



Tech Firms Urge Supreme Court to Adapt Privacy Protections for ‘Realities of the Digital Era’ in Cell Phone Tracking Case

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Apple, Facebook, Google, Twitter, Verizon, and other technology companies filed a [brief](#) with the Supreme Court late last night declaring that when it comes to the government’s tracking of people’s cell phone locations, “Rigid analog-era rules should yield to consideration of reasonable expectations of privacy in the digital age.”

The friend-of-the-court brief was one of many submitted Monday in the case, *Carpenter v. United States*, in which the American Civil Liberties Union represents a man who had months’ worth of cell phone location information handed over to police without a warrant. The Supreme Court is considering whether a warrant should be required to access location data.

The technology companies, which also included Microsoft, Airbnb, Cisco Systems, Dropbox, Evernote, Mozilla, Nest Labs, Oath, and Snap, said that their businesses depend on customers relying on them to keep sensitive information private. Writing that “Fourth Amendment doctrine must adapt to the changing realities of the digital era,” the companies argued that it is crucial that the Constitution be interpreted to provide strong protection to the many forms of private data created by using internet-connected digital technologies.

In 2011, without getting a probable cause warrant, the government obtained from cell service companies months’ worth of phone location records for suspects in a robbery investigation in Detroit. For one suspect, Timothy Carpenter, the records covered 127 days and revealed 12,898 separate points of location data — an average of over 100 location points per day. Police seek these kinds of cell phone location records from phone companies tens of thousands of times each year.

After Carpenter was convicted at trial, based in part on the cell phone location evidence, he appealed to the Sixth Circuit Court of Appeals, which ruled 2–1 that no warrant is required under the Fourth Amendment.

In its [opening brief](#) in the case filed last week, the ACLU argued that because cell phone location records give the government an unprecedented power to learn private details about people’s lives — such as personal relationships, visits to the doctor, or religious practices — the court must make clear that they are covered by the protections of the Fourth Amendment.

A number of the other friend-of-the-court briefs were filed Monday. The Reporters Committee for Freedom of the Press and 19 other media organizations, filing in support of the ACLU's client, warned of the chilling effect on First Amendment freedoms that can result from easy law enforcement access to the location information of reporters and their sources. The Center for Competitive Politics, Center for Media Justice, Color of Change, Americans for Prosperity Foundation, and Tea Party Patriots discussed the implications of warrantless government access to cell phone location information for people exercising their First Amendment rights to free speech and association.

The Electronic Privacy Information Center and 36 technical experts and legal scholars explained that revolutionary changes in technology in recent decades mean that Supreme Court cases from the 1970s do not govern the outcome of this digital-age case.

The Knight First Amendment Institute wrote on behalf of 19 technology experts to highlight the increasing precision of cell phone location data and the highly sensitive information about people's lives that the data can reveal.

Briefs were also filed by the Cato Institute, Gun Owners Foundation, Competitive Enterprise Institute, Reason Foundation, Institute for Justice, DKT Liberty Project, Constitutional Accountability Center, Data & Society Research Institute, Electronic Frontier Foundation, Constitution Project, Brennan Center for Justice, National Association of Criminal Defense Lawyers, National Association of Federal Defenders, Center for Democracy & Technology, Committee for Justice, Rutherford Institute, Restore the Fourth, United States Justice Foundation, Gun Owners of America, Inc., Citizens United, Citizens United Foundation, Downsize DC Foundation, DownsizeDC.org, Conservative Legal Defense and Education Fund, The Heller Foundation, and Policy Analysis Center, as well as law professors, legal scholars, technologists, and others.

“The number and variety of organizations and experts filing represent the widespread recognition that your cell phone's location history is your own business, and the government needs to have a good reason to get its hands on it,” said ACLU attorney Nathan Freed Wessler. “In particular, the tech firms are sending a very clear message that the law needs to catch up with the technology that is now an integral part of our everyday lives.”

The case will be argued in the fall. Carpenter is represented at the Supreme Court by attorneys for the ACLU and ACLU of Michigan; defense attorney Harold Gurewitz of Gurewitz & Raben, PLC; and Jeffrey Fisher, co-director of the Stanford Law School Supreme Court Litigation Clinic.