



**Response to the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce to Questions for the Record regarding the Federal Trade Commission Practices: A Discussion on Past Versus Present hearing from September 19, 2024.**

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Response to Congressman Russ Fulcher:

I favor a National Privacy Bill that brings symmetry to data collection in the United States, emphasizing transparency and accountability. Regarding the structure where Congress legislates, and the FTC enforces based on a narrow interpretation of privacy laws, there are concerns about how such a regime aligns with recent Supreme Court precedent. In cases like *West Virginia v. EPA* (2022), the Court has emphasized the “major questions doctrine,” which means that when an agency interprets a statute to address an issue of national significance, there must be explicit Congressional authorization. If Congress delegates broad authority without clear definitions, the FTC might face legal challenges about overstepping its jurisdiction.

A National Privacy Bill could establish **more precise definitions and standards** within the legislation to address these challenges, giving the FTC a more explicit mandate. This would reduce legal ambiguity and align the enforcement structure with recent judicial trends, providing the necessary legislative clarity while allowing for flexibility in the application of privacy rules in evolving digital environments.

Any privacy regulations must prioritize data governance and responsible AI use when considering the interplay between commercial surveillance rulemaking and AI development. While it is true that AI heavily relies on data, a well-designed

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privacy regime can foster **responsible AI development**. By ensuring that data collection and processing are conducted to respect individual privacy and maintain transparency and accountability, such a regime can help build public trust in AI and other data-driven technologies.

The key to a successful regulatory framework is balancing protecting consumers and fostering innovation. The FTC's role in overseeing compliance is instrumental in achieving this balance, provided that Congress's authority is clear and aligned with constitutional principles. This balanced approach will ensure that consumers are protected without stifling innovation.

Thank you to the committee for your interest in this important policy area of privacy and online protection. Please let me know if you have additional questions.