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July 13, 2022

Representative Frank Pallone, Jr.
Chair, Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Representative Cathy McMorris Rodgers
Ranking Member, Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

RE: American Data Privacy and Protection Act

Dear Chairman Pallone and Ranking Member McMorris Rodgers:

In 2019, the Maine Legislature enacted L.D. 946, An Act to Protect the Privacy of Online Customer Information.¹ The law is at the forefront of consumer privacy protection, and it reflects hard-fought progress in Maine to fortify consumer data against unauthorized collection and use by Internet Service Providers.²

Current efforts to adopt federal privacy legislation could imperil this progress, and similar progress made in other states across the country. I do not oppose the creation of a federal privacy regime in principle, and there are promising aspects of the bills that have been proposed in recent months. However, many of the drafts that I have reviewed, including the most recent draft of the American Data Privacy and Protection Act, contain preemption provisions that would erase legislation like Maine's cutting-edge privacy law from the books. If adopted in their current form, the legislation would set a ceiling on privacy protection below that which many state legislatures—including Maine's—have deemed necessary to safeguard their state's consumers. This is precisely

¹ See 35-A M.R.S. § 9301.

² See FTC Staff Report, "A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers," Federal Trade Commission, October 21, 2021, available at: https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf.

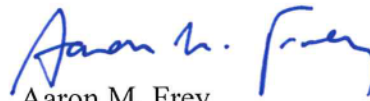
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what those who profit off consumer data seek: to tie the hands of elected state governments by locking a permissive federal privacy regime in place.

Nearly a century ago, Justice Louis Brandeis astutely observed that the states are this nation's great laboratories of democracy. As you continue your work on this important issue, I urge the Committee not to strip states like Maine of the power to innovate and improve their protection of consumers. Permitting an end-run around duly enacted state laws will not only harm consumers in Maine, but also will eliminate every state's ability to adjust to novel and unanticipated threats to consumer privacy in the ever-changing Internet ecosystem. In short, I strongly oppose the inclusion of preemption provisions in any federal privacy legislation.

I will be closely monitoring the progress of the American Data Privacy and Protection Act and legislation like it in the weeks and months ahead. Should any such legislation advance to the full House, I anticipate sending a more detailed letter highlighting any specific concerns regarding how the proposed legislation could affect Maine consumers.

Respectfully,



Aaron M. Frey
Attorney General
State of Maine

cc: Jesse Connolly, Chief of Staff for Representative Chellie Pingree
Aisha Woodward, Chief of Staff for Representative Jared Golden