

Congress of the United States
Washington, DC 20515

July 7, 2022

Mr. Dmitry Gurski
Chief Executive Officer
Flo Health, Inc.
1013 Centre Road, Suite 403-B
Wilmington, DE 19805

Dear Mr. Gurski:

We are writing to request documents regarding the collection and dissemination of personal reproductive health data. We are concerned about the potential misuse of this sensitive, private data to invade the privacy of those seeking reproductive health care.¹

People seeking abortion care today must contend with what one commentator called “an era of unprecedented digital surveillance,” where data about their location, search history, and health is constantly being collected and potentially accessed by others, including government agencies or private citizens seeking to harass or sue, without the individual’s knowledge or consent.² We seek information regarding your company’s practices to ensure the sale of this type of data does not endanger individuals seeking abortion services and other forms of reproductive health care.

On June 24, 2022, the Supreme Court overturned nearly 50 years of legal precedent with its decision in *Dobbs v. Jackson Women’s Health Organization* eviscerating the right to an abortion guaranteed in *Roe v. Wade*.³ This decision will make finding abortion care extremely difficult, and in many cases impossible, for millions of people. According to the Guttmacher Institute, 26 states are certain or likely to ban abortion entirely.⁴ As of July 3, six states have banned abortion, three have bans currently being litigated, ten plan to institute bans or severe restrictions soon, and the legal status of abortion is threatened in 11 additional states.⁵ Almost

¹ *Data Broker Is Selling Location Data of People Who Visit Abortion Clinics*, Vice Motherboard (May 3, 2022) (online at www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood).

² Eva Galperin (@evacide), *Twitter* (June 24, 2022) (online at https://twitter.com/evacide/status/1540358180789620736?s=21&t=jHMi5PGACzO_-Gby1GXaWA).

³ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022).

⁴ Guttmacher Institute, *Press Release: US Supreme Court Overturns Roe v. Wade* (June 24, 2022) (online at www.guttmacher.org/news-release/2022/us-supreme-court-overturns-roe-v-wade).

⁵ *Tracking Where Abortion Laws Stand in Every State*, The Guardian (June 28, 2022) (online at www.theguardian.com/us-news/ng-interactive/2022/jun/28/tracking-where-abortion-laws-stand-in-every-state).

40 million women of reproductive age live in those states, along with many transgender and nonbinary people who will also be impacted.⁶

Recent anti-abortion bans have pushed people to travel to nearby states to seek reproductive care. For example, after Texas's six-week abortion ban took effect on September 1, 2021, an average of 1,400 women in Texas went to one of seven nearby states to seek care each month—twelve times as many as typically sought out-of-state care before passage of the law.⁷

Anti-abortion lawmakers and activists are also pursuing legislation that would restrict people from leaving their state to seek abortion care in another state, and allow private citizens to sue anyone who helped them.⁸ In March 2022, the Missouri legislature considered a provision to make it illegal to “aid or abet” an abortion for a Missouri resident, irrespective of where the procedure occurs.⁹ Similarly, Texas' abortion ban enables residents to become so-called “bounty hunters” by providing a financial incentive to sue others involved in providing or obtaining abortion care.¹⁰

The collection of sensitive data could pose serious threats to those seeking reproductive care as well as to providers of such care, not only by facilitating intrusive government surveillance, but also by putting people at risk of harassment, intimidation, and even violence. Geographic data collected by mobile phones may be used to locate people seeking care at clinics, and search and chat history referring to clinics or medication create digital bread crumbs revealing interest in an abortion.¹¹

Reproductive health applications, which have experienced numerous data privacy issues, have been known to “share information with data brokers, advertisers, and other third parties that are difficult to track.”¹² One application was cited by the Federal Trade Commission for sharing

⁶ *Id.*

⁷ *Most Women Denied Abortions by Texas Law Got Them Another Way*, New York Times (Mar. 6, 2022) (online at www.nytimes.com/2022/03/06/upshot/texas-abortion-women-data.html).

⁸ *Anti-abortion Lawmakers Want to Block Patients from Crossing State Lines*, Washington Post (June 30, 2022) (online at www.washingtonpost.com/politics/2022/06/29/abortion-state-lines/).

⁹ *Missouri House Blocks Effort to Limit Access to Out-Of-State Abortions*, Missouri Independent (Mar. 29, 2022) (online at <https://missouriindependent.com/2022/03/29/missouri-house-blocks-effort-to-limit-access-to-out-of-state-abortions/>).

¹⁰ *The Texas Abortion Law Creates a Kind of Bounty Hunter. Here's How It Works*, New York Times (Sept. 10, 2021) (online at www.nytimes.com/2021/09/10/us/politics/texas-abortion-law-facts.html).

¹¹ *For People Seeking Abortions, Digital Privacy Is Suddenly Critical*, Washington Post (June 24, 2022) (online at www.washingtonpost.com/technology/2022/05/04/abortion-digital-privacy/).

¹² *See, e.g., Cycle-Tracking Apps Stand Behind Their Privacy Policies as Roe Teeters*, The Verge (May 6, 2022) (online at www.theverge.com/2022/5/6/23060000/period-apps-privacy-abortion-roe-supreme-court); Federal Trade Commission, *Press Release: FTC Finalizes Order with Flo Health, a Fertility-Tracking App that Shared Sensitive Health Data with Facebook, Google, and Others* (June 22, 2021) (online at www.ftc.gov/news-events/news/press-releases/2021/06/ftc-finalizes-order-flo-health-fertility-tracking-app-shared-sensitive-health-data-facebook-google); *Period Apps Are A Privacy Nightmare—Should You Still Use Them? An Expert Explains the Risks*, Business Insider (Jan. 28, 2021) (online at www.businessinsider.com/period-apps-privacy-risks-ad-targeting-

data with Facebook despite promising users that data would be kept private.¹³ In a recent study, researchers found that 87% of the 23 most popular women’s health apps—including reproductive health apps—shared user data with third parties, yet just over 50% requested consent from their users.¹⁴ Researchers have also found that at least 70% of women’s health apps allow location tracking.¹⁵

Even in instances where steps are taken to anonymize users’ data, it is often still possible to identify specific individuals.¹⁶ In its 2018 investigation into location tracking data, the *New York Times* was able to track individuals’ whereabouts through a database of location data, including one person who had visited a Planned Parenthood for more than an hour.¹⁷ The *New York Times* was able to identify individuals from this data, despite the fact that identities were not disclosed in the records they obtained.

The Committee has long been focused on the collection and sale of sensitive mobile phone location data.¹⁸ In June 2020, the Committee launched a bicameral investigation into the selling of consumer location data to federal agencies.¹⁹

As Congress considers legislative reforms to ensure the privacy of personal reproductive and sexual health information, we are examining the practices of data brokers, app companies, and others regarding the collection, dissemination, and sale of this private data.

For these reasons, we request that you provide the following information and documents to the Committee no later than July 21, 2022. Please note that for purposes of these requests, we are seeking information specific to the ‘Flo Period Tracker & Calendar’ app, and any other apps that collect personal reproductive or sexual health information:

2021-1).

¹³ *Id.*

¹⁴ Najd Alfa wazan et al., *Privacy, Data Sharing, and Data Security Policies of Women’s mHealth Apps: Scoping Review and Content Analysis*, JMIR Mhealth Uhealth (June 5, 2022) (online at <https://mhealth.jmir.org/2022/5/e33735>).

¹⁵ *Id.*

¹⁶ *Your Apps Know Where You Were Last Night, and They’re Not Keeping It Secret*, New York Times (Dec. 10, 2018) (online at www.nytimes.com/interactive/2018/12/10/business/location-data-privacy-apps.html).

¹⁷ *Id.*

¹⁸ See, e.g., Committee on Oversight and Reform, *Hearing on Geolocation Technology and Privacy*, 114th Cong. (Mar. 2, 2016) (online at <https://republicans-oversight.house.gov/hearing/geolocation-technology-and-privacy/>); Committee on Oversight and Reform, *Press Release: Members Launch Bicameral Investigation into Company Tracking, Collecting, and Selling Consumers’ Location Data* (June 24, 2020) (online at <https://oversight.house.gov/news/press-releases/members-launch-bicameral-investigation-into-company-tracking-collecting-and>).

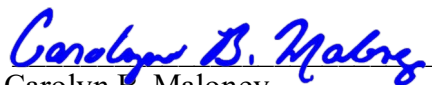
¹⁹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, et al. to Chris Gildea, Venntell, Inc. (June 24, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-06-24.CBM%20Warren%20Wyden%20DeSaulnie%20to%20Venntell%20re%20Mobile%20Phone%20Location%20Data.pdf>).

1. All documents and communications regarding your company's collection, retention, protection, use, or dissemination of personal reproductive or sexual health information, including documents and communications concerning the actual or potential production of such data to external entities voluntarily or subject to legal obligation, such as a subpoena;
2. All documents and communications with state or local governments regarding the collection, retention, protection, use, dissemination, or production of personal reproductive or sexual health information for any reason;
3. All policies and procedures related to user data privacy, data sharing, and data security;
4. All policies and procedures related to user consent to sell, trade, transfer, or otherwise share data;
5. A list of all entities that have access to your company's user data, including customers and trusted partners;
6. For each year from 2017 to present, your company's revenue and profits related to the sale of user data.

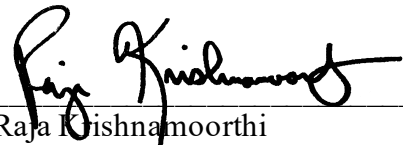
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

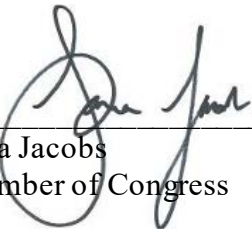
Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and
Consumer Policy



Sara Jacobs
Member of Congress

Mr. Dmitry Gurski
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Enclosure

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy