

May 19, 2023

To: Senator Carney, Representative Moonen, and Honorable members of the Judiciary Committee
From: Seth Perruzza
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 Seth Perruzza. I am a resident of Portland, and I am writing today as a student of 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," and to urge you to vote "Ought to Pass" on this bill.

The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."¹ This provision protects more than merely the property of Americans; it protects the external personal information and effects that comprise who Americans are as people. Similarly, our data reveals critical information about us, including information about our sexual orientation, our spending practices, our friends and families, and private conversations. This data is a part of us and our "persons," and we should have a right to protect this information from unreasonable searches and seizures in the absence of a warrant. Furthermore, if any of this information were maintained offline, law enforcement would be required to obtain a warrant to be able to access it. The format 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.

The Third-Party Doctrine has been established by case law, but states are empowered to enact legislation to limit intrusions upon the rights of their respective citizens. In *Carpenter v. United States*, Chief Justice John Roberts provided, "Legislation is much preferable to the development of an entirely new body of Fourth Amendment case law."² California and Utah have both taken this advice and passed broad legal provisions to protect essentially all data held by third parties by requiring judicial oversight and authorization over the process, subject to certain exceptions related to emergency situations.³ Maine should follow the precedent set by Utah and California and heed the advice of Justice Roberts, enacting legislation to protect Mainers from unwarranted searches and seizures of their data.

As our lives continue to become further intertwined with the internet, the amount of information third parties store about us continues to increase, and it is becoming unavoidable. As it stands, our laws are stuck in the Dark Ages and apply to a context that is almost exclusively offline, leaving Mainers increasingly vulnerable to warrantless searches by law enforcement.⁴ By enacting LD 1576, we are choosing to update Maine's privacy protections to reflect the modern digital world while simultaneously reinforcing

¹ The text of the Fourth Amendment.

² 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).

³ *Id.*

⁴ 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).

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 for your time and consideration.

Seth Perruzza