



Written by [Joe Wolverton, II, J.D.](#) on June 25, 2014

Amendment to Missouri Constitution Would Protect Digital Communication

Missourians will soon be called on to decide whether to amend the state's constitution to increase the strength of existing constitutional protections of privacy with regard to digital communication and data.

The proposed amendment, Senate Joint Resolution 27 (SJR27), was introduced by state Senator Rob Schaaf. The resolution was passed by the state legislature, and as it is a proposed constitutional amendment, it will not be subject to the governor's approval, but will be on the general election ballot in August.



Specifically, the amendment would repeal an existing section of the state constitution, replacing it with language purposely drafted to shore up the walls erected between the state and the personal effects — including electronic effects — of the people. The proposed amendment reads:

Section 15. That the people shall be secure in their persons, papers, homes, effects, and electronic communications and data, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, or access electronic data or communication, shall issue without describing the place to be searched, or the person or thing to be seized, or the data or communication to be accessed, as nearly as may be, nor without probable cause, supported by written oath or affirmation.

Upon entering the voting booth in August, voters will be called to answer the following question relating to the suggested change to their constitution: "Shall the Missouri Constitution be amended so that the people shall be secure in their electronic communications and data from unreasonable searches and seizures as they are now likewise secure in their persons, homes, papers and effects?"

Legislators who support the amendment sense a wider potential effect for the purpose behind the proposal. State Representative Paul Curtman believes that if the effort is successful, the movement to protect citizens' digital privacy could spread beyond the borders of Missouri.

"If the people of Missouri are concerned enough about this issue that they're willing to adjust our Constitution to make sure that they further secure their own rights of electronic privacy and communications, the rest of the country should take note of that," Curtman said.

A blog post published by the Tenth Amendment Center explains the import of the prospective amendment:

The effect of this resolution would be significant. The addition of electronic communications to the list of privacy items would make emails, phone records, Internet records and other electronic information gathered without a warrant inadmissible in state court. That would include data gathered illegally by overzealous state and local law enforcement as well as the federal



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government.

In a decision handed down in 2010 in the case of *U.S. v. Warshak*, the Sixth Circuit Court of Appeals ruled in favor of affording electronic data the same level of constitutional protection previously reserved for physical communication. The court held:

Given the fundamental similarities between email and traditional forms of communication, it would defy common sense to afford emails lesser Fourth Amendment protection.

Email requires strong protection under the Fourth Amendment; otherwise, the Fourth Amendment would prove an ineffective guardian of private communication, an essential purpose it has long been recognized to serve.

In truth, however, Americans need not look to the courts for protection of their right to be free from government monitoring and meddling in their personal correspondence, whether it be electronic or more traditional in form.

Besides, in October 2012, the Supreme Court gave a green light to the National Security Agency to continue its practice of listening in on private phone conversations without a warrant and without probable cause. When it comes to the right to be free from government intrusion, the federal judiciary seems to believe that the federal government giveth and the federal government taketh away.

There is much to be feared from relying on the courts to serve as sentinels on the walls set around federal authority. As Thomas Jefferson warned in a letter written in October 1823:

At the establishment of our Constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions nevertheless become law by precedent, sapping by little and little the foundations of the Constitution and working its change by construction before any one has perceived that that invisible and helpless worm has been busily employed in consuming its substance.

The only lasting hope for freedom from government consolidation of all power is the refusal by states to enforce or participate in any federal program not specifically authorized by the contract that created that power in the first place — the Constitution. Lawmakers in Missouri are to be applauded for their effort to enforce the terms of the contract that created federal authority in the first place.

Americans will know the fullest expression of liberty only in a country where God is recognized as the true source of all rights and where government is regarded as a constant menace to the continuing enjoyment of those rights.

August 5, the day of the general election in the Show Me State, will be momentous for not only the rights guaranteed by the Fourth Amendment, but for those protected by the Second Amendment, as well. As [The New American has reported](#), Missourians will be presented with a proposed amendment reinforcing the right to keep and bear arms, declaring that right “to be an unalienable right and that the state government is obligated to uphold that right.”

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