

May 19, 2023

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

From: Christian Jones

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 Christian Jones. I am a resident of Portland, and I am writing today as a student at the University of Maine School of Law to testify in support of LD 1576, **“An Act to Update the Laws Governing Electronic Device Information as Evidence.”**

Under the Fourth Amendment of the Constitution, American citizens maintain the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . .”<sup>1</sup> The Fourth Amendment was enacted in an effort to protect the privacy and persons of American citizens. Similarly to the external, offline information—since the private information could not be online in the time of the drafting of the Constitution—the Founders recognized as components of Americans’ persons and worth protection and privacy, our online data reveals critical information about us. From our banking transactions to our private communications, online data reveals extremely private information about our lives and is thus a part of us and our “persons.” We should have a right to protect this information from unreasonable searches and seizures, as we would in an offline context, in the absence of a warrant. The online or offline status of our personal information should not impact our rights. Mainers have a right to be free from unreasonable and unwarranted searches and seizures, both online and offline, and we must act now as a state to ensure the ongoing protections of our privacy and constitutional rights.

Though the Third-Party Doctrine is rooted in Supreme Court precedent and Fourth Amendment case law, Supreme Court justices, like Justice Roberts, have placed the burden on the individual states to act to protect the privacy rights of their respective citizens.<sup>2</sup> Assuming this burden and acting accordingly, California and Utah have both passed broad legal provisions to protect data held by third parties by requiring judicial oversight and authorization over the process, subject to certain exceptions related to emergency situations.<sup>3</sup> Maine should, likewise, follow suit and enact legislation to protect Mainers from unwarranted searches and seizures of their data.

Additionally, LD 1576 “Ought to Pass” for the following reasons:

- LD 1576 updates the language of the current statute, modernizing the statute and bringing the law into focus with the modern day as societal dependency on the law continues to evolve;
- LD 1576 provides clarification for situations in which a warrant would be required for the obtainment of electronic communications and information, reducing ambiguity for law enforcement while ensuring protections for Mainers; and

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<sup>1</sup> The text of the Fourth Amendment.

<sup>2</sup> See *Utah Becomes First State to Require Warrant for Data Held by Third-Parties*, EPIC (Apr. 1, 2019), <https://epic.org/utah-becomes-first-state-to-require-warrant-for-data-held-by-third-parties/> (last accessed May 19, 2023); Nicole A. Ozer, *It’s Time to Protect Digital Privacy in California*, ACLU NORCAL (Feb. 8, 2015), <https://www.aclunc.org/blog/its-time-protect-digital-privacy-california> (last accessed May 19, 2023).

<sup>3</sup> *Id.*

- LD 1576 ensures that the government and law enforcement entities consult an independent judge to obtain a warrant to search and obtain Mainers' personal information from third parties, creating a fair oversight and review in the search for evidence of a crime or otherwise.

As our lives continue to become further intertwined with the internet, the amount of information third parties store about us will, likewise, continue to increase. Our current laws and the allowance of the Third-Party Doctrine loophole are outdated and do not align with modern society that utilizes the Internet for most communications and information sharing and use. Our laws and protections apply to a context that is almost exclusively offline, leaving Mainers increasingly vulnerable to warrantless searches by law enforcement and violations of their Constitutional guarantees.<sup>4</sup> By enacting LD 1576, we are choosing to update Maine's privacy protections to reflect the modern digital world while simultaneously reinforcing constitutional rights by ensuring that police obtain a warrant before accessing Mainer's digital information held by third parties.

For these reasons, I respectfully urge this Committee to vote "Ought to Pass" on LD 1576.

Thank you,

Christian Jones

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<sup>4</sup> See Nicole A. Ozer, *It's Time to Protect Digital Privacy in California*, ACLU NORCAL (Feb. 8, 2015), <https://www.aclunc.org/blog/its-time-protect-digital-privacy-california> (last accessed May 19, 2023).