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Joint Committee on the Judiciary
July 9, 2013

**In Support of S.642/H.1457
An Act to Protect Freedom of Speech and Association**

The American Civil Liberties Union of Massachusetts, a nonprofit civil rights and civil liberties organization with more than 22,000 members and supporters in Massachusetts, strongly supports S.642/H.1457, *An Act to Protect Freedom of Speech and Association*. This legislation is vital to the protection of Massachusetts residents' freedom to assemble, to worship, and to dissent without fear of government surveillance and reprisals. It sends a clear message that the laws of the Commonwealth prohibit government surveillance of non-violent political activity, religious expression, and other everyday activities, absent a reasonable suspicion of criminal conduct.

This legislation will advance three important principles and put them into the Massachusetts statutes. It will:

1. prohibit surveillance of lawful political and religious activity without reasonable suspicion of criminal activity;
2. establish standards and safeguards for law enforcement use and sharing of data regarding constitutionally-protected activity; and
3. ensure accountability and transparency by means of auditing and public reporting.

It is difficult to imagine that we need to worry about domestic political monitoring or improper data collection in Massachusetts. We are in the cradle of liberty, after all.

Unfortunately, police surveillance of lawful political activity in the Commonwealth is on the rise. Just this weekend, at demonstrations on the occasion of July 4th – ironically, protests against government surveillance – police tweeted photographs of peaceful protesters. Public protests are, by definition, meant to be observable by the general public. Yet, all too often, people publicly expressing political views are subject to unwarranted scrutiny from law

enforcement, including having police document their activities and catalogue, classify, track, and save this information in expansive government databases.

A recent report by the ACLU of Massachusetts and the National Lawyers Guild documents the problem:

The Boston Police Department (BPD) and its fusion spying center, the Boston Regional Intelligence Center (BRIC), have for years been tracking and creating criminal “intelligence reports” on the lawful political activity of peace groups and local leaders, including a former Boston City Councilor and the late Boston University Professor Howard Zinn. . . . Officers monitor demonstrations, track the beliefs and internal dynamics of activist groups, and document this information with misleading criminal labels in searchable and possibly widely-shared electronic reports. This collection and retention of data regarding people’s constitutionally protected speech and beliefs — with no link to terrorism or a crime — violates federal privacy regulations and the BRIC’s own privacy policies.

Police monitoring of protected First Amendment activity, in and of itself, has a significant chilling effect on people’s political activity and associations. Today, however, that chilling effect is amplified by the explosive growth and proliferation of powerful new surveillance technologies and ambitious electronic data collection.

Ubiquitous still and video cameras, facial recognition technology, search algorithms and sophisticated databases have dramatically expanded the ability of the government to secretly monitor, collect, and rummage through data on virtually every aspect of our daily lives. At the same time, the federal government has embarked on a project to erect a complex and costly national intelligence infrastructure, expanding its reach into the states by deploying state and local law enforcement officers as surrogates for federal surveillance efforts. In Massachusetts, state, municipal, and even university police have been deputized to pursue these new national intelligence objectives – a mission that is, by definition, far broader and more amorphous than their traditional roles, and far more prone to abuse.

Former Massachusetts Governor Mitt Romney endorsed efforts to create this national domestic surveillance system and in 2004 established the Commonwealth Fusion Center, a multi-agency data-collection hub under the auspices of the Massachusetts State Police. In 2005,

the Boston Police Department created its own center for coordinated monitoring of domestic activity, known as the Boston Regional Intelligence Center (BRIC).

Despite expenditures of untold millions of dollars, a 2012 report by a bipartisan US Senate subcommittee found that the federal government’s work with state and local fusion centers — among them the BRIC — “has not produced useful intelligence to support Federal counterterrorism efforts.” To put a finer point on it, one Department of Homeland Security (DHS) official told investigators that fusion centers produce “a lot of...predominately useless information.”¹

Of course, there is nothing inherently wrong with law enforcement agencies seeking to improve methods for sharing legitimately-acquired, reliable information about criminal activity. In a democracy, however, tracking and sharing information about residents should never be conducted on an industrial scale without meaningful stated limitations and without careful consideration of the implications for personal privacy.

When law enforcement officers start investigating protected ideas rather than crimes, they threaten our right to free expression and assembly protected by the First Amendment to the Constitution and Article 16 of the Massachusetts Declaration of Rights. Unchecked political surveillance undermines our core values by chilling the speech of people who wish to participate in our democracy – a laudable exercise that our government should encourage and promote. It would weaken the First Amendment if would-be speakers were to remain silent out of fear that they would be falsely labeled an “extremist” or potential threat in a secret government database.

The ACLU of Massachusetts urges the committee to safeguard the rights of the Commonwealth’s residents to engage in lawful political and religious activity without being targeted for secret surveillance, and to protect residents’ personal data from indiscriminate government monitoring. *An Act to Protect Freedom of Speech and Association* will uphold the basic principle that Massachusetts residents should not be targeted for domestic tracking or data

¹ United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Majority and Minority Staff Report, “Federal Support for and Involvement in State and Local Fusion Centers,” Oct. 3, 2012, at http://www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers.

collection without reasonable suspicion of criminal activity, and will create a much-needed oversight mechanism for fusion centers in the state, ensuring both transparency and accountability. We urge you to give this legislation a prompt and favorable report.

ATTACHMENTS:

- POLICING DISSENT: Police Surveillance of Lawful Political Activity in Boston, ACLU of Massachusetts & National Lawyers Guild, Massachusetts Chapter (Oct. 2012). http://www.aclum.org/sites/all/files/policing_dissent.pdf.