

United States Senate
WASHINGTON, DC 20510

July 28, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor & Pensions
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health,
Education, Labor & Pensions
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Alexander, and Ranking Member Murray,

As you begin negotiations on another coronavirus stimulus package, we write to urge inclusion of commonsense privacy protections for COVID health data. Building public trust in COVID screening tools will be essential to ensuring meaningful participation in such efforts. With research consistently showing that Americans are reluctant to adopt COVID screening and tracing apps due to privacy concerns¹, the lack of health privacy protections could significantly undermine efforts to contain this virus and begin to safely re-open – particularly with many screening tools requiring a critical mass in order to provide meaningful benefits. According to one survey, 84% of Americans “fear that data collection efforts aimed at helping to contain the coronavirus cost too much in the way of privacy.”²

Public health experts have consistently pointed to health screening and contact tracing as essential elements of a comprehensive strategy to contain and eradicate COVID. Since the onset of the pandemic, employers, public venue operators, and consumer service providers have introduced a range tools and resources to engage in symptom monitoring, contact tracing, exposure notification, temperature checks, and location tracking.³ Increasingly, we have seen

¹ Kevin B. O’Reilly, “Why COVID-19 Tracking Will Flounder Without Privacy Protections,” *American Medical Association* (May 12, 2020), available at <https://www.ama-assn.org/delivering-care/patient-support-advocacy/why-covid-19-tracking-will-flounder-without-privacy>; Sarah Kreps, Baobao Zhang & Nina McMurry, “Contact-tracing Apps Face Serious Adoption Obstacles,” *Brookings Institution* (May 20, 2020), available at <https://www.brookings.edu/techstream/contact-tracing-apps-face-serious-adoption-obstacles/>

² Robert Hackett, “Why Americans Are Uneasy About COVID-19 Contact-Tracing,” *Fortune* (June 24, 2020), available at <https://fortune.com/2020/06/24/coronavirus-contact-tracing-america-privacy-covid-19/>.

³ See, e.g., Rebecca Heilweil, “Clear Usually Helps People Speed Past the TSA Line. Now It’s Offering A COVID-19 Screening Service,” *Vox* (July 23, 2020), available at <https://www.vox.com/recode/2020/7/23/21336245/clear->

higher education institutions mandate the use of these applications for incoming students⁴ and employers mandate participation in these programs among employees.⁵

Health data is among the most sensitive data imaginable and even before this public health emergency, there has been increasing bipartisan concern with gaps in our nation's health privacy laws. While a comprehensive update of health privacy protections is unrealistic at this time, targeted reforms to protect health data – particularly with clear evidence that a lack of privacy protections has inhibited public participation in screening activities – is both appropriate and necessary.

Our legislation does not prohibit or otherwise prevent employers, service providers, or any other entity from introducing COVID screening tools. Rather, it provides commonsense and widely understood rules related to the collection, retention, and usage of that information – most notably, stipulating that sensitive data collected under the auspices of efforts to contain COVID should not be used for unrelated purposes. As a litany of investigative reports, Congressional hearings, and studies have increasingly demonstrated, the widespread secondary use of Americans' data – including sensitive health and geolocation data – has become a significant public concern. The legislation also ensures that Americans cannot be discriminated against on the basis of COVID health data – something particularly important given the disproportionate impact of this pandemic on communities of color.

Efforts by public health agencies to combat COVID-19, such as manual contact tracing, health screenings, interviews, and case investigations, are not restricted by our bill. And the legislation would allow for the collection, use, and sharing of data for public health research purposes and makes clear that it does not restrict use of health information for public health or other scientific research associated with a public health emergency.

Our urgent and forceful response to COVID-19 can coexist with protecting and even bolstering our health privacy. If not appropriately addressed, these issues could lead to a breakdown in public trust that could ultimately thwart successful public health surveillance initiatives. Privacy experts, patient advocates, civil rights leaders, and public interest organizations have resoundingly called for strong privacy protections to govern technological measures offered in

[tsa-covid-19-screening-service-health-pass](#); Kate Morgan, “Get Ready to Have Your Temperature Taken – A Lot,” *OneZero* (July 23, 2020), available at <https://onezero.medium.com/get-ready-to-have-your-temperature-taken-a-lot-9b46dfe831ef>; Veronica Dudo, “COVID-19: Thermal Screening for AC Casino Employees,” *New Jersey News Network* (June 26th, 2020), available at <https://www.newjerseynewsnetwork.com/story/42296451/covid19-thermal-screening-for-casino-employees-ahead-of-reopening>.

⁴ Angus Chen, “As Universities Prepare to Bring Students Back, Some Turn to Mass Coronavirus Testing,” *WBUR* (July 14, 2020), available at <https://www.wbur.org/commonhealth/2020/07/14/college-university-fall-coronavirus-testing>; Ruth Reader, “Brown Is Using A New App from Alphabet’s Verily to Bring Teachers Back to Campus,” *Fast Company* (June 18, 2020), available at <https://www.fastcompany.com/90518685/brown-is-using-a-new-app-from-alphabets-verily-to-bring-teachers-back-to-campus>

⁵ Mohana Ravindranath, “Coronavirus Opens Door to Company Surveillance of Workers,” *Politico* (June 26, 2020), available at <https://www.politico.com/news/2020/06/26/workplace-apps-tracking-coronavirus-could-test-privacy-boundaries-340525>

response to the COVID-19 crisis.⁶ In the absence of a federal privacy framework, experts and enforcers – including the Director of the Bureau of Consumer Protection of Federal Trade Commission – have encouraged targeted rules on this sensitive health data.⁷ The *Public Health Emergency Privacy Act* meets the needs raised by privacy and public health communities, and has been resoundingly endorsed by experts and civil society groups.

Providing Americans with assurance that their sensitive health data will not be misused will give Americans more confidence to participate in COVID screening efforts, strengthening our common mission in containing and eradicating COVID-19. For this reason, we urge you to include the privacy protections contained in the *Public Health Emergency Privacy Act* in any forthcoming stimulus package.

Thank you for your attention to this important matter.

Sincerely,

/s/ Mark R. Warner

Mark R. Warner
United States Senate

/s/ Richard Blumenthal

Richard Blumenthal
United States Senate

/s/ Michael F. Bennet

Michael F. Bennet
United States Senate

/s/ Mazie K. Hirono

Mazie K. Hirono
United States Senate

/s/ Angus S. King, Jr.

Angus S. King, Jr.
United States Senate

/s/ Robert Menendez

Robert Menendez
United States Senate

⁶ The Leadership Conference on Civil & Human Rights, *Letter to Chairman Roger Wicker and Ranking Member Maria Cantwell on Senate COVID-19 Privacy & Civil Rights Principles* (June 10, 2020), available at <https://civilrights.org/resource/senate-covid-19-privacy-civil-rights-principles/>

⁷ *Testimony of Mr. Andrew Smith, Director, Bureau of Consumer Protection, Federal Trade Commission, Subcommittee on Manufacturing, Trade, and Consumer Protection hearing on “Protecting Americans from COVID-19 Scams”* (July 21, 2020).

/s/ Kamala D. Harris

Kamala D. Harris
United States Senate

/s/ Edward J. Markey

Edward J. Markey
United States Senate

/s/ Cory Booker

Cory Booker
United States Senate

/s/ Tammy Baldwin

Tammy Baldwin
United States Senate

/s/ Elizabeth Warren

Elizabeth Warren
United States Senate

/s/ Amy Klobuchar

Amy Klobuchar
United States Senate

/s/ Dick Durbin

Richard J. Durbin
United States Senate