

Rhode Island H 5833

OPPOSITION TESTIMONY

March 13, 2023

Rhode Island General Assembly
House Education Committee

Dear Chair Solomon and members of the committee:

We respectfully ask that you **oppose** H 5833. As it:

- Denies Rhode Island residents' ability to earn extra income from their home;
- Violates and is preempted by federal privacy laws; and
- Violates the 4th Amendment protections of the US Constitution.

As further outlined below, this bill undermines the ability of Rhode Island residents to earn extra income from their home. H 5833 also violates and is preempted by federal privacy laws – the Electronic Communications Privacy Act and the Stored Communications Act – which explicitly prohibit the government from forcing disclosure of private data like the “phone number of the owner of the property and/or property manager” and “the address of the rental property.” Further, forced disclosure requirements represent the type of onerous state action that prove hostile to private business and make it more difficult and more costly for Rhode Islanders to make use of their private property.

H 5833 violates two federal privacy laws

By forcing short-term rental services to disclose detailed “rental records,” H 5833 violates two federal privacy laws, the Federal Electronic Communications Privacy Act (ECPA) and the Stored Communications Act (SCA). Both laws were passed specifically to prevent the type of warrantless searches of private data, like “phone number of the owner of the property and/or property manager” and “the address of the rental property,” which H 5833 seeks to impose. The SCA, in particular, expressly prohibits companies like

STR platforms from “knowingly [divulging] a record or other information pertaining to a subscriber or customer . . . to any governmental entity” without the consent of that customer or subscriber.¹ This prevents STRs from disclosing data required by H 5833; H 5833 forces companies to violate the law.

The SCA states that “a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service,” *unless*:

“the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure . . . or (B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity . . . or (ii) obtains a court order.”²

H 5833 furnishes neither of these requirements.

Likewise, the legislative history of ECPA indicates that Congress meant to safeguard privacy in a previously “unprotected [and] important sector of the new communications technologies.”³ In the ECPA House Report, Judge Posner noted that “[i]n the absence of market discipline, there is no presumption that the government will strike an appropriate balance between disclosure and confidentiality.”⁴ ECPA aimed to close these legal gaps that could erode consumer trust in communications technologies and to prevent illicit access to personal information and communications.⁵ H 5833 poses precisely the kind of threat that ECPA was enacted to prevent. To avoid unnecessary litigation under federal privacy law, this committee should oppose H 5833.

H 5833 is a burdensome state intervention on Rhode Island Families

Rhode Islanders should be free to use their private property without unreasonable or burdensome demands by their state government for their personal information. It is understandable that a Rhode Island family, renting out their property, would seek to retain some degree of privacy from the renter in order to preserve their security and peace of mind.

¹ 18 U.S.C. § 2702(a)(3), (b).

² Stored Communications Act, 18 U.S.C. §§ 2702(a) (2012); 2703(b) (emphasis added).

³ H.R. Rep. No. 99-647, at 17.

⁴ *Id.* at 19 (internal citation omitted).

⁵ See *id.*

With increased inflation and volatility in the job and stock markets, the state government should make it as easy as possible for its citizens to leverage their resources, interests, and ingenuity in earning money for their family. Well intentioned but ill-advised state intervention should never be the reason that Rhode Islanders miss out on the ability to pay their bills or access innovative services. The legislature should avoid bills like H 5833 and instead trust their citizens to make the right decisions for themselves, their family, and their private property.

The 4th Amendment of the US Constitution protects Rhode Island citizens from unlawful search and seizure and is a core privacy protection.

But forced disclosure of STR platform records ignores this privacy protection and instead requires platforms to disclose records and information about hosts and guests to city employees and potentially law enforcement. And this disclosure does not require the state's employees to first obtain a warrant.

Required disclosure of STR platform's stored names and addresses of Rhode Island residents and also guests to City employees and potentially law enforcement is unconstitutional.

This could not only expose the operating procedures and income of businesses but also expose the privacy of Rhode Island residents using the platform and people staying in Rhode Island homes.

The US Supreme Court and the Hotel industry say that mandated disclosure is unconstitutional

When the city of Los Angeles demanded a hotel's proprietary business records, the hotel industry fought back in court – ultimately winning at the US Supreme Court in an opinion written by Justice Sotomayor in *Los Angeles v Patel*, 135 S. Ct. 2443 (2015).

In its opinion the US Supreme Court said:

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” It further provides that “no Warrants shall issue, but upon probable cause.” Based on this constitutional text, the Court has repeatedly held that “searches conducted out- side the judicial process, without prior approval by [a] judge or [a] magistrate [judge], are per se unreasonable . . . subject only to a few specifically established and well- delineated exceptions.”⁶

⁶ *Los Angeles v Patel*, 135 S. Ct. 2443 (2015).

The Respondent hotel operator said in its brief:

The Fourth Amendment generally requires a warrant to address the Founders' fundamental "concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Arizona v. Gant*, 556 U.S. 332, 345 (2009). The warrant requirement "interpose[s] a neutral magistrate between the citizen and the law enforcement officer." *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 667 (1989). In addition, by requiring that the warrant "particularly describe[] the place to be searched, and the persons or things to be seized," the Fourth Amendment seeks to safeguard against "exploratory rummaging in [that] person's belongings," including her papers. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (plurality). In combination, these requirements ensure that the decision whether, and how, to invade a person's privacy is not made by officers in the field "engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948); see also *United States v. U.S. Dist. Court*, 407 U.S. 297, 317 (1972).

In an amicus brief from the Asian American Hotel Operators Association, the hotel association argued:

"The City should not be able to destroy the hoteliers' property or interest in this information merely by requiring that some of it be collected."

Clearly, the US Constitution protects the privacy rights of business records, and in this case travel businesses' records, from disclosure to the government without judicial authorization. Moreover, to protect this court ruling, we could see the hotel industry opposing such requirements on STR platforms to disclose business records. And if such a requirement is passed, Rhode Island would likely see a similar court outcome.

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For these reasons, we respectfully ask you to **oppose H 5833**. As ever, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

Carl Szabo
General Counsel
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.