



June 26, 2024

The Honorable Cathy McMorris Rodgers  
Chair, Committee on Energy & Commerce  
Washington, D.C. 20515

The Honorable Frank Pallone  
Ranking Member, Committee on Energy & Commerce  
Washington, D.C. 20515

The Honorable Gus Bilirakis  
Chair, Subcommittee on Innovation,  
Data, and Commerce  
Washington, D.C. 20515

The Honorable Jan Schakowsky  
Ranking Member, Subcommittee on Innovation,  
Data, and Commerce  
Washington, D.C. 20515

**Re: MSPC Opposition to H.R. 8818, the American Privacy Rights Act**

Dear Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky,

The Main Street Privacy Coalition (MSPC)<sup>1</sup> and its 20 national trade association members appreciate the significant efforts you have made in developing legislation to establish a national privacy framework, however, we are opposed to the current draft of H.R. 8818, the American Privacy Rights Act (APRA), as introduced yesterday and released last night for your full committee markup tomorrow morning.

The MSPC members represent a broad array of companies that line America's Main Streets. From retailers to Realtors®, hotels to home builders, grocery stores to restaurants, gas stations to travel plazas, and self-storage to convenience stores, including franchise establishments, our member companies interact with consumers on a daily basis. These businesses can be found in every town, city, and state, providing jobs, supporting our economy, and serving Americans as a vital part of their communities. Collectively, the industries that MSPC trade groups represent directly employ approximately 34 million Americans and constitute one-fifth of the U.S. economy by contributing \$4.5 trillion to the U.S. gross domestic product.

As expressed in greater detail in [MSPC's previous letter sent in advance of the IDC Subcommittee markup](#) and in conversations with your and other committee members' staff, we have continuing significant concerns with the robust private rights of action (PRA) provision and its consequences for over one million American businesses we collectively represent. **As shown in the attached chart, the PRA disproportionately impacts Main Street businesses:** notably, *all* of the subsections of the bill enforceable by PRA apply to our businesses as "covered entities," however *only 3* PRA-enforceable subsections apply to Big Tech "service providers" and *none of them* apply to Big Tech "third parties." Moreover, section 111(a)'s and (b)'s direct requirements for Big Tech service providers and third parties, respectively, are not subject to the PRA.

As drafted, our members are concerned that this form of PRA will lead to tens of thousands of demand letters sent annually to Main Street businesses for *alleged* violations of the APRA that threaten costly but meritless litigation unless settlements are quickly paid. Further, the APRA provides no opportunity to "cure" claims for damages, leaving businesses with the devilish "choice" of either paying unjust, demanded settlements or paying exponentially more to go to court to defend themselves against privacy trolls' baseless claims.

We recognize that consumer-facing businesses represented by MSPC are often the businesses with whom consumers directly interact and share their personal information, but Main Street businesses do not monetize consumer data in opaque and deceitful ways and should not be held liable for data privacy violations committed by their Big Tech service providers or third parties the APRA does not hold accountable. Where Big Tech entities may view the consumers' data as *their* product, we do not. Our businesses responsibly use data that consumers share with us to better serve them the actual goods and services that are *our* products.

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<sup>1</sup> The Main Street Privacy Coalition website and member list may be accessed at: <https://mainstreetprivacy.com>.

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We therefore urge the Committee to hold accountable Big Tech service providers and third parties to the *same* extent as Main Street businesses by carefully aligning the APRA's service provider requirements to match the more consumer-protective provisions adopted in nearly every one of the 18 enacted comprehensive state privacy laws. These revisions would then reflect the level of service provider requirements previously negotiated by our associations with the Committee staff and service-provider stakeholders, as finalized within the text of the Committee's predecessor bill, the ADPPA, approved and reported by the Committee in 2022. Improving the APRA this way would help Main Street businesses by creating statutory obligations that ensure service providers and third parties must agree to these obligations in their contractual negotiations with covered entities or else be in violation of federal law. More importantly, it would protect against privacy loopholes that leave consumers unprotected when their personal data is handled by these business partners that most covered entities cannot police through contracts alone given the imbalance in negotiating leverage.

We appreciate your consideration of our significant concerns with H.R. 8818, as introduced for the markup, and we stand ready to work constructively with you to ensure the legislation will not disproportionately impact Main Street businesses and will properly hold Big Tech service providers accountable. While we cannot support the bill in its current form, we urge you and all members of the Committee to address these critical deficiencies through revisions to the bill prior to advancing H.R. 8818 in a full committee markup.

Sincerely,

Main Street Privacy Coalition

Attachment

cc: Members of the House Committee on Energy and Commerce

**Disproportionate Impact of APRA’s Private Rights of Action (“PRA”) on Main Street Businesses (“Covered Entities”)<sup>1</sup>**

<b>APRA Sections Subject to PRA</b>	<b>Covered Entities (X = section applies)</b>	<b>Service Providers (N/A = not applicable)</b>	<b>Third Parties (N/A = not applicable)</b>
<b>Data Minimization (§102)</b>			
• §102(b) Sensitive Data Transfers	X	N/A	N/A
• §102(c) Biometric Info and Genetic Info (e.g., includes collection, processing, retention, transfer, etc.)	X	N/A	N/A
<b>Transparency (§104)</b>			
• §104(a) Privacy Policy Publicly Available	X	X	N/A
• §104(e) Material Changes to Privacy Policy (including Notice and Opt Out)	X	N/A	N/A
<b>Individual Control Over Covered Data (§105)</b> (e.g., consumer rights of access, correction, deletion, and portability of covered data):			
• §105 (all subsections)	X	N/A	N/A
<b>Opt-Out Rights and Universal Mechanism (§106)</b>			
• §106 (a)	X	N/A	N/A
• §106 (b)(2)	X	N/A	N/A
<b>Interference with Consumer Rights (“Dark Patterns Prohibited”) (§107)</b>			
• §107 (all subsections)	X	N/A	N/A
<b>Prohibition on Denial of Service and Waiver of Rights (including, “Service or Pricing” in “Bona Fide Loyalty Programs”) (§108)</b>			
• §108 (all subsections)	X	N/A	N/A
<b>Data Security and Protection of Covered Data (§109)</b>			
• §109 (a) – “to the extent such action alleges a data breach arising from a violation of subsection (a)”	X	X	N/A
<b>Service Providers and Third Parties (§111)</b>			
• §111(a) Service Provider Requirements – <b>NOT subject to the PRA</b>		N/A	
• §111(b) Third Party Requirements – <b>NOT Subject to the PRA</b>			N/A
• §111(d) Reasonable Care in Selecting Service Providers or Transfers of Data to Third Parties	X	X	N/A
<b>Data Brokers (§112)</b>			
• §112(c)(4) – “Do Not Collect” and “Delete My Data” Requests	X <i>(a data broker is a “covered entity” that meets the definition of a “data broker”)</i>	N/A	N/A

<sup>1</sup> Chart prepared by [Main Street Privacy Coalition](#) based on section 117(a)(1) of [H.R. 8818, the American Privacy Rights Act \(APRA\)](#).