



AMERICAN CIVIL LIBERTIES UNION

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TESTIMONY OF MEAGAN SWAY, ESQ.

**LD 1576 - Ought to Pass**

**An Act to Update the Laws Governing Electronic Device Information as Evidence**

JOINT STANDING COMMITTEE ON JUDICIARY

May 22, 2023

Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, good morning. My name is Meagan Sway, and I am the Policy Director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 1576, legislation that preserves Mainers' privacy rights and prevents law enforcement from obtaining sensitive personal information from third-party companies without a warrant or without the user's consent.

Under current Maine law, law enforcement must get a warrant to obtain content information (such as texts and emails) stored on a portable electronic device or to obtain location information stored on any electronic device. 16 M.R.S. §§ 642, 648. These are common sense protections: people have a reasonable expectation that their texts and phone calls are private. But the present statutes do not safeguard other digital information that people reasonably expect to be private. This bill helps to fill those gaps.

This bill ensures that a warrant is needed to access *all* electronic information, including metadata, on *any* electronic device, not just portable devices. This includes emails or banking information on a person's desktop computer—information that is not protected by current statute and that any person reasonably expects to be private. This also includes photos and search history on a cell phone—again information that people reasonably expect to be private but is not protected under the current statutes. These protections have existed in federal jurisprudence for almost a

decade,<sup>1</sup> and the Law Court has already endorsed that federal reasoning,<sup>2</sup> demonstrating that these protections are workable. The bill also expands protections for metadata, which is data about data: who an author is, what time a text was sent, when the file was modified, how large it is, where it was composed, etc. Metadata can tell a complete story about a communication that the text of a communication cannot, and the details of that story are something that people have a reasonable expectation to keep private from the government without a warrant.

Because this bill expands on Maine's existing law to protect information that any reasonable person already believes to be private, we urge you to vote *ought to pass*.

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<sup>1</sup> *Riley v. California*, 573 U.S. 373, 374 (2014) (ruling that as “minicomputers,” cell phones contain vast amounts of personal information and are therefore entitled to Fourth Amendment protections).

<sup>2</sup> *State v. Jandreau*, 2022 ME 59 ¶¶ 15, 16 (relying on *Riley* to note that although “searches of computers and cell phones” have “unique concerns,” “traditional Fourth Amendment principles” still apply).