



ASIAN AMERICANS
**ADVANCING
JUSTICE**
ASIAN LAW CAUCUS

March 10, 2015

The Honorable Mark Leno & Joel Anderson
State Capitol, Room
Sacramento, CA 95814

Re: SB 178 – Support for California Electronic Communications Privacy Act

Dear Senators Leno & Anderson:

I write on behalf of the Asian Law Caucus, an affiliate of Asian Americans Advancing Justice, to express our strongly support for SB 178 – The California Electronic Communications Privacy Act.

The mission of Asian Americans Advancing Justice—Asian Law Caucus is to promote, advance, and represent the legal and civil rights of API communities. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, Advancing Justice—Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society with a specific focus directed toward addressing the needs of low-income, immigrant, and underserved APIs.

The importance of privacy to Californians, including the Asian American community, cannot be understated. In 1972, Californians approved Proposition 11 in a landslide election, declaring privacy to be a fundamental right under the California constitution. The initiative was prescient, warning that “[t]he proliferation of government snooping” “threaten[ed] to destroy our traditional freedoms.” The ballot proposition explained, “[t]he right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose.”

These values are all implicated by the use of new technologies which store information about Californians’ personal lives, sometimes over the course of decades. As the U.S. Supreme Court recently noted, in our modern era, with nothing but a digital cell phone, “[t]he sum of an individual’s private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions.”¹ Moreover, information about a person’s Internet history “could reveal an individual’s private interests or concerns—perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD.”² Such intrusions into personal privacy, the Court held, should not be permitted unless the government has obtained a warrant from a judge.

SB 178 would recognize these new realities and re-affirm California’s commitment to protecting fundamental constitutional rights, like the right to privacy. It will require police to obtain warrants from a judge before they access private, personal information stored on electronic devices, e-mails, digital documents, text messages, and GPS tracking data. The bill strikes an appropriate balance between individual rights and legitimate public safety needs. It also represents a step forward in ensuring greater transparency and oversight mechanisms for law enforcement in the context of electronic communications.

At the Asian Law Caucus, we are particularly sensitive to how overzealous law enforcement power in the area of surveillance can result in the unfair targeting of innocent people, sometimes as a result of racial or religious profiling. Without important checks and balances, like the warrant process, law enforcement may invade an innocent person’s privacy without nothing but a hunch unsupported by facts. By way of example, the Caucus recently filed a

¹ *Riley v. California*, 134 S.Ct. 2473, 2489-90 (2014).

² *Id.*

lawsuit with the ACLU of Northern California challenging a federal surveillance program that promotes the collection and dissemination of information that does not meet the traditional "reasonable suspicion" test. Although the federal government contends the tool is necessary for national security, upon review, many of the reports appear to be based on racial prejudice, not criminal activity. Law enforcement around the state reported many Middle Easterners and Asians as potential terrorists for nothing more than looking Muslim or Middle Eastern while taking photographs, buying water, walking around a metro station, or being unfriendly.

Without important limitations that limit law enforcement's ability to intrude on people's lives without a threshold showing that criminal activity may be afoot, such abuses are bound to occur in the context of electronic surveillance as well.

We applaud your leadership in protecting the rights of all Californians. We look forward to working with you to obtain the Governor's signature on SB 178.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Chan", with a stylized flourish at the end.

Angela Chan
Policy Director and Senior Staff Attorney, Criminal Justice Reform Program

A handwritten signature in black ink, appearing to read "Yaman Salahi", with a stylized flourish at the end.

Yaman Salahi
Staff Attorney, National Security and Civil Rights Program