



Written by [Joe Wolverton, II, J.D.](#) on June 21, 2018

Michigan Refuses to Fund Warrantless Surveillance by Federal Government

On June 17, a new law went into effect in Michigan, effectively hamstringing the warrantless surveillance of residents of that state.

The Fourth Amendment Rights Protection Act (HB 4430) was signed into law on March 20 by state Governor Rick Snyder after being passed by both houses of the state legislature.

Specifically, the statute prohibits the “state and certain other governmental agents, employees, and entities in this state from assisting a federal agency in obtaining certain forms of data without a warrant; and to prohibit certain uses of certain data collected without a warrant.”

With certain listed exceptions — when warrants have been issued or the person has given consent — the new law mandates that neither the state nor its counties and cities may do anything which would “assist, participate with, or provide material support or resources to a federal agency to enable it to collect or to facilitate in the collection or use of a person’s electronic data or metadata.”

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State Representative Martin Howrylak was the original sponsor of the bill, and in a statement published by the Michigan House Republicans, Howrylak explained the purpose of his measure. “This reform safeguards the fundamental rights of all Michigan residents, who are guaranteed protection of their property and privacy rights by the Fourth Amendment of the U.S. Constitution,” he said.

The law’s protections against the unconstitutional expansion of surveillance come just in time. In January, Congress passed and President Trump signed an act extending the federal government’s warrantless wiretapping authority for six additional years.

On the day the Senate voted to renew the warrantless wiretapping, President Trump tweeted, “We need it! Get smart!”

State Representative Howrylak doesn’t agree with Trump’s tweet. “This new law guarantees no state resources will be used to help the federal government execute mass warrantless surveillance programs that violate the Fourth Amendment protections enshrined in the U.S. Constitution,” Howrylak said. “Michigan will not assist the federal government with any data collection unless it is consistent with the constitution.”

Given the role that rebellion against the unreasonable, unwarranted searches and seizures by government played in igniting the spark that lit the fires of armed resistance in America and the American Revolution, it is remarkable that that liberty now is considered so expendable that 65 U.S.





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senators would vote in favor of a bill supporting those same unwarranted searches and seizures.

James Otis is a name that is almost completely forgotten by contemporary Americans, but he was once the most famous lawyer in the colonies, and it was his renowned recrimination of unreasonable searches in Boston that earned him fame and influenced his countrymen to resist the tyranny of these deprivations.

At a trial challenging the constitutionality of the General Writs of Assistance, Otis spoke eloquently and persuasively in favor of freedom from the unreasonable searches being carried out by 18th-century government agents:

Now, one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient.

This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and, when Mr. Ware succeeded him, he endorsed this writ over to Mr. Ware; so that these writs are negotiable from one officer to another; and so your Honors have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this: Mr. Justice Walley had called this same Mr. Ware before him, by a constable, to answer for a breach of the Sabbath-day Acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied, "Yes." "Well then," said Mr. Ware, "I will show you a little of my power. I command you to permit me to search your house for uncustomed goods" — and went on to search the house from the garret to the cellar; and then served the constable in the same manner.

In 1788, nearly three decades after the speech of Otis in defense of the right to be free from unwarranted searches and seizures, his equally eminent sister, Mercy Otis Warren, echoed her brother's bold attack on despotism. Writing under the pseudonym "Columbian Patriot," Warren said:

There is no provision by a bill of rights to guard against the dangerous encroachments of power in too many instances to be named: but I ... cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence — the daring experiment of granting writs of assistance in a former arbitrary administration is not yet forgotten in ... Massachusetts; nor can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure.

Today, though, we live in the post-9/11 era where the rights guaranteed by the Fourth Amendment and almost all others in the Bill of Rights have been forcibly seized from the people and laid by agents of government on the altar of "safety from terrorism."

As of June 17, though, the people of the sovereign state of Michigan will no longer have their state monies or elected leaders helping the federal government violate the Fourth Amendment.



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