

May 19, 2023

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

From: Christopher D. Guay

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 Christopher Guay, and I go to school at the University of Maine School of Law. I am writing as a student and concerned citizen to urge you to vote “Ought to Pass” on LD 1576, “An Act to Update the Laws Governing Electronic Device Information as Evidence.”

Generally speaking, the Fourth Amendment of the Constitution protects American citizens from unreasonable searches and seizures by the government. One important exception to this generalized protection is the Third-Party Doctrine, which provides that information shared with a third-party is not subject to the same Constitutional protections, with the exception of location data. Those Constitutional protections are fundamental to our democracy and should be protected as such. The Third-Party Doctrine negates those protections from government interference.

Every day, Mainers interact with countless third-parties when going about their daily lives. In order to use the Internet or use their phones, Mainers almost invariably share information with third-parties. Information that third-parties gains during these every day interactions can then be obtained by the government (so long as third-party companies cooperate). As such, the loophole created by the Third-Party Doctrine affects Mainers deeply and opens them to unreasonable intrusions upon their personal lives.

Likewise, with the knowledge that their information is not safe under the Third-Party Doctrine, Mainers may hesitate to fully express themselves, which has a chilling effect on free speech to society’s detriment. For example, individuals are less likely to express unpopular political opinions when the government has the capability to access those opinions at any time.

In addition to the Constitutional conflicts, unreasonable intrusions on privacy, inevitability of data sharing in the modern age, and the possible chilling effect the Third-Party Doctrine has on free speech, the following reasons further demonstrate why you should vote “Ought to Pass” on LD 1576:

- LD 1576 ensures that Mainers’ **personal information remains private** and free from government interference without a warrant;
- LD 1576 would ensure that an **independent judge would ascertain the necessity and justness** of any action to obtain personal information stored with a third party, **just as they would with personal information stored on a personal device**;
- LD 1576 would put **Maine in line with the trend towards limiting the application of the Third-Party Doctrine** as shown in *Carpenter v. United States*; and
- LD 1576 ensures that **Mainers are protected** in a world that continues to become increasingly online.

I have always believed strongly in the need for protections against government interference of private thoughts and words. When someone uses the Internet, they do not expect that the government will be able to simply ask a company for their private information, but that is the reality of what the government can do right now and what the government can do right now in the state of Maine. As such, Maine should take action to ensure that private information remains private by voting "Ought to Pass" on LD 1576.

Respectfully submitted,
Christopher Guay