



330 Main Street, Hartford, Connecticut 06106
860-523-9146 | www.acluct.org

Testimony in Support of House Bill 1092, AN ACT CONCERNING COMPELLED DISCLOSURE OF CELLULAR TELEPHONE AND INTERNET RECORDS

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Senator Coleman, Representative Tong and distinguished members of the Judiciary Committee, my name is David McGuire. I'm the staff attorney for the American Civil Liberties Union of Connecticut and I'm here to support House Bill 1092, An Act Concerning Compelled Disclosure of Cellular Telephone and Internet Records. This bill would bring Connecticut's ex parte cell phone tracking law into compliance with the Fourth Amendment and Supreme Court jurisprudence while allowing legitimate investigations to proceed.

In 2012, the U.S. Supreme Court ruled in *U.S. v Jones* that the government violated the Fourth Amendment when it used a GPS device to track a suspect's location for 28 days without a valid warrant.¹ The majority of the justices recognized that such close and persistent long-term monitoring of a person's movements, no matter what technology is used, impinges on an individual's reasonable expectation of privacy. In a concurrence endorsed by four justices, Justice Alito urged legislators to address location privacy issues, saying:

In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. . . . A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way. . . .

Connecticut General Statutes § 54-47aa(g) was passed in 2005 and it permits law enforcement to track a person by his or her cell phone upon stating only a reasonable and articulable suspicion that a crime has been or is being committed. The law has been used over 14,000 times since it was passed. To the best of our knowledge, every order applied for has been granted—largely because the standard is so low. That means scores of Connecticut residents have had their Fourth Amendment privacy rights violated through warrantless cell phone tracking.

We encourage this committee to pass this bill which will bring Connecticut General Statutes § 54-47aa(g) into conformity with the Fourth Amendment by expressly including a warrant requirement before police may access cell phone geolocational data. In the last two years states including Maine Utah have passed laws requiring police to get a warrant before accessing historical cell phone data.

The Connecticut General Assembly must pass House Bill 1092 to ensure that law enforcement agents in Connecticut comply with the Fourth Amendment jurisprudence set forth in *Jones*. This bill requires law enforcement agents to show probable cause before getting an ex parte order to track people through information obtained from their cell phone provider or an internet service provider, like Comcast, Facebook or Hotmail. These orders have been used to get historical location information, to

¹ <http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf>

track a person's location in real time and to obtain emails, text messages and Facebook messages, as well as metadata listing calls made and received. Requiring police to show probable cause before obtaining this sensitive data comports with the law of the land and would allow legitimate investigations to proceed, while protecting people in Connecticut from intrusions into their privacy.

Technological advances in cellular communication have made it possible for law enforcement agents to obtain geolocational information about the vast majority of Americans with great precision—and in real time. When they are powered on, cell phones constantly send detailed location data to the cellular carrier. Even phones without a GPS function leave a trail of contact with cell phone towers. Like GPS technology, this provides law enforcement agents with a powerful and inexpensive method of tracking individuals over an extended period of time and an unlimited expanse of space as they traverse public and private areas. Cell phone tracking is an even more invasive location tracking method than the GPS transponder at issue in the *Jones* case. After all, almost every teenage and adult in Connecticut carries a cell phone all day long. Additionally, unlike GPS data, cellular location data is available to law enforcement retroactively, as a historical record of an individual's movements.

CGA § 54-47aa(g) requires law enforcement to notify people by mail that they have been tracked under an ex-parte order, so that they can move to challenge the order. We followed up with several people who were subjects of an order obtained under the existing law and found that many were never charged with a crime and were never informed that police had obtained their personal cell phone data. This lack of notice is an extremely troubling due process violation and likely explains why more people are not complaining about being tracked in a fishing expedition. This bill's amendment to subsection g would help ensure notification by requiring that a copy of the mailed notice to the subscriber be filed with the court.

Lastly, the bill would prohibit the storage of disclosed data longer than fourteen days, unless the data relates to an ongoing criminal investigation. This would prevent police from holding onto cleared people's sensitive data while allowing police to keep the data as long they are still engage in an active investigation.

The need for House Bill 1092 is real and immediate. The ACLU of Connecticut agrees with Justice Alito that, in this time of rapid technological change, it is especially appropriate to regulate the use of surveillance technology by government. The probable cause requirements for all cell phone and internet account tracking strike the appropriate balance, ensuring that legitimate investigations can go forward without eroding the privacy rights of people in Connecticut. We urge the committee to pass this bill.