



**Testimony for the House Judiciary Committee
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**HB 56 - Criminal Procedure - Search Warrants - Utility Meters
Support**

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The ACLU of Maryland urges a favorable report on HB 56, which would prohibit a law enforcement officer from obtaining utility data recorded by a “smart meter,” in the course of an investigation, without a search warrant issued under § 1-203 of the Criminal Procedure Article.

It is clear that “smart” home technologies, ranging from smart meters and smart TVs, to smart refrigerators and home assistants, like the Amazon Echo, are becoming increasingly commonplace in American homes. While these technologies may, to some consumers, have benefits, they also subject users to intense monitoring.

Smart meters, a modern energy measurement device installed on homes, can collect significant amounts of data. A recent report from the ACLU of Northern California revealed that smart meters can collect up to 3,000 data points a month¹ about energy usage, potentially exposing details about your private life including whether you are home or away, your sleep and work habits, and whether someone in your house uses specialized medical equipment.²

Police have already been obtaining³ home energy-use data from utilities without a warrant. In a home with a “smart meter,” that kind of data can be so minutely detailed that it can reveal all kinds of details about what people are doing inside their homes—which appliances they use, and when they use them—and even what television shows they watch⁴ (based on the patterns of light and dark in a show, which changes a television set’s electricity draw).

The inside of the home has for centuries been sacred when it comes to privacy. The Supreme Court has refused to let police use thermal scanners on private homes without a warrant, for example, despite government protests that it was only measuring the heat *leaving* the home.

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¹ See <https://www.eff.org/press/archives/2010/03/09>.

² See <https://www.eff.org/press/archives/2010/03/09>.

³ See <http://www.foxnews.com/us/2014/04/17/is-your-home-energy-meter-spying-on.html>.

⁴ See <https://www.bloomberg.com/news/articles/2014-06-10/your-outlet-knows-how-smart-meters-can-reveal-behavior-at-home-what-we-watch-on-tv>.

However, the government has argued that under the court's so-called “third party doctrine,” the Constitution does not require police to get a warrant to get people's records from their bank, telephone company, internet service provider, Google, Amazon, or any other third party. On this line of reasoning, we fear that some government agencies will try to argue that they do not need a warrant to access the detailed and sensitive data from smart meters. Nevertheless, it is increasingly untenable to utilize the “third party doctrine” in an era where much of the data created about people's lives sits on the servers of international corporations and consumer use of smart technology is constantly on the rise. Indeed, the Supreme Court is poised to clarify how the Fourth Amendment applies to sensitive digital data held by third parties, and Maryland law should not be allowed to fall behind.⁵

We believe the Constitution is clear, and that, at a minimum, law enforcement needs a warrant based on probable cause to access this type of information in the home. In the absence of court rulings, legislative protections are needed.

Congress, recognizing the extremely invasive nature of traditional wiretaps, for instance, enacted safeguards that *anticipated* what it believed courts would rule the Constitution requires. These include requirements that wiretaps be used only for serious crimes, or be permitted only when other investigative procedures have failed or are unlikely to succeed. We think that similar privacy protections should also apply to invasive digital devices in the home.

California can serve as an example. In 2012, a single California utility company, San Diego Gas & Electric, disclosed the smart meter energy records of over 4,000 of its customers.⁶ The detailed and sensitive nature of these energy records prompted California lawmakers to call for privacy safeguards in 2010, and in 2011 the California Public Utilities Commission adopted privacy rules,⁷ including prohibiting the utility company from disclosing smart meter energy usage information to third parties unless pursuant to a warrant.

Detailed energy usage information includes intimate details about our private lives and Marylanders have a right to expect that these records will not be disclosed by their utility company without a judicially-approved warrant. This is a commonsense bill that will allow Marylanders to use smart meters in their homes without being forced to allow law enforcement to monitor them without standard privacy protections in place. Without this bill, Marylanders will need to choose between either using smart meters on their homes or protecting their privacy. In 2018, the legislature should act to ensure its citizens have the option to choose both.

For the foregoing reasons, we strongly urge a favorable report on HB 56.

⁵ See Adam Liptak, *Justices Seem Ready to Boost Protection of Digital Privacy*, N.Y. Times, Nov. 29, 2017, <https://www.nytimes.com/2017/11/29/us/politics/supreme-court-digital-privacy.html>.

⁶ See <https://www.aclunc.org/blog/call-logs-try-kilowatts-reports-reveal-demands-california-energy-data> and the citations therein.

⁷ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/140369.pdf.

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