

the predigital era could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery.”)

As the Supreme Court has repeatedly emphasized, individuals whose constitutional rights are implicated by a government request for private data held by a third party have standing to challenge the request in order to protect their constitutional rights before the disclosure of the requested information. See, e.g., *Gravel v. United States*, 408 U.S. 606, 608–09 (1972).

The warrant is unconstitutional because it permits a generalized search of electronic data that is private, sensitive, and protected by the First and Fourth Amendments. The Fourth Amendment requires that warrants “particularly describ[e] the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. This particularity requirement prohibits general warrants that would allow the government to “rummage” through someone’s personal effects. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). The need for such particularity, and for stringent limitations on warrants, is “especially great” when the searches by their nature “involve[] an intrusion on privacy that is broad in scope.” *Berger v. New York*, 388 U.S. 41, 56, (1967) (imposing procedural limitations on wiretapping warrants). The government’s request is too broad in scope for two reasons. First, because the government’s warrant seeks private and sensitive information related to First Amendment–protected speech and political activity, the Fourth Amendment’s requirement of particularity requires both the application of “scrupulous exactitude,” *Stanford v. Texas*, 379 U.S. 476, 485 (1965), as well as heightened showings of the state interest in the records sought and the nexus between the records sought and the underlying investigation. See, e.g., *Bursey v. United States*, 466 F.2d 1059, 1083 (9th Cir. 1972);

The Fourth Amendment’s particularity requirement is more demanding in the context of searches of electronic data, like the one here, which can sweep up large amounts of sensitive

information. The government's warrant fails to meet these standards, and it should therefore be quashed.

Respectfully Submitted,

By:

Counsel
Mary E. Maguire
Va. Bar No. 42505
Assistant Federal Public Defender
Office of the federal Public Defender
701 East Broad Street, Ste. 3600
Richmond, VA 23219
(804) 565-0806
(804) 648-5033 – fax
Mary_Maguire@fd.org