

STATEMENT OF BEN BAWDEN, BROOKS BAWDEN, LLC
ON BEHALF OF VIGILANT SOLUTIONS, INC.

April 15, 2016

House Committee on Judiciary

Vermont General Assembly

RE: S. 155 - ALPR Provisions

My name is Ben Bawden and I am a partner in a government affairs firm in Washington, DC called Brooks Bawden, LLC. I'm here today representing my client Vigilant Solutions, Inc. which is based in Livermore, CA and its corporate sister company DRN, Inc. which is based in Fort Worth, TX. Vigilant provides ALPR technology and data analytics to law enforcement agencies to help them generate leads and solve crimes. DRN is a data and analytics provider to the auto finance and insurance industries to help them recover assets and investigate fraud. You would be hearing directly from the company today, but the Vice President who was going to come is laying in bed with a burst disk in his neck, so believe me he would much rather be here today!

We are concerned about two provisions in the ALPR portion of the Senate-passed version of S. 155. The first is a prohibition on an individual's right to take a photograph of an object that is visible to the public. The second is a series of overly broad restrictions and requirements that would apply to private entities. We believe these provisions would clearly violate citizens' First Amendment rights, and because of that we recommend that this committee amend the bill before it moves forward.

Page 18, Lines 4-6 of the Senate-passed version of S. 155 reads:

"(1) A person shall not operate an ALPR system in Vermont unless he or she is a law enforcement officer and operates the system for a legitimate law enforcement purpose."

This language would outlaw a person's ability to use a certain type of camera to photograph a license plate that is in public view. If this language remains in the bill, it would be a clear violation of an individual's First Amendment right to free speech.

In real terms, here's what we're talking about. Anyone can go outside right now and take pictures with your smartphone of every license plate on State Street in front of the Capitol. You can note the date and time and location for each photo, and you can create a database with all that information. And you can store that information for as long as you want and use it for any legitimate purpose. I'm not aware of anyone who believes those activities are not protected under the First Amendment to the Constitution. The thing is, what you have done is to manually create an ALPR database. And that database would

look like any law enforcement or commercial ALPR database. ALPR scans do not contain any personally identifiable information. They are pictures along with read-outs of the text on the plates.

S. 155 would **make it illegal to take those pictures in public**. We think that has very chilling implications and would be a blatant violation of an individual's First Amendment rights. Even more chilling is that under S.155 a person who takes pictures of license plates on State Street could spend 2 years in state prison for that activity.

The Supreme Court has held that "it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of an automobile." (*New York v. Class, 475 U.S. 106, 114 (1986)*). To put a private individual in prison for using a camera to take a picture of something that is clearly meant to be visible to the public is not something that I think the legislature actually intends to do. And that's why we're here - to make sure the law that passes works for everyone.

ALPR data that our law enforcement customers and our private sector affiliates collect is used responsibly every day by thousands of law enforcement agencies in the United States to generate investigative leads, recover stolen cars, and solve serious crimes. For almost 10 years we have made all of our data that is collected by private entities available to analysts at the National Center for Missing and Exploited Children to query for free, and they use it all the time to help law enforcement generate leads in missing child investigations.

We believe that any effort to regulate government use of ALPR data should focus on access controls, comprehensive use policies, and mandatory audits. But outlawing ALPR operations by private individuals would be plainly unconstitutional.

So, given the constitutional concerns around limiting private photography and use of the photographs, there are some other provisions in the bill related to ALPR data use that should be revised so that it's clear they limit to government agencies and not private individuals. The language in the Senate-passed bill would prohibit certain uses of ALPR data by non-governmental entities and would force destruction of ALPR data held by private individuals after 18 months - again, clearly restrictions on First Amendment speech. The government can't tell a person they have to shred a photograph just because the photograph reaches a certain age. Narrowing the scope of this bill to government ALPR data collection and use would be appropriate and would bring the bill within constitutional limits.

Vermont is one of more than a dozen states that is considering some form of ALPR legislation this year. Last year it was more than 20 states. So as you might imagine, we've encountered most arguments you can think of, and we're happy to help the committee think through the issue. On behalf of Vigilant I really appreciate the chance to have this discussion.

Sincerely,

Ben Bawden
on behalf of
Vigilant Solutions, Inc.