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LD 1780 – Ought to Pass

An Act To Prohibit Providers of Cloud Computing Service to Elementary and Secondary Educational Institutions from Processing Student Data for Commercial Purposes

JOINT STANDING COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

March 5, 2014

Senator Millett, Representative MacDonald, and members of the Committee on Education and Cultural Affairs, greetings. My name is Oami Amarasingham, and I am Public Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we ask you to pass LD 1780 as amended by the bill sponsor, which would require contracts between schools and cloud computing service providers to restrict the use of student data by those providers.

The ACLU of Maine has been a strong advocate in favor of bills that protect the privacy of all Mainers, including students. As technology rapidly advances, more and more of our personal information is stored in the cloud. Unchecked, that sensitive data can be used for purposes far beyond the original reasons behind providing the information in the first place. Cloud computing is a powerful tool, but as with many new technologies, privacy laws are playing catch-up.

The indiscriminate collection and use of *students'* personal information is especially concerning. For instance, researchers at Fordham University School of Law in New York report that certain school districts have contracts for cafeteria service payments that “would allow companies to collect, store, share and sell everything the student buys and eats at school.” As the lead researcher stated, “Companies could sell that information to advertisers or insurance companies.... Because a kid drinks a lot of soda, a family might have to pay higher insurance premiums or have trouble getting dental insurance.”¹

Equally concerning is that these companies, without the proper restrictions, could use this information for what is known as behavioral advertising. Behavioral advertising means tracking someone's preferences so that advertisers can target that person specifically. This practice raises fundamental privacy questions. Depending on the work the student does, or what information is stored in the cloud, a lot of personal information could be revealed. Should anyone have the right to know and sell to others the fact that a student is overweight, or depressed, or gay?

¹ Natasha Singer, *Group Presses for Safeguards on the Personal Data of Schoolchildren*, N.Y. Times, Oct. 13, 2013, available at <http://www.nytimes.com/2013/10/14/technology/concerns-arise-over-privacy-of-schoolchildrens-data.html>.

Advertisers also sell this information to third parties, called data aggregators, who in turn sell it to other marketers, employers and, perhaps most chillingly, the government. As far back as 2001 data aggregation companies have had contracts with the federal government and states to collect and share personal information about millions of Americans, including unlisted cell phone numbers, insurance claims, driver's license photographs, and credit reports. One company boasts it is:

"the silent partner to municipal, county, state, and federal justice agencies who access our databases every day to locate subjects, develop background information, secure information from a cellular or unlisted number, and much more."²

At a minimum, the ACLU of Maine believes consumers should be able to opt out of this kind of tracking. However, where students are concerned, we can hardly expect each student to consider how using school-provided software compromises her privacy before logging on to a school computer. When schools enter into contracts for cloud computing, those contracts should ensure that each student's data is protected.

LD 1780 fills one of the many gaps in current laws that are simply not equipped to deal with privacy concerns in light of advanced technology. Because our children's personal information should not be for sale, we urge you to pass LD 1780.

² Chris Calabrese, *Yes, They Really Know It's You*, American Civil Liberties Union Blog of Rights, Oct. 11, 2011, available at <https://www.aclu.org/blog/technology-and-liberty/yes-they-really-know-its-you>.