

May 19, 2023

To: Senator Carney, Representative Moonen, and Honorable members of the Judiciary Committee

From: Hannah Babinski

Re: Testimony in Support of LD 1576, “An Act to Update the Laws Governing Electronic Device Information as Evidence”

Good morning, Senator Carney, Representative Moonen, and honorable members of the Judiciary Committee, my name is Hannah Babinski. I am a resident of Portland, and I am writing today as a student of the University of Maine School of Law and a privacy advocate to testify in support of LD 1576, “**An Act to Update the Laws Governing Electronic Device Information as Evidence,**” and to urge you to vote “Ought to Pass” on this bill.

Prior to beginning my studies at the University of Maine School of Law, I believed that federal and local governments and law enforcement bodies were bound by the provisions of the Constitution, carefully drafted by the Founders to protect the rights of the citizens of our country. Of these provisions is the Fourth Amendment, which protects Americans against unreasonable search and seizures by acknowledging the basic right held by all Americans to be secure in their “persons, houses, papers, and effects.”¹ I, like the majority of the public outside the legal field, believed that the Fourth Amendment required law enforcement officials to obtain a court-approved and ordered warrant authorizing the search or seizure of an individual’s personal effects and communications, and in most situations, this belief is true. However, there is a glaring gap in protection established by case precedent that enables law enforcement officials to access any information or communications shared by individuals willingly with a third-party, known as the Third-Party Doctrine.

The concept presented by the Third-Party Doctrine, which was established in the 1970s, is incompatible with the modern world. Every day, the lives of everyday citizens are further intertwined with the internet, and third-party companies continue to provide services to streamline and simplify our lives. Rather than bury cans of money in our backyards, we store our money in banks, accessible on our phones and laptops. Rather than write a letter to our loved ones, we send emails through an online service provider like Google or Yahoo! or an instant message on Facebook or WhatsApp.² The actions at the core are the same, yet the former is protected by the Constitution and the latter is not, making information online accessible absent a warrant under the Third-Party Doctrine.

In this way, the Doctrine chips away at the Constitutional rights of Americans as society continues to evolve, and this degradation will eventually render the protections envisioned and established by the Founders irrelevant. Are we prepared to say that the rights of one American are more valuable than another merely because one utilizes a third-party service provider to facilitate their private communications? And

¹ The text of the Fourth Amendment.

² *Third Party Doctrine*, INSTITUTE FOR JUSTICE, <https://ij.org/issues/ij-project-on-the-4th-amendment/third-party-doctrine/> (last accessed Mar. 22, 2023) (stating, “This categorical rule has devastated our security and privacy, particularly since so much of living in the modern world means sharing our information with others. If we want to call someone, we have to give the phone company the number. If we want to look at a website, we have to send the URL to our Internet provider. And if we want somewhere to put our money, we have to share information with our bank. The third-party doctrine says that even if all these companies agree to keep our information safe and secure, government agents can demand access to it without seeing a judge or securing a warrant.”)

are we willing to accept a future where our Fourth Amendment rights are only applicable if no external companies are involved?

Though the Supreme Court's precedent in cases like *United States v. Miller*, *Smith v. Maryland*, and *Carpenter v. United States* have affirmed the existence of the Third-Party Doctrine, we as a state are empowered to establish laws that seek to protect the rights of our citizens and ensure that the Fourth Amendment rights of Mainers are upheld and respected, regardless of whether the communications or information sharing occurs in an online forum utilizing a third party provider. We must act to preserve the Constitutional rights enjoyed by our predecessors in the modern world and require the acquisition of a warrant prior to the access of third party-maintained information and communications.

For these reasons, I respectfully urge this Committee to vote "Ought to Pass" on LD 1576. Thank you for your time and consideration.

Hannah G. Babinski