

CALIFORNIA PRIVACY PROTECTION AGENCY

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June 26, 2024

The Honorable Cathy McMorris Rodgers, Chair
The Honorable Frank J. Pallone, Jr., Ranking Member
House Energy & Commerce Committee
United States House of Representatives
Washington, DC 20515

Re: H.R. 8818, The American Privacy Rights Act of 2024—Opposed

Dear Chair McMorris Rodgers and Ranking Member Pallone,

The California Privacy Protection Agency¹ (Privacy Agency) writes in respectful opposition to The American Privacy Rights Act of 2024 (APRA).² The Agency appreciates the House Energy and Commerce Committee’s work to advance a federal privacy law, as all Americans deserve strong, meaningful protections over the collection, use, retention, and disclosure of the personal information. But those protections must not come at the expense of safeguards that consumers already enjoy. The Privacy Agency would support a federal privacy law that sets a floor on protections and allows states to continue to adopt stronger safeguards, consistent with most federal privacy laws. Instead, APRA seeks to preempt nearly every provision in groundbreaking state laws like the California Consumer Privacy Act (CCPA)³ and the California Delete Act⁴—a setback for many consumers, and one that would override the will of the millions of Californians who voted for Proposition 24, the California Privacy Rights Act.

States have always taken the lead on privacy, and California is often the first to secure landmark consumer protections. California was the first state to adopt a comprehensive consumer privacy law in the United States, the California Consumer Privacy Act, and since then, nearly twenty states have adopted similar laws—laws that APRA seeks to preempt. In the past two years alone, California has adopted multiple pieces of legislation to strengthen privacy protections—including SB 362, the California Delete Act, a first-in-the-nation global data broker deletion requirement.⁵ California likely never could have adopted these cutting-edge protections if Congress had passed preemptive legislation two years ago through the American Data Privacy and Protection Act (ADPPA).⁶

Even though the California Delete Act has influenced APRA—recent APRA drafts have included global data broker deletion language—APRA still fails to meet the standard set by California. Not only does the California Delete Act give consumers the right to request that a

¹ Established by California voters in 2020, the California Privacy Protection Agency was created to protect Californians’ consumer privacy. The Agency implements and enforces the California Consumer Privacy Act. It is governed by a five-member board that consists of experts in privacy, technology, and consumer rights.

² H.R. 8818, The American Privacy Rights Act of 2024 (APRA), https://d1ldth6e84htgma.cloudfront.net/H_R_8818_American_Privacy_Rights_Act_of_2024_a265f50b54.pdf.

³ Cal. Civ. Code § 1798.100 et seq.

⁴ 2023 Cal. Stat. 709 (SB 362).

⁵ *Id.*

⁶ H.R. 8152, the American Data Privacy and Protection Act (2022).

registered data broker delete their personal information, in a single step, but if a deletion request cannot be verified, the data broker must honor the request as an opt out of sale or sharing. This is an innovative protection to ensure that consumers can protect highly sensitive data, including location data, that is often tied to an advertising ID that nonetheless can trace back to identifiable consumers. The California Delete Act also has far stronger disclosure requirements, so that consumers will be able to learn whether a data broker maintains children’s data or reproductive health data, for example. Finally, unlike the California Delete Act, it’s not clear what penalties data brokers would face under the APRA for failure to register as required. For these reasons and others, the APRA’s provisions are less protective than existing California law.

Similarly, APRA seeks to eliminate privacy protections Californians enjoy with respect to sexual orientation, union membership, and immigration status. While these categories are considered sensitive personal information in California,⁷ they are not afforded these protections in the APRA. This is a key distinction, in part because APRA exempts inferences made from publicly available information as long as they do not reveal information about an individual that would constitute sensitive covered data and are not combined with covered data.⁸ For example, if a business infers that an individual is a member of the LGBT community based on factors such as social media posts and address, the business would not be obligated to disclose, correct, or delete this inference because it would not be “covered data.” In contrast, the California Attorney General has clarified that inferences derived from publicly available information are covered by the CCPA.⁹

APRA also seeks to delay the global opt-out of sale that protects much of the U.S. population. California, Colorado, and Connecticut already have this protection in place, and it will soon be effective in nearly a dozen states. More can, and likely will, follow suit by implementing consistent protections. These states require businesses to honor opt-out preference signals as a global opt-out of sale and sharing of their personal information—so that consumers can exercise their opt-out preferences for all businesses in a single step. This requirement has already been the subject of an enforcement action by the California Attorney General.¹⁰ While APRA would require businesses to honor a global opt-out mechanism, the FTC has years to clarify the outlines of that requirement, potentially preventing approximately a third of the U.S. population from benefitting from those protections in that interim.

Allowing states to continue to advance protections is consistent with interoperability. The states have been working to ensure consistency in protections. The Proposition 24 amendments to the CCPA, adopted in 2020, were intended to harmonize protections with the European Union’s General Data Protection Regulation (GDPR), and the Privacy Agency was modeled after European data protection authorities.¹¹ The Privacy Agency is required to “Cooperate with other agencies with jurisdiction over privacy laws and with data processing authorities in California, other states, territories, and countries to ensure consistent application of privacy protections.”¹²

⁷ Cal. Civ. Code § 1798.140(ae).

⁸ APRA, Sec. 101(12)(B)(iv).

⁹ Opinion No. 20-303 (Opinion), State of California Office of the Attorney General at 11 (Mar. 10, 2022), <https://oag.ca.gov/system/files/opinions/pdfs/20-303.pdf>.

¹⁰ Press release, *Attorney General Bonta Announces Settlement with Sephora as Part of Ongoing Enforcement of California Consumer Privacy Act* (Aug. 24, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-settlement-sephora-part-ongoing-enforcement>; *California v. Sephora USA, Inc.*, Complaint for Injunction, Civil Penalties, and Other Equitable Relief at ¶5 (Aug. 24, 2022), <https://oag.ca.gov/system/files/attachments/press-docs/Complaint%20%288-23-22%20FINAL%29.pdf>.

¹¹ Proposition 24, the California Privacy Rights Act (2020), https://cppa.ca.gov/regulations/pdf/prop24_text.pdf.

¹² Cal. Civ. Code Sec. 1798.199.40(i)

Consistent with that mandate, compliance with California’s regulations does not contravene compliance with laws in other states.¹³ Some businesses have vowed to extend California’s protections to consumers across the United States, further demonstrating interoperability across jurisdictions.¹⁴

Federal privacy law typically allows states to adopt stronger protections. Existing laws such as the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach-Bliley Act (GLBA), and the Fair Credit Reporting Act (FCRA), among others, include language that enables states to adopt stronger protection.¹⁵ The Confidentiality of Medical Information Act and the California Financial Information Privacy Act are just two examples of California laws that build on the federal baseline.¹⁶ This approach has not prevented California from becoming one of the largest economies in the world.¹⁷

Finally, as concerns grow about the influence of artificial intelligence, social media, and other technologies over our daily lives, Congress should empower, not seek to weaken, independent watchdogs like the California Privacy Protection Agency. The CCPA provides the Privacy Agency with the power to audit and bring administrative actions against businesses under its jurisdiction, creating another law enforcement entity to protect consumer privacy.¹⁸ California’s unique audit authority, in particular, is modeled after European inspection authority. And though the APRA seeks to vest the Federal Trade Commission (FTC) with new responsibilities, it also prevents the FTC from bringing robust enforcement in certain scenarios by granting compliance safe harbors to businesses. Constraining the primary enforcement authority when Americans need greater privacy enforcement—and limiting existing privacy enforcers—disadvantages consumers.¹⁹

Millions of Californians voted to establish a “floor” of privacy protections in California. Under California law, the legislature can only amend the CCPA if it furthers the law’s intent to protect privacy.²⁰ Congress should do the same. Americans should have a strong floor of protections and states should be able to build on top of them. We look forward to working with you to ensure these fundamental protections for all Americans.

Sincerely,



Ashkan Soltani
Executive Director

cc: Members, House Energy & Commerce Committee

¹³ California Privacy Protection Agency, California Consumer Privacy Act Regulations, Notice of Proposed Rulemaking at 7 (July 8, 2022), https://cppa.ca.gov/regulations/pdf/20220708_npr.pdf.

¹⁴ Julie Brill, *Microsoft Will Honor California’s New Privacy Rights Throughout the United States* (Nov. 11, 2019), <https://blogs.microsoft.com/on-the-issues/2019/11/11/microsoft-california-privacy-rights/>.

¹⁵ See 45 C.F.R. Part 160, Subpart B; 15 U.S.C. § 6807; 15 U.S.C. § 1681t.

¹⁶ Cal. Civ. Code § 56.10 et seq.; Cal. Fin. Code § 4051(b).

¹⁷ Office of Governor Gavin Newsom, *California Remains the World’s 5th Biggest Economy* (Apr. 16, 2024), <https://www.gov.ca.gov/2024/04/16/california-remains-the-worlds-5th-largest-economy/>.

¹⁸ Cal. Civ. Code § 1798.199.40.

¹⁹ APRA, Sec. 113.

²⁰ Proposition 24, Sec. 25.