



TO: House Transportation, Public Safety & Homeland Security
Committee

FROM: Gary Daniels, Associate Director, ACLU of Ohio

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RE: Senate Bill 5

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To Chairman Damschroder, Ranking Minority Member Mallory, and members of the House Transportation, Public Safety & Homeland Security Committee, my name is Gary Daniels, associate director for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present interested party testimony on Senate Bill 5.

The ACLU is the oldest and largest civil liberties organization in the world with over 500,000 members nationwide and over 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans.

The ACLU of Ohio has no fundamental objections to the provisions contained within SB 5. As it relates to the use of technology by law enforcement, the Fourth Amendment generally allows for police to acquire certain information absent a warrant in true emergency situations.

That said, SB 5 would benefit greatly from further clarification in the bill's language. Specifically, we suggest these three changes:

- 1) First and foremost, an amendment to require law enforcement to obtain a warrant for cell-phone tracking information in non-emergency situations.

A recent nationwide study conducted by the ACLU revealed law enforcement across the country routinely requests and receives such information without warrants. Many of these same departments and agencies also lack any internal rules or guidelines when doing so. (For the committee's benefit, I included with my written testimony a *New York Times* article about our project and its findings.)

Requiring a warrant is not a burden for law enforcement, particularly in non-emergency situations. By amending SB 5 to include this provision, Ohioans would have much more confidence their whereabouts will not be tracked by law enforcement without probable cause or any suspicion of wrongdoing.

- 2) A notification provision to require retroactive notice to those whose call location information was obtained without a warrant by law enforcement.
- 3) Removal of section 4927.28. This section immunizes wireless service providers against lawsuits brought in state court for compliance with SB 5. The ACLU of Ohio believes courts serve an essential role in determining whether or not such information was properly disclosed.

As technology advances it always becomes better and cheaper. In turn, it becomes more prevalent. These factors have led to ongoing discussions and deliberations about how current privacy laws and past court decisions apply to new technologies. But, we need not fear these types of technological advances so long as proper protections are put in place by lawmakers.

Indeed, in a recent U.S. Supreme Court case about police attaching GPS devices to suspects' automobiles without a warrant, Justice Alito stated, "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."

Members of this committee, if it is your intention to vote favorably for Senate Bill 5, I urge you to address this fundamentally important issue of when and how law enforcement may obtain cell phone tracking information without a warrant. The ACLU of Ohio stands ready to work with legislators who feel the same.