

**CALIFORNIA PRIVACY PROTECTION AGENCY**

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August 15, 2022

The Honorable Nancy Pelosi, Speaker  
The Honorable Kevin McCarthy, Minority Leader  
United States House of Representatives  
Washington, DC 20515

**Re: H.R. 8152, The American Data Privacy and Protection Act — Oppose**

Dear Speaker Pelosi and Minority Leader McCarthy,

The California Privacy Protection Agency writes in respectful opposition to H.R. 8152, the American Data Privacy and Protection Act (ADPPA). ADPPA's sweeping preemption seeks to remove important protections and significantly weaken the privacy Californians currently enjoy under the California Consumer Privacy Act (CCPA). In addition, it could nearly eliminate the ability of the California Privacy Protection Agency, the first data protection authority in the United States, to fulfill its responsibility to protect Californians' privacy rights. ADPPA represents a false choice, that the strong rights of Californians and others must be taken away to provide privacy rights federally. Americans deserve, and the Agency could support, a framework that offers both: a floor of federal protections that preserves the ability of the states to continue to improve protections in response to future threats to consumer privacy.

Californians have had privacy rights under the state Constitution for fifty years, and have continually expanded these protections.<sup>1</sup> In 2018, California became the first state in the nation to adopt a comprehensive consumer privacy law, and in 2020 became the first state to establish a dedicated data protection authority when voters amended the CCPA by passing Proposition 24, the California Privacy Rights Act (CPRA).<sup>2</sup> Since then, over half the states have considered comprehensive consumer privacy bills, and states such as Colorado and Connecticut have adopted similar laws to the CCPA.<sup>3</sup> But ADPPA seeks preempt these and other laws representing years of work and evolution on consumer privacy. And ADPPA seeks to prevent the states from strengthening privacy protections in the future.

ADPPA is not only substantively weaker than the CCPA, but it would remove important protections that benefit not just Californians, but the rest of the country. The CPRA amendments to the CCPA state that the California law may be amended by the legislature, provided that such amendments are consistent with and further the purpose and intent of the Act, thereby creating a "floor." This provision maintains a level of privacy protections which cannot be weakened, creating a de-facto model of protections for the nation. However, ADPPA seeks to preempt this floor along with other provisions of the CCPA.<sup>4</sup>

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<sup>1</sup> Cal. Cons. Art. 1 § 1.

<sup>2</sup> Cal. Civ. Code § 1798.100 et seq.

<sup>3</sup> National Conference of State Legislatures, State Laws Related to Digital Privacy (June 7, 2022), <https://www.ncsl.org/research/telecommunications-and-information-technology/state-laws-related-to-internet-privacy.aspx>.

<sup>4</sup> For more information on the ways in which ADPPA is substantively weaker than the CCPA, please see Maureen Mahoney, Analysis and Recommended Agency Position on Federal Legislation, H.R. 8152: The American Data Privacy and

In passing the CPRA, Californians also created and funded an expert agency and vested it with the responsibility and authority to implement and enforce their privacy law. This includes issuing regulations, auditing businesses' compliance, and providing administrative enforcement of the CCPA on behalf of Californians. Preempting most of the substantive provisions of the law that created the Agency, as ADPPA seeks to do, would nearly eliminate the Agency's ability to carry out its mandate of protecting the privacy of California residents under California law. Even though ADPPA currently purports to provide the Agency with the ability to enforce the new federal law, the language in the bill still raises significant uncertainties for the Agency were it to seek to enforce the federal measure.

If adopted in its current form, ADPPA's sweeping preemption language would be an anomaly for federal privacy legislation. Many existing federal privacy laws allow the states to adopt stronger laws. For example, the Health Information Portability and Accountability Act, the Gramm Leach Bliley Act, and the Fair Credit Reporting Act all contain language that allows the states to adopt stronger protections.<sup>5</sup> Similarly, the Telephone Consumer Protection Act and the Video Privacy Protection Act allow for stronger state laws.<sup>6</sup> ADPPA's preemption language is especially concerning given the rate at which technology continues to advance and evolve.

Everyone in the United States should enjoy strong privacy protections. But those rights should not come at the expense of existing rights. This is particularly important in an era in which *Roe v. Wade* has been overruled. Today more than ever, it is important that states be able to build on their existing laws and allow their voters to seek out the additional protections they require. The Agency joins California Governor Newsom, Attorney General Bonta, Assembly Speaker Anthony Rendon, and members of the California Senate in raising concerns about the ADPPA.<sup>7</sup> We look forward to working with you to ensure these protections.

Sincerely,

Ashkan Soltani  
Executive Director

cc: The Honorable Frank Pallone  
The Honorable Cathy McMorris Rodgers  
The Honorable Jan Schakowsky  
The Honorable Gus Bilirakis  
Members, United States House of Representatives

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Protection Act (Version: July 22, 2022) (July 26, 2022), [https://cppa.ca.gov/meetings/materials/20220728\\_item2\\_cpp\\_a\\_staff\\_memo\\_hr8152.pdf](https://cppa.ca.gov/meetings/materials/20220728_item2_cpp_a_staff_memo_hr8152.pdf).

<sup>5</sup> See, 45 C.F.R. Part 160, Subpart B; 15 U.S.C. 6807; 15 U.S.C. § 1681t.

<sup>6</sup> 47 U.S.C. § 227(f); 18 U.S.C. 2710(f).

<sup>7</sup> Letter from Governor Newsom to Chairman Pallone (July 19, 2022), [https://cppa.ca.gov/meetings/materials/20220728\\_item2\\_letter\\_gavin\\_newsom.pdf](https://cppa.ca.gov/meetings/materials/20220728_item2_letter_gavin_newsom.pdf); Letter from Ten State Attorneys General to Congressional Leaders (July 19, 2022), [https://cppa.ca.gov/meetings/materials/20220728\\_item2\\_letter\\_attorney\\_general.pdf](https://cppa.ca.gov/meetings/materials/20220728_item2_letter_attorney_general.pdf); Letter from California Assembly Speaker Rendon to U.S. House Speaker Nancy Pelosi (July 19, 2022), [https://cppa.ca.gov/meetings/materials/20220728\\_item2\\_letter\\_assembly\\_speaker.pdf](https://cppa.ca.gov/meetings/materials/20220728_item2_letter_assembly_speaker.pdf); Letter from Senator Tom Umberg et al. to U.S. House Speaker Nancy Pelosi (August 9, 2022).

The Honorable Chuck Schumer, Majority Leader, United States Senate  
The Honorable Mitch McConnell, Minority Leader, United States Senate  
Members, United States Senate