

Congress of the United States
Washington, DC 20515

August 19, 2024

The Honorable Robert Rivas
Speaker
California State Assembly
P.O. Box 942849
Sacramento, CA 94249

Dear Speaker Rivas,

In a letter to Governor Newsom on Thursday, August 15th,¹ which we shared with you, we expressed our serious concerns with SB 1047, *the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act*, before the bill passed out of committee in the California State Assembly. During the markup, this bill was amended substantially. We would like to acknowledge the efforts that the author of the bill and the State Assembly made yesterday to improve the underlying proposal with additional flexibility and clarity. Unfortunately, there are still substantial problems with the underlying construct of the bill. **It is our view that the bill in its current form should not be approved by the Legislature.**

As the Ranking Member of the House Committee on Science, Space, and Technology (Science Committee) which has legislative jurisdiction over artificial intelligence (AI) (Lofgren) and a former member of that committee and current member of the House AI Taskforce and House Committee on Energy and Commerce (Eshoo), our views on this legislation have been formed through extensive work on AI policy. We have helped to write and pass many laws analyzing the risks of AI to the public. Most notably, we helped to write one of the first Federal AI laws, *The National AI Initiative Act of 2020*, which focused heavily on the sociotechnical risks associated with AI systems, including safety risks. This legislation has resulted in major milestones in understanding AI-related risks, including the National Institute of Standards and Technology's (NIST) AI risk management framework and the federal interagency programs looking to

¹ Reps Zoe Lofgren, Anna Eshoo, Ro Khanna, Scott Peters, Tony Cárdenas, Ami Bera, Nanette Barragán, and J Luis Correa, "Letter from California Members to Governor Newsom Regarding AI Legislation," accessed on Minority Science Committee website, August 15, 2024, https://democrats-science.house.gov/imo/media/doc/2024-08-15%20to%20Gov%20Newsom_SB1047.pdf.

understand these risks. We have also worked to bolster federal research agencies' efforts to fund research exploring AI-related risks, including through the establishment of testbeds at NIST and the National Science Foundation's National AI Research Resource. That work on the Science Committee includes holding fifteen hearings in which AI-related risks were a major focus since 2019.² Likewise, the House AI Taskforce has held numerous meetings with dozens of AI experts and stakeholders. Finally, on an informal and formal basis, our staff constantly communicate about AI-related risks with experts in academia, civil society, industry stakeholders of all sizes, open-source developers, venture capital, as well as experts from key federal agencies, including the Department of Commerce and Department of Homeland Security.

As we described in our previous letter to Governor Newsom, AI safety is fundamentally an unsolved technical challenge. The technical solutions that would underpin implementation of SB 1047, including standards, benchmarks, and evaluations, are significantly underdeveloped. There is also significant disagreement within the AI safety field of scope, taxonomies, and definitions.^{3,4} As such, there is simply a lack of evidentiary basis for establishing such a restrictive law at this time. To address the risk of AI models creating chemical, biological, radiological, or nuclear weapons (CBRN), our country should focus on federal rules to control physical tools needed to create these physical threats, as described in our previous letter. California's law restricting the open-sourcing of sufficiently capable model derivatives will not stop these derivatives being open-sourced in another state, and subsequently made available in California through the Internet. Thus, SB 1047 will have minimal effect on the ability of malicious actors either inside or outside of California in constructing CBRN weapons. Fortunately, we already have robust controls in place for many of the physical threats and federal agencies and Congress are contemplating additional rules and restrictions to understand and combat issues created by AI.

If this bill were to become law in its current form, it could have pernicious effects on development of highly capable AI systems in California. As described in the previous letter, this bill would create incentives for developers to move to the closed development of highly capable AI systems. Not only is openness critical to the transparency and safety of these systems⁵, but many of the key innovations that led us to this moment were due to open source and open science. There is a worry that undermining open-source development in California would mean much of this critical innovative ecosystem simply moves to another jurisdiction. Further,

² In a hearing from October 2023, testimony directly contradicted many of the assumptions underpinning SB 1047. See testimony by Dr. Emily Bender. "Balancing Knowledge and Governance: Foundations for Effective Risk Management of Artificial Intelligence," House Committee on Science, Space, and Technology, October 18, 2023, <https://democrats-science.house.gov/hearings/balancing-knowledge-and-governance-foundations-for-effective-risk-management-of-artificial-intelligence>.

³ Inioluwa Deborah Raji and Roel Dobbe, "Concrete problems in AI Safety, revisited," In ICLR workshop on ML in the real world, 2020, accessed on arxiv, December 18, 2023, <https://arxiv.org/abs/2401.10899/>

⁴ In one major example, a report that found 'emergent capabilities' and 'sparks of artificial general intelligence' within large language models was debunked by rigorous statistical analysis. Ryan Schaeffer, Brando Miranda, Sanmi Koyejo, "Are Emergent Abilities of Large Language Models a Mirage?" arxiv, revised May 22, 2023, <https://arxiv.org/abs/2304.15004>.

⁵ "Joint Statement on AI Safety and Openness," Mozilla, October 31, 2023, <https://open.mozilla.org/letter/>.

openness promotes competition and innovation by creating an ecosystem where small firms have access to markets. There is a significant danger of SB 1047 cementing into place the existing dominance of this field by large AI companies by stifling the ability for small companies to compete.⁶ Proponents of the bill often say that only a few major firms would have to comply with this bill—but that creates real danger that these firms can influence regulatory processes to protect their power. Legislators should look for pathways for small firms to safely comply with the same requirements as large firms. Finally, while it is true that open-source development can be abused by malicious actors, this bill focuses on speculative misuse over demonstrable misuse (e.g., scams or nonconsensual pornography).⁷ We would support a more thoughtful, targeted approach to address real-world harm.

To be clear, there are several beneficial elements to SB 1047. We would support the provisions for CalCompute research, although funding sources for the measure remain unclear. We would also support the whistleblower protection provisions, especially given recent reporting.⁸ Further, the author made great improvements to the bill with recent amendments. For example, the public reporting requirements added to the bill is a positive change that would enhance transparency into frontier AI systems and their true risks. However, considering the totality of the bill, we remain concerned about the effect this legislation could have on the innovation economy of California without any clear benefit for the public or a sound evidentiary basis for the core functions of the legislation.

As members of the California Democratic Delegation, we have always been committed to defending California. There are times when we have acted vigorously to protect forward looking legislation enacted in California from federal preemption; For example, with California’s privacy laws and California’s Clean Air Act exemptions, even when faced with intense opposition to our position by some in Congress and in industry. There are, however, times when the federal interest is substantial and when state legislative bodies should defer to the federal legislative efforts. The subjects covered in SB 1047 are one such example.

In reaching this conclusion, we have consulted extensively with the minority professional staff of the Science Committee in the House. This staff is principally constituted by scientists, engineers, and legal and policy experts. Moreover, the minority staff of the Committee routinely consults with stakeholders in academia, industry, and relevant government entities. Based in no small part on those consultations with our expert staff, we have concluded that the approach outlined by SB 1047, even as amended, would be adverse to the national interest. One item that weighs heavily on the Congress as we proceed to formulate a regulatory scheme for AI is to not only protect against adverse outcomes, but also to promote innovation. The minority professional staff of the

⁶ Augustin et. al., “Generative AI could revolutionize health care – but not if control is ceded to big tech,” Nature, November 3, 2023, <https://www.nature.com/articles/d41586-023-03803-y>.

⁷ Raphael Satter, “FBI says artificial intelligence being used for 'sextortion' and harassment,” Reuters, June 8, 2023, <https://www.reuters.com/world/us/fbi-says-artificial-intelligence-being-used-sextortion-harassment-2023-06-07/>.

⁸ Pranshu Verman, Cat Zakrzewski, and Nitasha Tiku, “OpenAI illegally barred staff from airing safety risks, whistleblowers say,” Washington Post, July 13, 2024, <https://www.washingtonpost.com/technology/2024/07/13/openai-safety-risks-whistleblower-sec/>.

Science Committee prepared a memo to Ranking Member Lofgren regarding the amendments to SB 1047 adopted in committee, and we've attached that memo to this letter for reference.

All evidence suggest that the United States currently leads China in AI development. That lead is by no means guaranteed, and great care must be taken to avoid damaging innovation in America. Additionally, as AI has not only a national reach, but an international one, it will fall to the federal government to negotiate and confirm transnational adherence to provisions related to AI.

If you have any questions, please contact Alan McQuinn of the House Science Committee's Minority staff at (202) 225-6375.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren
Member of Congress

A handwritten signature in blue ink, appearing to read "Anna Eshoo", with a large, stylized initial "A" and a horizontal flourish.

Anna Eshoo
Member of Congress

cc: Governor Gavin Newsom