

January 23, 2023

Judiciary Committee
SCR 4006

Chairman Larson and Committee members:

Let the record reflect my support for Senate Concurrent Resolution 4006 ("SCR 4006"), as written and introduced by Senators Magrum and Beard, and Representatives Klemin, Olson, Paulson, and Prichard.

Section 8 of the North Dakota State Constitution is comparable in language to that of the 4th Amendment to the United States Constitution in that it specifically recognizes the "right of the people to be secure in their persons, houses, papers and effects."

A handful of US Supreme Court cases, briefly detailed below, have set precedence regarding how electronic data is to be treated in reference to 4th Amendment protections. Given the rise in geolocation tracking, it is imperative North Dakota amends Section 8 for greater specificity in the treatment of electronic data and communications.

Supreme Court Precedence

The below cases affirm the appropriateness of the intent of SCR 4006.

- Katz v. United States (1967)
 - A phone call from a public phone booth was inappropriately intercepted by an eavesdropping and recording device without a warrant.
 - The 4th Amendment should be interpreted to protect the peoples' "reasonable expectation of privacy." Justice Stewart further stated "the Constitution protects people, not places". Prior interpretations were more focused on the physical possession of tangible personal property.
- United States v. Jones (2012)
 - A GPS tracking device was affixed to a vehicle with no warrant.
 - Decision ensured no unlawful stalking by government on citizens.
- Riley v. United States (2014)
 - Digital data seized from warrantless cell phone searches violates 4th Amendment.
 - Cell phones are not comparable to other personal property given the volume of private information they could contain.
- Carpenter v. United States (2018)
 - Struck down the use of warrantless government acquisition of cell-site records.
 - "Third Party Doctrine" disregarded in this circumstance due to the extent of the data that can be collected and as data collection occurs without any affirmative action by the user

State of Montana Precedence

Section 11 *Searches and Seizures* of the Montana State Constitution is nearly identical in verbiage to Section 8 of North Dakota's Constitution. Both borrow heavily in wording and intent from the 4th Amendment to the US Constitution, as cited prior. In November 2022, Montana voters approved a change to their Constitution to incorporate electronic data or electronic

communication (Ballot measure C-48). The language changes proposed under SCR 4006 are virtually identical to the changes approved by Montana voters.

The strict adherence to civil liberty protections delineate citizens from subjects. I respectfully request a “do pass” recommendation from the Judiciary Committee.

Respectfully,

Matthew S. Simon