December 13, 2018

U.S. Congress
Washington, DC 20515

Dear Honorable Representative,

As organizations dedicated to protecting the consumer, privacy and civil rights of Americans, we write to remind you of the critical role that the states play in developing innovative solutions to emerging privacy challenges. State law provides important protections against invasions of privacy. Our organizations favor federal baseline privacy legislation that ensures a basic level of protection for all individuals in the United States. We will oppose federal legislation that preempts stronger state laws. Not only will preemption leave consumers with inadequate privacy protections, it will likely result in their being worse off than they would be in the absence of federal legislation. The states are the "laboratories of democracy" and have led the way in the development of innovative privacy legislation. US privacy laws typically establish a floor and not a ceiling. That is still the right approach, particularly as new challenges rapidly emerge.

Our federal system of government is premised on respect for the role of the states as independent sovereigns. As Justice Brandeis wrote, "it is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Both federal and state law work together to protect consumers in a number of areas—prohibitions against false and deceptive marketing practices, and consumer protections against harmful debt collection practices, for example.

In addition to longstanding common-law remedies for invasion of privacy in all fifty states, several states have already enacted strong protections specific to user privacy online, including:

- The California Consumer Privacy Act, which provides consumers with the "right to know" what personal information a company has collected about them; the right to delete that information; the right to opt-out of the sale of their information; and the right to receive equal service and pricing from a company.
- The Illinois Biometric Information Privacy Act, which allows consumers to decide for themselves whether it is in their best interest to share their biometric information with companies.
- The Vermont Data Broker Act, which protects consumers from the fraudulent collection of their data and from their data being used for harassment or discrimination.
- Legislation that protects consumers against data breaches, which has been enacted by all 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.
- Dozens of state laws that specifically protect the privacy of schoolchildren and prevent against the commercial use of their educational information.

Since data processing is intertwined within nearly every sector—including in employment, education and housing—a bill with a broad definition of covered activities that allows preemption could inadvertently dismantle state civil rights protections and put already marginalized groups in greater danger.

Given the rapid pace of changes in technology, Congress should continue to give states the freedom to quickly address and adapt to future threats that may impact privacy and consumer protection. Amending federal legislation to account for changes in technology is a process that can take years and often decades. Even adopting new regulatory standards typically takes years. In the rapidly changing world of information security, the states must be given room to innovate.

Historically, federal privacy laws have not preempted stronger state protections or enforcement efforts. Federal consumer protection and privacy laws, as a general matter, operate as regulatory baselines and do not prevent states from enacting and enforcing stronger state statutes. The Electronic Communications Privacy Act, the Right to Financial Privacy Act, the Cable Communications Privacy Act, the Video Privacy Protection Act, the Employee Polygraph Protection Act, the Telephone Consumer Protection Act, the Driver's Privacy Protection Act, and the Gramm-Leach-Bliley Act all allow states to craft protections that exceed federal law.

Federal privacy legislation that preempts stronger state laws would only benefit technology companies at the expense of the public. The job of protecting Americans' privacy is more than big enough to need the shared oversight of states and the federal government. We urge you to focus intently on the rights and dignity of your constituents by actively opposing any proposals to preempt stronger state laws in federal privacy legislation, so that existing state protections – both regulatory standards and liability rules – are maintained and so that states are free to adopt new protections.

Please direct any response to Kristen Strader at kstrader@citizen.org or Adam Schwartz at adam@eff.org.

Sincerely,

Campaign for a Commercial-Free Childhood
Center for Digital Democracy
Center for Media Justice
Color of Change
Common Sense Kids Action
Consumer Federation of America
Consumer Action
Consumer Watchdog
Customer Commons
Electronic Frontier Foundation
Electronic Privacy Information Center
Media Alliance
Privacy Rights Clearinghouse
Public Citizen
Stop Online Violence Against Women
U.S. PIRG