

# United States Senate

WASHINGTON, DC 20510

July 20, 2022

Brian Bason  
CEO  
Bark Technologies, Inc.  
3423 Piedmont Road NE, Suite 540  
Atlanta, Georgia 30305

Dear Mr. Bason,

We are writing in the aftermath of the Supreme Court’s June 2022 decision to repeal *Roe v. Wade*, and amid nationwide attacks on reproductive rights, with new concerns about your company’s use of artificial intelligence and algorithmic systems to monitor students’ online activity.<sup>1</sup> As abortion bans and restrictions sweep across the country,<sup>2</sup> we are concerned that your products may be used to criminalize or punish students seeking information related to abortion services, and that they “can be weaponized against teens who seek reproductive care.”<sup>3</sup> To address these concerns, we request that you provide information on (1) whether your products flag students’ online activity when they search for or use terms such as abortion, contraception, and other terms related to reproductive health; and (2) how you are ensuring that your company’s software is not and cannot be misused to punish or criminalize students for seeking reproductive health information.

While the stated intent of your products is to protect student safety, an investigation that we released in March 2022 revealed significant privacy and equity concerns associated with your software.<sup>4</sup> A recent report by privacy experts highlighted the threats posed by abortion bounty-hunter laws and revealed the increased privacy concerns with the fall of *Roe v. Wade* for people, including minors, who may be pregnant.<sup>5</sup> The report found that digital surveillance data can be weaponized “to target pregnant people and use their health data against them in a court of law,” and internet search engines were identified as “particularly potent tool[s]” as “police can not only obtain search histories from a pregnant person’s device, but can also obtain records directly from search engines.”<sup>6</sup> In fact, there have already been a

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<sup>4</sup> Office of Senator Elizabeth Warren, “Constant Surveillance: Implications of Around-the-Clock Online Student Activity Monitoring,” March 2022, <https://www.warren.senate.gov/oversight/reports/warren-markey-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students>.

<sup>5</sup> Surveillance Technology Oversight Project, “Pregnancy Panopticon,” Albert Fox Cahn and Eleni Manis, May 24, 2022, <https://www.stopspying.org/pregnancy-panopticon>.

<sup>6</sup> *Id.*

few alarming cases where digital trails were used as evidence by the prosecution.<sup>7</sup> As states enact new laws, or enforce existing laws that ban, restrict, or criminalize abortion, it is even more critical that student surveillance software does not identify or provide to law enforcement, information on students who may be seeking contraception, abortion, or other related services.

You have stated that your product is not intended to be used for discipline or punitive purposes; however, as our March 2022 report revealed, student activity monitoring products often result in disciplinary action. One survey of teachers found that almost half work in schools that have used these tools to identify violations of discipline policies, and many companies, including yours,<sup>8</sup> immediately flag certain activities and content for law enforcement.<sup>9</sup> And worse, parents, and students themselves, are often unaware that school districts use monitoring software, or the privacy risks and potential harm associated with these products.<sup>10</sup> It would be deeply disturbing if your software flags words or activity that suggest students are searching for contraception, abortion, or other related services, and if school administrators, parents, and even law enforcement were potentially informed of this activity.

Mental health advocates and experts have found that students are more likely to seek reproductive health information online<sup>11</sup> – particularly when living in states where abortion is illegal or stigmatized. For example, a high school student in Texas explained that “regardless of whether or not I live in Texas, [the internet] gives me a little bit of access,” to information about abortion and reproductive health.<sup>12</sup> Given students’ reliance on online information for health needs, the disproportionate use of school-issued devices by low-income students,<sup>13</sup> and your claim that your company is unable to track disparate impacts of your products,<sup>14</sup> we are extraordinarily concerned that your software could result in punishment or criminalization of

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students seeking contraception, abortion, or other reproductive health care. With reproductive rights under attack nationwide, it would represent a betrayal of your company's mission to support students if you fail to provide appropriate protections for students' privacy related to reproductive health information.

In order to understand whether your company is protecting students' privacy with regard to reproductive health information, we request you answer the following questions no later than August 3, 2022:

1. Please describe your guidelines for handling data that may reveal students' sensitive reproductive health data or searches for reproductive health information, and provide a written copy of these guidelines.
2. Does your software flag content related to any of the following words or phrases: pregnant, abortion, birth control, contraception, or Planned Parenthood? Does it flag any other phrases related to reproductive health?
  - a. If yes, will you commit to ending this content flagging?
    - i. If not, why not?
  - b. If not, will you commit to never adopting such a content flagging system?
    - i. If not, why not?
3. Can your software be used to identify individual students who search for terms related to reproductive health, such as those referred to in question #2? If yes, will you commit to ending any such tracking in the wake of the Supreme Court's repeal of *Roe v. Wade*?
4. Who is potentially informed when students are flagged for using search terms related to reproductive health?
  - a. Are school administrators informed or potentially informed?
  - b. Are parents informed or potentially informed?
  - c. Are law enforcement officials informed or potentially informed?
  - d. Are any other individuals informed or potentially informed, and if so, who?
5. Have law enforcement officials ever required your company to turn over individual students' search data, including information on reproductive health care pursuant to a subpoena, court order, or other methods of compulsory process?
  - a. If yes, please provide detailed descriptions of all instances in which your company has complied with such law enforcement requests.
6. Do you take any action to protect students' data from being turned over to law enforcement officials via subpoena, court order, or other methods of compulsory process?

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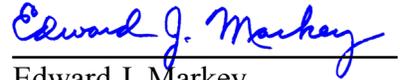
7. Will your company commit to never voluntarily providing such information to law enforcement entities?

Sincerely,



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Elizabeth Warren  
United States Senator



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Edward J. Markey  
United States Senator

# United States Senate

WASHINGTON, DC 20510

July 20, 2022

Jeff Patterson  
Founder and CEO  
Gaggle  
5050 Quorum Drive, Suite 700  
Dallas, TX, 75254

Dear Mr. Patterson,

We are writing in the aftermath of the Supreme Court’s June 2022 decision to repeal *Roe v. Wade*, and amid nationwide attacks on reproductive rights, with new concerns about your company’s use of artificial intelligence and algorithmic systems to monitor students’ online activity.<sup>1</sup> As abortion bans and restrictions sweep across the country,<sup>2</sup> we are concerned that your products may be used to criminalize or punish students seeking information related to abortion services, and that they “can be weaponized against teens who seek reproductive care.”<sup>3</sup> To address these concerns, we request that you provide information on (1) whether your products flag students’ online activity when they search for or use terms such as abortion, contraception, and other terms related to reproductive health; and (2) how you are ensuring that your company’s software is not and cannot be misused to punish or criminalize students for seeking reproductive health information.

While the stated intent of your products is to protect student safety, an investigation that we released in March 2022 revealed significant privacy and equity concerns associated with your software.<sup>4</sup> A recent report by privacy experts highlighted the threats posed by abortion bounty-hunter laws and revealed the increased privacy concerns with the fall of *Roe v. Wade* for people, including minors, who may be pregnant.<sup>5</sup> The report found that digital surveillance data can be weaponized “to target pregnant people and use their health data against them in a court of law,” and internet search engines were identified as “particularly potent tool[s]” as “police can not only obtain search histories from a pregnant person’s device, but can also obtain records directly from search engines.”<sup>6</sup> In fact, there have already

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been a few alarming cases where digital trails were used as evidence by the prosecution.<sup>7</sup> As states enact new laws, or enforce existing laws that ban, restrict, or criminalize abortion, it is even more critical that student surveillance software does not identify or provide to law enforcement, information on students who may be seeking contraception, abortion, or other related services.

You have stated that your product is not intended to be used for discipline or punitive purposes; however, as our March 2022 report revealed, student activity monitoring products often result in disciplinary action. One survey of teachers found that almost half work in schools that have used these tools to identify violations of discipline policies, and many companies, including yours,<sup>8</sup> immediately flag certain activities and content for law enforcement.<sup>9</sup> And worse, parents, and students themselves, are often unaware that school districts use monitoring software, or the privacy risks and potential harm associated with these products.<sup>10</sup> It would be deeply disturbing if your software flags words or activity that suggest students are searching for contraception, abortion, or other related services, and if school administrators, parents, and even law enforcement were potentially informed of this activity.

Mental health advocates and experts have found that students are more likely to seek reproductive health information online<sup>11</sup> – particularly when living in states where abortion is illegal or stigmatized. For example, a high school student in Texas explained that “regardless of whether or not I live in Texas, [the internet] gives me a little bit of access,” to information about abortion and reproductive health.<sup>12</sup> Given students’ reliance on online information for health needs, the disproportionate use of school-issued devices by low-income students,<sup>13</sup> and

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5. Have law enforcement officials ever required your company to turn over individual students' search data, including information on reproductive health care pursuant to a subpoena, court order, or other methods of compulsory process?
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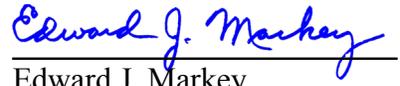
6. Do you take any action to protect students' data from being turned over to law enforcement officials via subpoena, court order, or other methods of compulsory process?
7. Will your company commit to never voluntarily providing such information to law enforcement entities?

Sincerely,



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Elizabeth Warren  
United States Senator



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Edward J. Markey  
United States Senator

# United States Senate

WASHINGTON, DC 20510

July 20, 2022

Bharath Madhusudan  
CEO and Co-Founder  
Securly Inc.  
111 N. Market Street, Suite 400  
San Jose, California 95113

Dear Mr. Madhusudan,

We are writing in the aftermath of the Supreme Court’s June 2022 decision to repeal *Roe v. Wade*, and amid nationwide attacks on reproductive rights, with new concerns about your company’s use of artificial intelligence and algorithmic systems to monitor students’ online activity.<sup>1</sup> As abortion bans and restrictions sweep across the country,<sup>2</sup> we are concerned that your products may be used to criminalize or punish students seeking information related to abortion services, and that they “can be weaponized against teens who seek reproductive care.”<sup>3</sup> To address these concerns, we request that you provide information on (1) whether your products flag students’ online activity when they search for or use terms such as abortion, contraception, and other terms related to reproductive health; and (2) how you are ensuring that your company’s software is not and cannot be misused to punish or criminalize students for seeking reproductive health information.

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device, but can also obtain records directly from search engines.”<sup>6</sup> In fact, there have already been a few alarming cases where digital trails were used as evidence by the prosecution.<sup>7</sup> As states enact new laws, or enforce existing laws that ban, restrict, or criminalize abortion, it is even more critical that student surveillance software does not identify or provide to law enforcement, information on students who may be seeking contraception, abortion, or other related services.

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extraordinarily concerned that your software could result in punishment or criminalization of students seeking contraception, abortion, or other reproductive health care. With reproductive rights under attack nationwide, it would represent a betrayal of your company's mission to support students if you fail to provide appropriate protections for students' privacy related to reproductive health information.

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Sincerely,



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United States Senator



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# United States Senate

WASHINGTON, DC 20510

July 20, 2022

Advait Shinde  
Co-Founder and CEO  
GoGuardian  
2030 E. Maple Ave, Suite 100  
El Segundo, CA 90245

Dear Mr. Shinde,

We are writing in the aftermath of the Supreme Court’s June 2022 decision to repeal *Roe v. Wade*, and amid nationwide attacks on reproductive rights, with new concerns about your company’s use of artificial intelligence and algorithmic systems to monitor students’ online activity.<sup>1</sup> As abortion bans and restrictions sweep across the country,<sup>2</sup> we are concerned that your products may be used to criminalize or punish students seeking information related to abortion services, and that they “can be weaponized against teens who seek reproductive care.”<sup>3</sup> To address these concerns, we request that you provide information on (1) whether your products flag students’ online activity when they search for or use terms such as abortion, contraception, and other terms related to reproductive health; and (2) how you are ensuring that your company’s software is not and cannot be misused to punish or criminalize students for seeking reproductive health information.

While the stated intent of your products is to protect student safety, an investigation that we released in March 2022 revealed significant privacy and equity concerns associated with your software.<sup>4</sup> A recent report by privacy experts highlighted the threats posed by abortion bounty-hunter laws and revealed the increased privacy concerns with the fall of *Roe v. Wade* for people, including minors, who may be pregnant.<sup>5</sup> The report found that digital surveillance data can be weaponized “to target pregnant people and use their health data against them in a court of law,” and internet search engines were identified as “particularly potent tool[s]” as “police can not only obtain search histories from a pregnant person’s device, but can also obtain records

<sup>1</sup> NPR, “Supreme Court overturns *Roe v. Wade*, ending right to abortion upheld for decades,” Nina Totenberg and Sarah McCammon, June 24, 2022, <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn>.

<sup>2</sup> The Guardian, “Tracking where abortion laws stand in every state,” Andrew Witherspoon and Alvin Chang, June 28, 2022, <https://www.theguardian.com/us-news/ng-interactive/2022/jun/28/tracking-where-abortion-laws-stand-in-every-state>.

<sup>3</sup> The Markup, “After Dobbs, Advocates Fear School Surveillance Tools Could Put Teens at Risk,” Todd Feathers, July 8, 2022, <https://themarkup.org/privacy/2022/07/08/after-dobbs-advocates-fear-school-surveillance-tools-could-put-teens-at-risk>.

<sup>4</sup> Office of Senator Elizabeth Warren, “Constant Surveillance: Implications of Around-the-Clock Online Student Activity Monitoring,” March 2022, <https://www.warren.senate.gov/oversight/reports/warren-markey-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students>.

<sup>5</sup> Surveillance Technology Oversight Project, “Pregnancy Panopticon,” Albert Fox Cahn and Eleni Manis, May 24, 2022, <https://www.stopspying.org/pregnancy-panopticon>.

directly from search engines.”<sup>6</sup> In fact, there have already been a few alarming cases where digital trails were used as evidence by the prosecution.<sup>7</sup> As states enact new laws, or enforce existing laws that ban, restrict, or criminalize abortion, it is even more critical that student surveillance software does not identify or provide to law enforcement, information on students who may be seeking contraception, abortion, or other related services.

You have stated that your product is not intended to be used for discipline or punitive purposes; however, as our March 2022 report revealed, student activity monitoring products often result in disciplinary action. One survey of teachers found that almost half work in schools that have used these tools to identify violations of discipline policies, and many companies, immediately flag certain activities and content for law enforcement.<sup>8</sup> And worse, parents, and students themselves, are often unaware that school districts use monitoring software, or the privacy risks and potential harm associated with these products.<sup>9</sup> It would be deeply disturbing if your software flags words or activity that suggest students are searching for contraception, abortion, or other related services, and if school administrators, parents, and even law enforcement were potentially informed of this activity.

Mental health advocates and experts have found that students are more likely to seek reproductive health information online<sup>10</sup> – particularly when living in states where abortion is illegal or stigmatized. For example, a high school student in Texas explained that “regardless of whether or not I live in Texas, [the internet] gives me a little bit of access,” to information about abortion and reproductive health.<sup>11</sup> Given students’ reliance on online information for health needs, the disproportionate use of school-issued devices by low-income students,<sup>12</sup> and your claim that your company is unable to track disparate impacts of your products,<sup>13</sup> we are

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<sup>6</sup> *Id.*

<sup>7</sup> The Markup, “After Dobbs, Advocates Fear School Surveillance Tools Could Put Teens at Risk,” Todd Feathers, July 8, 2022, <https://themarkup.org/privacy/2022/07/08/after-dobbs-advocates-fear-school-surveillance-tools-could-put-teens-at-risk>.

<sup>8</sup> Center for Democracy and Technology, “Views on Student Activity Monitoring Software: Research and analysis from online surveys of teachers, parents, and students,” September 2021, p. 7, <https://cdt.org/wp-content/uploads/2021/09/Student-Activity-Monitoring-Software-Polling-Research-Slides.pdf>.

<sup>9</sup> Office of Senator Elizabeth Warren, “Constant Surveillance: Implications of Around-the-Clock Online Student Activity Monitoring,” March 2022, <https://www.warren.senate.gov/oversight/reports/warren-markey-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students>; The Markup, “After Dobbs, Advocates Fear School Surveillance Tools Could Put Teens at Risk,” Todd Feathers, July 8, 2022, <https://themarkup.org/privacy/2022/07/08/after-dobbs-advocates-fear-school-surveillance-tools-could-put-teens-at-risk>.

<sup>10</sup> Health Education Research, “Accessing sexual health information online: use, motivations and consequences for youth with different sexual orientations,” Kimberly J. Mitchell, Michele L. Ybarra, Josephine D. Korchmaros, and Joseph G. Kosciw, July 16, 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3894662/>.

<sup>11</sup> The Markup, “After Dobbs, Advocates Fear School Surveillance Tools Could Put Teens at Risk,” Todd Feathers, July 8, 2022, <https://themarkup.org/privacy/2022/07/08/after-dobbs-advocates-fear-school-surveillance-tools-could-put-teens-at-risk>.

<sup>12</sup> Center for Democracy and Technology, “Online and Observed: Student Privacy Implications of School-Issued Devices and Student Activity Monitoring Software,” September 2021, p.10, <https://cdt.org/wp-content/uploads/2021/09/Online-and-Observed-Student-Privacy-Implications-of-School-Issued-Devices-and-Student-Activity-Monitoring-Software.pdf>.

<sup>13</sup> Office of Senator Elizabeth Warren, “Constant Surveillance: Implications of Around-the-Clock Online Student Activity Monitoring,” March 2022, <https://www.warren.senate.gov/oversight/reports/warren-markey-investigation-finds-that-edtech-student-surveillance-platforms-need-urgent-federal-action-to-protect-students>.

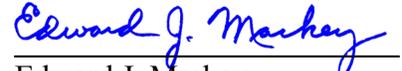
extraordinarily concerned that your software could result in punishment or criminalization of students seeking contraception, abortion, or other reproductive health care. With reproductive rights under attack nationwide, it would represent a betrayal of your company's mission to support students if you fail to provide appropriate protections for students' privacy related to reproductive health information.

In order to understand whether your company is protecting students' privacy with regard to reproductive health information, we request you answer the following questions no later than August 3, 2022:

1. Please describe your guidelines for handling data that may reveal students' sensitive reproductive health data or searches for reproductive health information, and provide a written copy of these guidelines.
2. Does your software flag content related to any of the following words or phrases: pregnant, abortion, birth control, contraception, or Planned Parenthood? Does it flag any other phrases related to reproductive health?
  - a. If yes, will you commit to ending this content flagging?
    - i. If not, why not?
  - b. If not, will you commit to never adopting such a content flagging system?
    - i. If not, why not?
3. Can your software be used to identify individual students who search for terms related to reproductive health, such as those referred to in question #2? If yes, will you commit to ending any such tracking in the wake of the Supreme Court's repeal of *Roe v. Wade*?
4. Who is potentially informed when students are flagged for using search terms related to reproductive health?
  - a. Are school administrators informed or potentially informed?
  - b. Are parents informed or potentially informed?
  - c. Are law enforcement officials informed or potentially informed?
  - d. Are any other individuals informed or potentially informed, and if so, who?
5. Have law enforcement officials ever required your company to turn over individual students' search data, including information on reproductive health care pursuant to a subpoena, court order, or other methods of compulsory process?
  - a. If yes, please provide detailed descriptions of all instances in which your company has complied with such law enforcement requests.
6. Do you take any action to protect students' data from being turned over to law enforcement officials via subpoena, court order, or other methods of compulsory process?
7. Will your company commit to never voluntarily providing such information to law enforcement entities?

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Edward J. Markey  
United States Senator