



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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Oklahoma’s Bipartisan Approach to Data Privacy | March 13, 2022 | OAS Episode 153

Ed: Hello and welcome to “Our American States.” A podcast from the National Conference of State Legislatures. This podcast is all about legislatures, the people in them, the policies, process and politics that shape them. I am your host, Ed Smith.

Josh: *Yes, I’m a rural, conservative Republican. Collin is an urban Democrat. There is a lot that you can stack against each other if we wanted to. But we wanted to show people that hey I can disagree with Collin adamantly. He can disagree with me. We can vote against each. Debate against each other. But, at the end of the day, we can sit around across the table as well and have an educated discussion.*

Collin *It allows us to bring in members from throughout the state on different parties to come in and talk on different topics. Because in Oklahoma, sometimes the divide isn’t really Democrat versus Republican. It is rural versus urban.*

Ed: That is Representative Josh West, the Republican Majority Leader, in the Oklahoma House. And representative Collin Walke, a Democratic member of the House. They are my guests on the podcast.

Data privacy is a topic that has captured the attention of many state legislators across the Country. In 2021, data privacy legislation was introduced in 38 states. The most common type of legislation was comprehensive privacy legislation along the lines of legislation enacted in California.

But enacting legislation in other states has been far more difficult as my guests can discuss. West and Walke teamed up to work on comprehensive legislation in their state. Their bill passed the House last year but has not yet been heard in the Oklahoma Senate. They discussed how they first became interested in the topic of data privacy and how they ended up working together.

They also explain why they started a podcast “Inside the Capitol.” The show has been a way to educate colleagues and constituents about data privacy. But episodes also examined other

policy topics: budgets, civility and more. And they say, it's a way to signal civility and bipartisanship. Here is our discussion.

(TM): 02:10

Ed: Representative West and Representative Walke, welcome to the podcast.

Collin: Thanks for having us.

Josh: Absolutely. Thanks for having us. Glad to be here.

Ed: Well, I'm of course very eager to talk with you about the data privacy legislation you worked on last session, and I know is going to be considered this session again. But I can't help but ask you about your podcast "Inside the Capitol." You are from different parties at a time when partisanship is particularly acute, I think it is fair to say. Can you talk a little bit about why you decided to do a podcast, the sort of topics you cover and what kind of feedback you've gotten from constituents and your fellow members?

Josh: Yeah absolutely. So, honestly all the things that you talked about the hyper partisan stuff and a lot of people they look at D.C. and that's where they get their politics from whether it is Fox or CNN. And so, they want, as a Republican, they would love for me to go out there everyday and put a press release or do a press conference and talk about how terrible that Walke is because he is a Democrat. It's easy to do that. I mean it's easy to get off in that partisan tunnel vision, I guess. And so, Collin and I came in in 2016 together. We both got elected in November of that year. And to be honest and we've talked about it a lot. We were not good friends. We really didn't like each other that first year. And after our first session, we got put in back-to-back special sessions. We had a huge budget shortfall in Oklahoma. So, Governor Fallin at the time put us in back-to-back specials. And so, I don't know, we were at a reception or something together and you know ended up talking and I really wanted to hate the guy, but we ended up becoming really good friends. He's one of my best friends and ahm ... and so as far as the podcast so that was years ago right. So that was 2016 and a few years ago, we got to talking about data privacy and all this stuff that was coming out and that's you know that was right before like "The Social Dilemma" came out on Netflix and so a lot of people started paying attention to this stuff. You know, Collin has been working on it for years, but we started looking at stuff that we could run together, and we got with our House staff and the media staff and Jason Worf and talked about the idea of a podcast, and he was all about it.

For one, you know, we wanted to show that, we wanted to cover the legislation we ran last year the House Bill 1602 which is the Oklahoma Data Privacy Act of 2021. And we put a lot of work into that. You know, we did interim studies with. We had people from all sides from the industry, from opposition. We had, you know, Roger McNamee come down. Well, he was actually going to come down and it was Covid, so but he was at our interim study which was awesome. So last session you know that first week we did the first episode. So, two reasons you know. We wanted to have a way for people to track and follow that legislation through the process and we wanted to show people that, yes, I'm a rural, conservative Republican; Collin is an urban Democrat. There is a lot that you could stack against each other if we wanted to. But we wanted to show people that hey I can disagree with Collin

adamantly. He can disagree with me. We can vote against each other. Debate against each other. But, at the end of the day, we can sit around across the table as well and have an educated discussion and I don't have to say Collin Walke is a piece of crap Democrat. You know, I can sit around and the stuff that we can't agree with, we hit it full force. And I think a lot of people are getting sick of, you know, they are burned out politically.

The elections aren't even here, and people already have voter fatigue, but people like to see both sides trying to work together on stuff that they can. So that was kind of the reasons that we did it.

(TM): 05:45

Ed: Representative Walke, what's your perspective on podcasting and its value?

Collin: The whole reason we brought this together, one was to help promote the interest in data privacy and reach a broader audience. But the other reason was because it allows us to bring in members from throughout the state on different parties to come in and talk on different topics. Because in Oklahoma, sometimes the divide isn't really Democrat versus Republican. It's rural versus urban, right, especially when it comes to school choice and those sorts of issues. We wanted people to start realizing that there is more at play than what you read in the headlines and long form podcasting provides that avenue. So, we saw it as a constructive solution to help society wanting to have conversations again instead of just yelling at one another.

Ed: Well, let's get back to the topic of the day. We talked a little bit already about data privacy. You both were sponsors of this comprehensive privacy bill that passed the House. But this was not an easy issue to tackle, and I don't need to tell you that. Washington state has been debating this for three years without passing anything so. Representative Walke, what prompted you to take this on? Representative West just said you had been involved with this for a long time. What attracted you to the topic?

Collin: I read Roger McNamee's book "Zucked" when it was first published. For those of you who aren't familiar with who Roger McNamee is, he is a billionaire, a hedge fund investor, former advisor to Mark Zuckerberg and Sheryl Sandberg. And up until that point in time, we live in Oklahoma – right? So, we grow it, eat it or pump it out of the ground and that's more West line that I just stole. We don't deal with data. It's not part of our commodities market yet. And so, we are really living in the 18th century. And when I read this book, in spite of Edward Snowden and the federal government. In spite of all of the data breaches, I didn't really understand and appreciate how important data was. And so, after I read this book, I simply wrote a letter to Mr. McNamee, and I said I'd like to work on legislation in Oklahoma to change this. And since then, he has been kind enough to work with Representative West and myself and he is now a bona fide Okie. So, that's how I got interested in it. Since then, I've become certified as a CIPP professional and CIPM professional, so it has really changed my life because I really do think that data and data analytics is the future. And we have got to address this issue now.

(TM): 8:00

Ed: So, Leader West, how did you end up getting involved in this issue? That's an interesting story Representative Walke has. Did you have an epiphany of that sort as well?

Josh: For about three years ago, I don't know if it was on the frontside or the backside of the election, but you know Collin and I were talking about some things that we could do together and we started looking at data privacy. And so, since then, like I said, you now, we developed the relationship with Roger or Collin did and brought me in. And it was just interesting to see all the things that we had no clue about. And there's times when Collin and I sound like tin hat crazies when we are talking to people about everything in your house if it is a smart device. Whether it's your cell phone, your TV, your vacuum cleaner, your Alexa, your vehicle. It's nice to have that stuff. I mean I use it a lot. But people didn't realize how much that they are able to influence their daily lives and decisions based off of the data that they collect on us that we had no clue about. I mean most people don't know that your vacuum cleaner, the Robo vacuum cleaners are mapping your house and selling it to Amazon as part of their business model as they are going to map the dimensions of your house. So, when they are getting pop up ads specifically for you know furniture to fit in their house, it's because of things like that.

There was a phone call early on where it was myself, Collin and Roger before the interim study that we did in 2020 and so during that conversation we were all talking about how you think your Gmail and things like that are secure. But in reality, they are not. It may not be a person on the other side, but there are oftentimes there is. And so, it was kind of funny ... within two or three minutes of ending the conversation, I get a pop up on my phone that says how to ensure that your Gmail is secured. Because my phone was listening to us and so you know I took a screenshot of it, and I sent it to Walke. I'm like you will never guess what just popped up on my phone. And he was like you are joking. I was like no. And so, we just started digging into it and we started trying to educate other members not as punitive against tech companies or whoever. You know your Amazons and your Wal-Mart's. All these big companies. We use them too. We want them to succeed, but we try to tell members that they can still succeed, and we can still have a healthy business environment without my personal information, my kid's personal information, my wife's personal information being out there for whoever wants to buy it. Collin sparked it and we just continued on with it. This was three years. Going on three years that we've been working on it and got to do a lot of ... We've met a lot of people that you know from other states that are state legislators that obviously this summer in September we went to Virginia to do that symposium. And so, it was good to see House and Senate members from around the country that are trying to address this on their own as well. So, it just backs up our position and you know we can talk smart on the subject and it's a fight. I mean when we ran the bill la. year on the floor, the night before, there were probably 65 to 70 contract lobbyists from two, I won't name them, but two cell phone carriers. They were picking members out one by one and bringing them out there. And it was deadline and so we had to get all House bills out of the House and over to the Senate, so it was the last day. But the night before, they were picking them out and they were trying to kill our bill. We had had 40 some co-authors on the bill before it ever ran on the floor, and I think it passed 85-11. We had a few members that were out. We had 101 members in the Oklahoma House so there's a few members that were not present, but overwhelmingly it passed. You know it didn't get hurt in the Senate so the good thing is that bill is still alive and so we can still work on it. We've also filed another bill this year so ups and downs and it's you are fighting money. You are fighting billion-dollar companies or multibillion dollar

companies and that's the reason that the federal delegation does not address it and they probably won't. And you know, you've got all these states trying to do it on their own now.

(TM): 11:58

Ed: Representative Walke, can you outline sort of the key elements of the legislation that you were able to get through the House?

Collin: So, recognizing that this was a bipartisan bill and that this is not a partisan issue – right. Republicans love their privacy just as much as Democrats do. What we decided was is to set the standard for data privacy in the country and the way we decided to do that was by offering an opt-in bill. So right now, the default or any of the other states have passed legislation is opt out which means that when you get on the internet unless you tell people not to track your information, they are tracking it. Well, our bill flips the script on that and says you can't track our information. You can't sell our information unless we give you explicit permission to do so. Because these other bills out there – sure they help enshrine the right of access to your data which our bill does the same thing. And it allows you to the right to correct your data. Our bill does the same thing. And it allows you the right to delete your data under certain circumstances. Our bill does that, and it actually takes it a step further and gives you a right to be forgotten similar to the GDPR. So, our bill as one lobbyist called it California on steroids because only through an opt-in bill do you actually prevent the collection of data in the first place, which is really where the problem is because data is a toxic asset. The longer it sits there, the more likely it is to be breached in a data hack or something along those lines right. So just think about a nuclear waste facility. That's not good stuff, but we have it there and we hope for the best and we never have a Fukushima incident or something along those lines. But it is bound to happen. And as we've seen with all of these data breaches. So, our bill is an opt-in bill, and it also contains the right to be forgotten which is different from the other states.

Ed: Thanks Representative Walke. We will be right back after this with the rest of our discussion.

Music and advertising

Ed: I'm back with Representative Josh West and Collin Walke from Oklahoma discussing data privacy. I know one of the real contentious issues around this topic is the right of individuals to sue companies – a so-called private right of action. Some opponents say a private right of action could stir frivolous lawsuits, class actions and excessive damages. What are your thoughts on that issue? Representative West maybe you could tackle that first.

(TM): 14:48

Josh: We don't have a PRA in that piece of legislation. Now that obviously we don't take it personal when lobbyists are up here trying to kill our stuff or when you have the state chamber obviously, they don't like it because they represent the business community and so we've always been upfront with them. And you know, I'm not going to take it personally. It's their job. They are hired by an industry or an avenue to go protect their assets and so. But what we hear back from you know there's a lot of scare tactics out there and so they will tell these companies, or these companies will put out to our constituents trying to get them to call

us and kill the bill ourselves. Say you are going to tack on all these extra costs to our business and in return we are going to flush it down the line to you all. And so, it's going to, it's an additional tax on business. And so, we met with dozens of Fortune 500 companies from 2020 to 2021 because we wanted to make it the best bill possible and have the best chance of succeeding and still be--I mean we feel like our legislation is business friendly. They can still do it. They can still sell my data. They can still collect it only if I give permission. Only if Collin gives permission. Our constituents and so there's not a single constituent from around the state that has called me or my constituents or any other Oklahomans from around the state that have called me and said that or Walke that said this is a terrible bill. ... There are a lot of fear tactics out there and you know I don't know if that is why it wasn't heard in the Senate. I don't want to speculate. And I'm not going to throw bombs at the Senate. We do that enough, but they got it done. And so, we met with the state chamber two days ago. They were very open with us. They didn't like it last time. They were kind of shady last time behind our back. This time they came out and said hey we are just going to be upfront with you. We don't like it. We are going to try to kill it and we said let's go for it. You know, we kind of like a battle. Collin and I like a good fight and so and we both said we get it. We got a job to do. Let's go see who can do it better and if we lose then we lose. But I just don't see how this is ... I don't understand how this is such a big topic ... how it is such a bad thing. ... We are not their employees. We are right-to-work states, you know, all kinds of other stuff but dealing with employees. I'm not an employee of any of these companies and so when they are selling my children's locations and we've talked about it before for \$12.95 you can download an app on your smart device and track anybody in the world on their smartphone. They did it with the president because a Secret Service agent had the app on his phone. And so, it gets into national security. It gets into other things. It's echelons above what people think about oh I'm getting popup ads on Facebook because I was looking at whatever on Amazon. I was looking up hunting boots on Amazon and now I'm getting popup ads. It's so much further in-depth than that and that's what we get off on, not tangents. But we get off talking about this and people think God dang they are crazy. They got their tin hats and no it's not that. We have dug into this, and we understand it's not only dangerous for our constituents, but it's dangerous for us as a country because there's no laws against it. They are not breaking any laws. But there's no protections in place for who that they are selling it to either. They can sell my data to anybody and it's dangerous for our country.

Ed: Representative Walke, what's your perspective on business pushback whether it's the right-of-private-action issue or the notion that there's kind of a patchwork of state laws in the absence of any federal action?

(TM): 18:09

Collin: Yea so first of all, I do believe our original bill did have a private right- of action in it. But we did amend that out for a lot of reasons. One, I'm a practicing attorney. I'm a litigator. I'm more than happy to debate the validity of a private right of action. And in fact, I don't necessarily think that the AG route that most states are taking is the best route either, but it seems to be the most efficient at this time. So, I just don't see the private right of action as actually being that big of a win. That's the first thing. The second thing I would say is that it blows my mind that these businesses think that this is such rocket science. The reality is most of these companies are already complying with the GDPR, which is 10 times stricter than anything that we are talking about. The other side of it, too is if you are going to be targeting

audiences in California or Virginia or Colorado, wherever, guess what? You are already going to have to start complying. And Representative West and myself had a meeting with Lt. Governor Pinnell's office last session meeting with a tech consortium about our bill. And one of the participants actually raised their hand and said I don't see what the big deal is. We are already telling our clients to comply with the GDPR, the CCPA so this isn't that big of a deal. So, the reality is I haven't seen a single valid business argument against this type of bill other than we just don't want to have to pay for your data so that we can make a profit off of it. Right? Right now, that's the bottom line.

Ed: And you've made reference to the privacy summit that NCSL convened I guess that was last fall. You had an opportunity to talk with legislators from around the country on this. Did they bring up any new issues that maybe hadn't occurred to you or was it more kind of confirming that you guys were on the right track? Representative Walke, why don't you tackle that first?

Collin: I think it was more commiserating about these issues. I don't know that I personally had any conversations where I went wow that's unique. I have had conversations with people outside of the NCSL that kind of opened my eyes to some other items like the private right of actions and things like that. But the summit itself was good to be able to recognize that we are not alone ... that this is happening in every state. And it was good to hear their experiences and also to talk to them about how they managed to navigate the routes to get their legislation passed. Every state is different. Every legislature is different. But I do think there are some good rules of thumb. I learned a lot from the speakers about themselves. That was interesting. You know, for example, one of the speakers had a comment about how if people were to control their own data and being paid for the use of their data, the amount wouldn't really be that much which kind of surprised me because I've seen different arguments about that. And I think it's more of a mannered method in which you do control your data. It was interesting to see their perspectives even from privacy advocates.

Ed: And Representative West, what was your takeaway from that summit?

(TM): 20:59

Josh: Same as Collin. I mean it was good just to be around other states and other members that were trying to do the same thing that we were. And so, we got to the second day, you know we got to present the House Bill 1602 we ran out of the House last year. They didn't know how to take Walke and I. We are pretty aggressive. You know there was a lot of scholarly people, and we are both hyped up and amped up and so we presented our legislation and afterwards I think the senator from, I don't know, New England, Connecticut or somewhere up there. She had made the point that ahm you know I don't have the. ...

Collin: Personality?

Josh: ... the intensity that you all do, but I'm glad that you have the intensity and so we learned a lot. You know one guy made some great points. He was a senator from California, and he said you know he felt that opt out was a better way because he said once you opt in then that's ... you opt in and from then on, your data is out there. He said with opt out, you know he felt that that was a better version. I don't think any surprises, but it was good being around people that were trying to do the same thing that we were, and it made us ... there was times

when we felt like we were on an island like the bill passed overwhelmingly but we are getting our asses handed to us any which way you could think of and I'm like good grief. I guess it was good to see that other states go through the same frustrations and political games that we were going through. And so, it just gave us more drive to continue on and keep working on this. It didn't ... it wasn't upsetting and so it just backed up our position and it was a positive thing. I'm glad that we went, and it was one of the best studies outside of the legislature that I've been able to attend, and I would assume the same thing for Collin.

Ed: Well, I'm sure it was helpful for the other people there to have you there given the work you've done on this. I ask pretty much any legislator I talk to when we get to the end of the podcast as we are now about lessons learned and what you ... what kind of advice you would share with your colleagues around the country if they decide to tackle this legislation and Representative Walke let me ask you to take that on first.

(TM): 23:24

Collin: So, I'll bring up the level of intensity and I'll give my rah-rah speech for everybody that is listening, which is don't back down because there's not a single constituent in anybody's district who thinks that data privacy is a bad idea. And Amazon, Microsoft, the big boys of the world – they don't vote for you. Thirty-eight thousand constituents in Grove, Oklahoma, elected Josh West and they care about their privacy. And so quit caring about the fear of not getting reelected because nobody doesn't get reelected on data privacy. This is the opportunity for us to step up and actually show our constituents that when a problem presents itself, we address it.

You know in Oklahoma; we didn't have rules on spacing between oil and gas wells for the longest time – right. And you can look outside of my window right now and you can see an oil derrick on the Capitol of the Oklahoma House of Representatives or Oklahoma House. We ended up implementing rules and regulations to create spacing requirements for oil and gas wells. Why? One it preserved oil and gas. And two it increased competition. And so, what we need to do is do the same thing today. If it's that important in Oklahoma oil and gas and we can regulate it, well by God we can regulate data in the 21st century. It's just as important as oil and gas was to us and if we can do it; ya'll can do it. It ain't a partisan issue. Republicans and Democrats love their privacy. Go out there and you tell the Facebooks of the world, you know what, I ain't buying your deal. I'm going to run an opt in legislation. We are going to make some real meaningful change.

Ed: Well, I do think we got to love your intensity. Leader West, why don't you take the final word here. What would you want to share with your colleagues around the country?

Josh: Everything that Walke said, and I would say if you're in a state that is considering tackling this, do your homework. You know, put the legwork in and be able to back up your positions because you are going to get beat up. You are going to get attacked by industries, certain industries. You are also going to have industries that come ... you know there's data privacy industries that feel like this would bring more jobs to the state. But you are going to get beat up and you are going to have ... you may have mailers go out in your district, but when I go talk to a group of parents and say did you know your live 360 app is tracking your kid's location. People usually don't have a clue that that stuff goes on. We want a great business

community and I feel like we are a real business friendly state. We've done a lot of ... we've ran a lot of legislation that deals with corporate taxes and things like that to draw those businesses here and so we want these businesses to come here.

Like Walke said, the CEO of whatever does not elect me. It's the 39,000 constituents in district 5 and so go have those conversations with your constituents. But be able to talk smart on it because you are going to get hemmed up and you know don't let them get you in a corner where you can't talk smart on the subject. So that's why we didn't just come out and run to legislation the first year we wanted to. We did the legwork, and we did the interim studies and we attended symposiums and so when members have questions here in Oklahoma, they come to Walke, and I because they know that we have made ourselves become subject matter experts on the topic.

Ed: Gentlemen, thank you both for taking the time to discuss this topic. It has been an education for me and I'm sure for the listeners. Take care.

Music (TM): 26:38

Ed: And that concludes this episode of our podcast. We encourage you to review and rate NCSL podcasts on Apple podcasts, Google Play, Pocket Casts, Stitcher or Spotify. We also encourage you to check out our other podcasts: *Legislature*, *The Inside Story* and the special series *Building Democracy*. Thanks for listening.