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Tuesday, June 30, 2015

Senator Jerry Hill
State Capitol
Room 5035
Sacramento, CA 95814-4900

RE: Senate Bill 34

Dear Senator Hill,

We are writing to enlist the CCLA's **SUPPORT** for Senate Bill 34**.**

The freedom of movement and the right to privacy are fundamental, constitutionally-protected rights of American citizens. Article I, section 1, of the California Constitution guarantees privacy as an "inalienable right" of all people: "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." The California constitution has often been interpreted as affording greater protections than the federal constitution.

Unrestricted use of ALPR technology allows government agencies, law enforcement, and private corporations to track the movement of private citizens arbitrarily. Besides the obvious problems this bill seeks to address, such as private entities profiting from municipal warrants being served via the use of ALPR technology, or law enforcement tracking the movements of citizens absent probable cause, consequences of great import may include the utilization of such technology by online websites designed to extort money from private citizens by publishing arrest records, mugshot photos, and criminal records (regardless of actual, resultant convictions) in conjunction with their home and business contact information.

The Supreme Court ruled in Knotts v. United States (1983) 460 U.S. 276, 282 that "[n]othing in the Fourth Amendment prohibit[s] the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology [has] afforded them . . . ." Likewise, the Court found that "[o]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects." (Knotts, supra, at pg. 281)

While it is plain that no reasonable expectation of privacy exists for a motorist whose license plate is clearly exposed to public view and visible to the naked eye, ALPR technology is not in use by the general public and goes above and beyond merely enhancing an officer's

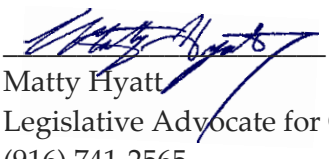
ability to read a license plate number. ALPR devices are able to "see" in complete darkness, read miniscule numbers at great distances, convert images of numerous license plates into raw data within a matter of seconds, and store that information in a growing database of millions of license plates along with a log of the respective dates, times, and locations that the data was captured. All of this allows law enforcement personnel to effectively track and profile the movements of unsuspecting citizens months or years after the fact and absent probable cause. It is nothing short of reckless to leave unchecked such a powerful, so-called "enhancement" of the naked eye. According to a 2006 news article discussing law enforcement use of ALPR devices, a Los Angeles police officer was quoted as saying "[i]t's physically impossible for an officer to do this kind of work . . . [i]t's reshaping the way we do policing." (Stroud, Scanning 'takes the guesswork out of policing', Daily Breeze (Torrence, Calif.), May 7, 2006, at A1)

In the case of Kyllo v. United States (2001) 533 U.S. 27, when a federal agent used a thermal imaging device to investigate the heat register of a resident's home who was suspected of growing marijuana, the Supreme Court found that this constituted a Fourth Amendment violation because the federal agent was engaged in more than mere "naked-eye surveillance" and "use[d] a device that [was] not in general public use." As noted by Supreme Court Justice Alito in a concurring opinion from United States v. Jones (2012) 181 L. Ed. 2d 911, 964, and joined by Justices Ginsberg, Breyer, and Kagan, "society's expectation has been that law enforcement agents and others would not--and . . . simply could not secretly monitor and catalogue every single movement of an individual's car for a very long period."

Admittedly, SB 34 may not be as comprehensive as some civil liberties advocates would prefer, but its language does provides a basic framework which comports with the practical concerns of modern society. It appears that SB 34 will establishe basic policies that will enhance privacy and procedural requirements, outlining the security, usage, and storage of ALPR data. The chain of custody procedures setup by SB 34 will offer greater accountability. SB 34 also provides additional civil remedies for anyone injured by a person who knowingly violates those requirements. All of these components lay a groundwork that privacy proponents my build upon in the future.

Based on the aforementioned reasons, the CCLA strongly **SUPPORTS** SB 34. Please don't hesitate to contact us for any reason.

Respectfully,



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cc: Assembly Privacy and Consumer Protection Committee