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California State Legislature

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HANNAH-BETH JACKSON

NINETEENTH SENATE DISTRICT



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CALIFORNIA'S WINE INDUSTRY

April 28, 2020

Office of Governor Gavin Newsom
State Capitol
Sacramento, CA 95814

Dear Governor Newsom,

Given the gravity of the ongoing pandemic and its evolving nature, your steady leadership has been crucial. My staff and I stand ready to serve in any way necessary. Please do not hesitate to reach out.

As Chair of the Senate Judiciary Committee, I write today to highlight something that fundamental rights advocates and I have dedicated ourselves to protecting during our careers, every Californian's fundamental right to privacy. Our great state values privacy so highly that the right to it is expressly granted in the California Constitution, written in by will of the People in 1972. Article I, Section 1 of the California Constitution provides: "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." Privacy is therefore not just a policy goal; it is a constitutional right of every Californian.

During this time of crisis, the health and safety of Californians is of paramount importance, and quick, decisive, and innovative action is necessary. However, such action should not be incompatible with our right to privacy. And further, it is in times of crisis that we must be increasingly vigilant to safeguard our fundamental rights and ensure that we do not sacrifice them in the name of safety. We must proceed with the least possible disruption and undermining of our privacy rights and must look to the least intrusive approaches to our success in battling this epidemic—and those that are likely to follow.

Response to the COVID-19 crisis has involved the emergency procurement of goods and services, including the formation of public-private partnerships. Many of these have and will involve the collection, maintenance, sharing, disclosure, and use of the personal information of Californians. My hope is that when assessing contracts, partnerships, and processes that due regard is given to transparency, disclosure, consent, and, ultimately, the protection of this sensitive information. At the forefront of this effort must be the recognition that this information is NOT a commodity to be shared or sold to the highest bidder—or to any bidder, for that

matter. We must not lurch toward the dystopian world of Aldous Huxley's "Brave New World" or George Orwell's "1984" as the price of protecting our health and safety---nor do we have to.

For instance, numerous elected and public health officials have highlighted the critical role that expanded testing and contact tracing must play in any loosening of the stay-at-home and social distancing orders. In fact, you have made expanded testing and contact tracing one of your core indicators for our successful path forward so that we are able to identify and isolate those with the virus. To this end you have announced a contractual partnership with Verily, a health subsidiary of Alphabet, and OptumServe to bolster our testing capabilities. You have also discussed plans to partner with Apple and Google in order to use their tracing technology. Although these efforts are critical to getting us back up and running, they also raise serious privacy concerns that must be addressed. It is heartening to read that Apple and Google have committed to implement new encryption specifications and to disable the service when the pandemic is contained. However, more needs to be done to truly protect privacy. To this end, the following elements must not only be considered but must be made public so that there is transparency around the process. Along with transparency, these elements include voluntariness, use limitations, minimization and anonymization of data, and a limit to the retention of data.

- **Transparency:** What data is being collected? Who is collecting and controlling this information? How will the public be notified?
- **Data Minimization:** What protections are being put in place to ensure that only data that is necessary for serving specific public health interests is being collected?
- **Consensual:** Will Californians have the ability to control whether their data is collected (will this be an opt-in process)? Will there be penalties for not sharing personal information, such as being barred from returning to work or school?
- **Anonymization:** Will any of the information be personally identifying? If not, how can we be sure it is not?
- **Use and Sharing Limitations:** What are the restrictions on the uses for this information? With whom can the information be shared? Is there going to be an adequate firewall so that the information collected cannot also be used for law enforcement, advertising, or other business purposes?
- **Data Retention Limits:** Are there retention limits on the data or clear guidelines for when the data will be deleted?
- **Secure Maintenance and Transmission:** What protocols are being put into place so that personal information is protected against breaches and other unauthorized disclosures?

Ensuring thorough consideration of privacy interests is especially important given that much of the health information that would be collected through these partners will likely not be protected by the Health Insurance Portability and Accountability Act (HIPAA). The federal law would not apply because these companies would not be considered "covered entities" subject to the strict HIPAA guidelines, even though they would be collecting sensitive, personal health information.

In addition, your leadership has secured computer and Internet access for many families and their children who are engaged in distance learning while our schools are physically closed. This is crucial to maintaining California's commitment to world-class education for our children, and as recent polling shows, Californians appreciate all of your hard work. However, we must be clear about what are the price tag for these products and services in terms of our privacy. The same questions above must be asked regarding our personal information. Families should have clear notice as to what data is being collected from them and their children, and what is being done with that data. We should ensure that every private partner is committing to abide by

the provisions of California's renowned student protection law, the Student Online Personal Information Protection Act (SOPIPA).

Another area of concern is the launch of the recent resource site, Onward.gov. I applaud the effort to get Californians connected to resources, especially in the wake of historic job losses. However, more transparency about the terms of this contract and answers to the same questions laid out above would help assuage some privacy concerns. It should also be noted that personal information collected by businesses is generally subject to California's landmark privacy law, the California Consumer Privacy Act (CCPA). As recently noted by Attorney General Xavier Becerra, our privacy rights are "more important than ever" with so much of our lives driven online. The Attorney General has redoubled his commitment to upholding the privacy rights of Californians and enforcing this critical law. I urge your team to ensure that all partners are complying with the CCPA as appropriate.

Although this letter highlights a few specific contexts to illustrate the core privacy concerns, the principles should be applied in any context, contracts, partnerships, procurement, or data exchanges that involve the personal information of Californians. While Californians are relying on your strong leadership, they must trust that the health information they provide, or that is collected from them, will not, for example, lead to adverse hiring decisions, insurance determinations, or other adverse actions.

This crisis has and will continue to cause disruptions in every facet of this great state. However, we cannot sacrifice our most fundamental right to privacy— a cornerstone of California values and the democracy which we all cherish and need to protect and preserve. I am confident that your leadership and vision will guide us through this tumultuous era while ensuring that the constitutional rights of our people are not forgotten. I appreciate your consideration of these thoughts and questions and your leadership throughout this challenging time.

Sincerely,

A handwritten signature in black ink that reads "Hannah-Beth Jackson". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Senator Hannah-Beth Jackson
Senate District 19