AMERICAN CIVIL LIBERTIES UNION of CONNECTICUT

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Testimony in Support of House Bill 5587, An Act Concerning Search Warrants

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Senator Coleman, Representative Fox 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 5587, An Act Concerning Search Warrants.

In January 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. . . .

The Connecticut General Assembly must pass House Bill 5587 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 secure a warrant based on probable cause before using Global Positioning System (GPS) to track people. This standard comports with the law of the land and would allow legitimate investigations to proceed, while protecting people in Connecticut from intrusions into their privacy.

As this committee works to bring Connecticut's search warrant laws into compliance with current Fourth Amendment jurisprudence, we ask you to seize the opportunity to provide these same protections from an even more invasive location tracking method—cell phone location tracking. 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. 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. Unlike GPS data, cellular location data is available to law enforcement retroactively, as a historical record of an individual's movements.

This bill recognizes that police must obtain a probable cause warrant before using a GPS device to track someone. It is consistent and even more critical to extend the same Fourth Amendment protection when police track someone using cell phone data. The definition of tracking device in House

[1] http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf

Bill 5587, found in Section 1(a), is "an electronic or mechanical device that permits the tracking of the movement of a person or device." Cell phones and other GPS tracking devices both satisfy this definition. Yet Connecticut General Statutes § 54-47aa(g) permits law enforcement to track a person by his or her cell phone upon stating a reasonable and articulable suspicion that a crime has been or is being committed. This relaxed standard permits warrantless cell phone tracking and is inconsistent with the Fourth Amendment's warrant requirement, the reasoning in *Jones* and the intent of House Bill 5587. We encourage this committee to correct Connecticut General Statutes § 54-47aa(g) by expressly including a warrant requirement before police may access cell phone geolocational data, which would comport with this bill, and the Constitution.

The ACLU of Connecticut recommends, in addition to expressly expanding the warrant requirement to apply to cell phone and GPS tracking, three other adjustments to the bill. First, the legislature must clarify that the period for use of the tracking device—up to 30 days— is the maximum a judge can allow, not the default period, and that a judge should determine the length of tracking based on the circumstances set forth in the affidavit. Second, the legislature needs to make clear that additional tracking time will be permitted only on application prior to the expiration of the initial period of time established by the judge in the warrant, not at the time the warrant is granted. Finally, subsection (c) of Section 2 should be adjusted to provide a meaningful opportunity for the subject of tracking to challenge the process. As written, the section allows authorities to wait until 10 days after the end of the authorized tracking period to notify the subject that he or she has been tracked, leaving insufficient time for the subject to file a motion to quash and postpone the delivery of the information gathered. This is a serious due process concern.

The need for House Bill 5587 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 and warrant requirements — for all GPS devices and cell phones—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 House Bill 5587.