



LEGISLATIVE REVIEW COMMITTEE MEETING  
Sheraton Garden Grove, Anaheim South  
12221 Harbor Blvd. Garden Grove, CA 92840

February 28, 2013  
AGENDA  
8:30 AM

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**Committee Members**

Lai Lai Bui  
Bob Cooke  
Sandra Hutchens  
Pete Kurylowicz  
Michael Ramos - Chair  
Michael Sobek  
Larry Wallace

- A. **Report on Proposed Legislation Regarding Joint Powers Agencies in the POST Program**
- B. **Assembly Bill 25 (Campos) Social Media**  
[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0001-0050/ab\\_25\\_bill\\_20121203\\_introduced.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ab_25_bill_20121203_introduced.html)
- C. **Assembly Bill 602 (Yamada) Relating to Disable Persons**  
[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0601-0650/ab\\_602\\_bill\\_20130220\\_introduced.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_602_bill_20130220_introduced.html)
- D. **Assembly Bill 685 (Achadjian) State Goods: Peace Officer's is State-Issue Handgun: Spouse**  
[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20130221\\_introduced.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0651-0700/ab_685_bill_20130221_introduced.html)
- E. **Assembly Bill 739 (Salas) Peace Officers: Deputy Coroners**  
[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0701-0750/ab\\_739\\_bill\\_20130221\\_introduced.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0701-0750/ab_739_bill_20130221_introduced.html)
- F. **Assembly Bill 810 (Muratsuchi) Law Enforcement Data Sharing**  
[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0801-0850/ab\\_810\\_bill\\_20130221\\_introduced.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0801-0850/ab_810_bill_20130221_introduced.html)
- G. **Senate Bill 340 (Jackson) Relating to Law Enforcement: Anti-Reproductive-Rights Crimes**  
[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0301-0350/sb\\_340\\_bill\\_20130220\\_introduced.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0301-0350/sb_340_bill_20130220_introduced.pdf)
- H. **Proposition 35 - Ban on Human Trafficking and Sex Slavery (2012)**  
[http://ballotpedia.org/wiki/index.php/California\\_Proposition\\_35,\\_Ban\\_on\\_Human\\_Trafficking\\_and\\_Sex\\_Slavery\\_\(2012\)](http://ballotpedia.org/wiki/index.php/California_Proposition_35,_Ban_on_Human_Trafficking_and_Sex_Slavery_(2012))  
[https://www.aclunc.org/news/press\\_releases/court\\_grants\\_preliminary\\_injunction\\_in\\_aclu\\_suit\\_challenging\\_prop\\_35's\\_free\\_speech\\_restrictions.shtml](https://www.aclunc.org/news/press_releases/court_grants_preliminary_injunction_in_aclu_suit_challenging_prop_35's_free_speech_restrictions.shtml)  
[https://www.aclunc.org/cases/active\\_cases/doe\\_v\\_harris.shtml](https://www.aclunc.org/cases/active_cases/doe_v_harris.shtml)

## AGENDA ITEM REPORT

**Title:** REPORT ON PROPOSED LEGISLATION REGARDING JOINT POWERS AGENCIES IN THE POST PROGRAM

## REPORT PROFILE

<b>MEETING DATE</b> 2/28/2013	<b>BUREAU SUBMITTING THIS REPORT</b> Executive Office	
<b>RESEARCHED BY (PRINT NAME)</b> Charles Evans		<b>REVIEWED BY (PRINT NAME)</b> Alan Deal
<b>REPORT DATE</b> 01/23/2013	<b>APPROVED BY</b> Robert A. Stresak	<b>DATE APPROVED</b> 02/12/13
<b>PURPOSE</b> Decision Requested		<b>FINANCIAL IMPACT</b> No

## ISSUE, BACKGROUND, ANALYSIS, &amp; RECOMMENDATION

## ISSUE:

Should the Commission pursue legislation to add Penal Code sections, 13507.1 to define joint powers agency, and 13526.3 to provide access to the Peace Officers' Training Fund (POTF) by joint powers agencies in the POST Reimbursable Program, and amend sections 13522 and 13523 to authorize joint powers agencies to receive state aid, as specified?

## BACKGROUND:

On January 30, 1980, the Town of Corte Madera and the City of Larkspur, executed a joint powers agreement (JPA), creating the Twin Cities Police Authority (TCPA) to provide consolidated police services to Larkspur and Corte Madera.

During 2009, the San Anselmo Police Department (SAPD) agreed to temporarily house the dispatch unit of the TCPA, during the construction of a new TCPA headquarters (2010-2013). During this period, SAPD and TCPA entered into multiple agreements under which they shared services which led to even greater cooperation, coordination, cost savings and higher levels of police services.

San Anselmo, Larkspur, and Corte Madera are public entities. All three municipalities are close in geographical proximity, have similar police protection needs and share a history of coordination and cooperation for police services. The City of Larkspur, the Town of Corte Madera and the Town of San Anselmo agreed to amend the January 30, 1980 joint powers agreement to add the Town of San Anselmo as a member, and to provide consolidated police services to the City of Larkspur, the Town of Corte Madera and the Town of San Anselmo.

To reflect the expanded jurisdiction of the JPA, and to incorporate a geographical reference into the name of the JPA, the amended agreement changes the name of the agency from TCPA to the Central Marin Police Authority (CMPA).

The Town Council of San Anselmo has delegated to the newly-created Central Marin Police Authority its power to appoint peace officers under Penal Code section 830.1, and all other powers necessary to provide law enforcement services to the citizens of the San Anselmo.

## ANALYSIS:

A Joint Powers Authority (JPA) is a unit of local government, authorized under the Government Code, created to jointly administer a shared power under the terms of a joint exercise of powers agreement adopted by the member agencies.

The Joint Powers Government Code Act section 6500 et seq., provides that public agencies by agreement, may jointly exercise any power common to them. The Parties often enter into an agreement in furtherance of the Joint Powers Act. It is the desire of the

parties to this Agreement, to create a system for meeting the public safety needs of the member agencies and that the Agreement be administered by the Central Marin Joint Power Agency.

Under the proposed legislative amendment, joint power agencies pursuant to Penal Code section 13510, will adhere to the standards for selection and training established by the Commission Peace Officer Standards Training (POST). (See **Attachment A**.)

Pursuant to Section 13512, the Commission and its representatives may make such inquiries as deemed appropriate by the Commission to ascertain that the Joint Powers Agency public safety personnel adhere to standards for selection and training established by the Commission on Peace Officer Standards and Training.

In implementing this amendment, joint powers agencies pursuant to Government Code section 6500 et seq., shall be entitled to receive funding from the Peace Officers' Training fund and must comply with Commission Regulations.

The formation of this new JPA is cost neutral in that San Anselmo Police Department and the Twin Cities Police Authority have been participants in the POST program for many years.

The proposed legislation is declarative of existing law, and clarifies an oversight, of the legislature's intent to authorize Joint Powers Agencies, as units of local government, within the definition contained in the Government Code. The legislation corresponds with existing language associated with agencies in the Public Safety Dispatchers Reimbursement Program and sets forth the requirements for JPA's (Penal Code section 13525).

#### **RECOMMENDATION:**

Staff recommends that the Commission authorize the Executive Director to pursue legislation to add Penal Code sections 13507.1, to define joint powers agency, and 13526.3 to provide access to the Peace Officers' Training Fund (POTF) by joint powers agencies in the POST Reimbursable Program, and amend sections 13522 and 13523 to authorize joint powers agencies to receive state aid, as specified.

#### **ATTACHMENT(S):**

Name:

Type:

☐ [Attachment A - Propose Code Amendments.docx](#)

Cover Memo

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**Propose Penal Code Additions and Amendments**

13507.1. As used in this chapter, "joint powers agency" means any agency, entity or authority formed pursuant to Government Code section 6500 *et seq.*

13522. Any city, county, city and county, district, or joint powers agency, which desires to receive state aid pursuant to this chapter shall make application to the commission for the aid. The initial application shall be accompanied by a certified copy of an ordinance, or in the case of the University of California, the California State University, and agencies not authorized to act by ordinance, by a resolution, adopted by its governing body providing that while receiving any state aid pursuant to this chapter, the city, county, city and county, ~~or district~~, or joint powers agency will adhere to the standards for recruitment and training established by the commission. The application shall contain any information the commission may request.

13523. The commission shall annually allocate and the State Treasurer shall periodically pay from the Peace Officers' Training Fund, at intervals specified by the commission, to each city, county, ~~and district~~, and joint powers agency, which has applied and qualified for aid pursuant to this chapter an amount determined by the commission pursuant to standards set forth in its regulations. The commission shall grant aid only on a basis that is equally proportionate among cities, counties, ~~and districts~~ and joint powers agencies. State aid shall only be provided for training expenses of full-time regularly paid employees, as defined by the commission, of eligible agencies from cities, counties, districts, or joint powers agencies.

In no event shall any allocation be made to any city, county, District, or joint powers agency which is not adhering to the standards established by the commission as applicable to such city, county, ~~district~~ or joint powers agency...

13525. Any city, county, city and county, district, or joint powers agency which desires to receive state aid pursuant to this chapter for the training of regularly employed and paid local public safety dispatchers, as described in subdivision (c) of Section 13510, shall include that request for aid in its application to the commission pursuant to Sections 13522 and 13523.

13526. In no event shall any allocation be made from the Peace Officers' Training Fund to a local government agency if the agency was not entitled to receive funding under any of the provisions of this article, as they read on December 31, 1989...

13526.3. Notwithstanding Section 13526, for the purposes of this chapter, joint powers agencies formed pursuant to Government Code section 6500 *et seq* shall also be entitled to receive funding from the Peace Officers' Training fund. This section is declaratory of existing law.

**B.**

BILL NUMBER: AB 25            INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Campos

DECEMBER 3, 2012

An act to amend Section 980 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 25, as introduced, Campos. Employment: social media.

Existing law prohibits a private employer from requiring or requesting an employee or applicant for employment to disclose a username or password for the purpose of accessing personal social media, to access personal social media in the presence of the employer, or to divulge any personal social media. Existing law prohibits a private employer from discharging, disciplining, threatening to discharge or discipline, or otherwise retaliating against an employee or applicant for not complying with a request or demand that violates these provisions.

This bill would apply the provisions described above to public employers. The bill would state that its provisions address a matter of statewide interest and apply to public employers generally, including charter cities and counties.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 980 of the Labor Code is amended to read:

980. (a) As used in this ~~chapter, "social~~  
chapter:

(1) *"Employer" means a private employer or a public employer.*

(2) *"Social media" means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.*

(b) An employer shall not require or request an employee or applicant for employment to do any of the following:

(1) Disclose a username or password for the purpose of accessing personal social media.

(2) Access personal social media in the presence of the employer.

(3) Divulge any personal social media, except as provided in subdivision (c).

(c) Nothing in this section shall affect an employer's existing rights and obligations to request an employee to divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.

(d) Nothing in this section precludes an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.

(e) An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

SEC. 2. Because of the crucial privacy rights at issue and the growing abuse of those rights, the Legislature finds and declares that this act addresses a matter of statewide interest and applies to public employers generally, including charter cities and counties.



C.

BILL NUMBER: AB 602      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Yamada

FEBRUARY 20, 2013

An act to add Section 13515.30 to the Penal Code, and to amend Section 15630 of the Welfare and Institutions Code, relating to disabled persons.

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as introduced, Yamada. Mentally and developmentally disabled persons: reporting abuse: peace officer training.

Existing law requires the Commission on Peace Officer Standards and Training, in the Department of Justice, to establish and keep updated a continuing education classroom training course relating to law enforcement intervention with mentally disabled persons and requires the course to be developed in consultation with specified groups and entities. Existing law requires the commission to submit a report to the Legislature that contains specified information regarding this training.

This bill would require the commission to establish, by July 1, 2015, and keep updated a training course relating to law enforcement interaction with mentally disabled or developmentally disabled persons living within a state mental hospital or state developmental center, as specified. The training course would be required for law enforcement personnel in law enforcement agencies with jurisdiction over state mental health hospitals and state developmental centers, as part of the agency's officer training program. This bill would require the commission to submit a report to the Legislature, by October 1, 2017, that contains specified information regarding this training. By creating new duties for local officials, this bill would impose a state-mandated local program.

Existing law requires specified people, known as mandated reporters, to report cases of elder or dependent adult abuse, as defined. Existing law requires a report to be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local enforcement agency if the suspected or alleged abuse occurred in a state mental hospital or state developmental center. Existing law also requires mandated reporters in the State Department of Developmental Services to immediately report suspected abuse to the Office of Protective Services or to the local law enforcement agency. Failure to make a report as required by existing law is a misdemeanor.

This bill would instead require a report to be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, and also to the local enforcement agency if the suspected or alleged abuse or neglect occurred in a state mental hospital or state developmental center and resulted in any specified incidents, including a death or a sexual assault. This bill would also require mandated reporters in the State Department of State Hospitals to immediately report suspected abuse to the Office of Protective Services or to the local law enforcement agency. By expanding the scope of an existing crime, the bill would

impose a state-mandated local program.

This bill would also require a local law enforcement agency to coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide a response to investigate reports received pursuant to specified provisions. By creating new duties for local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13515.30 is added to the Penal Code, to read:

13515.30. (a) By July 1, 2015, the Commission on Peace Officer Standards and Training shall establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. The training course shall be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups. In developing the course, the commission shall also examine existing courses certified by the commission that relate to mentally disabled and developmentally disabled persons. The commission shall make the course available to all law enforcement agencies in California, and the course shall be required for law enforcement personnel serving in law enforcement agencies with jurisdiction over state mental hospitals and state developmental centers, as part of the agency's officer training program.

(b) The course described in subdivision (a) shall consist of classroom instruction and shall utilize interactive training methods to ensure that the training is as realistic as possible. The course shall include, at a minimum, core instruction in all of the following:

(1) The prevalence, cause, and nature of mental illnesses and developmental disabilities.

(2) The unique characteristics, barriers, and challenges of individuals who may be a victim of abuse or exploitation living within a state mental hospital or state developmental center.

(3) How to accommodate, interview, and converse with individuals who may require assistive devices in order to express themselves.

(4) Capacity and consent of individuals with cognitive and intellectual barriers.

(5) Conflict resolution and deescalation techniques for potentially dangerous situations involving mentally disabled or developmentally disabled persons.

(6) Appropriate language usage when interacting with mentally



disabled or developmentally disabled persons.

(7) Community and state resources and advocacy support and services available to serve mentally disabled or developmentally disabled persons, and how these resources can be best utilized by law enforcement to benefit the mentally disabled or developmentally disabled community.

(8) The fact that a crime committed in whole or in part because of an actual or perceived disability of the victim is a hate crime punishable under Title 11.6 (commencing with Section 422.55) of Part 1.

(9) Information on the state mental hospital system and the state developmental center system.

(10) Techniques in conducting forensic investigations within institutional settings where jurisdiction may be shared.

(11) Examples of abuse and exploitation perpetrated by caregivers, staff, contractors, or administrators of state mental hospitals and state developmental centers, and how to conduct investigations in instances where a perpetrator may also be a caregiver or provider of therapeutic or other services.

(c) The commission shall submit a report to the Legislature by October 1, 2017, that shall include all of the following:

(1) A description of the process by which the course was established, including a list of the agencies and groups that were consulted.

(2) Information on the number of law enforcement agencies that utilized, and the number of officers that attended, the course or other courses certified by the commission relating to mentally disabled or developmentally disabled persons living within a state mental hospital or state developmental center from July 1, 2015 to July 1, 2017, inclusive.

(d) (1) The requirement for submitting a report imposed under subdivision (c) is inoperative on October 1, 2021, pursuant to Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (c) shall be submitted in compliance with Section 9795 of the Government Code.

(e) It is the intent of the Legislature to reevaluate, on the basis of its review of the report required in subdivision (c), the extent to which law enforcement officers are receiving adequate training in how to interact with mentally disabled or developmentally disabled persons living within a state mental hospital or state developmental center.

SEC. 2. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial

abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized by Section 15658, immediately or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential Internet reporting tool established in Section 15658, within two working ~~days~~ days.

(A) If the suspected or alleged abuse is physical abuse, as defined in Section 15610.63, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the following shall occur:

(i) If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, ~~and~~ but also no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(ii) If the suspected abuse does not result in serious bodily injury, a telephone report shall be made to the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

(iii) When the suspected abuse is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, as reasonably determined by the mandated reporter, drawing upon his or her training or experience, the reporter shall report to the local ombudsman or law enforcement agency by telephone, immediately or as soon as practicably possible, and by written report, within 24 hours.

(iv) When applicable, reports made pursuant to clauses (i) and (ii) shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, as set out in Subtitle H of the federal Patient Protection and Affordable Care Act (Public Law 111-148), Section 1418.91 of the Health and Safety Code, and Section 72541 of Title 22 of California Code of Regulations. When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility pursuant to this subparagraph, the local law enforcement agency may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report. The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this subparagraph.

(B) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other law, the department may implement subparagraph (A), in whole or in part, by means of all-county letters, provider bulletins, or other similar instructions without taking regulatory action.

(C) If the suspected or alleged abuse is abuse other than physical abuse, and the abuse occurred in a long-term care facility, except a state mental health hospital or a state developmental center, a telephone report and a written report shall be made to the local ombudsman or the local law enforcement agency.

(D) With regard to abuse reported pursuant to ~~subparagraphs (A) and~~ subparagraph (C), the local ombudsman and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day program, as defined in paragraph (2) of subdivision (a) of Section 1502 of the Health and Safety Code.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

(E) (i) If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, ~~the~~ and the suspected or alleged abuse or neglect resulted in any of the following incidents, a report shall be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, ~~or~~ and also to the local law enforcement ~~agency.~~ agency:

(I) A death.

(II) A sexual assault, as defined in Section 15610.63.

(III) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the state mental hospital or state developmental center.

(IV) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.

(V) An injury to the genitals when the cause of the injury is undetermined.

(VI) A broken bone, when the cause of the break is undetermined.

(ii) All other reports of suspected or alleged abuse or neglect that occurred in a state mental hospital or a state developmental center shall be made to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

(iii) When a local law enforcement agency receives an initial report of suspected or alleged abuse or neglect in a state mental hospital or a state developmental center pursuant to clause (i), the local law enforcement agency shall coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide the most immediate and appropriate response warranted to investigate the mandated report. The designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and local law enforcement agencies may collaborate to develop

protocols to implement this clause.

~~—(i)~~

(iv) Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

~~—(ii)~~

(v) Mandated reporters of the State Department of State Hospitals or the State Department of Developmental Services shall immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, report suspected abuse to the Office of Protective Services or to the local law enforcement agency.

(F) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) This subdivision shall not be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident if all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing



duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident if all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of State Hospitals or the State Department of Developmental Services or to a local law enforcement agency. Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) If two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and there is agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report or Internet report, as authorized by

Section 15658, of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

(i) For purposes of this section, "dependent adult" shall have the same meaning as in Section 15610.23.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the



Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**D.**

BILL NUMBER: AB 685      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Achadjian

FEBRUARY 21, 2013

An act to amend Section 10334 of the Public Contract Code,  
relating to state goods.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as introduced, Achadjian. State goods: peace officer's is state-issued handgun: spouse.

Existing law authorizes a peace officer who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability to be authorized by the person's department head to purchase his or her state-issued handgun, as specified.

This bill would provide that the spouse of a peace officer who has died in the line of duty may be authorized by his or her spouse's department head to purchase his or her state-issued handgun, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10334 of the Public Contract Code is amended to read:

10334. (a) No state employee shall acquire any goods from the state, unless the goods are offered to the general public in the regular course of the state's business on the same terms and conditions as those applicable to the employee. "State employee," as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of "designated employee" under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120-month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his

or her retirement date.

(c) Notwithstanding subdivision (a), any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code employed by the State of California who is authorized to carry firearms may purchase his or her state-issued service firearm if the person's department head directs the department to change its state-issued service weapon system. The cost of the service firearm shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the firearm issued as determined by the department head, plus a charge for the cost of handling. The requesting officer shall request to purchase his or her firearm in writing to the department within 10 calendar days of receiving the new state-issued weapon.

(d) Notwithstanding subdivision (a), the spouse of a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who was employed by the State of California and who died in the line of duty, may be authorized by his or her spouse's department head to purchase his or her state-issued handgun. The cost of the handgun shall be the fair market value of the handgun as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, as determined by the appointing power, plus a charge for the cost of handling. The spouse shall request to purchase the handgun in writing to the department within 30 calendar days of his or her spouse's death.

**E.**

BILL NUMBER: AB 739      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Salas

FEBRUARY 21, 2013

An act to amend Section 830.35 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 739, as introduced, Salas. Peace officers: deputy coroners.

Existing law prescribes the powers and authority of peace officers, and provides that, among other peace officers, a coroner and deputy coroners, who are regularly employed and paid in that capacity, are peace officers if their primary duties are within certain specified duties pertaining to inquests, as specified. Existing law establishes the extent of the authority of these peace officers, and provides that those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

This bill would include within the definition of peace officer describing coroner and deputy coroner, part-time and volunteer personnel who perform the duties of a deputy coroner, as specified, if those part-time and volunteer personnel meet the same background, training, and certification requirements established by the Commission on Peace Officer Standards and Training for regularly employed deputy coroners.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 830.35 of the Penal Code is amended to read:

830.35. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) A welfare fraud investigator or inspector, regularly employed and paid in that capacity by a county, if the primary duty of the peace officer is the enforcement of the provisions of the Welfare and Institutions Code.

(b) A child support investigator or inspector, regularly employed and paid in that capacity by a district attorney's office, if the primary duty of the peace officer is the enforcement of the provisions of the Family Code and Section 270.

(c) The coroner and deputy coroners, regularly employed and paid in that capacity, of a county, if the primary duty of the peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code —

, and any part -time or volunteer personnel performing

*those duties of a deputy coroner, if those part-time and volunteer personnel meet the same background, training, and certification requirements established by the Commission on Peace Officer Standards and Training for regularly employed deputy coroners.*

**F.**

BILL NUMBER: AB 810      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Muratsuchi

FEBRUARY 21, 2013

An act relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

AB 810, as introduced, Muratsuchi. Law enforcement: data sharing.

Existing law requires all basic information stored in state or local criminal offender record information systems to be recorded in a prescribed form. For each arrest made, existing law requires the reporting agency to report to the Department of Justice concerning each arrest, the applicable identification and arrest data, and fingerprints.

This bill would state that it is the intent of the Legislature to enact legislation to ensure that appropriate methods are devised to allow law enforcement agencies to share data, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to enact legislation to ensure that appropriate methods are devised to allow law enforcement agencies to share data, including providing accurate, timely information on ex-offenders from existing databases within state and county agencies to local law enforcement entities to facilitate their ability to monitor, and if necessary apprehend, ex-offenders released into their communities.



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**Introduced by Senator Jackson**

February 20, 2013

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An act to repeal Section 13779 of the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as introduced, Jackson. Law enforcement: anti-reproductive-rights crimes.

Existing law, the Reproductive Rights Law Enforcement Act, requires the Attorney General to assume specified duties relating to planning, information gathering, and analysis with respect to anti-reproductive-rights crimes, as defined, including consultation with specified subject matter experts. Existing law also requires the convening of an advisory committee that is responsible for evaluating the effectiveness of existing law. Existing law requires the Commission on Peace Officer Standards and Training to develop an optional course of training for law enforcement agencies regarding anti-reproductive-rights crimes, as specified. Existing law provides for the repeal of these provisions as of January 1, 2014.

This bill would make existing law operative indefinitely.

Because the bill would extend the operative date of provisions that would impose reporting requirements on local governments, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 13779 of the Penal Code is repealed.
- 2 ~~13779. This title shall remain in effect until January 1, 2014,~~
- 3 ~~and as of that date is repealed unless a later enacted statute deletes~~
- 4 ~~or extends that date.~~
- 5 SEC. 2. If the Commission on State Mandates determines that
- 6 this act contains costs mandated by the state, reimbursement to
- 7 local agencies and school districts for those costs shall be made
- 8 pursuant to Part 7 (commencing with Section 17500) of Division
- 9 4 of Title 2 of the Government Code.

## H.1.

# California Proposition 35, Ban on Human Trafficking and Sex Slavery (2012)

From Ballotpedia  
**Proposition 35, the "Californians Against Sexual Exploitation Act" Initiative** was on the November 6, 2012 ballot in California as an initiated state statute, where it was **approved**.  
 [1]

The day after the election, a federal judge issued a temporary restraining order that prevents Proposition 35 from going into effect. The judge acted in response to a class action lawsuit filed against Proposition 35 by ACLU and the Electronic Frontier Foundation on behalf of two anonymous sex offenders to whom the provisions of the initiative apply.<sup>[2]</sup> This temporary injunction was extended on January 11, 2013.<sup>[3]</sup>

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## Proposition 35



### Quick stats


**Type:** State statute  
**Referred by:** Petition signatures  
**Topic:** Law enforcement  
**Status:**

### Proposition 35:

- Increases prison terms for human traffickers.
- Requires convicted sex traffickers to register as sex offenders.
- Requires all registered sex offenders to disclose their internet accounts.
- Requires criminal fines from convicted human traffickers to pay for services to help victims.
- Mandates law enforcement training on human trafficking.

## Election results

*See also: 2012 ballot measure election results*

California Proposition 35		
Result	Votes	Percentage
 <b>Yes</b>	<b>10,078,476</b>	<b>81.3%</b>
No	2,310,612	18.7%

*These final, certified, results are from the California Secretary of State (<http://www.sos.ca.gov/elections/sov/2012-general/sov-complete.pdf>) .*

## Text of measure

*See also: Complete text of Proposition 35 and Ballot titles, summaries and fiscal statements for California's 2012 ballot propositions*

### Title

**Human Trafficking. Penalties. Initiative Statute.**

**Note:** The original title given to Proposition 35 by election officials during the petition circulation stage was, "Human Trafficking. Penalties. Sex Offender Registration. Initiative Statute."

### Summary

#### Official summary

The state's official voter guide included two summaries for each statewide ballot measure. One summary, in bullet-point format, appeared in the long-form description of each measure. A shorter form of the summary appeared on the ballot label in the front of the voter guide, where there was a short description of each measure.

The long-form summary for Proposition 35 said:

- Increases criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000.
- Fines collected to be used for victim services and law enforcement.
- Requires person convicted of trafficking to register as sex offender.
- Requires sex offenders to provide information regarding Internet access and identities they use in online activities.
- Prohibits evidence that victim engaged in sexual conduct from being used against victim in court proceedings.
- Requires human trafficking training for police officers.

The short-form (ballot label) summary for Proposition 35 said:

"Increases prison sentences and fines for human trafficking convictions. Requires convicted human traffickers to register as sex offenders.

Requires registered sex offenders to disclose Internet activities and identities."

Neither of the two summaries in the final voter guide was identical to the summary that was originally given to Proposition 35, when its sponsors sought a summary prior to circulating petitions to qualify the measure for the ballot. The summary that was given by election officials to Proposition 35 at that time said:

"Increases criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Fines collected to be used for victim services and law enforcement. Requires person convicted of trafficking to register as sex offender. Requires sex offenders to provide information regarding Internet access and identities they use in online activities. Prohibits evidence that victim engaged in sexual conduct from being used against victim in court proceedings. Requires human trafficking training for police officers."

## Fiscal impact

(This is a summary of the initiative's estimated "fiscal impact on state and local government" prepared by the California Legislative Analyst's Office and the Director of Finance.)

- Increased costs, not likely to exceed a couple million dollars annually, to state and local governments for criminal justice activities related to the prosecution and incarceration of human trafficking offenders.
- Potential one-time local government costs of up to a few million dollars on a statewide basis, and lesser additional costs incurred each year, due to new mandatory human trafficking-related training requirements for law enforcement officers.
- Potential additional revenue from new criminal fines, likely a few million dollars annually, which would fund services for human trafficking victims and for law enforcement activities related to human trafficking.

**Note:** The original fiscal note given to Proposition 35 by election officials during the petition circulation stage was, "Potential one-time local government costs of up to a few million dollars on a statewide basis, and lesser additional costs incurred each year, due to the new mandatory training requirements for certain law enforcement officers. Minor increase to state and local governments on the costs of incarcerating and supervising human trafficking offenders. Unknown amount of additional revenue from new criminal fees, likely not to exceed the low millions of dollars annually, which would fund services for human trafficking victims."

## Support

### Supporters

Chris Kelly, a 2010 candidate for Attorney General of California, helped draft Proposition 35.<sup>[4]</sup> Kelly, the former chief of privacy at Facebook, also contributed over \$2.3 million to the campaign in favor of Proposition 35.<sup>[1]</sup>



"Yes on 35" website logo

The arguments in favor of Proposition 35 in the state's official voter guide were submitted by:

- Leah Albright-Byrd, Withelma Ortiz, and Carissa Phelps. Albright-Byrd, Ortiz and Phelps are survivors of human trafficking.
- Marc Klaas. Klaas is the president of the KlaasKids Foundation.
- Scott R. Seaman. Seaman is the president of the California Police Chiefs Association.
- Nancy O'Malley. O'Malley is the District Attorney of Alameda County.

Endorsers of Proposition 35 included:

- Senator Barbara Boxer, Senator Dianne Feinstein, House Democratic Leader Nancy Pelosi, Lieutenant Governor Gavin Newsom, Congresswoman Jackie Speier, activists John Walsh, Marc Klaas, and Jada Pinkett Smith.<sup>[5]</sup>
- Planned Parenthood, NOW, the California Labor Federation, Crime Victims United of California, Peace Officers Research Association of California, the California Fraternal Order of Police, the National Latino Peace Officers Association (State of California), the California Association of Highway Patrolmen, the California Police Chiefs Association, California Nurses Association, California Catholic Conference, Church State Council, and organizations helping survivors like MISSEY, Bilateral Safety Corridor Coalition, GenerateHope, Mary Magdalene Project, and Shared Hope International.<sup>[6]</sup>
- The California Democratic Party<sup>[7]</sup>
- The California Republican Party.<sup>[8]</sup>

### Arguments in favor

The arguments presented in favor of Proposition 35 in the state's official voter guide included:

- "In California, vulnerable women and children are held against their will and forced into prostitution for the financial gain of human traffickers. Many victims are girls as young as 12. Human trafficking is one of the fastest-growing criminal enterprises in the world, and it's happening right here on California's streets and online where young girls are bought and sold."
- "A national study recently gave California an 'F' grade on its laws dealing with child sex trafficking."
- "Prop. 35 protects children from sexual exploitation. Many sex trafficking victims are vulnerable children. They are afraid for their lives and abused—sexually, physically, and mentally. The FBI recognizes three cities in California—Los Angeles, San Francisco, and San Diego—as high



intensity child sex trafficking areas. That's why we need Prop. 35 to protect children from exploitation."

- "Prop. 35 holds human traffickers accountable for their horrendous crimes."
- "Prop. 35 helps stop exploitation of children that starts online. The Internet provides traffickers with access to vulnerable children. Prop. 35 requires convicted sex offenders to provide information to authorities about their Internet presence, which will help protect our children and prevent human trafficking."
- Leah Albright-Boyd is quoted in the voter guide saying, "At 14, I ran away from a troubled home and into the clutches of a human trafficker. For years, I was trafficked and abused when I was still just a child. As a survivor of trafficking, I'm asking Californians to stand against sexual exploitation and vote Yes on 35."

## Donors

The "Yes on 35" campaign raised about \$3.7 million as of November 3. The donors listed in the chart below are the \$10,000 and over donors to the "Yes on 35" campaign **as of Saturday, November 3, 2012**. Note that some of these donors gave their money to a committee that was simultaneously supporting or opposing more than one of the ballot propositions on the November 6, 2012 ballot. When that is the case, it is not generally possible to break down how much of that donor's money specifically was spent on the campaign for a particular proposition. Those contributions are listed below with shading; readers should not assume that all or even most of a donation to a multi-purpose committee was used for expenditures related to this particular proposition.

Total campaign cash	
 <i>as of November 3, 2012</i>	
 <b>Support:</b>	<b>\$3,700,000</b>
 <b>Opposition:</b>	<b>\$0.00</b>

<b>Donor</b>	<b>Amount</b>
Chris Kelly	\$2,360,000
California Statewide Law Enforcement Association	\$498,064
Police Officers Research Association	\$162,459
California State Council of Service Employees (SEIU)	\$75,000
National Education Association	\$60,025
BISC	\$54,721
California Teachers Association	\$50,000
United Food and Commercial Workers	\$50,000
Working Families Issues Committee (AFL-CIO)	\$30,000
Quinn Delaney	\$25,000
Crowley Children's Fund	\$21,500
Daphne Phung	\$14,120
Karen Yee	\$10,374
Ronald C. Conway	\$10,000

## Opposition

### Opponents

The arguments against Proposition 35 in the state's official voter guide were submitted by:

- Maxine Doogan. Doogan is the president of the Exotic Service Providers Legal Education and Research Project.
- Manual Jiminez. Jiminez is the Chief Financial Officer of the Exotic Service Providers Legal Education and Research Project.<sup>[9]</sup>
- Norma Jean Almodovar. Almodovar is an author and a former police officer who has worked in the sex trade.<sup>[10]</sup>
- "Starchild."<sup>[11]</sup>

Other opponents included:

- Cindy Liou, a staff attorney at Asian Pacific Islander Legal Outreach, located in the Bay Area. Asian Pacific Islander Legal Outreach works with trafficking victims.<sup>[12]</sup>
- Perla Flores, a program manager at Community Solutions in Morgan Hills.<sup>[12]</sup>

- Harvey Milk LGBT Democratic Club <http://www.milkclub.org/2012-election/official-november-2012-endorsements.html>
- California Council of Churches-Oppose Prop 35 <http://churchimpact.org/2012/08/29/proposition-35-human-trafficking-penalties-sex-offender-registration-initiative-statute-oppose>
- San Francisco Rising<sup>[13]</sup>
- Bernal Heights Democratic Club
- California Association for Criminal Justice<sup>[14]</sup>
- Peace and Freedom Party<sup>[15]</sup>

## Arguments against

The arguments in opposition to Proposition 35 presented in the state's official voter guide included:

- "This short-sighted ballot measure relies on a broad definition of pimping."
- "The real goal is to gain access to asset forfeiture to benefit the endorsing law enforcement agencies and non-profits."
- "Proposition 35 will have a detrimental effect on the state budget."<sup>[16]</sup>
- "Criminalization of prostitution is the condition that allows exploitation."<sup>[9]</sup>
- "If Proposition 35 passes, anyone receiving financial support from normal, consensual prostitution among adults...could be prosecuted as a human trafficker, and if convicted, forced to register as a sex offender for life!"<sup>[11]</sup>

Other arguments made against Proposition 35 included:

- "It incorrectly presumes that increased prosecution and protections of trafficking survivors is entirely premised on increased penalties and fines rather than a comprehensive approach," according to attorney Cindy Liou. Liou works with trafficking victims.<sup>[12]</sup>
- "The work of human trafficking, it's not just all up to the prosecutors. It's also everybody else who has been at the table for years, developing a system that's collaborative and victim-centered," according to Perla Flores, who works with trafficking victims.<sup>[12]</sup>

## Donors

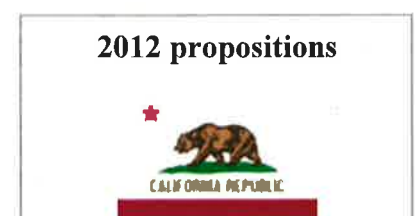
No campaign committees registered in opposition to Proposition 35.

## Editorial opinion

*See also: Endorsements of California ballot measures, 2012*

### "Yes on 35"

- The *Contra Costa Times*: "The proposition would expand some of the definitions of human trafficking in California laws and would increase the fines and penalties for engaging in such illegal conduct, and it severely increases those penalties for repeat offenders."<sup>[17]</sup>



- The ***Daily Democrat*** (Woodland, California): "While it could make the job of police harder, we support any effort to keep people from being treated as slaves."<sup>[18]</sup>
- The ***Long Beach Press-Telegram***: "A 2011 study by Shared Hope International and American Center for Law and Justice gave California an 'F' for its laws protecting women and children from exploitation. Prop. 35 would make up for that failing grade in a big way -- by enacting some of the most severe penalties nationally for human traffickers."<sup>[19]</sup>
- The ***Los Angeles Daily News***: "The FBI reports that three cities in California -- Los Angeles, San Diego and San Francisco -- are among the nation's 13 highest child sex trafficking areas. Yet the Legislative Analyst's Office found only 18 convicted human traffickers in state prison when it crafted its independent analysis of Prop. 35. Clearly, there's a disconnect between the number of victims and the prosecution of their abusers."<sup>[20]</sup>
- The ***Marin Independent Journal***: "While a proposition is not the best way to write and vet criminal law, a similar law in New York has increased public and police awareness about the problem."<sup>[21]</sup>
- The ***North County Times***: "These increased punishments are appropriate ---- and, given the ongoing reports of human trafficking here in California, sadly necessary."<sup>[22]</sup>
- The ***Orange County Register***: "Nonetheless, in light of some of our concerns regarding Prop. 35, this Editorial Board recommends a Yes vote – albeit with some reservations."<sup>[23]</sup>
- The ***Redding Record Searchlight***: "Proposition 35 will help protect the exploited and punish latter-day slavers."<sup>[24]</sup>
- The ***San Bernardino Sun***: "There's no disputing California and its cities face huge budgetary uncertainties, but it would be callous and wrong to say such minimal costs are not worth incurring to protect some of the most vulnerable living among us."<sup>[25]</sup>
- The ***San Diego Union-Tribune***: "Like most citizen initiatives, Proposition 35 is not perfect. The language of some provisions is imprecise, sometimes out of sync with federal law or otherwise problematic. That's why a legislative solution would have been better. But that was not to be. And the reality is that Proposition 35 was endorsed by the state Democratic and Republican parties and dozens of statewide and local law enforcement agencies, including the San Diego and Chula Vista police officer associations and the local Deputy Sheriffs' Association."<sup>[26]</sup>
- The ***San Francisco Chronicle***: "Under the measure, human traffickers could receive up to 12 years (instead of the current maximum five) - with the potential penalty rising to 15 years to life if the crime involves a minor. Those tougher sentences would match federal law and would give prosecutors a greater incentive to pursue trafficking cases against adults who exploit children in prostitution."<sup>[27]</sup>

## June 5

Proposition 28

Proposition 29

## November 6

Proposition 30

Proposition 31

Proposition 32

Proposition 33

Proposition 34

## Proposition 35

Proposition 36

Proposition 37

Proposition 38

Proposition 39

Proposition 40

## Donations • Vendors

## Endorsements • Full text

## Ballot titles • Fiscal impact

## Local measures

- The ***San Gabriel Valley Tribune***: "Proposition 35 on the Nov. 6 ballot ensures that those who trade on human lives pay a high price with tough new sentencing guidelines and dramatic increases to fines."<sup>[28]</sup>
- The ***San Jose Mercury News***<sup>[29]</sup>
- The ***Vallejo Times-Herald***: "Critics...worry that the new definition of human traffickers is so vague that it could include people caught distributing child pornography, even if they had no personal contact with the young victims. We'd prefer the language were tighter, but the possibility that some aggressive prosecutors will overreach and throw the book at some child porn distributor -- well, that's a risk we're somehow willing to take."<sup>[30]</sup>

## "No on 35"

- The ***Bay Area Reporter***: "This proposition is an abuse of the initiative process. The proposition makes no provision for funding, which will certainly be in the tens of millions of dollars annually. It also contains numerous provisions that seriously invade privacy and would have lifelong effects on those caught in its web. We are sensitive to the issue, because it wasn't that long ago that gay men were arrested and forced to register as sex offenders for offenses as minor as public urination. Under this proposition, they would lose all personal privacy for life. It is bad policy."<sup>[31]</sup>
- The ***Fresno Bee***: "Human trafficking is a despicable crime. But Proposition 35 on the Nov. 6 ballot is not the right approach to the problem."<sup>[32]</sup>
- The ***Lompoc Record***: "Prop. 35 thus zeroes in on some of mankind's most loathsome predators. That's the feel-good part. The not-so-feel-good aspect is that this get-tougher-on-crime trend will further burden the state's prison system, therefore California taxpayers, while doing very little to stem the tide of human trafficking."<sup>[33]</sup>
- The ***Los Angeles Times***: "If reducing sex trafficking and forced labor were as simple as adopting a ballot measure that promised to deal with those predatory practices, there would be every reason to vote for the popular Proposition 35. But the initiative system doesn't work that way. Voters must ask more than whether they would like to see those cruelties come to an end. They must be satisfied that the particular, far-reaching and inflexible penalties and procedures that would be enacted by this measure would help; that they are the best approach to solving an actual problem; and that actual progress would dwarf any unintended consequences. Proposition 35 fails those tests."<sup>[34]</sup>
- The ***Merced Sun-Star***: "Sex trafficking is a repugnant crime that needs to be prevented and punished. State lawmakers have a responsibility to beef up the laws against it and keep them current. We recommend a 'no' vote on Proposition 35 while standing firmly against any form of human trafficking."<sup>[35]</sup>
- The ***Modesto Bee***: "It's difficult to oppose Proposition 35, a measure that purports to stop a crime as despicable as human trafficking. But the proposition is overbroad and misdirected."<sup>[36]</sup>
- The ***Press-Enterprise***: "Human trafficking is a heinous crime, certainly, but the rigid prescriptions of a ballot measure are a poor way to address a complex issue. Voters should reject Prop. 35, in favor of more flexible and comprehensive approaches."<sup>[37]</sup>



- *Sacramento Bee*: "It's difficult to oppose Proposition 35, a measure that purports to stop a crime as despicable as human trafficking. But the proposition is overbroad and misdirected."<sup>[38]</sup>
- The *San Francisco Bay Guardian*: "Prop. 35 is a parade of horrors that could be used to make someone who peed in public turn over his Internet information and to threaten friends and relatives of sex workers. Under this law, the adult child of a sex worker who was living in her house with her financial support could be tagged a trafficker — and could face a long prison term and a lifetime of being tagged as a sex offender."<sup>[39]</sup>
- The *Santa Cruz Sentinel*: "Curiously, Prop. 35 fails to deal with one of the major difficulties in prosecuting trafficking cases -- the reluctance of victims to come forward because of their immigration status or fear of retaliation from criminal gangs. Instead, the measure seems to take for granted that imposing longer sentences and bigger fines will persuade victims to testify. That's a dubious assumption."<sup>[40]</sup>
- The *Ventura County Star*: "Another problem is Proposition 35's overreaching language. We foresee that courts will find it unconstitutionally limits an accused person's right to assert his or her innocence. Also, individuals could face severe penalties for very limited, indirect involvement with artistic or other creative works that later are found to have used minors illegally."<sup>[41]</sup>

## Polling information

*See also: Polls, 2012 ballot measures*

The California Business Roundtable, in conjunction with Pepperdine University, conducted polls on Proposition 35.<sup>[42]</sup>

Date of Poll	Pollster	In favor	Opposed	Undecided	Number polled
October 7-10, 2012	California Business Roundtable	77.8%	13.6%	8.6%	830
October 21-28, 2012	California Business Roundtable	76.5%	13.7%	9.8%	2,115

## Path to the ballot

*See also: California signature requirements*

- Daphne Phung submitted a letter requesting a ballot title on October 26, 2011.
- The ballot title and ballot summary were issued by the Attorney General of California's office on December 23, 2011.
- 504,760 valid signatures were required for qualification purposes.
- The 150-day circulation deadline for #11-0059 was May 21, 2012.
- On April 10, 2012, the California Secretary of State announced that signatures had been submitted.





- On May 9, 2012, the California Secretary of State announced that the initiative had qualified for the November 6, 2012 ballot.<sup>[1]</sup>

### **Cost of signature collection:**

The cost of collecting the signatures to qualify Proposition 35 for the ballot came to **\$1,437,523**.

The signature vendor was Progressive Campaigns (PCI).

*See also: California ballot initiative petition signature costs*

## **Lawsuits**

*See also: List of ballot measure lawsuits in 2012*

### **Ballot language**

Supporters of Proposition 35 filed a lawsuit in Sacramento Superior Court on August 3, 2012. The lawsuit was successful. The purpose of the lawsuit was to force the California Secretary of State, in the Spanish-language version of the state's official voter guide, to replace the term "tráfico humano" with "trata de personas."<sup>[43]</sup>

### **Federal lawsuit**

After the election, the ACLU and the Electronic Frontier Foundation filed a class-action lawsuit in federal court, asking that the court stop Proposition 35 from going into effect, on the grounds that it violates the United States Constitution.<sup>[44]</sup>

A federal judge agreed to grant a temporary restraining order. The Attorney General of California will defend the initiative in court. The first hearing on the lawsuit is scheduled for November 20, 2012.<sup>[2]</sup>

The general thrust of the lawsuit is that Proposition 35 restricts the free speech and free association rights of registered sex offenders, particularly online. Two anonymous sex offenders are the plaintiffs in the "Joe Doe" lawsuit. One of them said in the suit that because of Proposition 35, he will no longer be allowed to participate in online political discussions. The ACLU and the Electronic Frontier Foundation are helping with the lawsuit because they believe that when a registered sex offender is unable to participate in online political discussions without revealing his status as a registered sex offender, this amounts to an unconstitutional burden on the free speech and association rights of the sex offender.<sup>[2]</sup>

## **External links**

### **Basic information:**

- Complete November 6, 2012 official voter guide (<http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf>)
- Ballot title, summary and LAO analysis of Proposition 35 (<http://vig.cdn.sos.ca.gov/2012/general/pdf/35-title-summ-analysis.pdf>)



- Arguments for and against Proposition 35 (<http://vig.cdn.sos.ca.gov/2012/general/pdf/35-arg-rebuttals.pdf>) in the official state voter guide
- Letter requesting a ballot title for Initiative 11-0059 ([http://ag.ca.gov/cms\\_attachments/initiatives/pdfs/i1002\\_11-0059\\_%28human\\_trafficking%29.pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i1002_11-0059_%28human_trafficking%29.pdf))
- Living Voters Guide to Proposition 35 ([https://cali.livingvotersguide.org/ca\\_prop\\_35](https://cali.livingvotersguide.org/ca_prop_35))
- Proposition 35 (<http://smartvoter.org/2012/11/06/ca/state/prop/35/>) , an overview prepared by the League of Women Voters of California
- Proposition 35 on Voter's Edge (<http://votersedge.org/california/ballot-measures/2012/november/prop-35>)
- Proposition 35 Cheatsheet (<http://www.kcet.org/news/ballotbrief/elections2012/propositions/prop-35-cheat-sheet-human-trafficking.html>) from KCET
- Proposition 35 (<http://californiachoices.org/ballot-measures/proposition-35>) on California Choices (sponsored by Next 10, IGS at UC Berkeley, the UC San Diego Political Science Department, the Bill Lane Center for the American West at Stanford, and the Center for CA Studies at Sac State)
- Proposition 35 (<http://www.calvoter.org/voter/elections/2012/general/props/prop35.html>) at the California Voter Foundation

### Supporters:

- "Vote Yes on 35" (<http://www.VoteYeson35.com>) , website of supporters
- "Yes on 35" on Facebook (<https://www.facebook.com/VoteYesOn35>)
- "Yes on 35" on Twitter (<https://twitter.com/VoteYesOn35>)
- Campaign finance reports of "Californians Against Sexual Exploitation" (<http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1321216&session=2011>)
- Campaign finance reports of "Safer California Foundation" (<http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1346178&session=2011>)

### Opponents:

- Erotic Service Provider Legal, Educational and Research Project (<http://esplerp.org/>)
- THE CALIFORNIA Law- Turning all consensual sex acts into "human trafficking" (<http://bebopper76.wordpress.com/2012/09/27/proposition-35-the-california-law-banning-all-forms-of-anything-sexual/PROPOSITION>)
- No On Prop 35-Victims advocates and Cops Speak out (<http://noonprop35.wordpress.com/>)
- Disputing the lies of Prop 35: "legislators have not done anything for victims." Here is a list of 4 laws regarding sex, money and the minors passed in 2011 by one California Assembly lawmaker (<http://asmdc.org/members/a16/legislation/itemlist/category/283-2011-2012-legislative-update>)

## References

1. <sup>1.0 1.1 1.2</sup> *KCET*, "Human Trafficking Initiative Backed by Former Facebook Exec Qualifies for November Ballot", May 10, 2012 (<http://www.kcet.org/news/ballotbrief/ballot-measures/human-trafficking-initiative-qualifies-for-november-ballot.html>)
2. <sup>2.0 2.1 2.2</sup> *Slate*, "Blocking California's New Sex-Offender Law", November 15, 2012 ([http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2012/11/proposition\\_35\\_california\\_s\\_new\\_sex-offender-law.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2012/11/proposition_35_california_s_new_sex-offender-law.html))
3. <sup>3.0</sup> *The Tribune*, "Judge continues to block part of Calif. initiative", January 11, 2013 (<http://www.sanluisobispo.com/2013/01/11/2353572/judge-continues-to-block-part.html>)
4. <sup>4.0</sup> *News 10*, "Brown's tax hike finishes signature gathering", May 3, 2012 (<http://www.news10.net/capitol/article/191994/525/Brown-tax-initiative-poised-for-November-ballot>)

5. ↑ *Vote YES on 35*, "Stop Human Trafficking In California: Endorsements" (<http://www.caseact.org/case/endorsements/>)
6. ↑ *Vote YES on 35*, "Stop Human Trafficking In California: Endorsements" (<http://www.caseact.org/case/endorsements/>)
7. ↑ *Walnut Patch*, "Democratic Party Picks State Ballot Measures to Support", July 30, 2012 (<http://walnut.patch.com/articles/democratic-party-picks-state-ballot-measures-to-support>)
8. ↑ *Walnut Creek Patch*, "California Republicans Oppose Proposed Tax Measures", August 12, 2012 (<http://walnut.patch.com/articles/california-republicans-oppose-proposed-tax-measures>)
9. ↑ <sup>9.0</sup> <sup>9.1</sup> *California Secretary of State*, "Arguments Against Proposition 35" (<http://www.sos.ca.gov/elections/vig-public-display/110612-general-election/prop-35/prop-35-arg-against.pdf>)
10. ↑ *Wikipedia Profile of Norma Jean Almodovar* ([http://en.wikipedia.org/wiki/Norma\\_Jean\\_Almodovar](http://en.wikipedia.org/wiki/Norma_Jean_Almodovar))
11. ↑ <sup>11.0</sup> <sup>11.1</sup> *California Secretary of State*, "Rebuttal to arguments in favor of Proposition 35" (<http://www.sos.ca.gov/elections/vig-public-display/110612-general-election/prop-35/prop-35-rebut-arg-in-favor.pdf>)
12. ↑ <sup>12.0</sup> <sup>12.1</sup> <sup>12.2</sup> <sup>12.3</sup> *Inside Bay Area*, "Victims advocates oppose Proposition 35 human trafficking measure", September 21, 2012 ([http://www.insidebayarea.com/elections/ci\\_21594453/victims-advocates-oppose-prop-35-human-trafficking-measure?source=most\\_emaild](http://www.insidebayarea.com/elections/ci_21594453/victims-advocates-oppose-prop-35-human-trafficking-measure?source=most_emaild))
13. ↑ *San Francisco Rising*, November 6, 2012 endorsements (<http://www.sanfranciscorising.org/a/content/2012-endorsements>)
14. ↑ *California Association for Criminal Justice* (<http://www.cacj.org/>)
15. ↑ *Peace and Freedom Party, 2012* (<http://www.peaceandfreedom2012.org/>)
16. ↑ California Public Safety Informational Hearing for both Assembly and Senate, August 14, 2012 (<https://vimeo.com/47840049>)
17. ↑ *Contra Costa Times*, "Summary of our endorsements on state propositions", September 22, 2012 ([http://www.contracostatimes.com/news/ci\\_21603645/contracosta-times-oakland-tribune-summary-our-endorsements](http://www.contracostatimes.com/news/ci_21603645/contracosta-times-oakland-tribune-summary-our-endorsements))
18. ↑ *Daily Democrat*, "Democrat endorsements: Propositions", October 14, 2012 ([http://www.dailydemocrat.com/editorial/ci\\_21770457/democrat-endorsements-propositions](http://www.dailydemocrat.com/editorial/ci_21770457/democrat-endorsements-propositions))
19. ↑ *Long Beach Press Telegram*, "Endorsement: Yes on Prop. 35 -- Fight human trafficking in California with tougher penalties", October 11, 2012 ([http://www.presstelegram.com/opinions/ci\\_21752569/endorsement-yes-prop-35-fight-human-trafficking-california](http://www.presstelegram.com/opinions/ci_21752569/endorsement-yes-prop-35-fight-human-trafficking-california))
20. ↑ *Los Angeles Daily News*, "Endorsement: Yes on Prop. 35 -- Fight human trafficking in California with tougher penalties", October 11, 2012 ([http://www.dailynews.com/opinions/ci\\_21752569/endorsement-yes-prop-35-fight-human-trafficking-california](http://www.dailynews.com/opinions/ci_21752569/endorsement-yes-prop-35-fight-human-trafficking-california))
21. ↑ *Marin Independent Journal*, "Editorial: IJ's endorsements for state Propositions 34-37", October 12, 2012 ([http://www.marinij.com/opinion/ci\\_21753676/editorial-ij-s-endorsements-state-propositions-34-37](http://www.marinij.com/opinion/ci_21753676/editorial-ij-s-endorsements-state-propositions-34-37))
22. ↑ *North County Times*, "Yes on 35", September 19, 2012 ([http://www.nctimes.com/news/opinion/editorial/editorial-yes-on/article\\_0f2293d3-8458-5e99-930a-1277ed4b4f7d.html](http://www.nctimes.com/news/opinion/editorial/editorial-yes-on/article_0f2293d3-8458-5e99-930a-1277ed4b4f7d.html))
23. ↑ *Orange County Register*, September 25, 2012 (<http://www.ocregister.com/articles/trafficking-372698-prop-law.html>)
24. ↑ *Redding Record Searchlight*, "Editorial: Prop. 35: Sound steps to combat human trafficking", September 20, 2012 (<http://www.redding.com/news/2012/sep/20/editorial-prop-35-sound-steps-to-combat-human/>)
25. ↑ *San Bernardino Sun*, "Yes on Prop. 35: Fight human trafficking in California with tougher penalties", October 11, 2012 ([http://www.sbsun.com/ci\\_21752143/yes-prop-35-fight-human-trafficking-california-tougher?source=most\\_viewed](http://www.sbsun.com/ci_21752143/yes-prop-35-fight-human-trafficking-california-tougher?source=most_viewed))
26. ↑ *San Diego Union-Tribune*, "Yes on Prop. 35: Get tougher on human trafficking", September 18, 2012 (<http://www.utsandiego.com/news/2012/sep/18/yes-on-prop-35-get-tougher-on-human-trafficking/>)
27. ↑ *San Francisco Chronicle*, "Editorial: Chronicle recommends", October 5, 2012 (<http://www.sfgate.com/default/article/Editorial-Chronicle-recommends-3923462.php>)
28. ↑ *San Gabriel Valley Tribune*, "Our View: Fight sex crimes: Yes on Prop. 35", October 11, 2012 ([http://www.sgvtribune.com/editorial/ci\\_21752277/our-view-fight-sex-crimes-vote-yes-prop](http://www.sgvtribune.com/editorial/ci_21752277/our-view-fight-sex-crimes-vote-yes-prop))
29. ↑ *San Jose Mercury News*, "Summary of our endorsements on state propositions", September 22, 2012 ([http://www.mercurynews.com/ci\\_21603644/summary-our-endorsements-state-propositions](http://www.mercurynews.com/ci_21603644/summary-our-endorsements-state-propositions))

30. ↑ *Vallejo Times-Herald*, "'Yes' on 35: A despicable practice that we can stop", October 14, 2012 ([http://www.timesheraldonline.com/editorial/ci\\_21770504/yes-35-despicable-practice-that-we-can-stop](http://www.timesheraldonline.com/editorial/ci_21770504/yes-35-despicable-practice-that-we-can-stop))
31. ↑ *Bay Area Reporter*, "Editorial: State ballot measures", September 20, 2012 (<http://www.ebar.com/news/article.php?sec=news&article=68060>)
32. ↑ *Fresno Bee*, "Although well-intended, Prop. 35 is flawed", October 1, 2012 (<http://www.fresnobee.com/2012/09/25/3005247/editorial-although-well-intended.html>)
33. ↑ *Lompoc Record*, "Big changes for crime, punishment", October 12, 2012 ([http://www.lompocrecord.com/news/opinion/editorial/big-changes-for-crime-punishment/article\\_1fe53398-1432-11e2-b8e3-0019bb2963f4.html](http://www.lompocrecord.com/news/opinion/editorial/big-changes-for-crime-punishment/article_1fe53398-1432-11e2-b8e3-0019bb2963f4.html))
34. ↑ *Los Angeles Times*, "No on Proposition 35", October 10, 2012 (<http://www.latimes.com/news/opinion/editorials/la-ed-end-prop35-20121010,0,4382854.story>)
35. ↑ "Our View: Proposition 35 a good idea, but too flawed", October 8, 2012 (<http://www.mercedsunstar.com/2012/10/08/2579764/our-view-proposition-35-a-good.html>)
36. ↑ *Modesto Bee*, "'No' on flawed, well-intended Proposition 35", October 2, 2012 (<http://www.modbee.com/2012/09/24/2397919/endorsements-no-on-flawed-well.html>)
37. ↑ *Press-Enterprise*, "No on 35", October 1, 2012 (<http://www.pe.com/opinion/editorials-headlines/20121001-election-no-on-35.ece>)
38. ↑ *Sacramento Bee*, "Endorsements: 'No' on flawed, well-intended Proposition 35", September 24, 2012 (<http://www.sacbee.com/2012/09/24/4847731/endorsements-no-on-flawed-well.html#storylink=misearch>)
39. ↑ *San Francisco Bay Guardian*, "Endorsements 2012: State ballot measures", October 3, 2012 (<http://www.sfbg.com/2012/10/03/endorsements-2012-state-ballot-measures>)
40. ↑ *Santa Cruz Sentinel*, "Editorial: Prop. 35's dubious propositions", October 10, 2012 ([http://www.santacruzsentinel.com/opinion/ci\\_21744354/editorial-prop-35s-dubious-propositions](http://www.santacruzsentinel.com/opinion/ci_21744354/editorial-prop-35s-dubious-propositions))
41. ↑ *Ventura County Star*, "Editorial: Prop. 35, human trafficking law, not good enough", September 5, 2012 (<http://www.vcstar.com/news/2012/sep/05/editorial-prop-35-human-trafficking-law-not-good/>)
42. ↑ *Ventura County Star*, "Support plummets for initiative to label genetically engineered foods", October 11, 2012 (<http://www.vcstar.com/news/2012/oct/11/support-plummets-for-initiative-to-label-foods/>)
43. ↑ *In the Superior Court of the State of California, County of Sacramento*, "Daphne Phung and Chris Kelly v. Debra Bowen", order issued August 10, 2012 (<http://www.sos.ca.gov/elections/vig-public-display/110612-general-election/court-orders/prop35-order-judgment-1225.pdf>)
44. ↑ *John Doe v. Kamala Harris* ([https://www.aclunc.org/cases/active\\_cases/asset\\_upload\\_file464\\_12137.pdf](https://www.aclunc.org/cases/active_cases/asset_upload_file464_12137.pdf))

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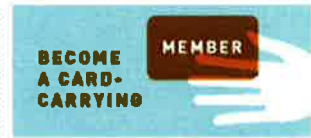
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# Court Grants Preliminary Injunction in ACLU Suit Challenging Prop 35's Free Speech Restrictions

**For Immediate Release: January 11, 2013**

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Today a federal judge granted a **preliminary injunction** in a lawsuit filed by the ACLU of Northern California (ACLU-NC) and the Electronic Frontier Foundation (EFF) that challenges unconstitutional provisions in Proposition 35.

"The court recognized that Prop 35's online speech regulations are overly broad and violate the First Amendment," said Linda Lye, staff attorney at the ACLU-NC. "Stopping human trafficking is a worthy goal, but the portions of Prop 35 that limit online speech won't get us there. It's crucial that free speech remains free for all of us."

"We're glad the court recognized the chilling effects Prop. 35 has on online speech," said EFF Staff Attorney Hanni Fakhoury. "This is an important step in ensuring that the First Amendment isn't the casualty of a well-intentioned initiative."

Proposition 35 is ballot measure passed by California voters in November 2012 that restricts the legal and constitutionally protected speech of all registered sex offenders in California. It requires anyone who is a registered sex offender - even people with decades-old, low-level offenses like misdemeanor indecent exposure and people whose offenses were not related to the Internet - to turn over a list of all their Internet identifiers and service providers to law enforcement. While the law is written very unclearly, this likely includes email addresses, usernames and other identifiers used for online political discussion groups, book and restaurant review sites, forums about medical conditions, and newspaper or blog comments.

Under the law, more than 73,000 Californians would have to immediately provide this information to law enforcement, and must report any new account or screen name within 24 hours of setting it up, even if the new screen name is their own real name. Violations can result in years in prison

The lawsuit charges that Proposition 35's online speech regulations are overly broad and violate the First Amendment, both because they prohibit anonymous speech and because the reporting requirements burden all sorts of online speech.

###

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H.2

## Court Grants Preliminary Injunction in ACLU Suit Challenging Prop 35's Free Speech Restrictions

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###



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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE, et al.,

Plaintiffs,

v.

KAMALA D. HARRIS, et al.,

Defendants.

NO. C12-5713 TEH

ORDER GRANTING  
PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION

This matter came before the Court on December 17, 2012, on Plaintiffs' motion for a preliminary injunction. Plaintiffs challenge several provisions of the Californians Against Sexual Exploitation Act ("CASE Act" or "Act") that require registered sex offenders to provide certain information concerning their Internet use to law enforcement. Having carefully considered the parties' written and oral arguments, the Court now GRANTS preliminary injunctive relief for the reasons explained below.

**I. BACKGROUND**

On November 6, 2012, California voters approved the CASE Act, which appeared on the ballot as Proposition 35, with approximately 81% of the vote. Ex. D to Intervenors' Req. for Judicial Notice at 1.<sup>1</sup> Plaintiffs John Doe, Jack Roe,<sup>2</sup> and the non-profit organization California Reform Sex Offender Laws filed this action on behalf of present and future

<sup>1</sup>The Court GRANTS Intervenors' unopposed request for judicial notice in its entirety.

<sup>2</sup>The Court granted the two individual plaintiffs' unopposed motion to proceed anonymously during the pendency of the preliminary injunction motion on November 15, 2012.

1 California sex offender registrants the following day, when the Act was to take effect.<sup>3</sup> See  
 2 Cal. Const. art. II, § 10(a). They contend that California Penal Code sections 290.014(b) and  
 3 290.015(a)(4)-(6), as enacted by the CASE Act, violate Plaintiffs' First Amendment rights to  
 4 free speech and free association. They further contend that the provisions are void for  
 5 vagueness under the Fourteenth Amendment.

6 California's sex offender registration program is governed by California Penal Code  
 7 section 290 *et seq.* The CASE Act added the following items to the list of information  
 8 registrants must provide "upon release from incarceration, placement, commitment, or  
 9 release on probation":

10 (4) A list of any and all Internet identifiers established or used  
 11 by the person.

12 (5) A list of any and all Internet service providers used by the  
 13 person.

14 (6) A statement in writing, signed by the person, acknowledging  
 15 that the person is required to register and update the  
 information in paragraphs (4) and (5), as required by this  
 chapter.

16 Cal. Penal Code § 290.015(a). In addition, items (4) and (5) must be reported as part of the  
 17 annual registration process. *Id.* § 290.012(a).

18 The Act defines "Internet service provider" as "a business, organization, or other  
 19 entity providing a computer and communications facility directly to consumers through  
 20 which a person may obtain access to the Internet," except for any "business, organization, or  
 21 other entity that provides only telecommunications services, cable services, or video services,  
 22 or any system operated or services offered by a library or educational institution." *Id.*  
 23 § 290.024(a). "Internet identifier" is defined as "an electronic mail address, user name,  
 24 screen name, or similar identifier used for the purpose of Internet forum discussions, Internet  
 25 chat room discussions, instant messaging, social networking, or similar Internet  
 26 communication." *Id.* § 290.024(b).

27 <sup>3</sup>California has over 75,000 registrants, excluding those who are incarcerated and  
 28 those who have been deported. Cal. Dep't of Justice, *Cal. Sex Registrant Statistics* (Jan. 10,  
 2013), <http://www.meganslaw.ca.gov/statistics.aspx?lang=ENGLISH>.

1 The CASE Act also added a provision that requires registrants to notify law  
 2 enforcement within 24 hours of any changes in the Internet information subject to  
 3 registration:

4 If any person who is required to register pursuant to the Act adds  
 5 or changes his or her account with an Internet service provider or  
 6 adds or changes an Internet identifier, the person shall send  
 7 written notice of the addition or change to the law enforcement  
 agency or agencies with which he or she is currently registered  
 within 24 hours. The law enforcement agency or agencies shall  
 make this information available to the Department of Justice.

8 *Id.* § 290.014(b). This section further requires all registrants to “immediately provide” the  
 9 required information to law enforcement upon the effective date of the Act. *Id.*

10 Following a telephonic hearing, the Court granted Plaintiffs’ motion for a temporary  
 11 restraining order (“TRO”) on November 7, 2012, and enjoined “Defendant Kamala Harris  
 12 and her officers, agents, servants, employees, and attorneys, and those persons in active  
 13 concert or participation with her . . . from implementing or enforcing California Penal Code  
 14 sections 290.014(b) and 290.015(a)(4)-(6), as enacted by Proposition 35, or from otherwise  
 15 requiring registrants to provide identifying information about their online speech to the  
 16 government.” Nov. 7, 2012 Order at 3. Pursuant to the parties’ agreement, the Court  
 17 explicitly applied this order “to all California state and local law enforcement officers and to  
 18 all members of the putative class, i.e., to all persons who are required to register under  
 19 California Penal Code section 290, including those whose duty to register arises after the date  
 20 of this order.” *Id.*

21 On November 14, 2012, the Court entered a stipulation and order deleting the  
 22 application of the TRO to “all California state and local law enforcement officers,” but  
 23 providing that “the California Department of Justice and local law enforcement will not  
 24 require registrants to submit the information covered by the TRO so long as the TRO remains  
 25 in effect.” Nov. 14, 2012 Stip. & Order ¶ 3. The parties further agreed that the TRO would  
 26 remain in effect “until the Court issues its ruling on Plaintiffs’ Motion for a Preliminary  
 27 Injunction or January 11, 2013, whichever occurs first,” *id.* ¶ 4, and that “any preliminary  
 28 injunctive relief granted by the Court will apply both to the named Plaintiffs and to all

persons who are required to register under California Penal Code § 290, including those whose duty to register arises during the pendency of the TRO and any preliminary injunctive relief,” *id.* ¶ 2. In addition, the parties agreed that this matter would be litigated as a facial challenge unless and until Plaintiffs provide the Attorney General with at least 45 days notice that they intend to raise an as-applied challenge. *Id.* ¶ 6.

Chris Kelly and Daphne Phung, the proponents of Proposition 35, moved to intervene on November 12, 2012. Although the Court did not grant the motion to intervene until January 10, 2013, Intervenors filed a written opposition and addressed the Court at oral argument. Thus, they were fully heard on Plaintiffs’ motion for a preliminary injunction.

## II. LEGAL STANDARD

To obtain a preliminary injunction, Plaintiffs must establish that: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of the preliminary injunction; (3) the balance of equities tips in their favor; and (4) the issuance of the preliminary injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A stronger showing on one of these four elements may offset a weaker showing on another, but the movant must nonetheless “make a showing on all four prongs.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

## III. DISCUSSION

### A. Likelihood of Success on the Merits

The Court first considers Plaintiffs’ likelihood of success on the merits. Because the Court finds Plaintiffs likely to succeed on their First Amendment speech claim for the reasons discussed below, it does not address whether Plaintiffs are likely to succeed on any of their remaining claims.

#### 1. First Amendment Legal Principles

This case concerns the First Amendment’s protection of the right to speak anonymously online. *See In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir.



2011). It is undisputed that speech by sex offenders who have completed their terms of probation or parole enjoys the full protection of the First Amendment. Rep. Tr. at 21:11-15 (Plaintiffs), 51:4-10 (government), 51:23-24 (Intervenors); *see also Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105 (1991) (striking down New York law that sought to interfere with criminals' profiting from works describing their crimes). The provisions at issue here are not outright bans on anonymous online speech, but they may still violate the First Amendment if they impermissibly burden such speech: "[T]he distinction between laws burdening and laws banning speech is but a matter of degree . . . . Lawmakers may no more silence unwanted speech by burdening its utterance than by censoring its content." *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2664 (2011) (internal quotation marks and citation omitted).<sup>4</sup>

Plaintiffs here challenge the CASE Act as facially overbroad. Although Plaintiffs bear the burden of demonstrating a likelihood of success on the merits under the preliminary injunction standard, the government ultimately "bears the burden of proving the constitutionality of its actions" whenever it seeks to restrict speech. *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000).

To succeed on a facial overbreadth challenge under the First Amendment, a plaintiff must demonstrate either "that no set of circumstances exists under which [the statute] would be valid," or that "a substantial number of [the statute's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 130 S. Ct. 1577, 1587 (2010) (internal quotation marks and citations omitted). The Court's inquiry is not limited to the application of the challenged provisions to the particular plaintiffs before it, as "[l]itigants . . . are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally

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<sup>4</sup>That the challenged provisions were enacted by voter initiative does not alter the constitutional analysis. "The voters may no more violate the United States Constitution by enacting a ballot issue than the general assembly may by enacting legislation." *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 194 (1999) (internal quotation marks and citation omitted).



1 protected speech or expression.” *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).  
 2 However, “the mere fact that one can conceive of some impermissible applications of a  
 3 statute is not sufficient to render it susceptible to an overbreadth challenge.” *Members of the*  
 4 *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984).

5 Plaintiffs urge the Court to subject the challenged provisions to strict scrutiny because  
 6 they discriminate against registrants as a class of speakers. However, strict scrutiny is only  
 7 required where “speaker-based laws . . . reflect the government’s preference for the  
 8 substance of what the favored speakers have to say (or aversion to what the disfavored  
 9 speakers have to say).” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 658 (1994). Here,  
 10 the Act reflects no such preference and operates without regard to the message that any  
 11 registrant’s speech conveys. The challenged provisions are therefore content-neutral, and  
 12 intermediate scrutiny applies. *Id.* at 662; *see also Doe v. Shurtleff*, 628 F.3d 1217, 1223  
 13 (10th Cir. 2010) (applying intermediate scrutiny to Utah reporting requirement that said  
 14 “nothing about the ideas or opinions that [registrants] may or may not express, anonymously  
 15 or otherwise” and were not “aimed at suppressing the expression of unpopular views”  
 16 (internal quotation marks, alteration, and citation omitted)).

17 Under intermediate scrutiny, a law must “be narrowly tailored to serve the  
 18 government’s legitimate, content-neutral interests.” *Comite de Jornaleros de Redondo*  
 19 *Beach v. City of Redondo Beach*, 657 F.3d 936, 947 (9th Cir. 2011) (en banc), *cert. denied*,  
 20 132 S. Ct. 1566 (2012) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989)).  
 21 “To satisfy this standard, the law need not be the least speech-restrictive means of advancing  
 22 the Government’s interests”; the test is whether “the means chosen . . . burden substantially  
 23 more speech than is necessary to further the government’s legitimate interests.” *Turner*, 512  
 24 U.S. at 662 (internal quotation marks and citation omitted). The “essence of narrow  
 25 tailoring” is to “focus[] on the source of the evils the [government] seeks to eliminate . . . and  
 26 eliminate[] them without at the same time banning or significantly restricting a substantial  
 27 quantity of speech that does not create the same evils.” *Ward*, 491 U.S. at 799 n.7.

## 2. Construing the Statute

Before determining whether a challenged provision violates the First Amendment, a court must first construe the provision; “it is impossible to determine whether a statute reaches too far without first knowing what the statute covers.” *United States v. Williams*, 553 U.S. 285, 293 (2008). In doing so, the Court must consider the government’s “own implementation and interpretation,” but it is “not required to insert missing terms into the statute or adopt an interpretation precluded by the plain language of the ordinance.” *Comite*, 657 F.3d at 946 (internal quotation marks and citations omitted). Instead, the court may impose a limiting construction only if a provision is, on its face, “readily susceptible” to such a construction. *Reno v. ACLU*, 521 U.S. 844, 884 (1997) (internal quotation marks and citation omitted). Applying these principles to this case, the Court finds that the reporting requirements for “Internet service providers” and “Internet identifiers” are readily susceptible to the narrowing constructions discussed at oral argument and advanced by the government.<sup>5</sup>

### a. “Internet service provider”

The CASE Act defines “Internet service provider” as a “business, organization, or other entity providing a computer and communications facility directly to consumers through which a person may obtain access to the Internet,” excluding any “business, organization, or other entity that provides only telecommunications services, cable services, or video services, or any system operated or services offered by a library or educational institution.” Cal. Penal Code § 290.024(a). Pursuant to § 290.015(a)(5), a person subject to the reporting

<sup>5</sup>The government and Intervenor also suggest that, in construing the reporting requirements, the Court may look to the federal standards for state sex offender registry and notification systems developed under the Sex Offender Registration and Notification Act (“SORNA”). See 42 U.S.C. § 16915a(a) (providing for collection of “those Internet identifiers the sex offender uses or will use of any type that the Attorney General determines to be appropriate”); Nat’l Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030-01 at 38,055 (July 2, 2008) (U.S. Attorney General guidelines for state registries to include “all designations used by sex offenders for purposes of routing or self-identification in Internet communications or postings”). The Court does not find it necessary to rely on SORNA for this purpose because, as discussed below, it finds the construction of the statutes proposed by the government and Intervenor to be supported by the statutes’ plain language. Neither the government nor Intervenor argue that SORNA affects the Court’s analysis on any other issue.

requirements must, upon registration, provide to law enforcement “[a] list of any and all Internet service providers used by the person.” At oral argument, the government stated that the plain language of the Act limits this requirement to only “Internet service providers with which the registrant has an open account at the time of the registration.” Rep. Tr. at 48:2-15; *cf. id.* at 49:2-5 (noting Intervenor’s agreement). Plaintiffs acknowledged that it would be permissible for the Court to construe the statute in this manner, *id.* at 17:15-18:1, and the Court now does so. Reading section 290.015(a)(5) to exclude providers that are only accessed or used by the registrant, as opposed to those with which the registrant has an account, is consistent with both the common understanding of “Internet service provider” and California Penal Code section 290.014(b), which requires a registrant to update law enforcement only when he or she “adds or changes his or her *account* with an Internet service provider” (emphasis added).

**b. “Internet identifier”**

The CASE Act’s definition of “Internet identifier” – “an electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication” – is also readily susceptible to a construction that avoids many of the potential problems suggested by Plaintiffs. *Id.* § 290.024(b).<sup>6</sup> The Act may be reasonably interpreted to require reporting only of Internet identifiers actually used to post a comment, send an email, enter into an Internet chat, or engage in another type of interactive communication on a website, and not identifiers a registrant uses solely to purchase products or read content online. *See* Rep. Tr. at 63:8-16 (Intervenor’s suggesting this rule); *id.* at 64:22-24 (government focusing on “interactive communications” as the test for whether an Internet identifier must be reported); *id.* at 37:5-8 (Plaintiffs saying that it would be

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<sup>6</sup>Plaintiffs expressed fear that law enforcement may subsequently decide to require registrants to report the websites associated with their Internet identifiers. However, as Plaintiffs acknowledge, the Act’s language requires the reporting only of Internet identifiers and not associated websites. Mot. at 22-23.

1 reasonable to interpret the Act to “count[] once you actually use that account to post  
2 something”).<sup>7</sup>

3 This interpretation raises the question of when a registrant must report an Internet  
4 identifier that could potentially be used for interactive communication but that the registrant  
5 initially uses only to view content or make a purchase online. At oral argument, the  
6 government assured the Court that it would not require a registrant to report such an  
7 identifier upon creating it, but that a registrant would have to report the identifier within 24  
8 hours of first using the identifier to engage in interactive communication. Rep. Tr. at 65:21-  
9 66:11. The Court finds this construction to be reasonable.

10 Consistent with the above discussion, the Court construes the challenged provisions  
11 as requiring registrants to report: (1) “Internet service providers” with which the registrant  
12 has a current account at the time of registration or with which the registrant later creates an  
13 account, and (2) “Internet identifiers” that are actually used by the registrant to engage in  
14 interactive communication with others, within 24 hours of the registrant’s first use of the  
15 identifier for interactive communication.

### 16 3. Narrow Tailoring

17 The Court now turns to whether Plaintiffs are likely to succeed in showing that the  
18 challenged provisions, as just construed, fail to satisfy the First Amendment under  
19 intermediate scrutiny. This requires the Court to determine whether the provisions are  
20 “narrowly tailored to serve the government’s legitimate, content-neutral interests.” *Comite*,  
21 657 F.3d at 947 (internal quotation marks and citation omitted).

22 The CASE Act’s stated purposes include “combat[ing] the crime of human  
23 trafficking” and “strengthen[ing] laws regarding sexual exploitation, including sex offender  
24 registration requirements, to allow law enforcement to track and prevent online sex offenses

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25  
26 <sup>7</sup>The government suggested that blog usernames need not be reported as long as the  
27 blog did not permit interactive comments. Rep. Tr. at 63:17-19. The Court declines to  
28 interpret the statute in this fashion since the government has not explained why a registrant’s  
use of his or her own non-interactive blog to comment should be distinguished from his or  
her posting the same comment on a different website. However, this deviation from the  
government’s proposed construction is not material to the Court’s First Amendment analysis.



1 and human trafficking.” CASE Act § 3(1), (3). The Act’s text also expresses an interest in  
 2 “deter[ring] predators from using the Internet to facilitate human trafficking and sexual  
 3 exploitation.” *Id.* § 2(6). Plaintiffs do not dispute that these are legitimate government  
 4 interests. *Cf., e.g., Doe v. Jindal*, 853 F. Supp. 2d 596, 805 (M.D. La. 2012) (“There can be  
 5 no doubt that the state has a wholly legitimate interest in protecting children from sex  
 6 offenders online.”).

7 It is not difficult to imagine situations in which having registrants’ Internet identifiers  
 8 would advance these interests. For instance, if a registered sex offender used a social  
 9 networking site to recruit victims for human trafficking, being able to match the Internet  
 10 identifier used to do the recruiting against a database of registered Internet identifiers could  
 11 help to identify the perpetrator.<sup>8</sup> *Cf.* Bock Decl. ¶ 10 (describing trafficking case of twin  
 12 girls recruited through a social networking site). Likewise, a database of Internet identifiers  
 13 could be used to identify the perpetrator of a sex offense – assuming that the person were a  
 14 registrant<sup>9</sup> – who used an anonymous Internet account to make contact with his or her  
 15 victim. *Cf. id.* ¶ 11 (describing case of a person who raped four women he contacted via  
 16 Craigslist, including a teenage victim “whose pimp had been trafficking her”). Although the  
 17 government has not presented any real-life examples involving the use of Internet  
 18 information in a sex offender registry to prevent or solve a crime,<sup>10</sup> the Court finds that the  
 19 challenged provisions could conceivably advance the legitimate purposes of the Act. It now  
 20 turns to the question of whether they are narrowly tailored to achieving those purposes.

21  
 22  
 23 <sup>8</sup>This assumes that the re-offending registrant complied with the Internet reporting  
 requirements enacted by the CASE Act.

24 <sup>9</sup>Plaintiffs’ unchallenged statistics suggest that “most online predators” –  
 25 approximately 96% – “are not registered offenders and have no prior record.” Finkelhor  
 Decl. ¶ 18.

26 <sup>10</sup>The government argues that it cannot provide such examples from California  
 27 because the challenged provisions have not yet gone into effect. However, neither the  
 28 government nor Intervenor responded to Plaintiffs’ observation that data from other  
 jurisdictions where Internet registration requirements are in effect could shed light on the  
 potential impact of such requirements in California.

Defendants and Intervenors assert that *Shurtleff*, 628 F.3d 1217, in which the Tenth Circuit upheld a reporting requirement in Utah, is persuasive authority that the CASE Act should survive scrutiny under the First Amendment. In *Shurtleff*, the challenged statute required a registrant “to provide all ‘Internet identifiers and the addresses [he] uses for routing or self-identification in Internet communications or postings.’” *Id.* at 1221 (footnote omitted) (alteration in original) (quoting Utah Code Ann. § 77-27-21.5(14)(i) (West 2008)). An Internet identifier was defined as “‘any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication.’” *Id.* at 1221 n.1 (quoting Utah Code Ann. § 77-27-21.5(1)(j)). The district court found that the original statutory scheme violated the First Amendment because it “contained no restrictions on how the [state] could use or disseminate registrants’ Internet information, implicating protected speech and criminal activity alike.” *Doe v. Shurtleff*, Case No. 1:08-CV-64-TC, 2009 WL 2601458, at \*1 (D. Utah Aug. 20, 2009).

The Utah legislature subsequently amended the statute to limit state officials’ use of the information to “investigating kidnapping and sex-related crimes, and . . . apprehending offenders. . . .” *Shurtleff*, 628 F.3d at 1221 (internal quotation marks omitted) (quoting Utah Code Ann. § 77-27-21.5(2) (West Supp. 2010)). The legislature simultaneously amended the state’s public records act “to designate certain information provided by an offender, including internet identifiers, as private.”<sup>11</sup> *Id.* (citing Utah Code Ann. § 63G-2-302(1)(m)). This meant that the information could “only be disclosed in limited circumstances such as when requested by the subject of the record, or pursuant to a court order or legislative subpoena,” and could be shared “between different government entities and their agents” only if the entity receiving the record placed “the same restrictions on disclosure of the record as the originating entity.” *Id.* at 1221 n.4 (internal quotation marks omitted) (citing Utah Code Ann. §§ 63G-2-201(5), 63G-2-202, and quoting Utah Code Ann. § 63G-2-206). The Tenth Circuit “read this language, as did the district court, as only allowing state actors

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<sup>11</sup>The legislature also amended the statute to remove “any requirement that offenders disclose their passwords.” *Shurtleff*, 628 F.3d at 1221.



1 to look beyond the anonymity surrounding a username in the course of an investigation after  
 2 a new crime has been committed,” and further interpreted the statute “as permitting sharing  
 3 only among law-enforcement agencies, not the public at large.” *Id.* at 1225. The court  
 4 consequently found no First Amendment problem: “Although this narrow interpretation  
 5 may still result in the disclosure of Mr. Doe’s online identifiers to state officials,” the court  
 6 reasoned, “such identification will not unnecessarily interfere with his First Amendment  
 7 freedom to speak anonymously.” *Id.*

8 In California, sex offender registration statements are not subject to “inspection by the  
 9 public or by any person other than a regularly employed peace officer or other law  
 10 enforcement officer,” Cal. Penal Code § 290.021, but a law enforcement entity may disclose  
 11 registrants’ information to the public “by whatever means the entity deems appropriate,  
 12 when necessary to ensure the public safety based upon information available to the entity  
 13 concerning that specific person,” *id.* § 290.45(a)(1). With any such disclosure, the entity  
 14 must include “a statement that the purpose of the release of information is to allow members  
 15 of the public to protect themselves and their children from sex offenders.” *Id.*  
 16 § 290.45(a)(2). These California statutes do not contain the safeguards present in the  
 17 amended Utah statutes and are closer to the pre-amendment Utah statutes initially found  
 18 unconstitutional by the district court in *Doe v. Shurtleff*, Case No. 1:08-CV-64-TC, 2008 WL  
 19 4427594 (D. Utah Sept. 25, 2008).

20 They are also similar to a Georgia statute – struck down by the district court in *White*  
 21 *v. Baker*, 696 F. Supp. 2d 1289 (N.D. Ga. 2010) – that permitted disclosure of registrants’  
 22 Internet information “to law enforcement agencies for law enforcement purposes” and to the  
 23 public as “necessary to protect the public” without any other limitations. *Id.* at 1309  
 24 (quoting O.C.G.A. § 41-1-12(o)). This Court agrees with the *White* court, which found the  
 25 lack of statutory protections on disclosure to be troubling:

26 It is conceivable, if not predictable, that a person in law  
 27 enforcement might determine that Internet Identifiers for  
 28 offenders ought to be released so that the public can search for  
 and monitor communications which an offender intends to be

1 anonymous. That these anonymous communications might well  
 2 be on a matter of public policy, political speech, or other  
 3 protected speech squarely implicates the First Amendment. . . .  
 The prospect that Internet Identifiers, as currently defined, may  
 be released to the community has an obvious chilling effect.

4 *Id.* at 1310-11.<sup>12</sup>

5 While the government asserted at oral argument that there has to be “some kind of  
 6 nexus” between the use of an Internet identifier and criminal activity before law enforcement  
 7 can access information related to a registrant’s Internet identifier, Rep. Tr. at 54:23-55:15,  
 8 the Court “cannot simply presume the [government] will act in good faith and adhere to  
 9 standards absent from the [statute’s] face.” *Comite*, 657 F.3d at 946-47 (internal quotation  
 10 marks, alteration, and citation omitted). Here, Plaintiffs have no guarantee that their  
 11 pseudonyms will be safeguarded from public dissemination because neither the CASE Act  
 12 nor any other California statute requires the nexus asserted by the government at the hearing.  
 13 Their right to speak anonymously will therefore be chilled.

14 This chilling effect is heightened because, unlike in the Utah or Georgia cases, the  
 15 disclosure of a registrant’s identity – at least to law enforcement, and potentially to the  
 16 public as well – will occur either before he or she speaks or, at maximum, within 24 hours  
 17 after speaking and potentially while the speech is ongoing. *Cf. Shurtleff*, 628 F.3d at 1225  
 18 (finding that disclosure “would generally occur, if at all, at some time period following  
 19 Mr. Doe’s speech and not at the moment he wished to be heard”); *White*, 696 F. Supp. 2d at  
 20 1294 (noting that the Georgia statute required registrants to provide updated information  
 21 within 72 hours). A contemporaneous disclosure requirement poses a greater burden on  
 22 speech than an after-the-fact disclosure requirement because it “connects the speaker to a  
 23 particular message directly.” *ACLU v. Heller*, 378 F.3d 979, 991-92 (9th Cir. 2004). When  
 24 a California registrant wants to speak online, he or she must use either a previously reported  
 25 Internet identifier – in which case the disclosure to law enforcement would have occurred

26 <sup>12</sup>The Georgia statute defined “Internet Identifier” as “E-mail addresses, usernames,  
 27 and user passwords,” and further defined “username” as “a string of characters chosen to  
 28 uniquely identify an individual who uses a computer or other device with Internet capability  
 to gain access to e-mail messages and interactive online forums.” *White*, 696 F. Supp. 2d at  
 1295 (quoting O.C.G.A. § 42-1-12(a)(16)(K) & (a)(21.1)).

1 prior to the speech – or a new identifier that must be reported within 24 hours, regardless of  
2 whether any conversation using the identifier has concluded. Because it results in a risk of  
3 more contemporaneous disclosure, this reporting requirement is even more problematic than  
4 the 72-hour reporting requirement found to be unconstitutional in *White*. It likewise creates  
5 a far greater chilling effect on anonymous speech than the statute upheld in *Shurtleff*,  
6 especially when combined with the lack of statutory protections on the information's  
7 disclosure to other law enforcement agencies and the public.

8 Registrants' speech may also be chilled because failure to comply with sex offender  
9 registration requirements, including the Internet provisions, is punishable by up to three  
10 years in state prison. Cal. Penal Code § 290.018(a)-(c). This potential punishment may  
11 deter registrants from speaking at all if they are uncertain about whether they have to report a  
12 particular Internet identifier to law enforcement and, if so, whether they will be able to file  
13 any such report within the required 24-hour period. *See NAACP v. Button*, 371 U.S. 415,  
14 433 (1963) ("The threat of sanctions may deter the[] exercise [of First Amendment rights]  
15 almost as potently as the actual application of sanctions."). The uncertainty surrounding  
16 what registrants must report – and the resultant potential chilling effect – is greater in this  
17 case because the Court's interpretation of the Act is not definitive guidance to registrants  
18 about what they must report. While the Court construed the Act's provisions for purposes of  
19 determining whether they violate the First Amendment, this Court's interpretation is not  
20 binding on state courts, where the registrants would face prosecution for failure to register.  
21 *See Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1146 (9th Cir. 2001) ("[I]t is  
22 solely within the province of the state courts to authoritatively construe state legislation.").

23 The CASE Act provisions' chilling effect might be justifiable if the provisions were  
24 narrowly tailored, but – at least at this stage of the proceedings – the government has not  
25 persuaded the Court that they are. For the reasons discussed below, the Court finds that the  
26 provisions apply both to more speakers and more speech than is necessary to advance the  
27 government's legitimate purposes.

1 First, the Court is not persuaded that burdening the anonymous speech rights of all  
 2 75,000 registered sex offenders is narrowly tailored to the government's interest in fighting  
 3 online sex offenses. The government already classifies registrants using a risk-assessment  
 4 tool known as Static-99. Using this instrument, the State has classified the majority of  
 5 registrants released on parole after 2005 as posing a "low" or "moderate-low" risk of  
 6 re-offending. Abbott Decl. ¶ 9. The government has not sufficiently explained why these  
 7 individuals ought to be treated differently from non-registrants who are not required to report  
 8 Internet-identifying information to authorities. This fact is not altered by Intervenor's  
 9 reliance on Plaintiffs' data that "[p]edophiles who molest boys and rapists of adult women  
 10 have recidivism rates of 52% and 39% respectively," or that the overall average recidivism  
 11 rate for registrants in all risk categories is between 14% and 20%. *Id.* ¶ 15. The issue is not  
 12 whether registrants recidivate, which Plaintiffs do not dispute. Instead, the problem is that  
 13 the government has not explained why the collection of Internet-identifying information  
 14 from registrants who present a low or moderately low risk of re-offending, and a potentially  
 15 even lower risk of re-offending online,<sup>13</sup> is narrowly tailored to the Act's purposes. Based  
 16 on the State's own existing risk assessments, the uniform application of the CASE Act  
 17 appears overbroad.<sup>14</sup>

18 At oral argument, the government asserted that Static-99 cannot be used to limit the  
 19 number of registrants who must report Internet-identifying information because the CASE  
 20 Act's "Internet identifier registration requirements serve[] a different purpose" than  
 21 Static-99's purpose of "estimat[ing] the risk that a person might pose when they are released

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22  
 23 <sup>13</sup>No party or intervenor presented any evidence concerning the rate by which  
 24 registered sex offenders re-offend using the Internet. The only statistical evidence presented  
 25 on the prevalence of Internet use in the commission of sex offenses was from a national study  
 of 2006 arrests, which indicated that only approximately 1% of sex offenses against children  
 involved the Internet or other technology. Finkelhor Decl. ¶ 12.

26 <sup>14</sup>Even if the Act were applied only to the registrants deemed to pose a higher risk by  
 27 the State's Static-99 tool, this, too, could still be insufficiently tailored because it considers  
 28 only the risk of re-offending, not the risk of committing a sex offense online – which is the  
 CASE Act's stated focus. However, the challenged provisions currently apply to all  
 registrants, regardless of risk, and the Court therefore need not and does not decide this  
 question.



1 to the community.” Rep. Tr. at 76:19-77:1. The purpose of the CASE Act’s new  
2 registration requirements is, according to the government, “to be able to find somebody if we  
3 need to.” *Id.* at 77:1-2. However, the government has not explained how being able to find  
4 all registered sex offenders using Internet identifiers – regardless of the registrants’ risk of  
5 re-offending as determined by the government’s own assessment tool – is narrowly tailored  
6 to achieving the Act’s legitimate interest in combating online sex offenses or human  
7 trafficking.

8 In addition, even as to registrants who may legitimately be required to register  
9 Internet-identifying provisions based on their risk of recidivism, the challenged provisions  
10 appear to extend to too much speech. When asked at oral argument what kinds of  
11 communications it would be “most helpful for law enforcement to be able to monitor,” the  
12 government referred to *White v. Baker*, stating that the court there said that “Internet chatting  
13 and social networks and chat rooms . . . were the most helpful, that mostly involved the  
14 exploitation of children.” Rep. Tr. at 75:1-8. Indeed, the *White* court found that online  
15 solicitation for sexual exploitation “generally do[es] not occur in communications that are  
16 posted publicly on sites dedicated to discussion of public, political, and social issues.” 696  
17 F. Supp. 2d at 1310. The government has not shown the utility of requiring registration of  
18 Internet identifiers used for this type of public commentary.

19 Nonetheless, the CASE Act provisions extend to all such websites, and registrants are  
20 likely to be chilled from engaging in legitimate public, political, and civic communications  
21 for fear of losing their anonymity. As a Nebraska district court forcefully stated, a  
22 requirement that sex offenders report to the government all communications on blogs and  
23 websites “puts a stake through the heart of the First Amendment’s protection of anonymity  
24 [and] surely deters faint-hearted offenders from expressing themselves on matters of public  
25 concern.” *Doe v. Nebraska*, Case No. 8:09CV456, 2012 WL 4923131, at \*28 (D. Neb.  
26 Oct. 17, 2012); *see also White*, 696 F. Supp. 2d at 1310 (concluding that a requirement was  
27 overbroad because it included communications that did not “reasonably present a vehicle by  
28 which a sex offender can entice a child to have illicit sex”). This Court agrees. Applying the

1 registration requirements to all Internet forums, even those types that have not been shown to  
2 pose any reasonable risk of leading to an online sex offense or human trafficking, creates a  
3 significant chilling effect on Plaintiffs' protected speech.<sup>15</sup>

4 In short, at this preliminary stage of the proceedings, the government, with the  
5 Intervenor's support, has failed to show that the CASE Act's reporting requirements are  
6 narrowly tailored to serve its legitimate interests. The challenged provisions have some  
7 nexus with the government's legitimate purpose of combating online sex offenses and  
8 human trafficking, but "[t]he Government may not regulate expression in such a manner that  
9 a substantial portion of the burden on speech does not serve to advance its goals." *Ward*,  
10 491 U.S. at 799. On the current record, the Court concludes that Plaintiffs are likely to  
11 establish that the challenged provisions, when combined with the lack of protections on the  
12 information's disclosure and the serious penalty registrants face if they fail to comply with  
13 the reporting requirements, create too great a chilling effect to pass constitutional muster.  
14 While the government may be able to demonstrate narrow tailoring in subsequent  
15 proceedings, it has not done so here. Accordingly, the Court concludes that Plaintiffs are  
16 likely to succeed on their First Amendment free speech claim.

#### 17 18 **B. Remaining Preliminary Injunction Factors**

19 To warrant injunctive relief, Plaintiffs must also show that they are likely to suffer  
20 irreparable harm in the absence of an injunction and demonstrate that the public interest and  
21 balance of equities weigh in their favor. As discussed below, the Court finds that Plaintiffs  
22 have sufficiently established all of these factors.

23 First, neither the government nor Intervenor's dispute that Plaintiffs are likely to suffer  
24 irreparable harm in the absence of an injunction. Indeed, the Supreme Court long ago

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25  
26 <sup>15</sup>The Court recognizes that, like the challenged provisions here, the Utah statutes  
27 upheld by the Tenth Circuit in *Shurtleff* applied broadly to all Internet forums and all  
28 registered sex offenders. However, as discussed above, the chilling effect of the Utah statute  
was diminished, if not eliminated, by the statutory restrictions on disclosure and the lack of a  
relatively contemporaneous reporting requirement.



1 explained that “[t]he loss of First Amendment freedoms, for even minimal periods of time,  
2 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

3 Second, the Ninth Circuit has “consistently recognized the ‘significant public  
4 interest’ in upholding free speech principles,” *Klein v. City of San Clemente*, 584 F.3d 1196,  
5 1208 (9th Cir. 2009), and has further observed that “it is always in the public interest to  
6 prevent the violation of a party’s constitutional rights,” *Melendres v. Arpaio*, 695 F.3d 990,  
7 1002 (9th Cir. 2012) (internal quotation marks and citation omitted).

8 Third, based on the present record, the government has not demonstrated that the  
9 CASE Act’s impact on public safety is sufficient to overcome the interest – both to Plaintiffs  
10 and to the public – in avoiding infringement of Plaintiffs’ First Amendment rights. As the  
11 Supreme Court has explained, “[t]he prospect of crime . . . by itself does not justify laws  
12 suppressing protected speech,” nor may the government “prohibit speech because it increases  
13 the chance an unlawful act will be committed at some indefinite future time.” *Ashcroft v.*  
14 *Free Speech Coal.*, 535 U.S. 234, 245, 253 (2002) (internal quotation marks and citation  
15 omitted). In this case, the government has not provided any evidence regarding the extent to  
16 which the public safety might be enhanced if the additional registration requirements went  
17 into effect. Plaintiffs’ evidence – as yet undisputed – indicates that only 1% of arrests for sex  
18 crimes against children are for crimes facilitated by technology, Finkelhor Decl. ¶ 12, and  
19 that registered sex offenders are involved in only 4% of these arrests, *id.* ¶ 18. While the  
20 Court does not minimize the significance of any single crime, the record at this stage of the  
21 proceedings suggests that the potential usefulness of the Internet registration information is  
22 limited to a very small portion of the universe of sex offenses and online sex offenses.  
23 Moreover, enjoining the Internet registration requirements enacted by the CASE Act would  
24 not prevent the government from investigating online sex offenses, as it could still employ  
25 other mechanisms to do so. *See, e.g., Doe v. Shurtleff*, 2008 WL 4427594, at \*9 (noting that,  
26 even in the absence of an Internet registration requirement, “investigators of internet crime  
27 already have tools to unmask anonymous internet suspects, such as investigative  
28 subpoenas”). Against the government’s weak showing of the utility of registrants’ Internet

1 information if the Act is not enjoined, the Court must weigh the likely and substantial  
 2 chilling of Plaintiffs' First Amendment rights discussed above. Having done so, the Court  
 3 concludes that both the balance of equities and the public interest weigh in favor of granting  
 4 injunctive relief.

### 6 C. Application of Injunction to Local Law Enforcement

7 Finally, the Court must address whether any injunctive relief binds local law  
 8 enforcement officials in California or only the Attorney General. The parties agreed that  
 9 local law enforcement officials would not enforce the challenged provisions during the  
 10 pendency of the temporary restraining order, but the government now argues that an  
 11 injunction against the Attorney General cannot bind local law enforcement agencies or  
 12 personnel. For support, the government cites a single California appellate case from seventy  
 13 years ago for the proposition that "the California Constitution does not contemplate absolute  
 14 control and direction of sheriffs" by the Attorney General. Gov't Opp'n at 9 (citing *People*  
 15 *v. Brophy*, 49 Cal. App. 2d 15, 28 (1942)).

16 The government's argument is beside the point. Federal Rule of Civil Procedure  
 17 65(d)(2) provides that an injunction will bind the parties, as well as "the parties' officers,  
 18 agents, servants, employees, and attorneys," and "[o]ther persons who are in active concert or  
 19 participation with" these individuals. Even if the Attorney General does not have absolute  
 20 control and direction over local law enforcement, it cannot be disputed that, as to the  
 21 collection of sex offender registration data, local law enforcement at least acts "in active  
 22 concert or participation with" the Attorney General, if not as her agent. *See, e.g.*, Cal. Penal  
 23 Code § 290.015(b) (requiring local law enforcement agencies to forward registrants'  
 24 information to the Department of Justice<sup>16</sup> within three days of registration); Schweig Decl.  
 25 ¶ 3 (describing the collection of sex offender registration data as a "collaborative effort")

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26  
 27  
 28 <sup>16</sup>"The Attorney General is head of the Department of Justice." Cal. Gov't Code  
 § 12510.

1 involving, among others, the California Department of Justice and local law enforcement  
2 agencies).

3       However, Federal Rule of Civil Procedure 65(d)(2) also provides that an injunction  
4 only binds persons “who receive actual notice of it by personal service or otherwise.” To  
5 ensure that all local law enforcement officials who are responsible for collecting registered  
6 sex offenders’ information are bound by this order, the Court will order the Attorney General  
7 to provide actual notice to all such officials. This requirement does not preclude the parties  
8 from further meeting and conferring to attempt to reach agreement that local law  
9 enforcement will not enforce the enjoined provisions as long as the Court’s order granting  
10 preliminary injunctive relief remains in effect.

#### 11 12 **IV. CONCLUSION**

13       The Court does not lightly take the step of enjoining a state statute, even on a  
14 preliminary basis. However, just as the Court is mindful that a strong majority of California  
15 voters approved Proposition 35 and that the government has a legitimate interest in  
16 protecting individuals from online sex offenses and human trafficking, it is equally mindful  
17 that “[a]nonymity is a shield from the tyranny of the majority,” and that Plaintiffs enjoy no  
18 lesser right to anonymous speech simply because they are “unpopular.” *McIntyre v. Ohio*  
19 *Elections Comm’n*, 514 U.S. 334, 357 (1995). The record before the Court does not establish  
20 that the Internet registration requirements enacted by the CASE Act are narrowly tailored to  
21 the Act’s legitimate purpose of combating online sex offenses and human trafficking. While  
22 the government may be able to make the necessary showing at a later stage of these  
23 proceedings, it has not yet done so, and the Court therefore concludes that Plaintiffs have  
24 demonstrated a likelihood of success on the merits of their First Amendment free speech  
25 claim.

26 //

27 //

28 //


1 Accordingly, with good cause appearing for the reasons stated in this order, Plaintiffs'  
2 motion for a preliminary injunction is GRANTED. IT IS HEREBY ORDERED that:

3 1. Defendant Kamala Harris and her officers, agents, servants, employees, and  
4 attorneys, and those persons in active concert or participation with her, are enjoined from  
5 implementing or enforcing California Penal Code sections 290.014(b) and 290.015(a)(4)-(6),  
6 as enacted by the CASE Act.<sup>17</sup>

7 2. Defendant Harris shall provide, by personal service or otherwise, actual notice of  
8 this order to all law enforcement personnel who are responsible for implementing or  
9 enforcing the enjoined statutes or from otherwise collecting registered sex offenders'  
10 information. The government shall file a declaration establishing proof of such notice on or  
11 before **January 28, 2013**. Alternatively, the parties may file on or before that date a  
12 stipulation and proposed order that local law enforcement will not enforce the enjoined  
13 provisions even in the absence of receiving actual notice.

14  
15 **IT IS SO ORDERED.**

16  
17 Dated: 01/11/13

  
\_\_\_\_\_  
THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT

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21  
22  
23  
24  
25  
26 <sup>17</sup>A careful reader may observe that the Court has omitted the phrase, "or from  
27 otherwise requiring registrants to provide identifying information about their online speech to  
28 the government," from the temporary restraining order. Nov. 7, 2012 Order at 3. This  
should not be interpreted as the Court's permission to attempt an end run around the  
preliminary injunction entered today. The Court removed this language out of an abundance  
of caution that the scope of its injunction not reach too broadly.

## H.3

# Doe v. Harris

**January 11, 2013****SHARE THIS:**  ON FACEBOOK  ON TWITTER  VIA EMAIL

The ACLU of Northern California and the Electronic Frontier Foundation filed a federal class-action lawsuit to block implementation of unconstitutional provisions of Proposition 35 – a ballot measure passed by California voters that restricts the legal and constitutionally protected speech of all registered sex offenders in California.

Proposition 35 requires anyone who is a registered sex offender – even people with decades-old, low-level offenses like misdemeanor indecent exposure and people whose offenses were not related to the Internet – to turn over a list of all their Internet identifiers and service providers to law enforcement. This likely includes email addresses, usernames and other identifiers used for online political discussion groups, book and restaurant review sites, forums about medical conditions, and newspaper or blog comments.

Proposition 35's online speech regulations are overly broad and violate the First Amendment, both because they prohibit anonymous speech and because the reporting requirements burden all sorts of online speech.

The lawsuit, filed in the U.S. District Court for the Northern District of California, asks for a temporary restraining order and an injunction.

On November 7 Judge Thelton Henderson granted the request for a temporary restraining order to block these provisions of Proposition 35 from taking effect.

A hearing on the plaintiffs' motion for a preliminary injunction is scheduled for December 17 at 10 am.

On January 11, 2013 the court granted a **preliminary injunction**.

## LEGAL DOCUMENTS

**Order Granting Plaintiffs' Motion for a Preliminary Injunction (Jan. 11, 2013)**

**Temporary Restraining Order (Nov. 7, 2012)**

**Memo of Points & Authorities in Support of Temp. Restraining Order & Preliminary Injunction (Nov. 7, 2012)**

**Ex Parte Application for Temp. Restraining Order & Order to Show Cause Why Preliminary Injunction Should Not Issue (Nov. 7, 2012)**

**Complaint (Nov. 7, 2012)**

