

NICOLE A. OZER
BTLJ FALL 2025 SYMPOSIUM
AI & POWER TO THE PEOPLE



CALIFORNIA –INTEGRATED ADVOCACY AI LEGAL WORK ACROSS STRATEGY

California Legislation – several dozen AI bills introduced this year

California Agency and Executive Action

Litigation

- California Constitutional claims
- Existing statutory law and new law

Very diverse coalitions driving work across strategy – building since 2018

Bipartisan Lawmakers Want To Talk To Amazon About Its Facial Recognition Tech

In a letter shared exclusively with BuzzFeed News, Reps. Jimmy Gomez and John Lewis have asked to meet with Amazon CEO Jeff Bezos to discuss Amazon's controversial face recognition tool.

 **Davey Alba**
BuzzFeed News Reporter

Last updated on July 27, 2018, at 4:19 p.m. ET • Posted on July 26, 2018, at 1:37 p.m. ET



Amazon Rekognition FALSE MATCHES

28 current members of Congress



One false match is one too many.
YES on AB 1215



The New York Times

San Francisco Bans Facial Recognition Technology



Attendee interacting with a facial recognition demonstration at the year's CES in Las Vegas. Joe Dragovic for The New York Times



Shankar Narayan, legislative director of the American Civil Liberties Union of Washington, speaking at a news conference outside Amazon headquarters. Elaine Thompson/Associated Press

CALIFORNIA AI BILLS

California – last year and this year – by far the most action on AI in the country

Very consequential bills – now at final stages of the legislative process

Governor will have until October 12 to sign or veto bills

CALIFORNIA – LOCAL AI LAWS

San Francisco AI Inventory Ordinance—

CHAPTER 22J: ARTIFICIAL INTELLIGENCE TOOLS

Sec. 22J.1. Background and Findings.

Sec. 22J.2. Definitions.

Sec. 22J.3. Roles and Responsibilities.

Sec. 22J.4. Enforcement.

Sec. 22J.5. Promotion of the General Welfare

CALIFORNIA – EXECUTIVE AND AGENCY ACTION

Governor Newsom's Executive Order = Fast timeline on AI deployment by state agencies

ACLU California Comments - civil rights framework for agencies considering AI

Why, Whether, and Who – Before How

1. Robust process to make AI decision-making and use transparent and accountable to those who are most impacted.
2. Mechanisms to ensure that AI systems are built carefully
 1. AI impact assessment & evidence-based evaluation of whether risks outweigh the benefits.
 2. Should not be used for high stakes decisions in criminal, immigration, and policing systems.
 3. Evaluation

CALIFORNIA – EXECUTIVE ACTION

State of California Guidelines- Evaluating Impacts of Generative AI on Vulnerable and Marginalized Communities (December 2024)

1. Identify potential equity impacts of GenAI tools on vulnerable communities
2. Assess the degree and scale of these impacts
3. Select ways to manage risks if a GenAI tool is adopted

CALIFORNIA – EXECUTIVE ACTION

Review GenAI Pre-Procurement Equity Evaluation Guidelines

1. Engage with potentially impacted vulnerable communities.
2. Gather feedback, concerns, and insights about using GenAI tools in your services
3. If necessary, rescope the use of the GenAI tool or consider alternative solutions

CALIFORNIA – EXECUTIVE ACTION

Review the GenAI Equity Evaluation Checklist at each iterative stage of consideration

1. Continuously assess and monitor the impact of the tool on vulnerable communities
2. Comply with all relevant state or federal laws

CALIFORNIA – EXECUTIVE ACTION

Accountability

Roles and responsibilities for data governance, model deployment, monitoring, compliance, and risk management

Fairness

Equitable across communities (including protected characteristics under federal and state nondiscrimination laws, e.g., race, age, gender, disability)

Human Oversight

Ongoing human-in-the-loop oversight

Staff training to interpret outputs, recognize potential biases or errors, and make final decisions/override the system when necessary.

Transparency

Californians can access information about what data collected, how it is processed, and for what purposes it will be used. Plain language notice provided when GenAI is used in creating or recommending outputs that may impact people

LITIGATION



LITIGATION



COURT CASES >

ACLU v. Clearview AI

Permanently banning Clearview from making its faceprint database available to most businesses and other private entities nationwide.

Company barred from selling access to its database to any entity in Illinois, including state and local police, for five years.

LITIGATION

Renderos et al v Clearview et al (Facial Recognition Surveillance)

- California constitutional right to privacy
- Existing Statutory Law

Just Futures Law & BraunHagey & Borden on behalf of immigrants' rights and racial justice activists

LITIGATION

California Constitution Article I - Declaration of Rights Section 1.

SECTION 1.

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

RIGHT OF PRIVACY. Legislative Constitutional Amendment. Adds right of privacy to inalienable rights of people. Financial impact: None.

YES	
NO	

(For Full Text of Measure, See Page 11, Part II)

General Analysis by the Legislative Counsel

A "Yes" vote on this legislative constitutional amendment is a vote to amend the Constitution to include the right of privacy among the inalienable rights set forth therein.

A "No" vote is a vote against specifying the right of privacy as an inalienable right. For further details, see below.

Detailed Analysis by the Legislative Counsel

The Constitution now provides that all men are by nature free and independent, and have certain inalienable rights, among which
(Continued in column 2)

Cost Analysis by the Legislative Analyst

The right to privacy, which this initiative adds to other existing enumerated constitutional rights, does not involve any significant fiscal considerations.

(Continued from column 1)

are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

This measure, if adopted, would revise the language of this section to list the right of privacy as one of the inalienable rights. It would also make a technical nonsubstantive change in that the reference to "men" in the section would be changed to "people."

Argument in Favor of Proposition 11

The proliferation of government snooping and data collecting is threatening to destroy our traditional freedoms. Government agencies seem to be competing to compile the most extensive sets of dossiers of American citizens. Computerization of records makes

it possible to create "cradle-to-grave" profiles on every American.

At present there are no effective restraints on the information activities of government and business. This amendment creates a . . . and enforceable right of privacy for every Californian.

The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.

Fundamental to our privacy is the ability to control circulation of personal information. This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.

Even more dangerous is the loss of control over the accuracy of government and business records on individuals. Obviously, if the person is unaware of the record, he or she cannot review the file and correct inevitable mistakes. Even if the existence of this information is known, few government agencies or private businesses permit individuals to review their files and correct errors.

The average citizen also does not have control over what information is collected about him. Much is secretly collected. We are required to report some information, regardless of our wishes for privacy or our belief that there is no public need for the information. Each time we apply for a credit card or a life insurance policy, file a tax return, interview for a job, or get a drivers' license, a dossier is opened and an informational profile is sketched. Modern technology is capable of monitoring, centralizing and computerizing this information which eliminates any possibility of individual privacy. The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is compelling public need. Some information may remain as designated public records but only when the availability of such information is clearly in the public interest.

Proposition 11 also guarantees that the right of privacy and our other constitutional freedoms extend to all persons by amending Article I and substituting the term "people" for "men". There should be no ambiguity about whether our constitutional freedoms are for every man, woman and child in this state :

KENNETH CORY
Assemblyman, 69th District
GEORGE R. MOSCONE
State Senator, 10th District

The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.

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Moving force was a focused privacy concern, “relating to the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society.”

White v. Davis – California Supreme Court (1975)

ACLU NorCal amicus - Clearview's invasive face surveillance implicates multiple principal mischiefs central to the constitutional right to privacy as identified by *White*:

government snooping and the secret gathering of personal information;

overbroad collection and retention of unnecessary personal information;

lack of reasonable checks on the accuracy of existing records;

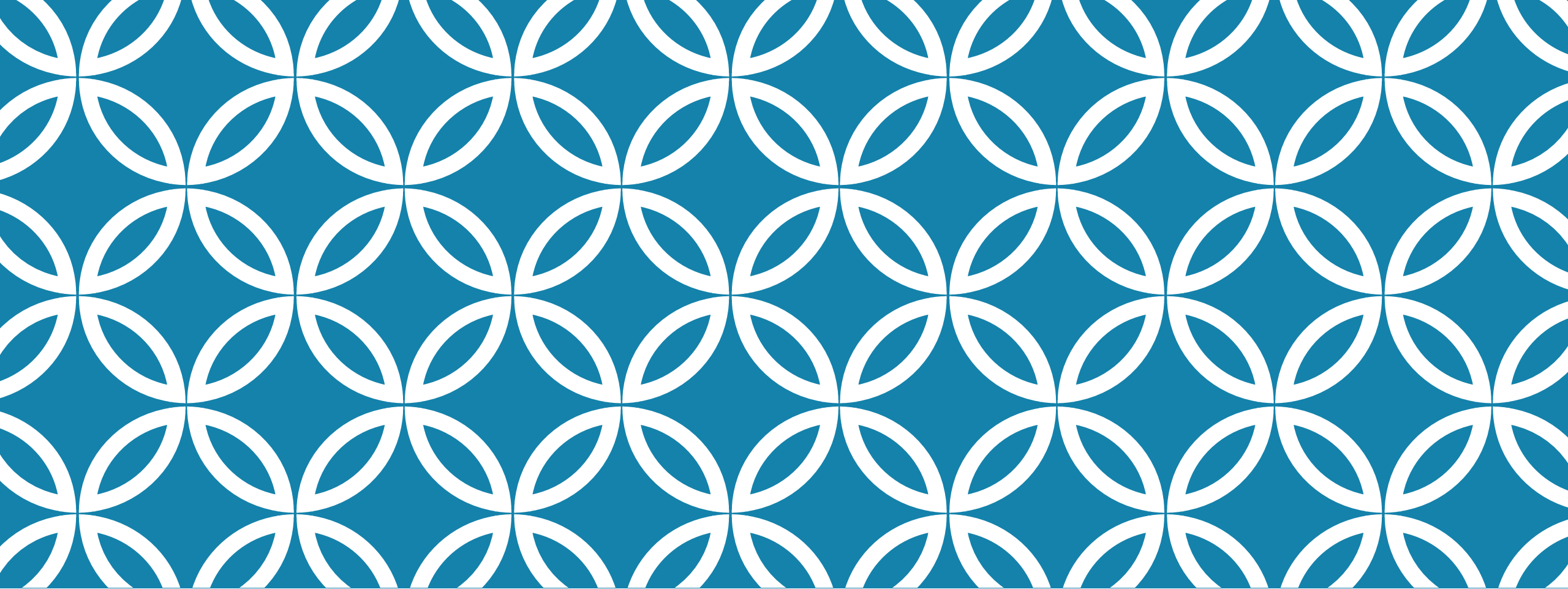
improper use of information properly obtained for a specific purpose, such as the disclosure of data to some third party.

ACLU of Northern California Amicus brief in Renderos v. Clearview available [here](#)

*Brennan Center State Court Report Article - *It's Time to Revitalize California's Constitutional Right to Privacy* available [here](#)*

Golden State Sword: The History and Future of California's Constitutional Right to Privacy to Defend and Promote Rights, Justice, and Democracy in the Modern Digital Age (BTLJ 2024) available [here](#)

ACLU California Comments to Governor Newsom Executive Order – civil rights framework for AI decisionmaking available [here](#)



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