

# Model Open Letter/Editorial RE: Contact Tracing & the Supreme Court

by KrisAnne Hall, JD

The people of **(STATE)** will be forced to pay enormous court fees and settlements if our counties continue with their proposed plans for COVID Contact Tracing.

I watch the county meetings because it is important to me to know what my government is doing with the COVID-19 situation. Recently, counties across **(STATE)** have been speaking to medical professionals and data scientists about Contact Tracing. The methods our counties propose to employ should be genuinely concerning to every taxpayer.

The main mechanism under consideration for Contact Tracing is to use cellphone GPS data to trace individuals and groups to a particular location. Data scientists are submitting reports to show how cell phone data monitoring would work to allow the government to track people through their cell phone GPS. These are not cell phones our governments will be tracking, they are people.

In addition to the cell phone tracking, our counties are also considering using infrared technology to “look” inside private homes and buildings to determine the number of people who are gathered. These infrared devices are so precise they can identify a single person in a home. This activity is more suitable to a George Orwell novel than for elected representatives tasked with protecting people’s rights.

Every data scientist must admit the data provided to our counties will contain specific, private, and personal information. Once provided, it will be completely up to the county officials, through their policies, to determine how much of that information they will use and how our personal information will be stored. I am personally not comforted by the thought that our counties will determine the limits to their own authority over our personal and private information.

If this sounds disturbing to you, it should. The good news is that the Supreme Court of the United States agrees with us. The use of cell phones by government entities to geo track people is not a new nor an unsettled issue. Although it may be legal for a hospital or university to purchase such data from a cell phone provider for research purposes, it is NOT lawful for the government to use the data from data scientists to track individuals without a warrant - even though that data comes from a third party. In *Carpenter v. U.S.*, the Supreme Court held that a government entity MUST have a warrant to use cell data to geo track someone, even when that data comes from a third party.

Additionally, the Supreme Court held in *Kyllo v U.S.* that a government entity must have a warrant to use infrared technology to look inside a private building and to do so without a warrant is a violation of our rights to privacy.

For government officers to use cell data or infrared technology to track people, they must have either express permission from each person or a warrant for every single individual or that tracking will be an unlawful search and seizure. If our officials use this technology for contact tracing without warrants, regardless of where the data comes from, it will be tantamount to legal negligence. Given the recency of these Supreme Court cases it is highly likely that the counties would lose a civil rights challenge and the taxpayers will foot the bill.

The taxpayers of **(STATE)** should not be forced to waste precious tax dollars to defend their county's actions when those actions are so clearly established to be unconstitutional by the Supreme Court of the United States. Our elected representatives ought to have a greater respect for the privacy and civil rights of the people. The people of **(STATE)** must demand our counties refuse to use this technology for any form of COVID Contact Tracing and spare the taxpayers from paying for the inevitable lawsuits.