



# Montana State Representative Daniel Zolnikov

## **Politics and The Surveillance State.**

The Story of a Young Politician's Successful Efforts to Fight Surveillance and Pass the Nation's Strongest Privacy Bills.

# About Daniel

- From Roundup, Montana.
- 31 Years Old. First Served at 25 Years Old.
- Chair of House Energy and Technology Committee.
- Republican 3<sup>rd</sup> Term State Legislator. 2 Year Terms.
- Swimmer. Current MBA Student. Previous Speaker at DefCon 21.
- Half Russian, Half Italian. All Chaos.
- Still Uses a Blackberry.

# Legislation Sponsored & Passed

- Nation's First Warrant Requirement for GPS Location. 2013
- Nation's Strongest Freedom of the Press Law. 2015
- Medical Immunity for Minors. 2015
- Co-Sponsor Asset Forfeiture. 2015
- Warrant Requirement for Electronic Devices. 2017
- Warrant or 4<sup>th</sup> Amendment Subpoena Requirement for Electronic Communications. 2017
- Severe Limits on License Plate Readers. 2017
- Major Reforms and Restrictions for Vehicle Spot Checks. 2017

# 1<sup>st</sup> and 4<sup>th</sup> Amendment

- 1<sup>st</sup> Amendment
  - Protects the Freedom of Religion, **Speech**, Press, Assembly, and to Petition.
- 4<sup>th</sup> Amendment
  - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- Why is this Important? Self Censorship!

# Why Isn't Our Data Ours?

- The Third Party Doctrine.
  - United States legal theory that holds that people who voluntarily give information to **third parties**—such as banks, phone companies, internet service providers (ISPs), and e-mail servers—have "no reasonable expectation of privacy."
  - Outdated laws from 1986 removes warrant protections to emails over 180 days old.
- Patriot Act.
  - Expanded the Government's ability to monitor, collect and retain the data of Americans and delay notification of these searches.

# NSA, Secret Courts and Vehicle Tracking

- NSA - Mass Data Collection of your Digital communications.
  - Microsoft, Google, Yahoo, Facebook, YouTube, Skype, Apple all participated.
- Secret Courts – Foreign Intelligence Surveillance Court “Oversight”.
  - From 1977 – 2013, the court rejected 11 out of 33,900 requests.
- National DEA License Plate and Facial Recognition Tracking Program.
  - Collects Data Locally, Creates a Map of Vehicle Usage Nationally.

# But I Have Nothing to Hide!

- Philosophy of Freedom of Speech and Expression.
- Problems of Self Censorship.
  - Driving Example
  - Montana Sedition Acts
  - You May Have Nothing to Hide, but One Day You Might
  - Privacy

# Historical Examples

- J. Edgar Hoover.
  - Congress
  - Martin Luther King Jr.
- Watergate.
- East Germany.



# How to Use These Tools to Take Over The World

- J. Edgar Hoover Model.
- Coercion.
- Blackmail.
- Expose.
- Discredit.

# Limits & Standards Worth Imposing

- Oversight.
  - Checks and Balances.
  - Require Records of Searches. Who and Why.
- Burden of Proof.
- Transparency.
- Notification Standards.

# Story Time!

- Running for Office.
- Campaigning.
- Every State is Different.
- Anyone Can Run.
  - Have a Strategy, Not a Plan.

# Term 1 & 2

- Befriended Colleagues on Both Sides of the Aisle.
- 2013
  - Privacy Bill of Rights. (Failed)
  - GPS Warrant Requirement. (Succeeded)
- 2015
  - Freedom of the Press Privacy. (Succeeded)
  - Warrants for Devices, Digital Communications. (Failed)
  - Limits on License Plate Readers and Spot Check Legislation. (Failed)

# Term 1 & 2

- Spoke at DefCon 21.
- Edward Snowden.
- Forbes 30 Under 30.
- Importance of Model State Legislation – Proof of Concept.
  - Other States Followed the Model.
  - Supreme Case Ruling. -2018

# Term 3

- Election
- Chair of Energy and Technology Committee
- Term Limits
- 2017
  - Warrant Requirements for Digital Communications. (Passed)
  - Warrant Requirements for Devices. (Passed)
  - License Plate Readers. (Passed)
  - Vehicle Spot Checks. (Passed)
  - Also a lot of Energy Policy.

# Passing the Bills

- What do Gun Groups, ACLU, Family Groups, Hackers and Citizens Have in Common?
  - Unique Coalitions are Key.
- Understanding and Beating the Opposition.
  - Law Enforcement Groups.
  - Prosecutors.
  - Politics.
- Arguments and Tactics Used.
  - Red Herring.
  - Strawman.

# How

- Efforts to Become a Privacy/Technology Expert.
- Influence of Outside Groups and Concerned Individuals.
  - Who Showed Up And Who Didn't.
- Now Multiple Model Bills for Your States.
- My Main Failure.
  - Privacy Goes Beyond Government.
  - Personal Browser Information.
  - Consent to Collect.



# Understanding Politicians

- What Drives Politicians?
  - Influence, Power, Change, Anger, Political Involvement
- Hundreds of Issues.
- Political Issues vs Policy Issues.
  - Don't Follow the Trends
- Political Capital.

# Partisanship

- Politicians Divide and Conquer the Electorate.
  - Polls and Data Influence Segmented Groups.
  - Example: Blue Lives Matter vs Black Lives Matter.
- Partisan Politics Invokes Partisan Behavior.
  - Tribalism.
- Keep the Issue Non-Partisan.

# Force Politicians to Listen

- Differences Between State and Federal.
- Constituents are only Represented when You Make Yourself Heard.
- Make a Politician in a Tight Election Earn your Vote.
- They Represent You! Be Persistent, but not Offensive.
- Get Involved or Challenge Them for Office and Make it the Main Issue.
- Call Them Out Publicly.
  - Facebook is Limited, Opinion Editorials in Papers is Powerful.
  - Politicians Fear Controversy.
- Expecting Them to Know Better is Not Reasonable.

# Have Your State Pass These Laws

- Identify a Bill Sponsor.
- Organize.
  - Create a Supportive Group to Contact Committee Members Prior to the Election.
  - Create Expectations.
  - Disrupt the Status Quo.
  - Work with Tech Policy/Civil Liberty Organizations like the Center for Democracy and Technology and the ACLU.
  - Testify.



# Why You Matter

“When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law.”

— **Frédéric Bastiat**



Questions?