



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

July 8, 2013

Representative Eugene O'Flaherty
Joint Committee on the Judiciary
Room 136
State House
Boston, MA 02133

Senator Katherine Clark
Joint Committee on the Judiciary
Room 410
State House
Boston, MA 02133

Re: Electronic Frontier Foundation Opposition of S.654

Dear Senator Clark, Representative O'Flaherty, and Committee Members:

This brief letter is submitted in opposition of S.654.

The Electronic Frontier Foundation ("EFF") is a non-profit organization member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 21,000 members across the country, with over 800 Massachusetts residents who donate to EFF and over 3,100 Massachusetts subscribers to the EFF mailing list.

EFF has worked hard to encourage legislatures and courts to recognize the threats new technologies pose to civil liberties and personal privacy, and has pushed for updates to electronic privacy laws in both local and federal governments.

Unfortunately, S.654 is an update in the wrong direction, turning away from preserving privacy in phone conversations.

If passed, S.654 would allow law enforcement to wiretap suspected individuals, an expansion of wiretapping power unnecessary to stop crime. Currently, Massachusetts law authorizes wiretaps for "organized crime," a term that has been interpreted in court to go beyond "Mafia"-style crime and apply to any sort of coordinated criminal activity.

Expanding wiretapping authority to no longer require this coordinated criminal activity allows state law enforcement officials to access far more private conversations involving individuals – who are not suspected of coordinating criminal activities – than otherwise occurs under the law as it exists today.

Moreover, S.654 expands the types of crimes subject to wiretapping, no longer limiting the police from wiretapping only in the most serious and violent of criminal offenses. Instead, S.654 allows police to wiretap in non-violent criminal investigations into prostitution or perjury. While there is no doubt that these are serious crimes worth of zealous investigation and prosecution, extending wiretapping authority to virtually any crime infringes on more privacy than necessary to protect the residents of Massachusetts.

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Finally, S.654 removes the law's recognition of the importance of protecting privacy.

The Preamble to the current wiretap statute affirms the government's commitment to privacy protection. It deliberately includes language warning of the "grave dangers to the privacy of all citizens of the commonwealth" posed by law enforcement officials' use of electronic surveillance and states that law enforcement officials' use of such tools in criminal investigations should be limited and "conducted under strict judicial supervision."

S.654 removes the entire Preamble, including this important language about protecting Massachusetts' residents' privacy. The new bill's striking of such language transcends mere symbolism, leaving privacy protections on the cutting room floor.

Wiretapping is a powerful tool that must be sparingly exercised with caution. Expanding the law to permit wiretapping of individuals suspected of a wider range of crimes is a slippery slope towards ever expanding surveillance.

EFF urges the Committee to reject S.654.

Sincerely,

A handwritten signature in black ink, appearing to read "Hanni Fakhoury".

Hanni Fakhoury, Esq.
Staff Attorney

A handwritten signature in black ink, appearing to read "Adi Kamdar".

Adi Kamdar
Activist