

May 19, 2023

To: Senator Carney, Representative Moonen, and Honorable members of the Judiciary Committee
From: J. Shinay
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 J. Shinay, and I am a resident of Portland. I am writing today as both a student at the University of Maine School of Law and a concerned citizen to testify in support of LD 1576, "An Act to Update the Laws Governing Electronic Device Information as Evidence." For the following reasons, I urge you to vote "Ought to Pass" on LD 1576.

First, the goals of LD 1576 are supported by a plain understanding of the text of the Constitution. The Fourth Amendment of the Constitution provides American citizens the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."¹ This language protects more than mere physical property; Fourth Amendment protections also prevent intrusions by the government into the external information about an individual that comprise who that individual is as a "person." Although the Founders likely intended this language to constitutionally protect offline personal information, in the modern era this same personal information is almost entirely stored externally online. Thus, digital data represents analogous "personal" information that should rightly be covered under the Fourth Amendment. As such, Mainers should have a right to protect this online information from unreasonable searches and seizures by law enforcement, as we would in an offline context, in the absence of a warrant. Given the fundamental nature of these rights under the Constitution, we must act now as a State to ensure the ongoing protection of our online data from unreasonable search and seizure by the government.

Second, LD 1576 would place Maine at the national forefront of State action to protect privacy issues in the modern era. Despite the existence of the "Third-Party Doctrine," the Supreme Court has empowered the individual states to act to further protect the privacy rights of their respective citizens. In the landmark case of *Carpenter v. United States*, the Supreme Court declined to extend the Third-Party Doctrine and recognized that at least one form of personal data, mobile phone location data, was protected under the Fourth Amendment.² Although the court declined to extend this precedent to all personal data, Chief Justice Roberts was clear that states should take up the mantle of further protections, stating: "Legislation is much preferable to the development of an entirely new body of Fourth Amendment case law."³ Assuming this burden and acting accordingly, California and Utah have both passed broad legal provisions to protect the externally stored data of their citizens by requiring judicial oversight and authorization over the process of law enforcement obtaining such information, subject to certain exceptions related to emergency situations.⁴ Maine should follow the precedent set by California and Utah and enact LD 1576, ushering in further Fourth Amendment protections as urged by Chief Justice Roberts.

LD 1576 "Ought to Pass" for the following additional legal and policy reasons:

¹ U.S. Const. Amend. IV.

² *Carpenter v. United States*, 138 S.Ct. 2206 (2018).

³ *Id.*

⁴ 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).

- 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 strong privacy law continues to evolve;
- LD 1576 provides clarification for situations in which a warrant would be required for law enforcement to obtain electronic communications and information, reducing ambiguity for law enforcement while ensuring protections for Mainers; and
- 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 process in the search for evidence of a crime or otherwise.

Finally, while a plain understanding of the law urges me to support the passing of this bill, I am also compelled to support it for personal reasons. I am a born and raised Mainer who, like many of us, deeply values my privacy and the protection of my personal property. One of the things I respect most about this state is the ability for Mainers to find seclusion and peace in a loud and crowded world. Unfortunately, like many of us I am increasingly required to engage with online enterprises and services for almost every part of my daily life, often without any meaningful choice or alternative. Although I accept this cost of living in modern society, I do not feel that we as Mainers should be required to sacrifice our values of privacy and peace of mind simply because of a modern system that necessitates the sharing of personal data. Indeed, the State should feel obligated to protect these long-held values through legislative actions like that seen before you today.

Mainers use the Internet daily to carry out important personal activities and business. The use of the Internet and third-party services on the Internet has become necessary to function in modern society, making the sharing of personal data over the internet unavoidable. As this trajectory towards further integration of our lives with the Internet continues, the amount of information third parties hold about Mainers will also continue to increase. As it stands, our laws and protections apply to an almost exclusively offline context, meaning that such laws are inadequate to protect the digital property of Mainers. This leaves Mainers increasingly vulnerable to warrantless searches by law enforcement and risks continual violations of Mainers' constitutional rights.⁵ By enacting LD 1576, Maine law will rightly reflect the complexities of 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 you to vote "Ought to Pass" on LD 1576. Thank you for your time and consideration.

Respectfully submitted,

J. Shinay

⁵ 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).