes 9 No: Passed by the State Senate 22 Yes 2 No) **CACR 15** YES ☐ No ☐

Manchester **Representative Bob Backus** (D-12) wrote, "I'm 100 percent on board. NH had a 150 year tradition of allowing taxpayers to have standing to ask a NH court to hear their claim that the government, state or municipal, were spending their tax dollars illegally. The NH Supreme Court took this long-established right away in the Duncan case on school vouchers in a case where Bill Duncan had prevailed in the

Superior Court. As a result today it's hard to see how anyone can challenge this, in my opinion, blatantly unconstitutional, diversion of tax to private, including religious, schools.”

Representative Paul Berch (D-Westmoreland) wrote, “This Constitutional Amendment restores to the taxpayers of our State the legal ability to bring certain lawsuits relating to the spending of public funds by the State or the political subdivision in which the taxpayer resides. In doing so, our taxpayers will have broader access to our Courts and greater ability to ensure governmental accountability. As the NH Supreme Court noted several decades ago, every taxpayer has a vital interest in proper government, regardless of whether his or her purse is specifically affected. Until relatively recently, the NH Supreme Court recognized taxpayer ‘standing’. This Amendment will assure that this important taxpayer right will continue to be recognized and enforced.”

While **Manchester Representative Tim Smith** (D-10) did not take a position on the amendment, he cautioned in a [Manchester Ink Link opinion piece](#),

“This language would also open up the state government to a potential flood of frivolous lawsuits (similarly to the amendment on personal privacy, doubly so if both of them are ratified) all of which would be underwritten by the taxpayers. [...] Even cases which are dismissed can still end up costing the state significant amounts of money to litigate (the amount of your money the state government already spends on litigation every year would shock you), and a number of people in the legislature expressed concern about this potential consequence even though they supported the amendment generally.”

In response to such concerns, **Berch** wrote, “There are significant limitations in the kinds of suits that can be brought. The Judicial Branch did not indicate it would have any difficulty handling potentially frivolous suits; requests for declaratory relief can be expeditiously handled by the Courts.’

“A core reason for me is the increased funding of non-public schooling in NH through the use, directly or indirectly, of public taxpayer money. In the Duncan case, the NH Supreme Court held that taxpayers did not have standing to sue to determine

whether this funding violates the state Constitution. This CACR would overturn the Duncan decision.’

Manchester Senators Donna Soucy (D-18) and **Lou D’Allesandro** (D-20) voted against this measure. Despite repeated attempts to get her comments, Soucy has not replied. D’Allessandro said, “I think the amendment is not needed.”

Question 2, CACR 16 assures the right to privacy from the government

The bill named CACR 16 was introduced in the House on January 3, sponsored by Representatives **Neal Kurk** (R-Weare) and **Renny Cushing** (D-Hampton). It received an Ought to Pass vote in the House on February 22 with the necessary three-fifths vote. It then passed to the Senate where it received an Ought to Pass vote on May 15 with the necessary three-fifths vote (235-96). Fifteen Yea votes were cast by the Senate (14 Republicans and 1 Democrat, Martha Fuller Clark of Portsmouth). Nine Nay votes were cast by Democrats including **Manchester Senators Kevin Cavanaugh, Lou D’Allesandro, and Donna Soucy**.

2. “Are you in favor of amending the first part of the constitution by inserting after article-2-a a new article to read as follows: [Art.] 2-b. [Accountability of Magistrates and Officers; Publics Right to Know.] **An individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.**” (Passed by the N.H. House 309 House Yes 9 No; Passed by State Senate 11 Yes 2 No) **CACR 16**
YES O No O

Representative Neal Kurk (R-Weare) explained CACR 16, “This updates our Fourth Amendment right to be free “... from unreasonable searches and seizures ...” for the information age. It protects personal information from government snooping regardless of where or how it is found.’

“Under the Fourth Amendment to the US constitution, and the similar Part 1, Article 19 of the NH Constitution, our “person, houses, papers and effects” are protected against warrantless searches. In a world without email, video, cell phones, DNA and

databases all private information was physical; it was letters, diaries and other papers and objects. In order to get at them government agents would have to go to where they were, find them and seize them.’

“Today, personal information can also be found in the cloud. It can be copied, not seized. Bits of your DNA, which identify you, can be found on your fork after you finish a meal at a restaurant. Government ought to demonstrate probable cause of a crime to collect such information just as they do when they want to read private letters. ‘

“The U.S. Supreme Court has established a two-part test to determine whether personal information can be seized by the government. First, the individual must demonstrate an expectation of privacy, i.e. do something, like closing a door, to show that privacy is desired, and second the expectation of privacy must be reasonable.’

“Unfortunately, courts and ordinary people don’t think the same things are reasonable. Most people would think that they haven’t surrendered their DNA by dining out and they haven’t made their personal thoughts public by sending texts and emails. Courts think those things are not private. Texts and emails are not encrypted, so anyone with the right equipment can read them. Similarly, you didn’t take that fork to the bathroom and wash it.’

“We need this amendment so that ordinary people’s expectation of privacy is the norm, not the exception.”

Smith cautioned, “The language would grant a right to privacy from government intrusion, but not from private intrusion. You’d have a right against a violation by the state government, for example, publishing your private information on the Internet (or whatever) but no protection at all against a creepy stalker doing the same or against a company selling it to marketing firms. Statutory protections against that sort of thing might come or go, as the whims of the state legislature change, but constitutionally you’d have no right to that privacy.”

UN Professor of Law Buzz Scherr countered Smith’s concern, stating that it “misperceives the point behind constitutional provisions regarding individual rights: the New Hampshire Constitution, like the federal one, only protects

LEG094

individuals from intrusions by the government. It does not and has never operated to protect individuals from intrusion by other individuals or non-governmental entities.’

“For example, the constitutional provision protecting individuals from unreasonable searches and seizure – Part I, Article 19 of the NH Constitution – explicitly protect individuals only from governmental intrusion. New Hampshire’s founders were aware of the unparalleled power of state government to imprison or even execute its citizens. As a result, in 1784—five years before the United States Constitution was even established—they provided in the New Hampshire Constitution a Bill of Rights for those accused of crimes as a necessary safeguard against government abuse just like other rights conferred by our founders – freedom of the press, freedom of speech, the right to bear arms, etc. The founders conceived the NH Bill of Rights to rein in the power of the government, not to rein in the power of other individuals or entities as to each other.’

“The threats posed by large commercial and industrial enterprises to our personal and private information are substantial, to say the least. The legislature can craft appropriate solutions to those concerns without using the New Hampshire Constitution inappropriately to do so. In fact, a number of legislators are already acting to develop broad legislation to address intrusions by private entities.”

Smith wrote about a second concern, that “It might end up opening the state government to a flood of lawsuits (at varying levels of frivolity or legitimacy) from people who don’t want the government to know how much money they make (their income being “personal information”) but still want to receive some government service which is means-tested against personal income. Or a driver challenging that the DMV has no right to know if they wear corrective lenses.”

Smith added that the amendment, “might have implications during criminal investigations and it is unknown how the courts would interpret this wording in conjunction with the 4th amendment of the US Constitution in relation to the discovery process during a trial. Does the state have standing to violate your constitutional right to privacy if you are under investigation for a speeding ticket? How about under investigation for robbing a bank?”

Scherr responded, “Yes, there will be a temporary flood of lawsuits by those who believe that Q2 will create an absolute right to informational privacy no matter what the governmental interest involved. The huge majority of those lawsuits will go nowhere because no constitutional right is absolute. For example, the right to free speech falls in certain circumstances to the need to ensure public safety. The right to bear arms does not mean that no regulation of gun possession is allowed.’

“In the privacy context, what will happen in the courts is that a court will balance the nature of the right to privacy and the extent of the intrusion on that right against the governmental interest at stake. So, while the bank robber may have a constitutional right to privacy in personal information, it will likely fall in the face of the governmental interest of preventing crime.’

“Practically speaking the most important effect of Q2 is that it will lay down a new marker that recalibrates courts’ consideration of the balancing of one’s privacy interests against the government’s interest in its interference. It will say to the courts an individual’s privacy interest in personal information is worthy of more consideration than it previously has been. It will still allow law enforcement to gain search warrants when they have sufficient justification. But, it will give simpler and more direct respect to one’s personal information than currently exists. This is particularly important in the face of ever-evolving technology that outpaces the courts’ current ability to keep up.’

“Rest assured that Q2 does not mean that criminals will go free and that our society as we know it will fall apart because people care more about protecting their private information than each other. Rather, Q2 is a moderate, rational and significant improvement in our ability to protect our personal information from unjustified governmental intrusion.”

Manchester Senators Donna Soucy (D-18) Kevin Cavanaugh (D-16), and Lou D’Allesandro (D-20) voted against this measure. Soucy and Cavanaugh declined to comment for this report. D’Allessandro said, “I think the amendment is not needed.”

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NEWS & COMMENTARY

On Election Day, the Voters of New Hampshire Can Protect Their Privacy in the Digital Age



Chad Marlow, Senior Policy Counsel, ACLU

Neal Kurk, Representative (Hillsborough 2), New Hampshire House of Representatives

October 15, 2018

“Live free or die.”

As reflected in its official state motto, no state has unequivocally embraced the principles of liberty and privacy more than the state of New Hampshire. These ideals make up the core of the state’s philosophical DNA. It is therefore surprising that New Hampshire is conspicuously missing from the list of the [10 diverse states](#) that have explicitly enshrined the right to privacy in their constitutions. But on Election Day, Granite State voters will have a chance to remedy that oversight.

Earlier this year, the New Hampshire Legislature passed by a necessary two-thirds vote a proposed amendment to the state constitution guaranteeing the right to privacy in the digital age. Now it’s up to voters to enshrine that natural right. New Hampshire’s ballot [Question 2](#) (Q2) would do just that by adding simple but mighty language to the constitution: “An individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.”

LEG097

The risks to personal privacy are certainly greater today than they were when Gen. John Stark wrote — “Live free or die. Death is not the greatest of evils.” — [in an 1809 letter](#) to his fellow veterans of the Battle of Bennington, a turning point in the American Revolutionary War. Today’s powerful [surveillance technologies](#) can provide the state government and state and local law enforcement agencies with the ability to spy on people when they walk on public sidewalks, drive on public roads, play in public parks, attend public schools, and visit public libraries. They can track you using your own cell phone like a GPS device. They can access your internet search history and social media accounts, and they can read your text messages and emails.

Without state constitutional protections, privacy is not the Granite State’s default setting. Rather, it needs to be repeatedly established, protected, and defended by the state legislature each time a new surveillance technology or method is established, which is a common occurrence in our modern technological world. State legislators should not play an endless game of [Whack-A-Mole](#) against threats to their residents’ privacy. Relying exclusively on piecemeal statutes or search and seizure provisions written before the dawn of the internet is no way for New Hampshire to protect privacy.

To be sure, the [Fourth Amendment](#) to the United States Constitution provides every American with privacy rights. But in New Hampshire, where the right to privacy is a bedrock, nonpartisan political value, the U.S. constitutional right to privacy should be considered a floor, not a ceiling. That is why it is high time for the voters of New Hampshire to follow their legislature’s lead by voting to guarantee an explicit right to informational privacy in the state constitution.

Understandably, some New Hampshire voters may find it hard to believe their state does not already have the nation’s highest privacy standards, but a simple examination of current state law reveals that it does not. For example, while [Part I, Article 19](#) of the New Hampshire Constitution provides some privacy protections in the arena of police investigations, if Q2 were adopted, the constitution would provide much broader protection against a wide array of potential governmental intrusions into private, personal information.

Q2 would require that the government obtain a judicial warrant, supported by probable cause, before accessing any personal information. If contested, the government would need to show a compelling state interest in obtaining access to that information before a court would allow the government access. This is not intended to be an insurmountable burden, especially when public safety is legitimately at risk, but it will serve as an important speed bump — and, from time to time, an all-out stop sign — on the road between the government and your private information.

Q2 would also help prevent the police from accessing your private information through third parties. For instance, Q2 would deny the police access to any account held by your internet service provider unless you provided your ISP with a waiver or the police obtained a warrant. This principle applies to an array of circumstances where a third party has not obtained your consent to turn your personal information over to the police.

Put simply, adopting Q2 would fill important gaps in current statutory privacy protections and would provide automatic privacy protections regardless of what the next wave of surveillance technologies and techniques bring. Nothing could be more consistent with New Hampshire's legacy of cherishing individual liberty. This November, New Hampshire voters should vote yes on Ballot Question 2.

Every day across the nation, the ACLU is called on to defend all the freedoms guaranteed in the Constitution and the Bill of Rights. There's never been a more important time for to support the ACLU and our effective work to protect civil liberties. If you like what you just read, help us continue to speak freely by [donating today](#).



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ARCHIVE

The Right to 'Live Free From Government'? New Hampshire Voters Just Gave It to Themselves.

Privacy concerns have prompted 10 states to add privacy protections in their constitutions.

October 24, 2018 • **Graham Vyse**





New Hampshire state Rep. Neal Kurk, in 2009 (AP/Jim Cole)

SPEED READ:

- **New Hampshire's Question 2 will add "an individual's right to live free from governmental intrusion" into the state's constitution.**
- **10 other states have similar language in their constitutions.**
- **The ballot measure was pushed by state Rep. Neal Kurk, one of the nation's staunchest legislative defendants of privacy.**

Chad Marlow, a privacy lawyer for the American Civil Liberties Union (ACLU), has a ritual.

Each year, at the start of the New Hampshire legislative session, he reads a slew of proposed bills from longtime Republican state Rep. Neal Kurk, one of the nation's most prolific lawmakers on the issue of privacy. Marlow says reading his legislative priorities -- from **regulating surveillance drones** to **challenging government disclosure of voter information** -- is "like Christmas" for a civil libertarian like himself.

Kurk isn't seeking another term in Concord, but New Hampshire voters gave him a farewell gift this year.

LEG101

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They overwhelmingly approved **Question 2** on the November ballot, which aims to protect Granite State residents' privacy rights. The measure amends the state constitution to say: "An individual's right to live free from governmental intrusion in private or personal information is natural, essential and inherent."

The goal is to ensure that governments get permission before snooping through citizens' private social media accounts, internet search histories, emails and text messages.

"Without state constitutional protections, privacy is not the Granite State's default setting," Kurk and Marlow **wrote** in a recent ACLU blog post. "Rather, it needs to be repeatedly established, protected and defended by the state legislature each time a new surveillance technology or method is established, which is a common occurrence in our modern technological world."

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As Kurk and Marlow point out, **10 states** -- including Arizona, California, Florida, Illinois, Montana and Washington -- already have similar privacy protections in their constitutions. It's not surprising that the state that has adopted "Live Free or Die" as its motto would want to join their ranks, and that the new constitutional language was approved with strong bipartisan majorities in the New Hampshire legislature.

But state Rep. Timothy Smith, a Democrat who declined to reveal how he voted in the House's anonymous vote to pass the amendment, said many of his fellow lawmakers were afraid to oppose it for fear of appearing anti-privacy, and because they didn't expect it to pass. He had "serious reservations" about how it's written.

The measure, he said, will "grant a right to privacy in your personal information from the government, but it would provide you absolutely no right to protection whatsoever against somebody stealing a hairbrush out of your trash and doing one

LEG102

of those 23andMe DNA sequence things and publishing the results on the internet."

Smith is also concerned that the amendment's vague language may lead to frivolous lawsuits against the state.

"It's not hard to imagine someone trying to sue the government because they don't think the Department of Motor Vehicles (DMV) has a right to know whether they wear glasses," he said.

Marlow isn't worried. He's familiar with the DMV concern but insists that none of the states with existing privacy provisions "are facing a bunch of nearsighted drivers driving around." In other words, he said citizens aren't abusing these protections.

Even some of the amendment's critics expected voters to approve it.

"It's got good, flowery constitutional language, talking about high-minded principles," said Smith. "Everyone's gonna love that."

Before the vote, Kurk wasn't saying much. He made **no public statement** following news reports about his decision not to seek another term. Reached briefly by phone, the only comment he would make about his career defending privacy was an irritated assertion of his own.

"I'm a private person," he said curtly before ending the call. "I don't need this kind of attention."

For results of the most important ballot measures, [click here](#).

Graham Vyse
Staff Writer

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SAMPLE

INSTRUCTIONS TO VOTERS

- To Vote.** Completely fill in the oval ☐ to the right of your choice. For each office vote for not more than the number of candidates stated in the sentence: "Vote for not more than ____." If you vote for more than the stated number of candidates, your vote for that office will not be counted.
- To Vote by Write-In.** To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Completely fill in the oval ☐ to the right of your choice.

Offices	Democratic Candidates	Republican Candidates	Libertarian and Other Candidates	Write-in Candidates
For Governor Vote for not more than 1	Molly Kelly ☐	Chris Sununu ☐	Jilletta Jarvis ☐	☐ Governor
For Representative in Congress Vote for not more than 1	Ann McLane Kuster ☐	Steven Negrón ☐	Justin O'Donnell ☐	☐ Representative in Congress
For Executive Councilor Vote for not more than 1	Andru Volinsky ☐	James S. Beard ☐		☐ Executive Council
For State Senator Vote for not more than 1	Jenn Alford-Teaster ☐	Ruth Ward ☐		☐ State Senator
For State Representative Sullivan District 7 Vote for not more than 1	Claudia Y. Istel ☐	Judy Aron ☐		☐ State Representative Sullivan District 7
For State Representative Sullivan District 11 Vote for not more than 1	Bruce L. Cragin ☐	Steven Smith ☐		☐ State Representative Sullivan District 11
For Sheriff Vote for not more than 1	John P. Simonds ☐	John P. Simonds ☐		☐ Sheriff
For County Attorney Vote for not more than 1	Marc Hathaway ☐	Marc Hathaway ☐		☐ County Attorney
For County Treasurer Vote for not more than 1		Michael Sanderson ☐		☐ County Treasurer
For Register of Deeds Vote for not more than 1		Janet Gibson ☐		☐ Register of Deeds
For Register of Probate Vote for not more than 1	Raymond Gagnon ☐	Timothy O'Hearne ☐		☐ Register of Probate
For County Commissioner, 1st District Vote for not more than 1		Jeff Barrette ☐		☐ County Commissioner
For County Commissioner, 3rd District Vote for not more than 1		George Hebert ☐		☐ County Commissioner

2018 CONSTITUTIONAL AMENDMENT QUESTIONS

Constitutional Amendments Proposed by the 2018 General Court

- "Are you in favor of amending article 8 of the first part of the constitution to read as follows:
[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government. Therefore, any individual taxpayer eligible to vote in the State, shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer. However, this right shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding."
(Passed by the N.H. House 309 Yes 9 No; Passed by State Senate 22 Yes 2 No) CACR 15 **Yes** ☐ **No** ☐

- "Are you in favor of amending the first part of the constitution by inserting after article 2-a a new article to read as follows:
[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."
(Passed by the N.H. House 235 Yes 96 No; Passed by State Senate 15 Yes 9 No) CACR 16 **Yes** ☐ **No** ☐

GENERAL ELECTION November 6, 2018	Constitutional Amendment Questions			
	Question No. 1		Question No. 2	
	Yes	No	Yes	No
Belknap County	18,899	5,099	19,035	4,533
Carroll County	17,040	3,361	17,348	3,606
Cheshire County	22,872	4,712	21,878	6,291
Coos County	7,742	1,670	8,055	1,647
Grafton County	29,005	6,154	28,335	7,464
Hillsborough County	117,359	23,791	116,750	26,696
Merrimack County	43,793	10,878	43,596	12,312
Rockingham County	104,290	20,446	103,737	22,312
Strafford County	38,561	7,370	38,523	8,309
Sullivan County	11,957	2,654	12,068	2,849
Totals	411,518	86,135	409,325	96,019
Belknap County	Constitutional Amendment Questions			
	Question No. 1		Question No. 2	
	Yes	No	Yes	No
Alton	1,967	408	1,979	432
Barnstead	1,382	351	1,406	353
Belmont	1,872	377	1,881	436
Center Harbor	446	87	453	78
Gilford	2,742	583	2,733	638
Gilmanton	1,158	254	1,174	269
Laconia Ward 1	875	197	874	222
Laconia Ward 2	641	119	643	130
Laconia Ward 3	721	189	704	220
Laconia Ward 4	622	142	658	136
Laconia Ward 5	483	112	482	132
Laconia Ward 6	1,005	1,086	1,020	203
Meredith	2,279	455	2,299	499
New Hampton	822	180	810	204
Sanbornton	963	303	972	330
Tilton	921	256	947	251
TOTALS	18,899	5,099	19,035	4,533
Carroll County	Constitutional Amendment Questions			
	Question No. 1		Question No. 2	
	Yes	No	Yes	No
Albany	231	38	250	33
Bartlett	1,055	237	1,138	249
Brookfield	261	50	257	63
Chatham	119	23	123	19
Conway	2,886	560	2,979	567
Eaton	193	35	193	39
Effingham	466	91	486	86
Freedom	585	122	582	127
Hale's Location	77	14	82	11
Hart's Location	32	1	30	3
Jackson	442	76	438	95
Madison	919	168	910	206
Moultonborough	1,903	367	1,932	387
Ossipee	1,134	265	1,210	228
Sandwich	642	155	614	183
Tamworth	919	194	942	193
Tuftonboro	1,018	210	1,029	229
Wakefield	1,479	300	1,518	319
Wolfeboro	2,679	455	2,635	569
Totals	17,040	3,361	17,348	3,606

Cheshire County	Constitutional Amendment Questions				Coos County	Constitutional Amendment Questions			
November 6, 2018	Question No. 1		Question No. 2			Question No. 1		Question No. 2	
	Yes	No	Yes	No		Yes	No	Yes	No
Alstead	645	132	628	167	Atkinson & Gilmanton Academy Grant	0	0	0	0
Chesterfield	1,301	278	1,257	357	Bean's Grant	0	0	0	0
Dublin	640	124	569	213	Bean's Purchase	0	0	0	0
Fitzwilliam	724	162	661	242	Berlin	1,867	383	1,921	383
Gilsum	253	67	265	61	Cambridge	2	0	2	0
Harrisville	452	89	355	196	Carroll	291	60	276	79
Hinsdale	918	194	942	192	Chandler's Purchase	0	0	0	0
Jaffrey	1,631	302	1,494	460	Clarksville	83	14	89	11
Keene Ward 1	968	170	985	220	Colebrook	511	93	532	99
Keene Ward 2	1,373	270	1,303	374	Columbia	174	36	183	33
Keene Ward 3	1,282	268	1,215	356	Crawford's Purchase	0	0	0	0
Keene Ward 4	1,339	273	1,253	382	Cutt's Grant	0	0	0	0
Keene Ward 5	1,668	315	1,545	468	Dalton	279	58	289	53
Marlborough	680	114	659	154	Dix's Grant	0	0	0	0
Marlow	269	64	275	64	Dixville	1	4	5	0
Nelson	268	46	241	79	Dummer	73	20	77	19
Richmond	388	67	394	75	Errol	113	22	115	22
Rindge	1,856	446	1,734	610	Erving's Location	0	0	0	0
Roxbury	83	21	77	28	Gorham	810	172	839	158
Stoddard	416	110	402	144	Green's Grant	1	0	1	0
Sullivan	213	60	207	75	Hadley's Purchase	0	0	0	0
Surry	252	66	244	91	Jefferson	355	74	357	81
Swanzey	2,076	417	2,080	479	Kilkenny	0	0	0	0
Troy	349	77	349	87	Lancaster	885	181	893	190
Walpole	1,281	243	1,246	302	Low & Burbank's Grant	0	0	0	0
Westmoreland	594	145	548	196	Martin's Location	0	0	0	0
Winchester	953	192	950	219	Milan	339	85	351	82
Totals	22,872	4,712	21,878	6,291	Millsfield	13	2	13	2
					Northumberland	436	108	460	104
					Odell	0	0	0	0
					Pinkham's Grant	0	0	1	0
					Pittsburg	234	55	247	48
					Randolph	168	28	165	32
					Sargents Purchase	0	0	0	0
					Second College Grant	0	0	0	0
					Shelburne	142	35	155	28
					Stark	121	36	129	37
					Stewartstown	165	34	178	30
					Stratford	115	40	92	33
					Success	0	0	0	0
					Thompson & Meserve's Pur.	0	0	0	0
					Wentworth's Location	15	0	15	0
					Whitefield	549	130	670	123
					Totals	7,742	1,670	8,055	1,647

Grafton County	Constitutional Amendment Questions				Hillsborough	Constitutional Amendment Questions			
November 6, 2018	Question No. 1		Question No. 2		County	Question No. 1		Question No. 2	
	Yes	No	Yes	No		Yes	No	Yes	No
Alexandria	535	123	538	124	Amherst	4754	821	4612	1059
Ashland	643	154	656	156	Antrim	867	195	868	202
Bath	315	77	340	56	Bedford	8,149	1,616	7,949	1,959
Benton	99	32	103	38	Bennington	429	95	439	94
Bethlehem	881	210	900	210	Brookline	1,926	408	1,925	443
Bridgewater	402	94	409	105	Deering	546	180	566	166
Bristol	933	195	917	225	Francestown	642	150	658	150
Campton	1,167	254	1,144	300	Goffstown	5,249	1,072	5,172	1,274
Canaan	1,028	242	1,033	261	Greenfield	537	114	547	115
Dorchester	107	33	116	29	Greenville	471	116	489	112
Easton	122	47	141	36	Hancock	755	158	711	217
Ellsworth	34	8	35	9	Hillsborough	1,676	363	1,738	344
Enfield	1,469	279	1,423	335	Hollis	3,201	611	3,165	727
Franconia	430	119	421	131	Hudson	6,911	1,265	6,921	1370
Grafton	365	111	351	135	Litchfield	2,760	535	2,798	565
Groton	177	51	197	44	Lyndeborough	620	107	624	118
Hanover	4,422	817	3,970	1320	Manchester Ward 1	2,989	824	2,979	920
Haverhill	1,152	272	1,214	250	Manchester Ward 2	2,669	577	2,662	639
Hebron	277	72	271	83	Manchester Ward 3	1,716	331	1,670	390
Holderness	778	209	761	248	Manchester Ward 4	1,694	345	1,715	373
Landaff	138	27	138	29	Manchester Ward 5	1,183	261	1,216	259
Lebanon Ward 1	1,559	281	1,484	385	Manchester Ward 6	2,625	567	2,609	639
Lebanon Ward 2	1,417	296	1,387	351	Manchester Ward 7	1,865	417	1,909	417
Lebanon Ward 3	1,563	273	1,471	371	Manchester Ward 8	2,648	614	2,678	666
Lincoln	464	109	485	107	Manchester Ward 9	2,115	479	2,121	524
Lisbon	365	81	380	71	Manchester Ward 10	2,148	492	2,114	479
Littleton	1,688	314	1,689	342	Manchester Ward 11	1,662	322	1,646	378
Livermore	0	0	0	0	Manchester Ward 12	2,439	467	2,419	548
Lyman	173	44	177	46	Mason	514	118	538	109
Lyme	741	149	652	337	Merrimack	8,698	1,546	8,602	1809
Monroe	284	62	289	74	Milford	4,789	870	4,734	1025
Orange	109	25	104	31	Mont Vernon	903	227	833	324
Orford	399	97	380	129	Nashua Ward 1	3,047	579	2,954	701
Piermont	243	49	231	57	Nashua Ward 2	2,461	551	2,424	623
Plymouth	1,894	393	1,886	426	Nashua Ward 3	2,343	551	2,289	604
Rumney	514	120	517	135	Nashua Ward 4	1,460	358	1,512	344
Sugar Hill	250	64	249	72	Nashua Ward 5	3,057	606	3,050	667
Thornton	816	177	816	187	Nashua Ward 6	2,039	441	2,089	445
Warren	144	22	145	23	Nashua Ward 7	2,007	423	2,004	462
Waterville Valley	172	31	161	45	Nashua Ward 8	2,751	508	2,693	618
Wentworth	288	47	291	58	Nashua Ward 9	2,776	543	2,744	604
Woodstock	448	94	463	93	New Boston	2,057	496	2,057	541
Totals	29,005	6,154	28,335	7,464	New Ipswich	1,701	286	1,762	273
					Pelham	4,169	803	4,258	818
					Peterborough	2,540	462	2,436	599
					Sharon	166	37	171	36
					Temple	547	120	535	137
					Weare	2,688	537	2,767	542
					Wilton	1,331	214	1,308	254
					Windsor	69	13	70	14
					Totals	117,359	23,791	116,750	26,696

Merrimack County	Constitutional Amendment Questions				Rockingham	Constitutional Amendment Questions			
November 6, 2018	Question No. 1		Question No. 2		County	Question No. 1		Question No. 2	
	Yes	No	Yes	No		Yes	No	Yes	No
Allenstown	1,139	231	1,165	231	Atkinson	2,688	454	2,714	506
Andover	475	208	736	237	Auburn	2,141	395	2,152	450
Boscawen	867	177	882	182	Brentwood	1,525	333	1,496	389
Bow	2,919	733	2,830	862	Candia	1,469	318	1,474	348
Bradford	536	143	541	152	Chester	1,755	339	1,765	367
Canterbury	951	233	930	266	Danville	1,400	251	1,420	264
Chichester	892	187	843	276	Deerfield	1,585	469	1,651	438
Concord Ward 1	1,236	253	1,241	292	Derry	8,116	1,674	8,162	1,860
Concord Ward 2	1,032	197	1,024	249	East Kingston	944	196	960	207
Concord Ward 3	830	211	786	276	Epping	2,360	457	2,421	465
Concord Ward 4	1,064	294	1,026	353	Exeter	5,710	1,086	5,515	1,401
Concord Ward 5	1,265	517	1,188	621	Fremont	1,496	323	1,512	337
Concord Ward 6	902	242	912	241	Greenland	1,744	253	1,719	317
Concord Ward 7	1,349	367	1,254	477	Hampstead	3,150	563	3,176	618
Concord Ward 8	1,005	223	1,003	249	Hampton	6,356	1,044	6,276	1276
Concord Ward 9	853	212	807	269	Hampton Falls	976	208	990	206
Concord Ward 10	1,526	427	1,489	496	Kensington	873	166	866	188
Danbury	343	107	367	90	Kingston	2,178	388	2,172	453
Dunbarton	1,058	267	1,010	319	Londonderry	8,075	1,610	7,988	1731
Epsom	1,374	346	1,433	328	New Castle	556	86	528	132
Franklin Ward 1	681	142	690	152	Newfields	746	173	747	188
Franklin Ward 2	431	141	464	129	Newington	376	72	386	76
Franklin Ward 3	764	202	778	201	Newmarket	3,385	1,614	3,341	726
Henniker	1,418	359	1,415	387	Newton	1,531	265	1,541	280
Hill	276	85	295	74	North Hampton	1,999	320	1,969	387
Hooksett	4,428	846	4,388	981	Northwood	1,397	364	1,422	367
Hopkinton	2,193	689	2,109	821	Nottingham	1,824	364	1,810	420
Loudon	1,723	416	1,785	400	Plaistow	2,424	399	2,490	397
New London	1,893	373	1,827	466	Portsmouth Ward 1	1,684	281	1,605	398
Newbury	849	187	858	208	Portsmouth Ward 2	1,997	303	1,853	474
Northfield	1,183	303	1,200	302	Portsmouth Ward 3	1,470	227	1,409	340
Pembroke	2,061	454	2,031	527	Portsmouth Ward 4	1,370	235	1,353	291
Pittsfield	939	272	1,002	228	Portsmouth Ward 5	1,614	272	1,508	398
Salisbury	437	107	457	106	Raymond	2,878	647	2,897	687
Sutton	687	169	681	198	Rye	2,756	386	2,649	547
Warner	1,093	259	1,035	339	Salem	8,544	1,649	8,697	1732
Webster	577	168	586	178	Sandown	2,076	367	2,100	386
Wilmot	544	131	528	149	Seabrook	2,333	491	2,391	487
Totals	43,793	10,878	43,596	12,312	South Hampton	345	69	363	64
					Stratham	3,222	488	3,111	656
					Windham	5,222	847	5,138	1058
					Totals	104,290	20,446	103,737	22,312

Strafford County November 6, 2018	Constitutional Amendment Questions			
	Question No. 1		Question No. 2	
	Yes	No	Yes	No
Barrington	3155	656	3186	707
Dover Ward 1	1,720	256	1,672	352
Dover Ward 2	1,802	280	1,755	279
Dover Ward 3	2,099	394	2,063	494
Dover Ward 4	1,878	308	1,866	363
Dover Ward 5	1,429	326	1,414	323
Dover Ward 6	1,351	249	1,358	292
Durham	5,127	759	4,945	1,082
Farmington	1,611	356	1,654	353
Lee	1,710	305	1,646	406
Madbury	465	65	436	101
Middleton	524	110	553	96
Milton	1,257	270	1,319	239
New Durham	960	209	987	206
Rochester Ward 1	1,498	289	1,497	337
Rochester Ward 2	1,459	293	1,481	326
Rochester Ward 3	1,360	253	1,392	271
Rochester Ward 4	1,384	318	1,393	346
Rochester Ward 5	1,330	298	1,370	306
Rochester Ward 6	1,120	230	1,150	230
Rollinsford	930	198	939	206
Somersworth Ward 1	776	150	777	161
Somersworth Ward 2	613	117	624	119
Somersworth Ward 3	558	112	568	109
Somersworth Ward 4	436	81	444	73
Somersworth Ward 5	610	118	618	127
Strafford	1,399	370	1,416	405
Totals	38,561	7,370	38,523	8,309
Sullivan County	Constitutional Amendment Questions			
	Question No. 1		Question No. 2	
	Yes	No	Yes	No
Acworth	317	54	311	56
Charlestown	1,241	228	1,264	245
Claremont Ward 1	736	154	742	166
Claremont Ward 2	1,127	211	1,165	203
Claremont Ward 3	883	211	918	203
Cornish	580	146	578	174
Croydon	213	49	213	52
Goshen	204	47	208	49
Grantham	1,312	309	1,211	434
Langdon	211	38	222	43
Lempster	304	81	313	76
Newport	1,487	320	1,527	305
Plainfield	848	224	843	255
Springfield	471	111	474	119
Sunapee	1,302	270	1,326	273
Unity	365	115	395	95
Washington	356	86	358	101
Totals	11,957	2,654	12,068	2,849

New Hampshire Question 2, Right to Live Free from Governmental Intrusion in Private and Personal Information Amendment (2018)

Elections in New Hampshire, 2018

- General election: Nov. 6
- Voter registration deadline: Oct. 23
- [Early voting](#): N/A
- [Absentee voting deadline](#): Varies by locality
- [Online registration](#): No
- [Same-day registration](#): Yes
- [Voter ID](#): Photo ID required
- [Poll times](#): In general, polling places open between 6:00 a.m. and 11:00 a.m. and close at 7:00 p.m. Eastern Time

On the ballot: [U.S. House](#) • [Governor](#) • [State executive offices](#) • [State Senate](#) • [State House](#) • [Special state legislative](#) • [State ballot measures](#) • [Democratic primaries](#) • [Republican primaries](#)

New Hampshire Question 2, the Right to Live Free from Governmental Intrusion in Private and Personal Information Amendment, was on the [ballot](#) in [New Hampshire](#) as a [legislatively referred constitutional amendment](#) on [November 6, 2018](#).^[1] The measure was **approved**.

A **"yes"** vote supported this amendment to provide that individuals have a right to live free from governmental intrusion in private or personal information.

A **"no"** vote opposed this amendment to provide that individuals have a right to live free from governmental intrusion in private or personal information.

Supermajority requirement: In New Hampshire, a constitutional amendment needs a [two-thirds \(66.67%\) vote](#) of electors to be approved.

New Hampshire Question 2



Election date

[November 6, 2018](#)

Topic

[Constitutional rights](#)

Status

✔ *Approved*

New Hampshire Question 2

Result	Votes	Percentage
 Yes	409,325	81.00%
No	96,019	19.00%

List of New Hampshire measures 

Submit

Results are officially [certified](#).
[Source](#)

Overview

What did Question 2 add to the state constitution?

Question 2 added language to the [New Hampshire Constitution](#) stating that "An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."^[1]

How did Question 2 get on the ballot?

[Rep. Neal Kurk](#) (R-Hillsborough 2) and [Rep. Robert Cushing](#) (D-Rockingham 21) sponsored the amendment in the [New Hampshire General Court](#). Question 2 was introduced into the [state legislature](#) as Constitutional Amendment Concurrent Resolution 16 (CACR 16) on November 6, 2017. On February 22, 2018, the [New Hampshire House of Representatives](#) voted 235 to 96, with 37 members absent, to pass the amendment. On May 2, 2018, the [New Hampshire Senate](#) voted 15 to nine to pass CACR 16.

Text of measure

Ballot title

The ballot title was as follows:^[1]

“ Are you in favor of amending the first part of the constitution by inserting after article 2-a new article to read as follows:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in

See also: [Article 2 of New Hampshire Constitution](#)

The measure added an Article 2-b to the [New Hampshire Constitution](#). The following text was added:^[1]

Article 2-b. Right to Privacy.

An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.^[2]

Readability score

See also: [Ballot measure readability scores, 2018](#)

Using the Flesch-Kincaid Grade Level (FKGL and Flesch Reading Ease (FRE) formulas, Ballotpedia scored the readability of the ballot title and summary for this measure. Readability scores are designed to indicate the reading difficulty of text. The Flesch-Kincaid formulas account for the number of words, syllables, and sentences in a text; they do not account for the difficulty of the ideas in the text. The [state legislature](#) wrote the ballot language for this measure.

The [FKGL](#) for the ballot title is grade level 10, and the [FRE](#) is 44. The word count for the ballot title is 47, and the estimated reading time is 12 seconds.

In 2018, for the 167 statewide measures on the ballot, the average ballot title or question was written at a level appropriate for those with between 19 and 20 years of U.S. formal education (graduate school-level of education), according to the FKGL formula. Read Ballotpedia's entire 2018 ballot language readability report [here](#).

Support

[Rep. Neal Kurk](#) (R-Hillsborough 2) and [Rep. Robert Cushing](#) (D-Rockingham 21) sponsored the amendment in the [New Hampshire General Court](#).^[3]

Opposition

Opponents

- **Cornerstone Action PAC** said, "Privacy matters. So does the right to life. Don't let a ballot question trick you into picking

the former over the latter. If we are to have a right to privacy explicitly recognized in the New Hampshire constitution, it must be abortion neutral. Say no to Question 2."^[5]

Campaign finance

See also: [Campaign finance requirements for New Hampshire ballot measures](#)

No [ballot question committees](#) registered to support or oppose the bond measure.^[6]

Total campaign contributions:	
Support:	\$0.00
Opposition:	\$0.00

Media editorials

Support

Ballotpedia had not identified any media editorial boards in support of the ballot measure. If you are aware of an editorial, please send an email with a link to editor@ballotpedia.org.

Opposition

- **The Kenne Sentinel:** "It's a concept we think almost anyone would find appealing. Who doesn't want protection from government spying or the release of personal information? But the devil is in the details, and with Question 2, there are none. There's no caveat giving police the right to a search warrant, nor protecting the public's right to know. There's no real way of knowing how a court would interpret the terms "essential" or "inherent."... Voters should say no to Question 2."^[7]

Background

Referred amendments on the ballot

From 1996 through 2016, the [state legislature](#) referred 9 constitutional amendments to the ballot. Voters approved three and rejected six of the referred amendments. All of the amendments were referred to the ballot for general elections during even-numbered election years. The average number of amendments appearing on the general election ballot was less than one. The approval rate of referred amendments at the ballot box was 33.3 percent during the 20-year period from

Total number	Approved	Percent approved	Defeated	Percent defeated	Annual average	Annual median	Annual minimum	Annual maximum
9	3	33.33%	6	66.67%	0.41	1.00	0	2

Path to the ballot

See also: [Amending the New Hampshire Constitution](#)

In New Hampshire, a constitutional amendment must be passed by a [60 percent vote](#) in each house of the [New Hampshire General Court](#) during one legislative session.

The constitutional amendment was introduced into the [state legislature](#) as Constitutional Amendment Concurrent Resolution 16 (CACR 16) on November 6, 2017.

On February 22, 2018, the [New Hampshire House of Representatives](#) voted 235 to 96, with 37 members absent, to pass the amendment.^[3] *Note: The partisan vote in the state House is not available.*

On May 2, 2018, the [New Hampshire Senate](#) voted 15 to nine to pass CACR 16.^[3] *Note: The partisan vote in the state Senate is not available.*

As the CACR 15 was approved in both chambers of the New Hampshire General Court, the measure was referred to the ballot for the election on November 6, 2018.

How to cast a vote

See also: [Voting in New Hampshire](#)

Poll times

In [New Hampshire](#), polling place hours of operation vary. According to state law, polling places must be open between 11:00 a.m. and 7:00 p.m. Eastern Time. Localities may set their own polling hours as long as they are open during those hours prescribed by state law.^[8] To search for the hours your polling place is open, [click here](#) .

Registration requirements

Check your voter registration status [here](#) .

To register to vote in New Hampshire, each applicant must provide documentary proof of United States citizenship, be a resident of New Hampshire, and at least 18 years old by the next election

register in person because of physical disability, religious beliefs, military service, or because of temporary absence.” Absentee registration requires mailing a voter registration form and witnessed absentee voter registration affidavit to the local clerk.^[9]

Automatic registration

New Hampshire does not practice [automatic voter registration](#).

Online registration

See also: [Online voter registration](#)

New Hampshire does not permit online voter registration.

Same-day registration

New Hampshire allows [same-day voter registration](#).

Residency requirements

In New Hampshire, citizens can register to vote the day they move to the state.^[9]

Verification of citizenship

See also: [Laws permitting noncitizens to vote in the United States](#)

New Hampshire requires voters to provide proof of citizenship when registering to vote, as of June 2025. Gov. [Chris Sununu](#) (R) signed [HB 1569](#) into law on September 17, 2024. The legislation required voter registration applicants to provide one of the following at the time of registration:

punishment.^[12] Seven states — Alabama, Arizona, Georgia, Kansas, Louisiana, New Hampshire, and Wyoming — have laws requiring verification of citizenship at the time of voter registration, whether in effect or not. One state, Ohio, requires proof of citizenship only when registering to vote at a Bureau of Motor Vehicles facility. In three states — California, Maryland, and Vermont — at least one local jurisdiction allows noncitizens to vote in some local elections. Noncitizens registering to vote in those elections must complete a voter registration application provided by the local jurisdiction and are not eligible to register as state or federal voters.

Verifying your registration

The New Hampshire Secretary of State's office allows residents to check their voter registration status online by visiting [this website](#) .

Voter ID requirements

New Hampshire requires voters to present photo identification while voting.^[13]

The following list of accepted ID was current as of October 2025. [Click here for the New Hampshire Secretary of State page on accepted ID to ensure you have the most current information](#) .

“

- Driver's license issued by any state or federal government;
- Non-driver ID card issued by NH DMV or motor vehicle agency of another state;
- Photo ID card for “voting identification only” issued by NH DMV;
- United States armed services identification card;
- United States passport or passcard;
- NH student ID card (Dated within the past 5 years. Must be from a school on the approval list provided to the Secretary of State each year by the Department of Education.)^[2]

”

Additionally, a moderator or other election official may verify the voter's identity.^[13]

A voter may obtain a free photo ID for voting purposes by presenting a voucher from their local clerk or the New Hampshire Secretary of State to any New Hampshire Department of Motor Vehicles office that issues identification.^[13]

See also

[2018 measures](#)



[New Hampshire](#)



[News and analysis](#)



- [2018 ballot measures](#)
- [Constitutional rights on the ballot](#)
- [New Hampshire ballot measures](#)
- [New Hampshire ballot measure laws](#)
- [Ballot measure lawsuits](#)
- [Ballot measure readability](#)
- [Ballot measure polls](#)

External links

- [Constitutional Amendment Concurrent Resolution 16](#)

Footnotes

1. [New Hampshire General Court, "Constitutional Amendment Concurrent Resolution 16," accessed February 23, 2018](#)
2. *Note: This text is quoted verbatim from the original source. Any inconsistencies are attributable to the original source.*
3. [New Hampshire General Court, "CACR 16 Overview," accessed February 23, 2018](#)
4. [Cornerstone Action PAC, "Home," accessed November 15, 2018](#)
5. [Cornerstone Action PAC, "Cornerstone Advises 'No' on Question 2," accessed November 15, 2018](#)

Only the first few references on this page are shown above. [Click to show more.](#)

https://www.unionleader.com/opinion/op-eds/neal-kurk-vote-for-your-privacy-on-question-2/article_d183b0a2-1684-584b-8230-27828e8e2869.html

Neal Kurk: Vote for your privacy on Question 2

By NEAL KURK
Nov 2, 2018

ON NEXT TUESDAY'S general election ballot, Question 2 would add the following to our state constitution:

[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.

This updates our Fourth Amendment right to be free "... from unreasonable searches and seizures ..." for the information age. It protects personal information from government "snooping" regardless of where or how it is found.

Under the Fourth Amendment to the U.S. Constitution, and the similar Part 1, Article 19 of the NH Constitution, our "person, houses, papers and effects" are protected against warrantless searches. In a world without email, video, cellphones, DNA and databases, all private information was physical; it was letters, diaries and other papers and objects. In order to get at them, government agents would have to go to where they were, find them and seize them.



Today, personal information can also be found in the cloud. It can be copied, not seized. Bits of your DNA, which identify you, can be found on your fork after you finish a meal at a restaurant.

Government ought to demonstrate an exceptionally important public purpose before it can collect such personal information, just as it must demonstrate probable cause when it wants to read private letters in connection with a crime.

So why do we need this amendment? The U.S. Supreme Court has established a two-part test to determine whether personal information can be seized by the government. First, the individual must demonstrate an expectation of privacy, i.e. do something, like closing a door, to show that privacy is desired, and second the expectation of privacy must be reasonable.

Unfortunately, courts and ordinary people don't think the same things are reasonable. Most people would think that they haven't surrendered their DNA by dining out and they haven't made their personal thoughts public by sending texts and emails. Courts think those things are not private. Texts and emails are not encrypted, so anyone with the right equipment can read them. Similarly, you didn't take that fork to the bathroom and wash it.

We need this amendment so that at least in New Hampshire, ordinary peoples' expectation of information privacy is the norm, not the exception, and government "snooping" into our personal and private information is prohibited.

Visit [yesonnh2.com](https://www.yesonnh2.com) for more information.

Neal Kurk represents Hillsborough District 2, Deering and Weare, in the New Hampshire House.