

June 13, 2022

Urgent Concerns With Privacy Legislation and the Legislative Process

Dear Representatives:

The American Civil Liberties Union writes to you today with considerable concern and urgency about congressional consideration of consumer privacy legislation. While we greatly appreciate the work and leadership of the chairs and ranking members of the Senate Commerce Committee and House Energy and Commerce Committee in developing legislative proposals, we strongly urge the committees of jurisdiction, including the House Judiciary Committee, to take the time necessary to conduct thorough hearings and full and informed markups of legislation before sending legislation to the House or Senate floor. While the two draft discussion proposals, one sponsored by the chairman of Senate Commerce and the other by the chairman of House Energy and Commerce, each contain important advances, they also each have very problematic provisions. We urge the committees to take the time to consider both proposals, perfect them into a single bill that provides the most protection for individuals, and do so without undermining other protections.

Our concern about the possibility of legislation being rushed towards enactment without taking the time to ensure that it provides the most protection possible for individuals is based on the experiences of several of our ACLU state affiliates who have been unable to stop harmful or effectively useless state privacy bills from being pushed quickly to enactment with the enormous lobbying and advertising support of sectors of the technology industry that resist changing a business model that depends on consumers not having protections against privacy invasions and discrimination. The result is that several states now have “privacy” laws that were rushed through legislatures, and have little or no effect on privacy. Congress should not make the same mistake.

To be clear, Americans need a strong federal privacy law, as well as laws that provide more robust civil rights protections against tech-driven harms—and mechanisms to better enforce existing civil rights protections. Right now, due to a lack of federal consumer privacy protections, Americans risk being tracked and surveilled every time we open an app, walk into a store carrying a phone, or do an online search for a new doctor. And too often, access to critical opportunities such as a new home or a new job is blocked through online or data-driven discrimination. That is not acceptable, and federal legislation is long overdue.

But neither proposal, based on reports of current drafts, meets the nation’s needs without very significant revisions. Congress must take the time now, working off of both proposals, to make the protections stronger, make sure the legislation can survive judicial review against any First Amendment



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claims, bolster enforcement provisions, including providing a strong private right of action, and allow the states to continue to respond to new technologies and new privacy challenges with state privacy laws.

While it is urgent for Congress to enact legislation to protect the rights of Americans to privacy and nondiscrimination, it is critical that Congress learn from the mistakes of state legislatures that rushed “privacy” laws to enactment at the urging of segments of industry, only to realize later that they failed to deliver protections to residents of their states. We are very interested to work with you to get it right. Thank you for your attention to this issue, and please reach out with any questions to Nate Wessler at nwessler@aclu.org.

Sincerely,



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