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July 19, 2022

Chairman Frank Pallone and Ranking Member Cathy McMorris Rogers
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Pallone and Ranking Member Rogers,

On behalf of the more than one million members and supporters of the Council for Citizens Against Government Waste (CCAGW), I would like to share our views ahead of your markup tomorrow on [H.R. 8152](#), the American Data Privacy and Protection Act (ADPPA), as amended.

The need for a national privacy framework to protect consumers, while providing certainty to businesses, large and small, across the country is critical, and CCAGW is pleased that the committee has taken this important step forward. Citizens Against Government Waste first offered recommendations for a national data privacy framework in its November 8, 2018, [comments](#) to the National Telecommunications and Information Administration.

However, we have grave concerns about certain provisions in the bill as reported to the full committee during the June 23, 2022, markup at the Subcommittee on Consumer Protection and Commerce.

The ADPPA amendment in the nature of a substitute (AINS) includes several of these recommendations, like offering clear consumer choices by providing a unified opt-out mechanism, including transparency requirements, and providing for data security and protection of covered data. While the AINS remedies some of the concerns CCAGW had regarding sections 403 and 404, including allowing an individual to permit a company to use their data to provide loyalty discounted services, the deadline by which a litigant must notify the FTC and state attorneys general of proposed civil action against a covered entity, the inclusion of a private right of action, and certain exceptions to preemption authority continue to be problematic.

While section 403(b)(2) of the AINS clarified state preemption authority, the committee should ensure that the exceptions do not encourage states to continue to enact a battery of privacy laws that meet these exceptions, continuing the status quo of a complex and confusing patchwork of state statutes that all companies must comply with, regardless of the revenue and size thresholds imposed by the bill. Provisions that include a private right of action will lead to an increase in frivolous lawsuits, the cost of which will be passed on to consumers.

While the bill correctly preempts the Federal Communications Commission's authority for three privacy and data security provisions in the Communications Act, CCAGW believes that the bill should preempt all the Communications Act's provisions regarding privacy and data

security for a covered entity subject to the FTC's new regime, so that those entities would not be subject to two separate and potentially conflicting federal regulatory regimes. CCAGW is also concerned about provisions that increase the FTC's reach and authority in light of FTC Chair Lina Khan's unceremonious elimination of the consumer welfare standard, expansion of its antitrust authority, and opposition to potentially beneficial mergers and acquisitions. CCAGW believes it is unwise at best to increase the FTC's power by adding a new bureau and providing it with funding and regulatory powers.

CCAGW commends the committee for its efforts to protect consumers' personal information and respectfully requests that you reconsider the exceptions to the bill's state preemptions, remove the private right of action authority that will only lead to a more litigious society, require the FTC to conduct its rulemaking and regulatory activity under the longstanding consumer welfare standard, and clarify whether consumers will be permitted to make their own choices in how their data is used. If you have any questions, please feel free to contact Deborah Collier at dcollier@cagw.org.

Sincerely,

A handwritten signature in black ink that reads "Tom Schatz". The signature is written in a cursive, slightly slanted style.

cc: House Energy and Commerce Committee members