



April 19, 2012

Honorable Mark Leno
State Capitol, Room 5100
Sacramento, CA 95814

Re: SB 1434 - Support

Dear Senator Leno:

EFF is proud to co-sponsor SB 1434, a sensible law that requires law enforcement agencies in California to obtain a search warrant before tracking a person's location through the use of an electronic device, and requires communication providers to report on the number of applications for tracking data received.

SB 1434 follows the lead of the U.S. Supreme Court's recent decision in *United States v. Jones*, which ruled it was unconstitutional for police to install a GPS device on a car without a search warrant. While a landmark decision, given today's rapid technological changes, its emphasis on GPS tracking is already outdated. GPS tracking is no longer the only – or even easiest – way for law enforcement to collect details on when and where a person has been. Cell phones, especially web enabled “smartphones” which have become the majority of cell phones in the United States, create a location data trail throughout the day as they ping cell phone towers. And its not just cell phones; tablets and mobile apps are increasingly logging every step we take.

This data provides law enforcement with a powerful investigative tool for solving crimes, a tool it should be permitted to use in making Californians safer. But given how extraordinarily sensitive this information can be - revealing a person's religion, health, hobbies, and politics - judicial oversight is necessary to ensure that law enforcement's access to this information is justified.

SB 1434 heeds the words of Justice Samuel Alito, who in his concurring opinion in *Jones* noted, a “legislative body is well-suited to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.” SB 1434 creates an easy rule that balances the needs of law enforcement with the right to privacy inherent in the Constitution.

It gives law enforcement access to this great investigative information by only requiring a search warrant issued by a magistrate. It contains exceptions that allow law enforcement to obtain location information without a warrant in case of an emergency. And it imposes no reporting requirements on the agencies themselves.

At the same time SB 1434 protects privacy by limiting law enforcement access to 30 days worth of location information. It contains a simple reporting requirement that promotes

transparency by allowing the public to see not only how frequently location information is being requested, but also how many times such data is released to law enforcement.

The balance between allowing law enforcement access to effective investigatory tools, and protecting the public's privacy rights is oftentimes a delicate one. But SB 1434 strikes the right balance. For that reason, EFF is proud to be a co-sponsor.

Thank you for taking the initiative over this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hanni Fakhoury', with a long horizontal flourish extending to the right.

Hanni Fakhoury, Esq.
Staff Attorney

cc: Members & Consultant, Senate Public Safety Committee