



April 4, 2023

The Honorable Reginald Jones-Sawyer
 Chair, Assembly Public Safety Committee
 1020 N Street, Room 162
 Sacramento, CA 95814

Re: A.B. 793 – SUPPORT

Dear Assemblymember Jones-Sawyer:

The undersigned organizations represent a broad coalition of advocacy organizations, which focus on reproductive justice, LGBTQI rights, equity, criminal justice, free expression. We write in support of A.B. 793, authored by Assemblymember Mia Bonta, which would provide critical protections, especially for marginalized communities and the healthcare providers serving them.¹

The legislature has recognized the threat that faces these communities, passing A.B. 2091 (Bonta, 2022), A.B. 1242 (Bauer-Kahan, 2022), and S.B. 107 (Wiener, 2022). Those bills were a good first step, but more must be done. Unfortunately, police can skirt the protections in last year's laws if, for example, they don't say specifically why they want the data. By taking some of the most invasive surveillance warrants off the table, A.B. 793 would continue to solidify California's status as a sanctuary for those seeking reproductive or gender-affirming care.

The bill specifically addresses the problem of "reverse demands" and would put a stop to them. Normal warrants seek information about a particular person police have probable cause to believe merits investigation. A reverse warrant seeks the opposite: the identity of all the people who were present at a

¹ Alfred Ng. "A uniquely dangerous tool": How Google's data can help states track abortions." POLITICO: (July 2022). <https://www.politico.com/news/2022/07/18/google-data-states-track-abortions-00045906>

particular location (geofence demands) or who looked up a particular term in a search engine (keyword demands) simply because of where they were or what they searched for. Reverse demands have the same practical effect as unconstitutional general warrants, and courts have found geofence demands unconstitutional.

These demands, already used to target protestors,² can be used to conduct broad fishing expeditions for those who are seeking needed healthcare. A police investigator could ask for everyone who was outside an unrelated business across the street from a reproductive health clinic, for example, and get information about who has been near that clinic's entrance—along with anyone who happened to be in the area at that moment – while skirting around the reproductive privacy protections enacted last year.

Thousands or even millions of people can be included in a single, overbroad request without any probable cause at all. For example, a single warrant issued in Los Angeles County sought to identify all devices within a total geographic area equivalent to about 24 football fields during five morning commute hours on a Friday.³ The area included several of the most densely populated cities in the greater Los Angeles area, including Lynwood, with a population of 13,894 people per square mile and Paramount, with a population of 11,367 people per square mile.⁴ In this way, rather than help law enforcement find a needle in a haystack, reverse warrants give law enforcement a haystack to search through without any guarantee the needle they want is anywhere inside. Someone might have left their cellphone at home and so not be included in a geofence warrant, for example, or they could have used one of dozens of search engines to avoid inclusion in a keyword search warrant to a particular search engine company.

Reverse demands have the same practical effect as unconstitutional general warrants. General warrants are expansive and invasive searches by the government that fail to identify specific persons, devices, or places to be searched with evidence of probable cause. They date back to pre-Revolutionary War times when the King used 'writs of assistance' to authorize his agents to "carry out wideranging searches of anyone, anywhere, and anytime regardless of whether they were suspected of a crime. These 'hated writs'⁵ spurred colonists toward revolution⁶ and directly motivated James Madison's crafting of the Fourth Amendment."⁷ Since our Nation's founding, general warrants have been deemed a significant threat to personal freedom, privacy, and liberty, and the Supreme Court has repeatedly held that the

² Russell Brandom. "How police laid down a geofence dragnet for Kenosha protestors." *The Verge* (August 2021). <https://www.theverge.com/22644965/kenosha-protests-geofence-warrants-atf-android-data-police-jacob-blake>

³ Jennifer Lynch and Andrew Crocker. "People v. Meza - Geofence Warrant - EFF Amicus Brief in Support of Appellant at California Court of Appeal" Electronic Frontier Foundation (Jan. 2023): pp. 27-31 <https://www.eff.org/document/people-v-meza-geofence-warrant-eff-amicus-brief-support-appellant-california-court-appeal>

⁴ *Ibid.*

⁵ *Stanford v. Texas*, 379 U.S. 476, 484 n.13 (1965).

⁶ *Stanford*, 379 U.S. at 481 ("Vivid in the memory of the newly independent Americans were those general warrants known as writs of assistance under which officers of the Crown had so bedeviled the colonists."). See also *Marcus v. Search Warrant of Property*, 367 U.S. 717, 729 ("The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression.").

⁷ David Snyder, "The NSA's 'General Warrants': How the Founding Fathers Fought an 18th Century Version of the President's Illegal Domestic Spying," <https://www.eff.org/files/filenode/att/generalwarrantsmemo.pdf>

Fourth Amendment to the United States Constitution prohibits the use of these general warrants. It is not surprising then that courts have found reverse-location demands unconstitutional.

The use of reverse demands poses a unique threat to those who are seeking reproductive or gender-affirming care, particularly if they are coming to California from other states. These mass surveillance demands are dangerous because they allow local law enforcement in states across the country to request the names and identities of people whose digital data trail shows they've visited California abortion or gender-affirming care providers. They could also indicate if people searched for revealing particular keywords online such as "mifepristone," "abortion drugs," "top surgery," or for care options in California.

Taking reverse warrants off the table would solidify California's place as a protector of those who are merely seeking healthcare. It would also provide needed clarity for companies that receive these warrants, which have often spoken out against such requests because of the lack of scrutiny applied before they are issued.⁸

For these reasons, we strongly support A.B. 793 and respectfully urge your "aye" vote. Thank you.

Sincerely,



Myra Durán, Senior Policy Advocate
If/When/How: Lawyering for Reproductive
Justice




Becca Cramer-Mowder, Legislative Advocate
ACLU California Action



Hayley Tsukayama, Senior Legislative Activist
Electronic Frontier Foundation



Xochitl Lopez-Ayala, Policy Advocacy
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Access Reproductive Justice



Amira Hasenbush, Founder
All Family Legal

⁸ Reform Government Surveillance. "RGS Urges Adoption of New York's Reverse Location Search Prohibition Act." Press statement: (May 2022). <https://www.reformgovernmentsurveillance.com/rgs-urges-adoption-of-new-yorks-reverse-location-search-prohibition-act/>

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All* Above All (Organization)



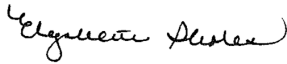
Jessica Kemper-Lytle
American Atheists



Evan Clark, Executive Director
Atheists United



Dannie Cesena, Director
CA LGBTQ Health and Human Services
Network



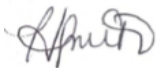
Elizabeth Sholes
California Church IMPACT



Colby Lenz
California Coalition for Women Prisoners



Lorena García Zermeno, Director of Policy
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Holly Smith, CNMA Health Policy Chair
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Margo George & Jennifer Friedman, Co-chairs
CPDA Legislative Committee
California Public Defenders Association



Betsy Butler, Executive Director
California Women's Law Center



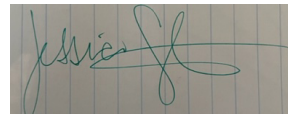
Elaine L. Sierra, President
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Robert Herrell, Executive Director
Consumer Federation of California



Caitriona Fitzgerald, Deputy Director
EPIC



Jessica Stender, Policy Director & Deputy Legal
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Tracy Rosenberg, Executive Director
Media Alliance



Michele Gomez, MD, Co-founder
MYA Network



Chelsea Wiggins, Counsel
National Abortion Federation



Shakti Belway, Co-Executive Director
National Center for Youth Law



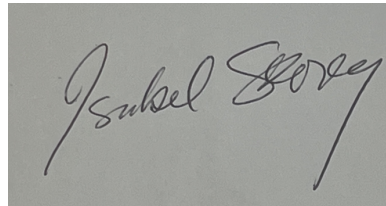
Tracy Rosenberg, Advocacy Director
Oakland Privacy



Neha Vasudeva, Senior Program Coordinator
Reproductive Health Access Project - Northern
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Neha Vasudeva, Senior Program Coordinator
Reproductive Health Access Project - Southern
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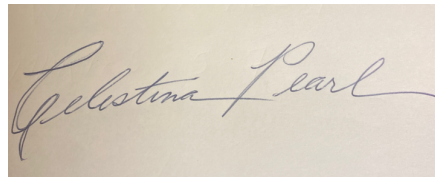
Isabel Story, Vice President of Legislation
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Brian Hofer - Executive Director
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Ann Irwin, Executive Director
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The San Francisco Black & Jewish Unity
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Marisol Franco, Chief Strategist, Programs
Women's Foundation California



Molly Robson, VP of Government Affairs
Planned Parenthood Affiliates of California



Emory Roane, Policy Counsel
Privacy Rights Clearinghouse



Alex Marthews
Restore The Fourth

cc: The Honorable Mia Bonta; Honorable Members and Committee Staff, Assembly Public Safety Committee