



July 6, 2023

The Honorable Laura Friedman
1021 O Street, Suite 5740
Sacramento, California 95814

**Re: AB 645 – as amended 7/3/2023
OPPOSE**

Dear Assemblymember Friedman:

ACLU California Action, Anti Police-Terror Project, Black Lives Matter CA, California Teamsters Public Affairs Council, Electronic Frontier Foundation, National Motorists Association, and Safer Streets LA regret that we must respectfully oppose your AB 645. While we appreciate your worthy intention to reduce traffic fatalities caused by speeding, we are concerned about the approach AB 645 takes to solving the problem. AB 645 would increase surveillance in order to automate enforcement and increase ticketing in ways that raise fundamental privacy and equity concerns while also costing significant money to run. There are other effective means of reducing speeding violations that do not raise these problems, and, on behalf of foreseeably impacted communities, we request you pursue those solutions instead. While this bill is estimated to generate millions of dollars of revenue for local jurisdictions, the cost of losing hard-earned assets borne by communities already suffering from economic instability and wealth extraction are incalculable.

AB 645 establishes an expensive program that does not address the underlying issue.

Speed cameras are expensive to implement. For example, between fiscal year 2014 and 2019, New York City's speed safety program cost just shy of \$165 million,¹ including an operating cost of \$104 million. Other cities's speed camera programs also cost millions annually to administer.²

While the revenue raised by these speed cameras made up for the costs,³ that has raised the question of whether speed cameras may be exploited as a revenue-generating tool rather than used solely for the speed enforcement purpose for which they were initially installed. For example, when it changed its speed camera program to issue tickets for driving 6 mph above the speed limit in 2021, for example, Chicago generated \$89 million in fines in just one year and increased the daily tickets issued by nearly ninefold – despite pedestrian fatalities also increasing that same year.⁴ AB 645 appears to require excess revenue generated by speed cameras be used for traffic calming measures; however, it also allows excess revenue to revert to the Active Transportation Program instead of traffic calming measures after the third year, raising the risk that the speed cameras installed under AB 645 may become focused on revenue generation rather than traffic calming measures.

¹[New York City's Speed Camera Program Costs over \\$164 Million Including an Operating Cost of \\$104 Million During Fiscal Year 2014 to 2019.](#) (2021).

² [Automated Speed Enforcement Implementation: Survey Findings and Lessons Learned From Around the Country](#), City and County of San Francisco Office of the Controller – City Services Auditor (2015).

³Ibid.

⁴Priya Sarathy Jones, [Traffic enforcement cannot do the job of better roadway design](#), Smart Growth America (2022).

To address pedestrian safety issues, we need investment in capital improvements – especially in those areas least equitably served currently. Traffic calming uses physical infrastructure changes and addresses how roads can be multi-modal to increase mobility for nondrivers, decrease car-based travel, reduce pollution and congestion on roads, and create more efficient physical spaces.⁵ Traffic calming measures can be relatively inexpensive in the short-term,⁶ do not require the steep ongoing costs that speed cameras do, and can be more effective. As Priya Sarathy Jones of the Fines and Fees Justice Center has noted:

“[r]elying on enforcement and financial penalties to solve issues that stem from street design cannot solve the epidemic of traffic fatalities. And even a simple traffic ticket can trap working families in a vicious cycle of poverty and punishment if they can’t afford to pay the stiff fines and fees that jurisdictions often impose. *Design*, on the other hand, is an upstream solution. When streets are designed with safety in mind, people intuitively drive more slowly, making them able to notice and process important signals from their environment, preventing dangerous behavior before it occurs, and focusing efforts on safer systems rather than individual behavior.

When streets are designed primarily to move as many cars as possible as fast as possible, and people are not provided the infrastructure they need to walk and bike safely, enforcement often punishes travelers for *behaving logically*...When a road looks and feels like a highway and is designed for 45 mph or more but has a speed limit of 35 mph or less, many drivers are not aware they are making a mistake—until it’s too late. The result of that is frequently issued citations, but not a change to overall driving behaviors.”⁷

AB 645 contains this same flaw, specifically authorizing the cameras to be used on roadways designated as a safety corridor under section 22358.7 of the Vehicle Code. However, per AB 43 (2021) and AB 1938 (2022), speed limits on safety corridors can be reduced up to 12 mph below the operating speed of the roadway as measured by the 85th percentile of vehicle speeds. AB 645 allows ticketing starting at 11 mph over the speed limit, so drivers traveling below the speed the road was designed for will be subject to ticketing. Rather than requiring that cities employ proper engineering countermeasures to calm traffic and make the roadways self-enforcing at the desired speed limit, AB 645 instead specifically allows cities to run speed traps using automated ticketing on these poorly designed roads.

We recognize that traffic calming measures cost money; however, AB 645 also has costs. Instead of cities and counties paying the bill, though, AB 645 transfers the burden to vulnerable Californians. Historically redlined neighborhoods have had fewer infrastructure investments than wealthier neighborhoods, so from an equity standpoint, some neighborhoods require more funds to catch up with neighborhoods that have had more consistent infrastructure investments. It does not make policy or fiscal sense to tax these neighborhoods to raise the money for these improvements, which is what AB 645 effectively does. Instead, we should follow the lead of localities that incorporate

⁵[FHWA Course on Bicycle and Pedestrian Transportation Lesson 11: Traffic Calming.](#)

⁶Todd Litman, [Traffic Calming Benefits, Costs and Equity Impacts](#), Victoria Transport Policy Institute. (December 7, 1999).

⁷Priya Sarathy Jones, [Traffic enforcement cannot do the job of better roadway design](#), Smart Growth America (July 12, 2022).

these traffic calming costs into their budgets, such as Berkeley,⁸ San Bruno,⁹ and Oakland¹⁰ have done.

AB 645 taxes residents harmed by racist infrastructure decisions to fix their roads.

AB 645's goal of reducing speed-based traffic collisions is important. But surveillance can be both less effective and far more costly to local agencies and to the community at large than initially imagined, leaving communities saddled with long-term bills for surveillance that does not make the community safer. Surveillance can also be easily misused, leading to the erosion of community trust and costly lawsuits as well as discouraging people from going about their daily lives and exercising their civil liberties.

While these speed trap programs may start small, they can soon balloon into ever expanding surveillance and ticketing apparatuses that result in millions more tickets being issued, further incentivizing the growth of these programs regardless of whether they result in fewer speed-related traffic collisions. New York, for example, started in 2012 with a pilot of 20 school speed zones, but planned in 2021 to install an average of 60 additional cameras per month to bring the city to a total of 2,220 cameras.¹¹ In 2020, New York City issued 4,397,375 speed camera tickets, totaling nearly \$220 million in tickets.¹² In Chicago, speed cameras resulted in a ticket being issued every eleven seconds, totaling more speed camera tickets in 10 months than had been issued in the previous three years combined.¹³ The dramatic increase in ticketing that AB 645 threatens would be at odds with the recent reforms to California's ticketing laws to reduce the well-documented economic harms caused by mass ticketing, particularly for communities of color.

Additionally, surveillance systems with automated enforcement, like that which AB 645 would rely on, disproportionately impact marginalized communities.¹⁴ In Chicago, for example, households in majority Black and Latinx ZIP codes were ticketed by surveillance enabled automated ticketing systems at two times the rate of white ZIP codes between 2015 and 2019, and majority Black ZIP codes were ticketed at three times the rate of white ZIP codes during the pandemic.¹⁵ According to ProPublica, "[t]he consequences have been especially punishing in Black neighborhoods, which have been hit with more than half a billion dollars in penalties over the last 15 years, contributing to thousands of vehicle

⁸[Request Traffic Calming](#), City of Berkeley.

⁹[City of San Bruno Traffic Calming Program: How to Reduce Speed and Volume in Your Local Residential Street](#), City of San Bruno (2020).

¹⁰[City Council's April 2021 Traffic Safety \\$800k Allocation for High Priority Traffic Calming and Speed Bumps: OakDOT Prioritization and Process](#), City of Oakland.

¹¹[New York City Automated Speed Enforcement Program: 2014-2020 Report](#).

¹² Ibid.

¹³[Chicago's Speed Cameras Ticket 8x Faster After Limit Drops to 6 MPH](#) (Jan. 2022).

¹⁴ See, for example, Simone Browne, *Dark Matters: On the Surveillance of Blackness* (2015); Ruha Benjamin, *Race After Technology* (2019); Barton Gellman & Sam Adler-Bell, *The Disparate Impact of Surveillance* (December 21, 2017); Michele E. Gilman, *The Class Differential in Privacy Law*, 77 Brook. L. Rev. (2012); Scott Skinner-Thompson, *Privacy at the Margins* (2021); Virginia Eubanks, *Automating Inequality* (2018); John Gilliom, *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy* (Chicago, Illinois: University of Chicago Press, 2001); Khiara M. Bridges, *The Poverty of Privacy Rights* (Stanford University Press 2017); Sahar F. Aziz, *Caught in a Preventive Dragnet: Selective Counterterrorism in a Post 9/11 America*, 47 Gonz. L. Rev. 429 (2011). David J. Garrow, *The FBI and Martin Luther King, Jr.: From "Solo" to Memphis* (2015); Eric Avila, *Popular Culture in the Age of White Flight: Fear and Fantasy in Suburban Los Angeles* (2004).

¹⁵[Chicago's Race Neutral Traffic Cameras Ticket Black and Latino Drivers the Most](#) (ProPublica, Emily Hopkins, Melissa Sanchez, 2022)

impoundments, driver’s license suspensions and bankruptcies[.]”¹⁶ When ending Rochester’s red light camera program, the mayor noted that their automated ticketing through surveillance program “was a program that disproportionately affected the poorest of city residents” and was “counter to our efforts to reverse Rochester’s troubling rates of poverty.”¹⁷ A study of Cleveland’s speed camera program found that Black drivers received 61% of tickets despite making up only 38% of drivers.¹⁸ AB 645’s surveillance-enabled automated enforcement-based solutions will recreate these same problems currently facing disadvantaged communities across the country.

Many of our most dangerous roads are in minority neighborhoods due to a historic lack of investment in roadway safety design in those communities and the role racism has historically played in infrastructure in the US.¹⁹ As a result, the cameras will likely be placed primarily in these areas. For example, the spatial relationship between Oakland’s identified “High Injury Network” and designated “communities of concern” makes clear that the implementation of automated speed enforcement along the High Injury Network would disproportionately impact minority communities with lower incomes.²⁰ As AB 645 requires some revenue generated by the cameras to be used for roadway improvements, the tickets will act as a taxing mechanism to pay for safety enhancements that the government should have previously made. Residents in minority communities will have been harmed twice – first by previous under-investment, leading to higher fatality rates, and then by incurring hundreds of thousands of dollars in tickets to pay for correcting that historic under-investment.

The increased number of tickets issued through surveillance technology especially burden California’s residents earning low incomes, who have less money to spare for tickets and are more likely to be subject to additional consequences for nonpayment. While the amount of the fine for a violation is an annoyance to affluent drivers, it can be crippling to people with lower incomes, often initiating a cascade of consequences. While we appreciate your attempts to mitigate the harmful effects on Californians earning low incomes, they are not sufficient to blunt the impact AB 645 will have on Californian residents who cannot bear the burden of increased ticketing and some are problematic in themselves. Offering community service in lieu of paying the penalties has been likened by some advocates to indentured servitude for people who are poor,²¹ while creating a dual fine and enforcement scheme – one for drivers across the state cited by live law enforcement officers at a higher ticket cost and another with lower tickets for vehicles in a subset of cities that are cited by surveillance cameras – may violate the equal protection clause.

Multiple tickets could also be issued before the first ticket was ever received by the vehicle owner, who may routinely enter the area after the signs, which can be as far from the cameras as 500 feet. Additionally, the ticket would go to the vehicle owner, not the driver, so many people who own a vehicle driven by someone else would be on the hook for the ticket with no ability to shift the legal responsibility to the

¹⁶ Ibid.

¹⁷ [Red Light Camera Program Turned Off](#) (Rochester Democrat and Chronicle, Will Cleveland, 2016).

¹⁸ www.spur.org/news/2021-04-28/can-automated-speed-safety-systems-advance-racial-and-economic-equity

¹⁹ Candice Norwood, [How Infrastructure Has Historically Promoted Inequality](#). PBS (2021).

²⁰ Alejo Alvarado, [The Racial Equity Implications of Road Safety Enforcement in Oakland, CA](#). Department of City and Regional Planning, University of California, Berkeley (2021).

²¹ Ebby Stoutmiles and Chris Lin, [The Problem with “Community Service.”](#) Juvenile Law Center (, 2022).

actual driver.²² Women of color, particularly Black and Latinx women, are especially likely to suffer under AB 645 because they tend to bear the brunt of the cost of citations, regardless of whether they incurred the citations.²³

AB 645 raises due process concerns that are not mitigated by the language of the bill.

These tickets have consequences that go beyond the dire financial economic impact to communities populated with a significant number of people who earn low incomes. For example, tickets would be civil violations subject to adjudication in an administrative hearing, eliminating almost all rights currently afforded defendants when cases are heard as infractions in Superior Court, including the right to confront accusers and the right to discovery. Only the ticket and photo evidence would be required to be presented as evidence, with no requirement to show that the required signage was in place or that the system was operating properly. The burden of proof would shift to the defendant and the standard of proof would be reduced to "preponderance of the evidence" rather than "beyond a reasonable doubt."

There are also due process concerns with the code sections that would be subject to automated enforcement under AB 645. While Section 22351 makes speeds in excess of the posted speed limit *prima facie* unlawful, it also allows that presumption to be rebutted by the defendant if they establish "by competent evidence that the speed in excess of said limits did not constitute a violation of the basic speed law at the time, place and under the conditions then existing." In other words, a person can rebut the unlawfulness of their speed by providing evidence that their speed was reasonable or prudent based on the weather, visibility, traffic, and the surface and width of the highway and that they did not endanger the safety of persons or property. However, if ticketed by a speed camera, the defendant will receive the ticket days or weeks later and will have no memory of what the conditions were at the time, nor will the cameras capture enough of the conditions for the defendant to mount a fair defense. Under our current system, drivers who are issued a citation for violation of Section 22350 can appear in court and the officer who issued the ticket would need to testify that the defendant's speed not only exceeded the posted speed limit, but that it was also unsafe based on the conditions then existing. The defendant could then rebut the officer's opinion, possibly by cross examination and providing other objective evidence that they collected at the time they were ticketed. This is why violations of CVC 22350 can only reasonably be cited by a live officer who serves as a witness to the events. These legal safeguards should no be dispensed with for the expediency of issuing tickets through an automated system – they are requirements to ensure due process.

Current law requires the state to prove that the speed limit was set correctly according to the vehicle code and the Manual on Uniform Traffic Control Devices. Where applicable, a valid speed survey must be presented. All of this must be testified to under oath and placed into evidence prior to the case proceeding. This bill would eliminate all these requirements, making the ticket itself *prima facie* evidence of the violation and explicitly not requiring that the person who issued the ticket appear for the hearing, thereby rendering moot California's decades old prohibition on speed traps so long as the ticket is issued by a camera system instead of a live person. Despite requiring tickets be paid or contested within 30 days of

²² We also note that in 2015, the Missouri Supreme Court struck down a red-light program because the camera did not record the driver of the vehicle, so ticket recipients who wanted to dispute the ticket had to shoulder the burden of proving whether they were driving at the time of the violation. While reducing what the cameras capture is better from a privacy standpoint, AB 645 may also be open to similar legal challenges. See, *e.g.* <https://finesandfeesjusticecenter.org/articles/speeding-into-the-future-the-pitfalls-of-automated-traffic-enforcement/>.

²³ [Who Pays? The True Cost of Incarceration on Families](#), Ella Baker Center for Human Rights (2015).

mailing, the bill does not require proof that a ticket was received and lacks any allowance for extensions of time.

The data collected under AB 645 will inevitably create irreparable harm.

California’s Truth in Evidence provisions may defeat the language of this bill that purports to limit the use of the data and photos collected by the proposed Speed Safety System Pilot Program. In that case, notwithstanding the very real due process concerns created by this administrative program, those accused of crimes will not be able to prevent this evidence from being used in trials.

Automated traffic enforcement systems, such as those authorized by this bill, also raise numerous privacy concerns. By encouraging the use of surveillance technologies, like automated license plate readers (ALPRs), for enforcement of speed limits, AB 645 subjects Californians to increased surveillance and perpetuates the false notion that this surveillance benefits the communities that are surveilled. The need for enforcement of speed limits does not warrant the creation of a new mechanism for government collection of large amounts of data on Californians.

There are effective alternatives to reduce speed-based traffic collisions without these harmful impacts, including those highlighted in the bill itself: roundabouts, speed humps or speed tables, traffic circles, and other traffic-calming measures that do not require increasing surveillance to automate enforcement and issue more tickets. We encourage you to pursue those solutions instead of increasing surveillance for automated ticketing.

For these reasons, we must respectfully oppose AB 645.

Sincerely,



Carmen-Nicole Cox
ACLU California Action



James Burch
Anti Police-Terror Project



Hayley Tsukayama
Electronic Frontier Foundation



Stewart Price
National Motorists Association



Jay Beeber
Safer Streets L.A.



Shane Gusman
California Teamsters Public Affairs Council



Sheila A. Bates
Black Lives Matter CA

cc: Members and Committee Staff, Senate Judiciary Committee