andreessen horowitz

August 2, 2024

Senator Scott Wiener
1021 O Street, Suite 8620
Sacramento, CA 95814

Re: Senate Bill 1047

Dear Senator Wiener:

We write in response to your July 1, 2024 letter regarding Andreessen Horowitz's ("a16z") public comments about California's SB 1047. While we are confident that your intentions are to protect the security of Californians—a laudable goal, to be sure—the bill as currently drafted will not achieve its intended goals. It will hinder innovation and investment in this important emerging technology, will weaken the United States' position as the global leader in technology, and will create unnecessary and arbitrary obstacles for a competitive industry that is fueling California-based job creation at record scale. This is why your legislation has generated open pushback and widespread concerns from nearly every major developer and investor in the AI ecosystem.

As one of Silicon Valley's preeminent venture capital firms with over $35 billion in committed capital, Andreessen Horowitz has been investing in artificial intelligence for many years. Today, we manage pooled vehicles which hold investments in nearly 100 AI development firms, including as a leading investor in start-ups and open-source AI developers. We work closely with founders to help them navigate hurdles they face as they try to grow their businesses. As a result, we have keen insight into this developing technology.

Because of our experience with and understanding of artificial intelligence, we are extremely concerned with the impact that SB 1047 would have on the AI ecosystem in California and on the ability of the United States to lead in the development of this important technology. Foreign companies, and in particular Chinese companies, are rapidly catching up to the most advanced American AI models.[1] Given the importance of AI to the continued economic growth and security of our country, this is the worst time to be introducing unproven and arbitrary burdens to this burgeoning field.

We write to urge you to take into account the substantive concerns raised by a broad and diverse community of entrepreneurs, experts, and academics in this field before proceeding with SB 1047. We are responsible and committed members of California's business community and disagree with your characterization of us as fearmongers. We raise important, substantive concerns regarding the impact that this legislation would have on startups and small businesses.

In particular, your July 1, 2024 letter made certain legal claims that are inconsistent with a plain reading of the proposed bill in its current form. As set forth in more detail below:

- **SB 1047 applies to startups because of its arbitrary and shifting threshold.**
- **SB 1047's criminal penalties will deter innovation.**
- **SB 1047 creates new civil liability.**
- **SB 1047 will hurt California's economy.**
- **SB 1047 is troublingly vague.**
- **SB 1047's "kill switch" requirement imposes excessive burdens on AI new models.**
- **SB 1047 privileges closed-source models over their open-source counterparts.**

[1] Meaghan Tobin and Cade Metz, N.Y. Times, *China Is Closing the A.I. Gap With the United States* (July 25, 2024), *available at* https://www.nytimes.com/2024/07/25/technology/china-open-source-ai.html.

These flaws, which are evident from the text of the proposed bill, are reason enough to cause significant concern. But there are more fundamental legal issues with the bill. To start, **it violates the U.S. Constitution because it unlawfully interferes with interstate commerce.** State laws that substantially burden interstate commerce in excess of any purported local benefits violate the dormant Commerce Clause.[2] A majority of the Supreme Court recently reaffirmed that view.[3] As we explain below, the burdens SB 1047 imposes, including on interstate commerce, are tremendous. And the benefits to California are essentially nil. This opens up the bill to obvious constitutional challenges that would mire it in litigation.

In addition, **the law as drafted runs headlong into a basic tenet of our federal system**: The "legislative power of a State to act" is "limit[ed] [to] its own territory" and "persons and property within" its borders.[4] There is a presumption *against* extraterritorial application of state law. The bill does not contain any nexus between its requirements and the state of California. There is no requirement in the statute that developers subject to the law do business in California, transact with Californians, or interact with the state in any way. Contrary to the assertion in your letter, the bill will not regulate the conduct of developers outside of California, allowing developers to avoid its burdens by moving out of state.

Finally, **the bill is unnecessary because it aims to address many risks that are already prohibited under existing law**. For instance, existing laws already criminalize serious harms, such as creating weapons of mass destruction[5] and bioweapons,[6] and engaging in large-

[2] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).
[3] *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (concurring opinion of Sotomayor, J., joined by Kagan, J., and opinion concurring in part and dissenting in part of Roberts, C.J., joined by Alito, Kavanaugh, and Jackson, JJ; *see also* concurring opinion of Barrett, J.).
[4] *Pork Producers*, 598 U.S. at 375 (quoting *Hoyt v. Sprague*, 103 U.S. 613, 630 (1881); *see also N. Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1 (1916); *McPherson v. EF Intercultural Found., Inc.*, 47 Cal. App. 5th 243, 270–71 (2020) (holding that California labor law does not apply to work performed by non-California resident in "any other state outside of California" even though employee "periodically worked in California").
[5] 18 U.S.C. § 2332a.
[6] 18 U.S.C. § 175.

scale cyber-attacks.[7] Legislation that attempts to unnecessarily reinforce these prohibitions by specifically targeting AI technology—rather than penalizing bad conduct—brings little marginal benefit and a host of problems that will undermine development of this promising technology. Because artificial intelligence presents profound opportunities to provide broad social benefits and because the bill seeks to target risks that are already covered by existing laws, the bill's costs are not outweighed by commensurate benefits.

We continue to believe that parties engaging in good faith can address these legal concerns and come to the right solution for California and the country. With that goal in mind, we address the principal claims raised in your letter in further detail below.

A. SB 1047 will burden startups because of its arbitrary and shifting thresholds.

Your letter asserts that SB 1047 does not create any new liability for startups since there is a carveout for models that cost less than $100 million to train, and because there is liability under existing law. As an initial matter, the $100 million threshold is largely meaningless at current rates of technological development. In the current business environment, even early-stage AI startups have training costs that routinely exceed this threshold since the computing power and data required to train models requires substantial upfront capital. For example, AI startups receive substantially more investment than other companies; many AI startups, including several funded by a16z, have received well over $100 million from investors to fund the costs of training their models.[8]

More fundamentally, your claim that SB 1047 applies "*only* [to] models that cost over $100 million to train" is incorrect: the bill applies to the fine-tuning of models, *regardless of training costs*. And there is no threshold—either based on compute or based on cost—with respect to "covered model derivatives," which include "cop[ies] of a covered model that ha[ve]

[7] 18 U.S.C. § 1030(5).

[8] Berber Jin, Wall Street Journal, *AI Startups Have Plenty of Cash. They Often Don't Yet Have a Business* (Apr. 29, 2024), *available at* https://www.wsj.com/tech/ai/investors-are-showering-ai-startups-with-cash-one-problem-they-dont-have-much-of-a-business-94534fc9.

been subjected to post-training modifications unrelated to fine-tuning."[9] Practically speaking, anyone who has access to a covered model and modifies it in any way will be subject to the law. That sweeps in startups, particularly those that rely on open-source models which are cheaper and more widely accessible than closed models.

Finally, the definition of "covered models" will likely cover dramatically more models as AI technology continues to advance. The definition includes "an artificial intelligence model created by fine-tuning a covered model using a quantity of computing power equal to or greater than three times 10^25 integer or floating point operations."[10] There are currently at least three existing models that exceed this threshold.[11] Just 16 months ago, there were zero.[12] In 2021, there were fewer than 10 models trained using computing power greater than 10^23 FLOPs; in 2023, there were greater than 40.[13] And with "the training compute used to create AI models … growing at a rate of 4.1x per year,"[14] the number of models covered by this law will likely at least triple within the year. Given Moore's Law,[15] it is a virtual certainty that the arbitrary thresholds set in SB 1047 will soon cover a large number of startups. These provisions bring to mind the export controls in the 1990s that banned the sale of "supercomputers" to certain foreign countries—restrictions that would apply to today's smartphones.[16]

---

[9] SB 1047, § 22602(f)(2).
[10] SB 1047, § 22602(e)(1)(A)(ii).
[11] Epoch AI, *Notable AI Models* (June 19, 2024), *available at* https://epochai.org/data/notable-ai-models (Gemini 1.0 Ultra and Llama 3.1-405B exceed this threshold based on published data and GPT-4 likely exceeds this threshold based on estimates derived from public information).
[12] Epoch AI, *Tracking Large Scale AI Models* (Apr. 5, 2024), *available at* https://epochai.org/blog/tracking-large-scale-ai-models
[13] *Id.*
[14] Epoch AI, *Notable AI Models* (June 19, 2024) *available at* https://epochai.org/data/notable-ai-models.
[15] Intel, *Moore's Law* (Sept. 18, 2023), *available at* https://www.intel.com/content/www/us/en/newsroom/resources/moores-law.html ("Moore's Law is the observation that the number of transistors on an integrated circuit will double every two years with minimal rise in cost.").
[16] Congressional Research Service, *High Performance Computers and Export Control Policy: Issues for Congress* (May 5, 2005), *available at* https://sgp.fas.org/crs/natsec/RL31175.pdf (describing regime that required export licenses based on "MTOPS" or "millions of theoretical operations per second.") The iPhone 14 can perform 15.8 trillion operations per second. Apple Newsroom, *Apple introduces iPhone 14 and iPhone 14 Plus* (Sept. 7, 2022) *available at* https://www.apple.com/newsroom/2022/09/apple-introduces-iphone-14-and-iphone-14-plus/.

Although SB 1047 permits the newly created Frontier Model Division (the "Division") to change these thresholds and otherwise amend the definition of "covered models" after January 1, 2027,[17] the bill imposes no requirements or guardrails on this process, providing far too much unchecked discretion to the Division and no guarantee that it will constrain its own authority to regulate startups in the future. As a result, there is a significant risk that startups will increasingly be scoped into the Division's jurisdiction.

B. Adopting a criminal perjury standard for risk certifications will chill the development of AI in California.

Additionally, your letter characterizes as "misleading" concerns which a16z has expressed publicly that "SB 1047 would impose civil and in some cases criminal liability on startups and their founders." We do not believe it is misleading to point out what is evident from the plain text of the proposed bill: the bill requires developers to provide a certification, signed under penalty of perjury, that describes "[t]he nature and magnitude of critical harms that the covered model … may reasonably cause or enable[,]" and assesses "the risk that compliance with the safety and security protocol may be insufficient to prevent the covered model . . . from causing or enabling critical harms."[18] There is no carve out for startups. By any reading of this proposed provision, SB 1047 would impose civil and in some cases criminal liability on startups—and it is not misleading to point this out in good faith. The fact is that SB 1047's expansion of liability, including criminal liability, is a deeply troubling and fundamental departure from the way software development has been regulated in this country. To our knowledge, software developers have never before been required to certify to a government, under penalty of perjury, to the putative risks of their products even *before* those products are made commercially available.

While your letter is generally correct that perjury requires purposeful conduct, the standard is not intentionality, but more precisely under California law, "willfulness," meaning a

[17] SB 1047, § 22602(e)(1)(B).
[18] SB 1047, § 22603(f).

willingness to commit the act, and knowledge of the existence of the facts in question.[19] The fact is that the inherent imprecision in the statements that officers must swear to under penalty of perjury—such as the "risks" that existing protocols will not prevent critical harms or the range of potential "magnitudes of critical harms" that may be "reasonably caused"—means officers will face an untenable challenge where they will have to make judgment calls about which risks to include in their certification and how to characterize them, and potentially face criminal liability if they fail to include some dire consequence, regardless of likelihood. This risk will undoubtedly have a chilling effect on AI developers who will be concerned about the liability they could face.

Moreover, the practical impact of this provision will be to require startups to hire lawyers who will undoubtedly advise them to include a litany of risks to avoid legal exposure, diluting their informational value. This is not a hypothetical flaw—we have in fact seen it played out in other disclosure and certification based regimes.[20]

This certification regime will also substantially increase the costs of AI development and increase concentration in the AI technology market. While large software companies have armies of lawyers to handle these compliance obligations, AI startups will have to rely on expensive outside counsel, which will substantially increase the costs to startups doing business in California—handicapping entrepreneurs and open source projects to the benefit of big tech.[21] We therefore urge you to seriously reconsider this provision.

[19] Judicial Council of California, Jury Instructions – Criminal § 1.20, 1.21.

[20] *See, e.g.*, Joost Impink, et al., Abacus, *Regulation-induced Disclosures: Evidence of Information Overload* (Nov. 9, 2021), *available at* https://onlinelibrary.wiley.com/doi/10.1111/abac.12246 (discussing SEC and accounting rule disclosures and finding that "above a certain level of disclosures, increases in disclosures are associated with a decrease in the decision quality of analysts … at some point these increases in financial disclosures can lead to information overload").

[21] Even well-funded AI startups spend most of their money on compute, leaving little for lawyers. *See, e.g.,* Amir Efrati and Aaron Holmes, The Information, *Why OpenAI Could Lose $5 Billion This Year (July 24, 2024), available at* https://www.theinformation.com/articles/why-openai-could-lose-5-billion-this-year.

C. SB 1047 creates new civil liability.

Contrary to the claim in your letter, SB 1047 does expand developer liability. Developer liability under existing tort law is limited, as most software use is often governed by a contract between the developer and the user, which has the practical effect of "bar[ring] claims in negligence for pure economic loss in deference to a contract."[22] SB 1047 significantly expands this liability in several ways:

- SB 1047 introduces a plethora of technically and operationally complex obligations that are expensive and burdensome to comply with, especially for startups that are just getting off the ground. It requires, among other things, "administrative, technical, and physical cybersecurity protections"; "a safety and security protocol", including detailed testing procedures; and "annual reviews" to update those protocols.[23] The bill also requires developers to "retain a third-party auditor."[24]

- The difficulty of complying with these obligations is compounded by the lack of standardized metrics and benchmarks for assessing AI safety across different industries and applications. Without such standardized criteria, it will be challenging for both auditors and the businesses which are mandated to undergo audits. While these oversight mechanisms may appear to be simple from the perspective of a large, established company, they are substantial and burdensome requirements from a startup's perspective. Moreover, the bill does not include any protections for the highly confidential and potentially privileged information that may go into these reports, making it easy for competitors or bad actors to obtain advanced and proprietary information through a simple California Public Records Act request.

- To enforce this complex web or regulations, SB 1047 establishes a brand new legal regime that empowers the California Attorney General to impose massive penalties—10% of the cost of the computing power for a first violation and 30% for subsequent

[22] *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal.5th 905, 922 (2022).
[23] SB 1047, § 22603(a).
[24] *Id.* § 22603(e).

violations—and to obtain injunctive relief including "a full shutdown, or delet[ion]" of a covered model.[25] Indeed, startups and other businesses that rely on covered models may suddenly lose access if the AG orders the developer to shut down a model. Contrary to your letter, these are extraordinary remedies that establish liability well beyond existing tort law.

D. SB 1047 will hurt California's economy.

Your letter claims that "San Francisco quickly came roaring back" and that "San Francisco and Silicon Valley … are a big thing, and that's not going to change." The reality, however, is not that simple. California is largely seen as a difficult regulatory environment in which to start and run a business, and, in 2023, California ranked ninth among American states by the number of new tech businesses established.[26] Furthermore, even established technology companies have sought refuge from California's perceived business hostility, with companies such as Apple, HP, and Tesla—just to name a few—moving their headquarters or building major new facilities in states like North Carolina and Texas, not California.[27] The nature of California's reputation as a burdensome place to start and run a business has resulted in San Francisco and San Jose's failing to make the list of the top 10 U.S. metro areas by net tech employment gains between 2022 and

[25] *Id.* § 22606(b), (c).

[26] CompTIA, *State of the Tech Workforce*, at 11 (Mar. 2024), *available at* https://comptiacdn.azureedge.net/webcontent/docs/default-source/research-reports/comptia-state-of-the-tech-workforce-2024.pdf.

[27] Kif Leswing, CNBC, *Apple will spend $1 billion to open 3,000 employee campus in North Carolina* (Apr. 26, 2021), *available at* https://www.cnbc.com/2021/04/26/apple-announces-1-billion-north-carolina-campus.html; Roland Li, S.F. Chronicle, *HPE a touchstone of Silicon Valley, moving headquarters to Houston to save costs, recruit talent* (Dec. 2, 2020), *available at* https://www.sfchronicle.com/business/article/HPE-a-touchstone-of-Silicon-Valley-moving-15770588.php; Roland Li, S.F. Chronicle, *Elon Musk Says Tesla will move headquarters from Palo Alto to Austin, Texas* (Oct. 7, 2021), *available at* https://www.sfchronicle.com/tech/article/Elon-Musk-Tesla-to-move-headquarters-from-Palo-16517586.php.

2023,[28] during which time both cities actually *lost* tech jobs.[29] SB 1047 threatens to be another government decision that pushes tech companies out of California.

The risk of losing developers to other states and countries—including China, which has already been deemed a "country of concern" with respect to the development of AI due to the risk that it will exploit this technology to undermine American national security[30]—is particularly acute because this law targets developers directly, even if they never commercialize or sell their AI model publicly. Regulation at the developer level is effectively non-existent in current regulation of the tech industry. Typically, regulation comes into play when technology is deployed to consumers, focusing on consumer-company interactions and disclosures. This has been a historical source of American success: businesses are free to research, develop, innovate, and publish, largely unfettered by regulation before their products are made publicly available.[31] But SB 1047 crosses that rubicon, creating an entirely new mechanism for hampering innovation.

Nor is the fear of developers leaving California or cutting the state out of their developments a far-fetched possibility. Both Apple and Meta have recently announced that they will not be making AI models available on their devices and platforms in the EU because of the

[28] CompTIA, *State of the Tech Workforce*, at 12 (Mar. 2024), *available at* https://comptiacdn.azureedge.net/webcontent/docs/default-source/research-reports/comptia-state-of-the-tech-workforce-2024.pdf.
[29] *Id.* at 112–113.
[30] *See generally* Executive Order on Preventing Access to Americans Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern (Feb. 28, 2024), *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2024/02/28/executive-order-on-preventing-access-to-americans-bulk-sensitive-personal-data-and-united-states-government-related-data-by-countries-of-concern/; Executive Order Addressing the Threat Posed By Applications and Other Software Developed or Controlled by Chinese Companies (Jan. 5, 2021), *available at* https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-applications-software-developed-controlled-chinese-companies/.
[31] Even under legal regimes in which products are subject to tort claims for "strict liability," like manufacturing or design defects, companies may only be held liable if they "sell[] or distribute[] a defective product," not before. See Restatement (Third) of Torts: Product Liability § 1 (1998).

EU's regulations.[32] Such actions are particularly concerning with respect to SB 1047 because, as your letter concedes, SB 1047 follows the EU AI Act in significant ways, such as in its ambiguous definition of AI.

E. SB 1047 is troublingly vague.

SB 1047 is rife with ambiguities. "Artificial intelligence" is defined, in part, as an "engineered or machine-based system … that can … infer from the input it receives how to generate outputs that influence physical or virtual environments."[33] This definition contains a litany of undefined terms, like "outputs," "influence," and "environments." Yet the bill provides little guidance or context as to how these terms should be interpreted, creating a strong possibility that the bill may sweep in a wide array of ordinary tools. The bill also requires safety and security protocols that, if complied with, "provide reasonable assurance" that the developer will not create a model that "poses an unreasonable risk of causing or enabling a critical harm."[34] The only guidance regarding the meaning of "reasonable assurance" the bill provides is that it "does not mean full certainty or practical certainty."[35] But short of "certainty," there is no guidance provided as to the meaning of "reasonable assurance."

Courts can interpret statutes and agencies can promulgate regulations that explain these terms, but the law looks to the ordinary meaning of words or, failing that, extrinsic aids such as context, statutory purpose, and the legislative history to determine the meaning of ambiguous provisions.[36] The breadth and depth of the ambiguity that plagues SB 1047, therefore, will create significant risk for developers. Although future litigation could give meaning to the statute over time, the uncertainty in the law's terms will create a chilling effect in the short-

[32] Jess Weatherbed, The Verge, *Meta won't release its multimodal Llama AI model in the EU* (July 18, 2024), *available at* https://www.theverge.com/2024/7/18/24201041/meta-multimodal-llama-ai-model-launch-eu-regulations; Richard Lawler, The Verge, *Apple may delay AI features in the EU because of its big tech law* (Jun 21, 2024), *available at* https://www.theverge.com/2024/6/21/24183251/apple-eu-delay-ai-screen-mirroring-shareplay-dma.
[33] SB 1047, § 22602(b).
[34] *Id.* § 22603(a)(3).
[35] *Id.* § 22602(q).
[36] *See Hoechst Celanese Corp. v. Franchise Tax Bd.*, 25 Cal.4th 508, 519 (2001).

term,[37] which is when the development of AI will be most critical. Such vagueness creates yet another avenue for legal challenges to the bill, because vague laws, particularly those that attach criminal penalties, may be unconstitutional.[38]

F. SB 1047's "kill switch" requirement imposes excessive burdens on AI new models.

Your letter concedes that SB 1047 requires a kill switch (what you refer to as an "emergency shutdown"), yet you claim that this "only applies to models within the control of the developer." Given the text of the bill, that is not accurate. The "full shutdown" requirements apply to all covered models, whether in the control of the developer or not.[39] Only covered model *derivatives* must be controlled by a developer to be subject to the shutdown requirements.

Moreover, this provision is particularly concerning because it requires developers to "implement the capability to promptly enact a full shutdown" "*before* a developer initially trains a covered model."[40] This effectively means that all models will require implementation of a kill switch, since it is impractical to know whether a model is covered or not prior to its being trained. And kill switches are not harmless pieces of code—they can be exploited by bad actors as easily as regulators, and as a result render AI models vulnerable to hackers and bad actors much like backdoors in encryption technology. Since the failure to implement this provision carries significant monetary penalties, developers would be faced with the choice of making their models vulnerable to bad actors or facing significant monetary penalties. It is likely that

[37] *Cf. Reno v. ACLU*, 521 U.S. 844 (1997); *Doe v. Harris*, 772 F.3d 563, 579 (9th Cir. 2014).
[38] *See, e.g.*, *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("A fundamental principle of our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."); *United States v. Davis*, 588 U.S. 445, 451 (2019) ("Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide."); *Butcher v. Knudsen*, 38 F.4th 1163 (9th Cir. 2022) (deeming unconstitutionally vague registration requirement for "political committees" due to lack of clarity around exception for "de minimis" acts, including "volunteer services or efforts").
[39] Id. § 22602(l).
[40] *Id.* § 22603(a).

developers will choose to develop their products outside of California rather than face this Hobson's choice.

G. SB 1047 privileges closed-source models over their open-source counterparts.

SB 1047's treatment of open-source models merits particular scrutiny. Open-source models have the distinct advantage of allowing governments, regulators, and the public to evaluate them in a more transparent manner. Open-source models reduce barriers to entry, promote innovation, increase competition, promote democratization, and reduce bias.[41] Open-source models should therefore be encouraged, not stifled.

But SB 1047 contemplates a parallel set of rules and regulations specific to open-source models. It creates an "advisory committee" that has the authority to issue guidelines and advise the Legislature and the Division, including on "future policies and legislation." As drafted, SB 1047 expressly contemplates policies and regulations applicable to open-source models *only*. While your letter claims that "the bill has been written and further amended to offer protections for open source," that's just not true. The bill contains no specific benefits or protections for open-source models. The only specific benefit for open-source models identified are "tax credits" that, in any event, have to be enacted by the Legislature in a separate bill. There are thus no protections or benefits in this bill. And because the bill sets a floor on the rules that would govern all covered models, the advisory committee's "guidelines" or "policies" could only serve to increase the burdens on open-source models, not reduce them. To be sure, those "guidelines" may not have the force of law, but even if they don't, state-sanctioned "guidelines" are often used by courts and regulators as indicators of what is or isn't reasonable.[42] An open-source developer that runs afoul of these guidelines may find themselves the subject of a lawsuit

---

[41] *AH Capital Management, L.L.C.'s Response to the National Telecommunications and Information Administration's Request for Comment on Dual Use Foundation Artificial Intelligence Models with Widely Available Model Weights*, Nat'l Telecomm. & Info. Admin. Dkt. No. 240216-0052 (Mar. 27, 2024), *available at* https://www.regulations.gov/comment/NTIA-2023-0009-0252.

[42] *See, e.g.*, *Cal. Building Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.*, 2 Cal. App. 5th 1067, 1089 (2016) (noting that "guidelines, though not binding on any agency" are reviewable in court as "quasi-legislative act[s]"); *Bains v. Dept. of Industrial Relations*, 244 Cal. App. 4th 1120, 1132 n.7 (characterizing "opinion letters" of the Division of Labor Standards Enforcement as "useful, but non-binding, guidance").

by the Attorney General, even though they have otherwise complied with the restrictions applicable to all AI developers because their approach to the mandated certification doesn't follow the guidelines.

Conclusion

We appreciate your effort to clarify the provisions of SB 1047, but we remain concerned about the bill's negative impact on AI innovation and startups. To the extent AI regulation is warranted, it should focus on minimizing the risk of negative outcomes rather than restricting innovation, itself. To that end, we are committed to working toward a constructive approach that is consistent with expert recommendations and global best practices, and hope that you will come to the table with an open mind to the legal and practical impacts the proposed legislation actually will have on AI technology and businesses. We remain interested in engaging with you—either through specific discussions or broader engagement in the legislative and regulatory process—to address our concerns and to ensure that any regulation of this new and compelling technology will benefit the people of California.

Respectfully submitted,

Jai Ramaswamy

Jaikumar Ramaswamy
Chief Legal Officer
Andreessen Horowitz