

**2023 SENATE JUDICIARY**

**SCR 4006**

# 2023 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Peace Garden Room, State Capitol

SCR 4006  
1/25/2023

A resolution relating to search and seizure protections.

10:00 AM Chairman Larson opened the meeting.

Present are Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger.

### **Discussion Topics:**

- Protection of electronic information
- US Supreme Court cases
- Privacy expectations

10:01 AM Senator Magrum introduced the resolution and provided written testimony. #16701.

10:12 AM Matthew Simon testified in favor of the resolution. #15635.

10:19 AM Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the resolution. #16530.

### **Additional written testimony:**

Rory Gabe, Valley City, provided written testimony #15098.

10:22 AM Chairman Larson closed the public hearing.

10:22 AM Senator Myrdal moved to do pass the resolution.

Senator Braunberger seconded the motion.

10:22 AM Roll call vote was taken.

<b>Senators</b>	<b>Vote</b>
Senator Diane Larson	N
Senator Bob Paulson	Y
Senator Jonathan Sickler	N
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 5-2-0.

Senator Myrdal will carry the resolution.

This resolution does not affect Workforce Development.

10:27 AM Chairman Larson closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SCR 4006: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SCR 4006 was placed on the Eleventh order on the calendar. This resolution does not affect workforce development.

**TESTIMONY**

**SCR 4006**

I urge a yes vote on SCR4006

Thank you,

Rory Gabel

Valley City, ND

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 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> Amendment should be interpreted to protect the peoples' "reasonable expectation of privacy." Justice Steward 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 4<sup>th</sup> 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 4<sup>th</sup> 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

SCR 4006  
68<sup>th</sup> Legislative Assembly  
Senate Judiciary Committee  
January 25, 2023  
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of SCR 4006.

The Commission’s constitutional mission can really be summed up as protecting individual liberty against the great weight of the government. Our attorneys ensure due process before their client’s liberty interests can be taken, whether that be their freedom, their right to parent children, or their right to be free from unreasonable search and seizure to name a few. As technology has evolved, so too must our protections wherein we should expect privacy. The Commission feels it would be appropriate to pass this resolution and allow the voters of the state of North Dakota to express their expectations of privacy.

Madam Chair, members of the Senate Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel supports SCR 4006.

Respectfully Submitted:



Travis W. Finck  
Executive Director, NDCLCI





# North Dakota Senate

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**Senator Jeffery J. Magrum**

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**COMMITTEES:**  
Finance and Taxation  
Energy and Natural Resources

01/25/2023

Good morning, Madam Chair Larson,

For the record I am Senator Jeff Magrum from District 8 which is rural Burleigh County including Wilton, Lincoln, Moffit, Menoken and all of Emmons County including Hazelton, Kintyre, Braddock, Linton, Strasburg, Hague, Temvik, hull and Westfield.

I have introduced SCR 4006 to ask our legislature to let the people speak to this question of Constitutional protection of our electronic data and communications. As society has continued on the path of storing important and personal information electronically. Our Communications should be our own to share with whomever we decide to share it with. It is my humble opinion that our electronic information should be protected in our North Dakota Constitution and I ask for a do pass on SCR 4006 and I stand for questions.

THANK YOU.