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WESTERN CENTER
ON LAW & POVERTY
Youth Justice Coalition
yth
youth+ tech+health

March 3, 2017

Hon. Jim Cooper
California State Capitol, Room 6025
Sacramento, California 95814

Re: AB 165 - as introduced
Oppose

Dear Assembly Member Cooper:

The undersigned civil rights, immigration, racial justice, youth, health, privacy, labor, LGBTQ, and Muslim community organizations work every day to keep diverse California families healthy and safe. With regret, we must oppose AB 165 because it threatens the privacy and safety of Californians at a time when we need protections most.

AB 165 would gut the basic protections of the California Electronic Communication Privacy Act (CalECPA)[1] for over six million Californians who study and work in our schools. Like the rest of us, these Californians rely on digital devices and online accounts to connect with their families and communities, and to learn about and discuss topics including religion, immigration, personal health, and social and political activism. CalECPA properly protects these activities for all Californians. Members of the school community should not be excluded from these rights and protections simply because they work for or attend a public school.

California cannot afford to go back to the digital dark ages. Instead, we need to ensure that all Californians have the full privacy protections of existing law.

Digital privacy protections are essential for the 6 million Californians who study and work in our public schools, including those from our most vulnerable populations.

Electronic devices and online accounts contain a wealth of sensitive personal information for youth and adults alike: emails, text messages, and other communications with friends, family and others; photos of personal life outside of school; calendars detailing past and future activities; contact lists and logs documenting relationships; records of the websites they visit; a log of their precise locations throughout the day; medical records and other personal documents; and much, much more.

The risks of information exposure are even greater for members of marginalized or vulnerable populations, especially those that face threats in the current political climate. Students or staff from Muslim or immigrant communities are rightly concerned that they or their family members and friends would be at risk if their digital information were wrongfully obtained and misused. Half of California students have at least one immigrant parent – and more than half of these parents are not citizens. Members of the school community may fear reprisal for participating in

online or real-world social or political activism that their school's administration may not support. LGBTQ students or staff may have concerns about their personal and professional relationships and even their safety. And youth who live in poverty, for whom their cell phone may be their primary or only means of accessing the Internet and thus seeking information about health, sexuality, or other sensitive topics, are vulnerable to even greater exposure of their personal lives than other students with greater access to technology in the home. For all of these groups, protecting their digital information is necessary to protect them from other harms.

AB 165 would eliminate these essential privacy protections

Current law ensures that digital information is protected for all Californians, including the students, teachers and staff at our public schools. The law ensures that, under ordinary circumstances, searches are conducted only with independent oversight, puts safeguards in place to control how information can be used, ensures that anyone subject to a search is promptly notified, and provides appropriate mechanisms to make sure the law is followed.

Eliminating any of these protections would make the digital information of school community members more vulnerable to inappropriate government access and misuse. Eliminating *all* of them — as AB 165 proposes — would dramatically increase this risk. It would also be unprecedented: CalECPA was crafted with extensive input from law enforcement agencies to address appropriate public safety needs and allow various exceptions in specific contexts. But there is no circumstance and no government agency that is completely exempt from every provision of CalECPA. Nor should there be.

AB 165 would exempt a wide range of individuals, including law enforcement officers, from the protections and restrictions currently required by law.

The bill would exempt any "local education agency" and any "individual acting for or on behalf of a local education agency" from all of the provisions of CalECPA. As a result, any school employee — ranging from an overzealous school janitor to a school police officer — could conduct a digital search:

- without outside review,
- without notice to either the individual or her parents or guardians, and
- without safeguards limiting retention, use and disclosure of information.

Numerous incidents prior to the enactment of CalECPA demonstrates that these protections are clearly needed to prevent abusive searches in schools. In Santa Ana, students who captured video of a police officer dragging a fellow student by the hair had phones searched and were forced to erase the videos. In San Francisco, students who published a commentary website about school staff were subjected to searches of their cell phones. In Linden, a student whose only violation was using his phone to call his mother had three weeks of personal text messages searched. Others student have had their personal lives invaded for little to no reason at all, such as for

laughing in class or just being tardy. And in many cases, these searches revealed far more than evidence of any alleged violation of school rules: students have been outed as gay, exposed as the author of First Amendment-protected anonymous speech, had their personal relationships revealed to school officials, and more.

For these reasons, we must oppose AB 165 to ensure that Californians of all ages and backgrounds are protected from improper searches, not put at greater risk. We would be pleased to meet with you to discuss our concerns.

Sincerely,

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