

Deb, LD 2204

Testimony in Opposition of LD 2204, An Act to Combat Racketeering in Scheduled Drugs by Certain Organizations

Senator Harrington

Representative Andrews

Members of the Committee on Criminal Justice and Public Safety

My name is Debra Hart, and I am a resident of Manchester, Maine. I am providing this testimony on behalf of my clients, the Dirigo Electric Cooperative. The Dirigo companies, which are Maine's consumer-owned electric utilities include Van Buren Light & Power District, Houlton Water Company, Eastern Maine Electric Cooperative, Fox Island Electric Cooperative, Madison Electric Works, Kennebunk Light & Power District, Isle Au Haut Electric, and Brunswick Landing Electric Utility (collectively, "the COUs").

The COUs oppose LD 2204, specifically the proposed language in Sec. 4. 35-A MRSA §3217, sub-§5, which requires utilities to report "suspicious" power use.

Utilities are not law enforcement entities and should not be used by law enforcement entities to conduct investigatory activities that allegedly violate the Fourth Amendment right against unconstitutional search and seizure without a warrant or subpoena. Utilities do not have governmental immunity for actions taken on behalf of law enforcement; LD 2204 forces utilities to choose between violating state law or infringing on their customers' right to privacy, both of which could lead to costly litigation.

The Fourth Amendment of the Constitution establishes an expectation of privacy in the activities that occur in the home. In *Kyllo v. United States*, 533 U.S. 27 (2001), the U.S. Supreme Court upheld the Fourth Amendment "right of a man to retreat into his own home and there be free from unreasonable governmental intrusion" by ruling that thermal imaging of a home from a public street to determine whether halide grow lights were being used to grow marijuana inside the house was an unconstitutional search without a warrant. In *Kyllo*, the Supreme Court opined, "In the home, our cases show, all details are intimate details, because the entire area is held safe from prying government eyes."

The COUs consider how much electricity customers use and how they use electricity as an intimate detail of privacy within the home; the information is not available to the public. In supplying such electricity, utilities hold customer records confidential in recognition of and respect for their customers' privacy; any required reporting is comprised of bulk information that cannot be used to identify individual users or accounts. The utility reporting requirements in LD 2204 include private customer information, labeling those customers as "suspicious" of criminal activity – large homeowners, multi-family dwellings, small home businesses, and other large users would be targeted for investigation without due process wholly unsupported by probable cause. The Fourth

Amendment was adopted to prevent this type of government surveillance, and the State should not compel utilities to participate in such activities.

The COUs respectfully request that this committee require police to secure a subpoena or warrant to obtain the information, which is a reasonable and lawful solution that protects the Constitutional rights of U.S. citizens. Law enforcement can obtain a subpoena or warrant when they need information that might otherwise intrude on the Fourth Amendment right of U.S. citizens to be secure in their persons, homes, and papers. The process for obtaining a subpoena or warrant is established by law whereby the government gains access to private spaces and information upon demonstrating reasonable suspicion that a person has committed a crime.

The COUs are not law enforcement entities and oppose taking part in law enforcement activities for the reasons stated herein. The COUs respectfully request that LD 2204 not pass. The COUs are available to answer any questions you may have or assist you in any way they can.