

# Should Utah Constitution include protection against electronic data searches?

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SALT LAKE CITY — A proposal to add electronic data and communications to the Utah Constitution protection against unreasonable searches sparked a thought-provoking debate among state lawmakers but no conclusion Tuesday.

"It's a tricky, tricky issue," Rep. McKell, R-Spanish Fork, said after an hourlong House Judiciary Committee discussion.

Rep. Craig Hall, R-West Valley City, proposed a resolution, HCR9, that would ask voters to amend the state constitution to include electronic data such as emails, text messages and cloud storage in the section forbidding unreasonable searches.

Hall said laws have not kept pace with new technologies, and amending the constitution is better than a "hodgepodge" of statutes addressing issues they arise.

University of Utah law professor Paul Cassell argued against the resolution, saying it's unnecessary and existing case law already protects electronic data from illegal searches. Cassell said it's a solution in search of a problem.

"I really don't see a good reason for making any changes here," he told the committee.

Cassell, a former federal judge, said amending the constitution also would remove power from the Legislature and hand it to the Utah Supreme Court. Legal interpretations could interfere with police investigations, particularly in the area of child pornography, he said.

Marina Lowe, ACLU of Utah legislative counsel, said it's important to explicitly protect electronic communications. Neither legislatures nor courts can keep up with changing technology, and that causes lags in the law with each new electronic device, she said.

"This sends a clear message that this data is protected," she said.

Next ›

Rep. Brian Greene, R-Pleasant Grove, worried that an argument could be made that emerging technology wouldn't be covered if it weren't specifically spelled out in the constitution.

Hall said those opposed to the proposal are arguing both sides.

"Either it will do nothing or cause lots of problems. It can't be both," he said.

The Utah Chiefs of Police Association and the Statewide Association of Prosecutors also opposed the bill.

The committee voted to hold the resolution but have the state's Constitutional Review Commission study the issue.

"It's not an issue that is going away," Hall said