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Testimony of Senator Eric Brakey

L.D. 1056, An Act Restricting State Assistance in Federal Collection of Personal Electronic Data and Metadata

Before the Maine Legislature's Joint Standing Committee on Judiciary

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Senator Carney, Representative Moonen, and members of the Joint Standing Committee on Judiciary, I am Senator Eric Brakey, representing the people of Auburn, New Gloucester, Poland, and Durham. Today, I am here to present L.D. 1056, "An Act Restricting State Assistance in Federal Collection of Personal Electronic Data and Metadata."

Ten years ago, U.S. Senator Ron Wyden (D-OR) asked the Director of National Intelligence, James Clapper, in an open meeting of the Senate Intelligence Committee whether the National Security Agency (NSA) "collect[s] any type of data at all on millions or hundreds of millions of Americans?"

"No, sir," Clapper responded. "There are cases where they could inadvertently perhaps collect [data on Americans], but not wittingly."

Thanks to the actions of a whistleblower named Edward Snowden (who remains persecuted by our federal government to this day), we know that Director Clapper lied to Congress. We know that the federal government has engaged in mass surveillance of every single American through the bulk collection of our digital data and metadata — all without an individualized warrant from a judge, articulating probable cause that a crime has been committed, as the 4th Amendment of our U.S. Constitution requires.

In his memoir, Snowden wrote, "I participated in the most significant change in the history of American espionage — the change from the targeted surveillance of individuals to the mass surveillance of entire populations. I helped make it technologically feasible for a single government to collect all the world's digital communications, store them for ages, and search through them at will."

To recognize the danger of intelligence agencies with this kind of power — who can lie to Congress about their unconstitutional actions and suffer no penalty — let's look to the past of the FBI's treatment of Martin Luther King, Jr. With the technology of the 1960s, the FBI targeted him for his political activism, spied on him, tapped his phones, threatened to disclose alleged affairs, and attempted to push him toward suicide.

Now imagine it is 2023 — with the technology of today. With little legal oversight, they could track his every move with GPS data, see every phone call he's ever made, and learn what websites he is browsing. Further, they do not even need to do this in real time. With bulk data collection on everyone (stored in gigantic data centers, like the NSA's Massive Data Repository in Bluffdale, Utah — 1.5 million square feet, filled with servers to hold many exabytes of data), they can look back at all of your digital footprints for decades.

This all gives new meaning to the saying, "Show me the man and I will show you the crime." How can you have a functional democratic system when political dissidents can be targeted in this way?

One thing I have always appreciated about the Maine Legislature is the bipartisan support this institution has demonstrated over the years for the 4th Amendment rights of the Maine people. I remember when this committee endorsed — and the legislature passed into law — protections requiring state officials to observe due process and get a warrant from a judge to access cellular telephone records, handle GPS tracking data, place cameras on an individual's private property, or conduct drone surveillance.

These laws do not prohibit the use of surveillance tools by state and local law enforcement. Rather, they uphold the constitutional requirements of due process, requiring a warrant from a judge.

But while Maine has endeavored to hold our officials to the high standards of our Constitution, our federal government has shown no such regard. That is why this legislation is needed.

This bill is known popularly as the "4th Amendment Protection Act." It would prohibit state, county, and municipal officials from assisting, participating with, or providing material support to the federal government in the collection or the use of a person's electronic data or metadata, absent informed consent, proper due process, or another legally recognized exception to federal warrant requirements.

I brought this legislation forward once before in the 127th Maine Legislature. The majority of this committee voted to support it then. It passed the House of Representatives by a vote of 82-58, but failed in the Senate.

Today, I have brought this legislation back because the federal government's respect for our 4th Amendment rights has not improved in the years since — and it is time for the State of Maine to assert that we will not be party to these unconstitutional activities against the civil liberties of the Maine people and the American people.

Thank you for your time and consideration. I will gladly take questions.