

May 12, 2026

Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *People v. Anderson*, No. S296335
People v. Allen, No. S296269
Amicus Letter in Support of Petition for Review

Dear Chief Justice Guerrero and Associate Justices of the Court:

Amici Susan Freiwald and Nicole Ozer respectfully submit this letter in support of the petitions for review in *People v. Anderson*, Case No. S296335, and *People v. Allen*, Case No. S296269. These cases implicate an important question of law affecting millions of Californians' privacy protections: whether the unqualified statutory suppression remedy in the California Electronic Communications Privacy Act (CalECPA)¹ should be compromised by an atextual Fourth Amendment-like good faith exception. Only review by this Court can resolve this critical question.

The text of CalECPA provides both a clear warrant requirement and a statutory suppression remedy to enforce it. This suppression remedy is independent of the Fourth Amendment and independent of its exceptions. But in the consolidated appeal, the California Court of Appeal sidestepped the question of whether CalECPA was violated and held that a good faith exception like the one employed under Fourth Amendment doctrine should be grafted onto the statute that California's legislature enacted.² Undermining CalECPA's suppression remedy in this way will significantly harm the privacy rights of Californians.

CalECPA's language and related legislative materials evince a clear intent to ensure that the provisions of the law are followed and that the good faith exception in Fourth Amendment jurisprudence could not undermine the law's suppression remedy. The statute was drafted with the direct and extensive involvement of legal scholars from California, including Amici, and was supported by other scholars from throughout the United States with deep expertise in both Fourth Amendment and California constitutional and statutory privacy law.³ Their expert guidance was integral to the creation and passage of CalECPA and its full, unambiguous suppression remedy. From first drafts to final passing, the suppression remedy was a non-negotiable core component of

¹ Pen. Code, § 1546 et seq.

² *People v. Anderson* (2023) 119 Cal.App.5th 173, 188.

³ Legal Scholars, letter to Governor Edmund G. Brown, Jr., Sept. 12, 2015, pp. 3-7

<<https://www.aclunorcal.org/app/uploads/drupal/sites/default/files//SB178ScholarsSupport.pdf>> (as of May 11, 2026).

the bill. Reading in a new, judicially created good faith exception would be fundamentally inconsistent with that strong suppression remedy.

I. Interests of Amici

Susan Freiwald is a professor at and Dean Emerita of the University of San Francisco School of Law. She is a leading scholar on Fourth Amendment and internet law who served as an issue expert for CalECPA’s authors, State Senators Mark Leno and Joel Anderson, and as a member of the bill’s policy and legislative language teams. She contributed to and answered questions about the bill’s language, testified at legislative hearings about the bill, and coordinated legal scholars to write a letter in support of the bill.

Nicole Ozer is the Executive Director of the Center for Constitutional Democracy at UC Law San Francisco. She is a legal expert on federal and California privacy and surveillance law, and at the time of the CalECPA’s passage, served as director of the Technology and Civil Liberties Program at the ACLU of Northern California. Ms. Ozer spearheaded the passage of CalECPA, leading the overall coalition campaign in support of the bill, including its policy and legislative language teams. She testified at legislative hearings about the bill and was deeply engaged throughout the legislative process in the bill’s drafting and final wording.

Amici are uniquely positioned to provide the Court with insight into how fundamental the strong suppression remedy was in the drafting and passage of CalECPA. Amici have an interest in ensuring the law is correctly interpreted in a uniform way that effectuates its original purpose and protects the privacy interests of all Californians.

II. Review is Necessary to Preserve the Text’s Clear and Unqualified Suppression Remedy

The text of CalECPA is clear on its face. It provides a strong suppression remedy and one that goes beyond the scope of Fourth Amendment protections. CalECPA states that “any person in a trial, hearing, or proceeding may move to suppress” electronic information “obtained or retained in violation of the Fourth Amendment to the United States Constitution or of this chapter [CalECPA].”⁴ Its language further shows that it extends beyond both the California and United States Constitutions: Any individual whose information is obtained by means “inconsistent with this chapter” or “in violation of this chapter” may “petition the issuing court to void or modify the warrant, order, or process, or to order the destruction of any information.”⁵ This language was specifically drafted on the advice of legislative counsel to clarify the procedure for obtaining relief. It was not intended to narrow the suppression remedy or limit the circumstances triggering suppression, which the statute defines to include conduct inconsistent with or in violation of CalECPA. Indeed, CalECPA is now facing a similar circumstance to what was at issue in *People v.*

⁴ Pen. Code § 1546.4(a).

⁵ Pen. Code § 1546.4(c).

Jackson where, in the context of the California Wiretap Act’s suppression remedy, the Court of Appeal found that the good faith exception was a “judicially crafted exception, . . . a judicial creation” that was inapposite to suppression “required by a statutory mandate.”⁶

The plain meaning of CalECPA’s suppression remedy is also bolstered by the broader statutory scheme, which explicitly defines certain situations in which a good faith exception *does* apply. The government is authorized to access electronic device information even without a warrant when they, “in good faith,” believe that certain emergency situations are occurring.⁷ A similar exception applies when the government, “in good faith,” accesses a device believed to be lost or stolen in order to identify its owner.⁸ However, CalECPA does not mention a good faith exception to suppression because it includes no such carveout.

III. CalECPA Was Carefully Designed and Drafted to Include a Strong Suppression Remedy

CalECPA’s statutory suppression is specific, deliberate, and carefully crafted. Including a suppression remedy and ensuring that it was triggered by a violation of any provision of the Act— independent of Fourth Amendment jurisprudence—was central to the drafting. The bill was keyed from the start as one that would require a two-thirds passage vote of the legislature because of its strong suppression remedy.⁹ As explained in the bill’s legislative analysis, CalECPA “would exclude evidence obtained or retained in violation of [its] provisions” and thus “required a two-thirds vote for passage on the Assembly Floor,”¹⁰ which it obtained.¹¹

CalECPA could have been passed by the legislature with a simple majority vote if its enforcement provision was a civil remedy, such as was included in the California Reader Privacy Act enacted just a few years prior.¹² But CalECPA’s history reflects that its strong suppression remedy was seen as critical to the drafters and supporters and was a non-negotiable core component from the bill’s inception through to its signing into law by the Governor.

Clearing the two-thirds voting threshold required for the passage of CalECPA was no easy feat. Amici and others dedicated a tremendous amount of planning and time to a multi-level campaign to craft CalECPA and ensure its passing with the suppression remedy. For more than a year, Amici and others worked in broad coalition to ensure that the bill could garner a two-thirds

⁶ (2005) 129 Cal.App.4th 129, 153.

⁷ Pen. Code § 1546.1(c)(6).

⁸ Pen. Code § 1546.1(c)(7).

⁹ “Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding[.]” (Cal. Const., art. I § 28(f)(1).)

¹⁰ Assem. Com. on Privacy and Consumer Protection, Rep. on Sen. Bill No. 178 (2015-2016 Reg. Sess.) as amended Jun. 2, 2015, p. 11.

¹¹ Bill Votes for Sen. Bill No. 178 (2015-2016 Reg. Sess.)

<https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160SB178> (as of May 11, 2026).

¹² Civ. Code § 1798.90(g)(1)(A).

majority vote and that the law would have a suppression remedy as its strong, concrete enforcement mechanism.

The bill’s drafters understood that a good faith exception would neuter enforcement.¹³ They therefore crafted CalECPA’s suppression remedy to prevent it from being undermined by the good faith exception to the Fourth Amendment. As Professor Freiwald wrote in an article published shortly after CalECPA’s passage, its “procedures [did] not incorporate the expansive exceptions that courts have used to deny suppression remedies in Fourth Amendment cases under the doctrine of good faith.”¹⁴

In addition to the extensive involvement of Amici, the bill was also supported by thirty-eight other leading legal scholars from throughout the United States who teach and write extensively about criminal procedure, information privacy law, internet law, and related fields, including Professors Erwin Chemerinsky, Mark Lemley, Paul Ohm, and Pam Samuelson.¹⁵ These scholars discussed the fact that “only the protections of the warrant requirement” would protect Californians from “unjustified government surveillance” and how the bill codified existing California constitutional principles that went beyond federal protections.¹⁶ Other academics, including Professor Daniel Solove, had also separately observed that the “lack of an exclusionary rule” in the federal Stored Communications Act meant that “violations of the Stored Communications Act [did] not receive adequate attention in the courts.”¹⁷

The drafters of CalECPA were well aware of this deficiency—the federal Stored Communications Act’s lack of a suppression remedy was described by Professor Freiwald as “its most significant failing,”¹⁸ and CalECPA was thus designed to include a robust and effective suppression remedy. But if CalECPA’s carefully crafted suppression remedy is undermined by a good faith exception that appears nowhere in its text, the statute will suffer the same fate.

IV. Conclusion

California has long been a leader in protecting the privacy of its citizens—its state constitution guarantees privacy protections that go beyond the Fourth Amendment, and CalECPA was designed to be a continuation of this legacy. The good faith exception imposed without textual support by the Court of Appeal in these cases would gravely undermine the robust privacy protections intended for the modern digital age that were enacted by the Legislature. CalECPA’s suppression

¹³ See, e.g., Susan Freiwald, *The Davis Good Faith Rule*, 14 N.C. J.L. & Tech. 341, 379 (2013) (arguing that overreliance on the good faith exception would lead to serious legal questions “stay[ing] open indefinitely” and “egregious[] underenforce[ment]” of defendants’ rights).

¹⁴ Susan Freiwald, *CalECPA: At the Privacy Vanguard*, 33 Berkeley Tech. L.J. 131, 161 (2018).

¹⁵ Legal Scholars, letter to Governor Edmund G. Brown, Jr., Sept. 12, 2015, pp. 3-7 <<https://www.aclunorcal.org/app/uploads/drupal/sites/default/files/SB178ScholarsSupport.pdf>> (as of May 11, 2026).

¹⁶ *Id.* at p. 1.

¹⁷ Dan Solove, *Reconstructing Electronic Surveillance Law*, 72 Geo. Wash. L. Rev. 1701, 1725 (2004).

¹⁸ Susan Freiwald, *supra* note 14, at pp. 169-170.

remedy is central to the law’s proper functioning—without the full scope of its intended suppression remedy, CalECPA is in danger of becoming merely words on paper. The Court should therefore grant the petition for review.

Respectfully submitted,

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