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IN THE SUPREME COURT OF CALIFORNIA

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AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF  
SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER  
FOUNDATION,

*Petitioners,*

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF LOS ANGELES,

*Respondent,*

COUNTY OF LOS ANGELES, and the  
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, and the  
CITY OF LOS ANGELES, and the LOS ANGELES POLICE  
DEPARTMENT,

*Real Parties in Interest.*

After A Decision by The Court Of Appeal,  
Second Appellate District, Division Three (No. B259392)  
Los Angeles County Superior Court (No. BS143004)  
Hon. James C. Chalfont, Judge Presiding

ANSWER TO AMICUS BRIEF OF SENATOR JERRY HILL

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## INTRODUCTION

Senator Jerry Hill’s Amicus Brief contradicts the plain language and legislative history of Senate Bill 34 and does not support the argument that automated license plate reader (“ALPR”) plate scans are public records under the California Public Records Act (“CPRA”). If anything, the plain language and legislative history of SB 34 confirm that California lawmakers are justly concerned about the potential impact to private citizens if plate scans are disclosed to the public, while at the same time recognizing that private citizens should not be forced to choose between more effective, efficient law enforcement and their own privacy interests. Far from assisting this Court’s disposition of this matter, Senator Hill’s Amicus Brief provides a personal, unsupported interpretation of a statute whose legislative history and plain language speak for themselves.

## DISCUSSION

### I.

#### **THE PLAIN LANGUAGE OF SB 34 REQUIRES ALPR OPERATORS TO PREVENT UNAUTHORIZED ACCESS TO ALPR DATA**

A statute that imposes civil penalties for unauthorized disclosure of ALPR data cannot logically be interpreted to simultaneously require disclosure of that same data to anyone who makes a CPRA request. Not

only would this interpretation render SB 34's civil penalty provision meaningless, it would potentially expose millions of California drivers to invasion of privacy by other private parties who could obtain their ALPR data without restriction. That cannot be and clearly is not the intention of the Legislature.

This Court's primary task in construing a statute is to determine legislative intent. (*Hampton v. County of San Diego* (2015) 62 Cal.4<sup>th</sup> 340, 349.) "The statutory language, of course, is the best indicator of legislative intent." (*Adoption of Kelsey S.* (1992) 1 Cal.4<sup>th</sup> 816, 826.) "We give the words their usual and ordinary meaning, while construing them in light of the statute as a whole and the statute's purpose." (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4<sup>th</sup> 524, 529-530.) "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*Id.* at 530.)

Reviewing courts have a duty to read the elements of a statute together, harmonizing and giving effect to them all. (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4<sup>th</sup> 175, 186; *City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4<sup>th</sup> 462, 468.) "If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4<sup>th</sup> 733, 737.)

**A. SB 34’s Statutory Framework Confirms that It Does Not Contemplate Disclosure of ALPR Data to the Public.**

SB 34 consists of six provisions:

<u>Civil Code</u>	<u>Title</u>
§1798.90.5	Definitions
§1798.90.51	Automated license plate recognition end-user “ALPR” operator duties; maintenance of reasonable security procedures; implementation of usage and privacy policy
§1798.90.52	Accessing or providing access to ALPR information by ALPR operator; maintenance of record of access; use of information for authorized purposes only
§1798.90.53	ALPR end-user duties; maintenance of reasonable security procedures and practices; implementation of usage and privacy policy
§1798.90.54	Civil action for harm caused by violation of title; award
§1798.90.55	Public meeting requirement; selling, sharing, or transfer of ALPR information by public agency prohibited

SB 34 requires an ALPR operator to “[m]aintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure.” (Civ. Code, §1798.90.51(a).) However, under Senator Hill’s construction of SB 34, there can be no “unauthorized” access to ALPR data, because every member of the public would be entitled to request and obtain copies of ALPR data by submitting a CPRA request. Senator Hill nowhere addresses

this fundamental inconsistency, which effectively renders SB 34's data protection provisions meaningless.

SB 34 requires ALPR operators to implement a "usage and privacy policy in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties." (Civ. Code, §1798.90.51(b)(1).) The usage and privacy policy must be made publicly available and, if the ALPR operator has a website, it must be posted "conspicuously on the website." (*Id.*) There is no need for a privacy policy if any member of the public can obtain copies of ALPR data with a CRPA request, for any purpose whatsoever. (Govt. Code §6257.5; *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4<sup>th</sup> 222, 242 [identity and motives of person submitting CPRA request is irrelevant].) Senator Hill's proposed interpretation renders these provisions meaningless.

SB 34 also requires a "description of the job title or other designation of the employees and independent contractors who are authorized to use or access the ALPR system, or to collect ALPR information," and a "description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws." (Civ. Code, §1798.90.51(b)(2)(B).) If an ALPR operator accesses or provides access to ALPR information, the ALPR operator must maintain records of that access, including the date and time

of access, the license plate number used to query the system, the “username” of the person who accessed the information, and the “purpose for accessing the information.” (Civ. Code, §1798.90.52(a).) These requirements are inconsistent with the requirements of the CPRA.

Similar requirements apply to “ALPR end-users,” who are defined as “a person that accesses or uses an ALPR system”. (Civ. Code, §1798.90.5(a).) They too must “[m]aintain reasonable security procedures and practices, including operational, administrative, technical and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure.” (Civ. Code, §1798.90.53(a).) They also must “[i]mplement a usage and privacy policy in order to ensure that the access, use, sharing, and dissemination of ALPR information is consistent with respect for individuals’ privacy and civil liberties,” which must be posted on their website. (Civ. Code, §1798.90.53(b)(1).) The usage and privacy policy similarly must include a “description of the job title or other designation of the employees or independent contractors who are authorized to access and use ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.” (Civ. Code, §1798.90.53(b)(2)(B).) These provisions confirm that SB 34 requires any person with access to ALPR data – even private individuals – to maintain ALPR data in a secure environment that prevents unauthorized access, use or disclosure, with full

disclosure to the public regarding their usage and privacy policies.

Senator Hill offers no explanation how these requirements can be reconciled with his insistence that ALPR data constitutes a public record under the CPRA. That is because the Legislature never contemplated that ALPR data would be freely provided to members of the public without regard to SB 34's detailed scheme to restrict access to ALPR data. Instead, the Legislature referenced Vehicle Code section 2413, governing ALPR use by the California Highway Patrol, which prohibits "making the data available to an agency that is not a law enforcement agency or an individual that is not a law enforcement officer." (2015 Cal. Legis. Serv. Ch. 532 (S.B. 34), October 6, 2015.) The Legislature was plainly concerned that private citizens may be impacted by the disclosure of location information, and addressed that concern by restricting access to and disclosure of ALPR data.

This is further corroborated by analysis performed by the Assembly Committee on Privacy and Consumer Protection, which expressly found that SB 34 requires that "data collected through the use or operation of an ALPR system be treated as personal information for purposes of existing data breach notification laws applying to agencies, persons, or businesses that conduct business in California and own or license computerized data including personal information." (California Bill Analysis, Assembly Committee, 2015-2016 Regular Session, S.B. 34 Assem., July 7, 2015.)

Civil Code section 1798.90.5 et seq. addresses the concerns presented by Petitioners without compromising the privacy concerns of private citizens. Rather than deem ALPR data “public records” and thus force the Legislature and citizenry to choose between privacy concerns and more effective law enforcement of vehicle-related crimes, the Legislature has chosen to provide a private enforcement mechanism that will deter abuses of ALPR technology on a case-by-case basis. It is significant that the Legislature also has seen fit to provide the courts with the discretion to award reasonable attorney’s fees and litigation costs, which removes concerns that the new law will fail to deter abuses due to the costs of enforcement. (Cf. 42 U.S.C. §1988; *Perdue v. Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 550 [prevailing party attorney’s fee provision helps ensure that civil rights are adequately enforced].)

## II.

### **SB 34’s LEGISLATIVE HISTORY IS CONSISTENT WITH THE PLAIN MEANING OF ITS LANGUAGE**

SB 34, codified at Civil Code section 1798.90.5 et seq., was enacted to address privacy concerns arising from the collection of ALPR plate scans. This is confirmed by legislative history documenting its introduction by Senator Hill on December 1, 2014, where it was described as an act

“relating to personal information.” (CA Sen. Jour., Bill No. 34 (2015-2016 Reg. Sess., No. 1) p. 17.) That description was maintained throughout the course of its legislative history. (See, e.g., CA Assem. Jour., July 13, 2015, Senate Bill No. 34 (2015-2016 Reg. Sess., No. 107) p. 2351 [“...relating to personal information.”]; CA Sen. Jour., Bill No. 34, May 5, 2015, Bill No. 34 (2015-2016 Reg. Sess., No. 67) p. 898 [“...relating to personal information.”].)

The Committee Reports similarly reflect the overriding purpose of SB 34: “This bill establishes regulations on the privacy and usage of automatic license plate recognition (ALPR) data and expands the meaning of ‘personal information’ to include information or data collected through the use or operation of an ALPR system.” (Sen. Comm. On Transportation, Rep. on Bill No. 34 (2015-2016 Reg. Sess.) April 2, 2015.) There is no mention of any intent to make ALPR data a public record.

The final reading analysis of SB 34 details the legislative goals of SB 34 as follows:

This bill:

\* \* \*

(2) Requires that data collected through the use or operation of an ALPR system be considered as personal information subject to existing law pertaining to agencies, persons, or businesses that conduct

business in California, and that own or license computerized data including personal information.

(4) Requires that ALPR operators ensure that ALPR information is protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality and integrity.

(5) Requires that ALPR operators and end users implement and maintain reasonable security procedures and practices in order to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure.

(6) Requires that ALPR operators and end users implement and maintain a usage and privacy policy in order to ensure that the collection, access, and use of ALPR information is consistent with respect for individuals' privacy and civil liberties.

(7) Requires ALPR operators that access or provide access to ALPR information to maintain a record of that access. The record must include the date and time of access, the license plate number which was queried, the person who accesses the information, and the purpose of accessing the information.

(Sen. Rules Com., Off. Of Sen. Floor Analysis, final reading analysis of Sen. Bill No. 34 (2015-2016 Reg. Sess.) September 3, 2015, p. 4.) There is no mention of any intent to disclose ALPR data to members of the public as a means of monitoring ALPR use.

The final reading analysis also includes the following statement attributed to Senator Hill, the author:

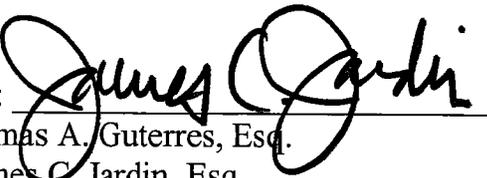
Purpose. The author states that this bill is necessary to institute reasonable usage and privacy standards for the operation of ALPR systems, which do not exist for the majority of local agencies that have approved the use of ALPR technology, according to the American Civil Liberties Union (ACLU). Additionally, this bill requires an opportunity for public input on the usage and standards of ALPR technologies, something the author contends few local agencies allow. The author states that the main focus of this bill is to put in place regulations for businesses and agencies which currently do not have any policies regarding the use of ALPR data, unlike transportation agencies which are already regulated by existing law.

(*Id.* at pp. 4-5.) Public disclosure of ALPR data is never mentioned.

## CONCLUSION

SB 34 addresses the concerns presented by Petitioners without compromising the privacy concerns of private citizens. Rather than deem ALPR data “public records” and thus force the Legislature and citizenry to choose between privacy concerns and more effective law enforcement of vehicle-related crimes, the Legislature has chosen to provide a private enforcement mechanism that will deter abuses of ALPR technology on a case-by-case basis. That is the correct result based on the language of the CPRA, the language of SB 34, and the interests of private citizens in not having their location information disclosed to any member of the public who fills out and submits a CPRA request.

Dated: August 10, 2016 COLLINS COLLINS MUIR + STEWART LLP

By: 

Tomas A. Guterres, Esq.

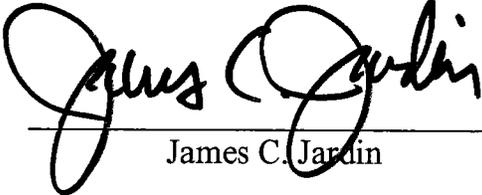
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**CERTIFICATE OF WORD COUNT**  
**(Cal. Rules of Court, rule 8.204(c)(1))**

The text of this brief, excluding this Certificate, consists of 3,553 words as counted by the Microsoft Word version 2010 word-processing program used to generate the brief.

Dated: August 10, 2016



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James C. Jardin

**PROOF OF SERVICE**  
**(CCP §§ 1013(a) and 2015.5; FRCP 5)**

State of California,                     )  
  ) ss.  
County of Los Angeles.            )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1100 El Centro Street, South Pasadena, California 91030.

On this date, I served the foregoing document described as **ANSWER TO AMICUS BRIEF OF SENATOR JERRY HILL** on the interested parties in this action by placing same in a sealed envelope, addressed as follows:

**SEE ATTACHED SERVICE LIST**

- (BY MAIL)** - I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in **Orange**, California to be served on the parties as indicated on the attached service list. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at: South Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY CERTIFIED MAIL)** - I caused such envelope(s) with postage thereon fully prepaid via Certified Mail Return Receipt Requested to be placed in the United States Mail in **South Pasadena/Orange/Carlsbad**, California.
- BY EXPRESS MAIL OR ANOTHER METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY**
- (BY ELECTRONIC FILING AND/OR SERVICE)** - I served a true copy, with all exhibits, electronically on designated recipients listed on the attached Service List:
- FEDERAL EXPRESS** - I caused the envelope to be delivered to an authorized courier or driver authorized to receive documents with delivery fees provided for.
- (BY FACSIMILE)** - I caused the above-described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (626) 243-1111 (So. Pasadena indicated all pages were transmitted).
- (BY PERSONAL SERVICE)** - I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s).

Executed on August 10, 2016 at Orange, California.

- (STATE)** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL)** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
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