

June 11, 2020

The Honorable Roger Wicker
Chair
U.S. Senate Committee on Commerce,
Science, & Transportation
512 Dirksen Senate Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
U.S. Senate Committee on Commerce,
Science, & Transportation
512 Dirksen Senate Building
Washington, DC 20510

The Honorable Jerry Moran
Chair
Subcommittee on Manufacturing, Trade,
& Consumer Protection
512 Dirksen Senate Building
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
Subcommittee on Manufacturing, Trade,
& Consumer Protection
512 Dirksen Senate Building
Washington, DC 20510

Dear Senators Wicker, Cantwell, Moran, and Blumenthal:

The undersigned civil rights, civil liberties, civil society, and consumer protection organizations endorse the following principles to protect the civil rights and privacy of all persons, especially those populations who are at high risk for the virus and communities of color, when considering the deployment of technological measures in response to the COVID-19 crisis.

Both the health and economic effects of COVID-19 disproportionately impact people from historically disadvantaged communities, including Native Americans,¹ African Americans,² Hispanics,³ as well as Native Hawaiians and Pacific Islanders.⁴ People with disabilities have also faced devastating obstacles as a result of this virus.⁵ As a consequence of historical systemic discrimination and related policy choices, people of color today are more likely to be essential workers without paid sick leave, more likely to live in densely populated areas or living quarters, less likely to have health insurance or access to healthcare, and more likely to suffer from inequities in the healthcare system, resulting in a disproportionate impact of the disease on these communities.⁶

As employers, policymakers, businesses, and public health authorities consider strategies to reopen American society, they must not harm communities of color and people with

¹ Acee Agoya, "Coronavirus Takes Higher Toll on Native Americans in Hard Hit Region," *Indianz*, April 15, 2020, <https://www.indianz.com/News/2020/04/15/coronavirus-takes-higher-toll-on-native.asp>.

² "COVID-19 in Racial and Ethnic Minority Groups," *Centers for Disease Control and Prevention*, April 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

³ "COVID-19 in Racial and Ethnic Minority Groups," April 22, 2020.

⁴ Ku'uwehi Hiraishi, "Native Hawaiians, Pacific Islanders Face Higher Rates of COVID-19," *Hawaii Public Radio*, April 27, 2020, www.hawaiipublicradio.org/post/native-hawaiians-pacific-islanders-face-higher-rates-covid-19-1#stream/0.

⁵ Abigail Abrams, "'This Is Really Life or Death.' For People With Disabilities, Coronavirus Is Making It Harder Than Ever to Receive Care," *Time*, April 24, 2020, <https://time.com/5826098/coronavirus-people-with-disabilities>.

⁶ "COVID-19 in Racial and Ethnic Minority Groups," April 22, 2020. *See also* Pallavi Gogoi, "Why A Historic Wave Of Latino Prosperity Is Under Threat Now," *NPR*, May 10, 2020, www.npr.org/2020/05/10/853049239/historic-wave-of-latino-prosperity-is-threatened-by-devastating-job-losses.

disabilities already suffering disproportionately from the virus and economic hardships. They must avoid improperly deploying *information technologies designed specifically to monitor, track, or trace individuals in order to mitigate, or respond to the COVID-19 public health crisis (hereinafter “COVID-19 response technologies”)*. Digital tools should be implemented only to augment, and not to replace traditional manual contact tracing. Moreover, neither manual tracing nor digital tools will be effective without widely available COVID-19 testing, supported isolation, partnerships with vulnerable communities, and other supportive public health measures, such as equitable access to healthcare.

No COVID-19 response technology has been proven trustworthy and effective for combating the pandemic in the United States. Use of such technology must only be allowed if it is non-discriminatory, effective, voluntary, secure, accountable, and used exclusively for public health purposes.

Non-Discrimination

Collection of data for COVID-19 response should focus on the information that public health authorities need to combat the pandemic. To the extent that any collection and use of data involves protected characteristics, such as race or gender, it must be narrowly tailored to the compelling public interest of tracking, studying, and treating COVID-19. Government surveillance disproportionately targets and affects marginalized communities,⁷ contributing to the inequities they face from the use of big data.⁸ COVID-19 response technologies should neither add to these inequities nor be used to discriminate in employment, housing, credit, education, insurance, healthcare, public accommodations, or public benefits. In addition, under no circumstances should anyone be able to use COVID-19-related data to deny or restrict the right to vote.

Exclusive Public Health Purpose

COVID-19 response technologies need to be trusted to be successful. To build that trust, these programs must minimize the data they collect to only that which is necessary for public health purposes, prohibit any other uses unrelated to public health, and promptly destroy data when it is no longer necessary to serve a public health-related purpose. Furthermore, just like Census data, data collected to protect public health should not be shared with law enforcement or immigration authorities. The only government entities with access to COVID-19 health and location data should be public health authorities and researchers. Use of COVID-19 response technologies should sunset once the public health emergency ends so that they cannot be repurposed.

⁷ Elizabeth Davis, Anthony Whyde, and Lynn Langton, “Contacts Between Police and the Public,” *U.S. Department of Justice*, October 2018, <https://www.bjs.gov/content/pub/pdf/cpp15.pdf>; *See, e.g.*, Dorothy Roberts and Jeffrey Vagle, “Racial Surveillance Has a Long History,” *The Hill*, January 1, 2016, <https://thehill.com/opinion/op-ed/264710-racial-surveillance-has-a-long-history>.

⁸ *See* The Leadership Conference on Civil and Human Rights, “Civil Rights Principles for the Era of Big Data,” February 27, 2014, <https://civilrights.org/civil-rights-principles-era-big-data/>.

Effectiveness

Developers of COVID-19 response technologies should design their tools to meet the actual needs of public health authorities, and test and self-certify that their products are safe and effective prior to widespread deployment. No one should use such a tool if public health experts deem it ineffective. After deployment, the technologies and programs should be regularly assessed by independent auditors to ensure they maintain the highest level of data security, protect privacy, and function as intended. Continued deployment of COVID-19 response technologies must be dependent on proving effectiveness.

Voluntariness

Public health officials stress that technological approaches to addressing the pandemic only work if they are trusted and voluntary.⁹ In general, any COVID-19 response technology must be used with informed, express consent, which an individual can revoke at any time. Outside of limited medical applications defined by orders from public health authorities, employers, businesses, and government agencies should not be allowed to compel use of COVID-19 response technology or retaliate against those who choose not to participate.

Security

The technologies under consideration may collect extremely personal and private health information about health, location, and associations. Entities deploying this technology must implement cybersecurity and data security practices that comply with recognized best practices, provide data access only to public health entities who need it for public health purposes, and protect data integrity. Moreover, if a government uses a COVID-19 response technology to assist with digital contact tracing or exposure notification, it should be built with open source code so that security, privacy, and civil rights experts can identify and report any issues.

Accountability

All use of COVID-19 response technologies requires oversight, transparency, and accountability. This means that proposals to regulate these technologies should provide for clear and comprehensive privacy policies, routine public reporting, enforcement of violations by federal and state authorities, and a private right of action for those whose rights are violated. Marginalized communities historically have not been able to rely upon the government to protect their interests, so individuals must be empowered to safeguard their rights through other avenues.

In this time of global emergency, it is heartening to see so many people coming forward to share ideas and resources to help those in need and prevent further suffering. However, we must also be mindful of the risks of overreach and unintended consequences, especially to marginalized communities already suffering disproportionately from the virus and economic hardships.

“Experience should teach us to be most on our guard to protect liberty when the government’s purposes are beneficent,” Justice Brandeis wrote. “The greatest dangers to liberty

⁹ Luca Ferretti, et al., “Quantifying SARS-CoV-2 Transmission Suggests Epidemic Control with Digital Contact Tracing,” *Science*, May 8, 2020, <https://science.sciencemag.org/content/sci/368/6491/eabb6936.full.pdf>.

lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”¹⁰
Public health expertise and scientific rigor is necessary to save lives; thoughtful consideration of equity and civil rights is necessary to safeguard them.

Sincerely,

Access Now
Alianza Nacional de Campesinas
American Atheists
American Federation of Teachers
American-Arab Anti-Discrimination
Committee (ADC)
Americans for Financial Reform
Amnesty International - USA
Arab American Institute
Asian & Pacific Islander American Health
Forum
Asian Americans Advancing Justice | AAJC
Association of Asian Pacific Community
Health Organizations (AAPCHO)
Augustus F. Hawkins Foundation
Autistic Self Advocacy Network
Campesinos Sin Fronteras
Center for American Progress
Center for Democracy and Technology
Center for Digital Democracy
Center for Science and Democracy, Union
of Concerned Scientists
Center on Privacy & Technology at
Georgetown Law
Common Cause
Constitutional Alliance
Consumer Action
Consumer Federation of America
Customer Commons
Democracy 21
Economic Policy Institute
Electronic Frontier Foundation
Electronic Privacy Information Center
(EPIC)
ELEVATE AAPI @ Irvine Valley College
Equal Rights Advocates
Equality California
Farmworker Association of Florida

Filipina Women's Network
Free Press Action
Freedom House
Government Accountability Project
Government Information Watch
Human Rights Campaign
Impact Fund
Japanese American Citizens League
Justice for Migrant Women
Justice in Aging
Lawyers' Committee for Civil Rights Under
Law
League of Women Voters of the United
States
Matthew Shepard Foundation
Media Alliance
MediaJustice
Multicultural Efforts to end Sexual Assault
(MESA)
Muslim Advocates
NAACP
National Action Network
National Alliance for Partnerships in Equity
(NAPE)
National Black Justice Coalition
National Center for Lesbian Rights
National Consumer Law Center, on behalf
of its low-income clients
National Council of Jewish Women
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Health Law Program
National Hispanic Media Coalition
National Indian Education Association
National Network to End Domestic
Violence
National Partnership for Women & Families

¹⁰ *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

National Queer Asian Pacific Islander
Alliance (NQAPIA)
National Urban League
New America's Open Technology Institute
Oakland Privacy
OCA-Asian Pacific American Advocates
Open MIC (Open Media & Information
Companies Initiative)
Pacific Islander Health Partnership
Prison Policy Initiative
Public Citizen

Public Knowledge
Ranking Digital Rights
Restore The Fourth, Inc.
Silver State Equality-Nevada
South Asian Network
The Leadership Conference on Civil and
Human Rights
UnidosUS
Union for Reform Judaism
United Church of Christ, OC Inc.
Workplace Fairness