



August 28, 2020

The Honorable Gavin Newsom
Governor of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Newsom,

Since the beginning of the COVID-19 pandemic, the undersigned have been working closely with Leadership in both houses of the Legislature to ensure that California is equipped to respond efficiently and effectively to the severity of the moment. During this time, several legislative members and staff have attempted to engage your Administration in order to coordinate an appropriate State response, and to ensure that the needs and values of our constituents are paramount. Unfortunately, we have received limited engagement at times on a number of critical decisions, on which the input of the Legislature is vital. One area where there must be strong collaboration between the Administration and the Legislature moving forward is in the development of technology to facilitate contact-tracing efforts.

On several occasions, the Legislature, on behalf of our constituents, has communicated strong privacy concerns about technology-assisted contact tracing applications. As your Administration worked to finalize plans for rolling out California Connected, the State's traditional contact tracing program, there were no plans at the time to develop a statewide contact-tracing application. Nonetheless, the Legislature requested the opportunity to provide further counsel in the development and deployment of such an application, should these plans change.

We recently learned that discussions between tech companies and the Administration are taking place regarding the development and possible deployment of a contact-tracing application. After inquiring with your staff about the Administration's plans, your office eventually invited us to participate in a meeting to discuss the development of a pilot project that *may* include a contact tracing application supported by the Apple/Google exposure notification platform. There was very little information shared during that meeting regarding the nature of the pilot program under consideration, yet the request made was for us to voice our concerns. At the time, AB 1782 was mentioned as a bill moving through the Legislative process, which sought to establish critical privacy protections in the event such an application is adopted by state or local governments. Although it is now a defunct bill, we must work together every step of the way to ensure that any action taken by the Administration to deploy a contact-tracing application provide our

constituents with the data privacy and security assurances necessary to encourage widespread participation.

To be clear, it is not the intention of the Legislature to block the development or use of contact tracing applications. We acknowledge that the technology could be very useful in combatting the further spread of COVID-19, restarting the economy, and resuming the normal course of daily life. It is our intention, however, to ensure that we protect the rights and civil liberties of Californians if such an application becomes available to the public. History has repeatedly shown us that civil liberties are most vulnerable when confronted with the fear and uncertainty of an emergency, and it is our solemn duty to prevent encroachment on those liberties in response to the current crisis. Protecting personal privacy is not incompatible with the public health benefits of contact tracing applications, so long as they are thoughtfully developed and deployed.

In our only discussion since that first meeting, we again received very few answers. However, it was also clear to us the Administration has not fully considered many important implications of implementing a statewide contact tracing app. Toward the end of that meeting, your Office asked that we submit questions in writing. Therefore, in our ongoing effort to engage with your Administration on its plans moving forward, below is a list of questions that we have for the time being:

- While intended to be privacy protective by design, some serious privacy concerns have arisen regarding the Apple/Google exposure notification platform. Because Android devices require turning on Location Services for it to function, Google has the ability to retain detailed location information. In addition, Apple devices must remain unlocked for this functionality, which poses security concerns and has implications for search and seizure of these devices. In light of these vulnerabilities, how do you intend to ensure that any application built on this platform for statewide use avoids compromising users' data security and privacy?
- What privacy scheme or schemes apply to information obtained through these technology platforms if a public health authority were to build a contact tracing application? The California Consumer Privacy Act does not apply to public entities, and much of the information collected by such an application is likely not protected health information or medical information for the purposes of HIPAA and CMIA protections, respectively.
- Will use of the application be voluntary? Will there be penalties for failure to participate, or will there be protections against discrimination based on participation or non-participation? If those protections are not available, we have serious concerns for personal privacy and, in particular, for the civil liberties of vulnerable and underserved populations who may not have access to the requisite technology.
- What personal information, if any, will the application collect? With whom will that personal information be shared? What are the data security provisions being contemplated? Who "owns" the data: the State, the contractor, or the individual user?

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- Control Section 11.95 of AB 89, the supplementary budget bill, prevents the use of federal funds for contact tracing applications, raising the question of how this pilot will be funded. Will the requisite funds come from the General Fund? What are the likely consequences of diverting general funds away from other critical health programs for this purpose?
- Some discussion, both around AB 1782 and around this amorphous pilot project, has focused on the desire to make data collected through such an application available for research purposes. Our understanding is that the Apple/Google exposure notification platform is intended to dramatically limit data collected and retained, and your staff indicated that this data would be of little use for research. What research uses, if any, would the data collected by the application have? What kind of research is being contemplated with the resulting data, and what parameters will govern permissible research uses?
- Will data collected by a state-sponsored contact tracing application be made available to law enforcement? If so, under what circumstances? Will a warrant be required to access that data?
- What are the general parameters of the pilot program? Pilot programs are typically limited to a few representative counties to ensure that the policy is effective before rolling out on a broader scale. Apple and Google have made clear that they do not intend to offer their technology for use at a less-than-statewide scale. Will the pilot program be statewide? Will the deployment of a statewide application preclude local health agencies from developing and deploying their own contact tracing apps?

Despite our frustrations with the process leading up to this point, we do appreciate the time your staff has taken on these two occasions to solicit feedback, and look forward to more opportunities to engage on this matter. We are very interested in learning more about your pilot program, and we stand ready and willing to provide feedback after we receive adequate information to do so in a meaningful way.

One of the few insights offered into the potential pilot project is that several businesses are under consideration as contractors for the development of the application itself. In response to the question of funding for the project, your staff indicated that Google and Apple have offered to develop an application for the State free of charge. We caution that while contracting these companies to create the application may not cost the state financially, the Legislators and advocates attending closely to these issues over the years have learned that no such venture is truly free. Often times, products or services offered for “free” are paid for through the surrender of sensitive personal information. Our constituents have made clear to us that the wholesale

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surrender of personal information, whether to the government or to a private business, is deeply concerning.

We ask that the administration carefully consider at what cost to Californians any such contract is made.

Thank you for your consideration and for your hard work and dedication to protecting the health and well-being of all Californians.

Sincerely,



Anthony Rendon

Speaker of the Assembly, 63rd District



Ed Chau

Assemblymember, 49th District



Hannah-Beth Jackson

Senator, 19th District