



March 26, 2013

Senator John Whitmire, Chairman  
Kathryn Hendrix, Clerk  
Senate Committee on Criminal Justice  
Room 476, Sam Houston Building  
Austin, Texas 78711

**Re: SB 786 – Support of Electronic Frontier Foundation**

Dear Committee Members:

Thank you for the opportunity to submit this brief letter in support of Senate Bill 786.

The Electronic Frontier Foundation (“EFF”) is a non-profit organization member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world, including litigating the constitutionality of warrantless cell phone tracking before the U.S. Court of Appeals for the Fifth Circuit. EFF has more than 21,000 members across the country, including over 900 Texas residents who donate to EFF, and 4,426 Texas subscribers to the EFF mailing list.

EFF has long been interested in encouraging the government and the courts to recognize the threats that new technologies pose to civil liberties and personal privacy. And one of the biggest current threats is the dramatic increase in the government’s use of location information gained from cellular phones and other electronic devices.

There is a growing surge in law enforcement requests for cellular phone data. As a result of Congressional inquiry, the biggest wireless phone providers admitted that in 2011 they received 1.3 million requests for user cell phone data.<sup>1</sup> While it is unclear how many of these requests involve location information, Freedom of Information Act requests have shown that nationwide, over 250 different local law enforcement agencies admitted to using location information, oftentimes without a search warrant and with differing legal standards.<sup>2</sup>

That’s why EFF is proud to support SB 786, a sensible law that requires law enforcement agencies in Texas to obtain a search warrant before tracking a person’s location through the use of an electronic device, and which imposes much needed oversight by both the government and the communication providers on the number and cost of applications for tracking data.

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<sup>1</sup> See “More Demands on Cell Carriers in Surveillance,” *New York Times*, July 8, 2012, available at <https://www.nytimes.com/2012/07/09/us/cell-carriers-see-uptick-in-requests-to-aid-surveillance.html>.

<sup>2</sup> “Cell Phone Location Tracking Public Records Request,” American Civil Liberties Union, March 25, 2013 available at <http://www.aclu.org/protecting-civil-liberties-digital-age/cell-phone-location-tracking-public-records-request>.

SB 786 follows the lead of the U.S. Supreme Court's 2012 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,” 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 people 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 786 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 786 creates an easy rule that balances the needs of law enforcement with the right to privacy inherent in the Constitution.

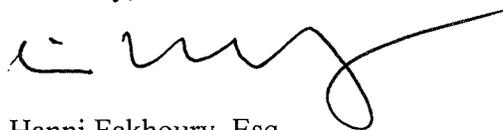
It gives law enforcement access to this great investigative information by simply requiring law enforcement obtain a search warrant issued by a judge. It contains common sense exceptions that allow law enforcement to obtain location information without a warrant in case of an emergency, or if an electronic device is reported stolen.

At the same time the warrant requirement in SB 786 protects privacy by requiring law enforcement to demonstrate probable cause that evidence of a crime will be obtained by tracking a person's location. Its reporting requirements will shed light on how many requests are being made, and how much these requests cost the state.

There has been a recent push in both federal and state legislatures to strike the delicate balance between allowing law enforcement access to effective investigatory tools while protecting the public's privacy rights. With SB 786, Texas has a chance to be a national leader on the issue of location privacy, properly balancing security and privacy, and letting the country know that the Fourth Amendment remains alive and well in Texas.

For these reasons, EFF strongly supports SB 786 and urges this committee to report it favorably to the Senate chamber.

Sincerely,



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Staff Attorney