

June 24, 2024

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Re: State Associations' Letter in Opposition to the APRA as Drafted

Dear Chair Rodgers and Ranking Member Pallone,

The undersigned organizations write to our express opposition to the American Privacy Rights Act of 2024 (APRA) in the form released on June 20, 2024, to be marked up in the Committee on Thursday, June 27. We urge all members of the Committee to vote "NO" when APRA is marked up in the full House Energy & Commerce Committee unless significant changes are made to address our concerns with the private right of action and service provider requirements within the bill.

First, the APRA's private right of action would enable trial lawyers to primarily target Main Street businesses through demand letters seeking quick settlement payments in order to avoid class action lawsuits for alleged violations that may not have occurred or caused any harm. Unfortunately, small businesses across the nation have long been plagued by demand letters and frivolous lawsuits within other legal contexts, including through patent "troll" campaigns and ADA "drive-by" lawsuits and website accessibility claims, which can result in these entities facing bankruptcy by these monetary demands. APRA's robust private right of action would unfairly open small businesses up to similar legal liabilities while also failing to hold service providers and third parties like big tech companies to the same data privacy standards.

Exacerbating this issue is the fact that Main Street businesses would not have the ability to cure alleged violations in claims for damages in the APRA's notice and cure provision because its use is limited only to claims for injunctive relief. At the same time, plaintiffs are not required to even prove that harm or actual damages have occurred, which is cause for even greater concern given that the APRA creates more than ten new areas of potential legal liability for Main Street businesses alone, including our customer loyalty programs and the requirement to exercise "reasonable care" when selecting service providers. Worse yet, the private right of action would become effective just six months after enactment, which is not nearly enough time for small businesses to come into compliance if the bill were to become law.

Finally, we believe that all industry stakeholders within the digital ecosystem should have statutory obligations under federal data privacy legislation so that no consumer is left unprotected. We recognize that consumer-facing businesses on Main Street are often the businesses with whom consumers directly share their personal information, but we do not monetize consumer data in opaque and deceitful ways and should not be held liable for potential data privacy violations committed by our service providers or other downstream business partners.

This is why it is even more impactful that the private right of action in the bill allows lawsuits against Main Street businesses but does not apply to the tech companies that process data on behalf of these businesses. Instead, the bill makes Main Street liable for the privacy violations of big tech companies on the theory that Main Street should police what the tech companies do on privacy even though our members are just not equipped to do that. We therefore urge the bill's proponents to expand the statutory requirements for both service providers and third parties to ensure that Main Street is not liable for the

actions of tech companies and there are no privacy loopholes that leave consumers unprotected when their personal data is handled by any business, regardless of where they live.

We strongly urge you to express concerns with the APRA unless it is changed to address the private right of action and service provider provisions. If significant changes cannot be made to these critical provisions, we urge you to vote in opposition to the legislation during the Committee markup process.

Thank you for your consideration of this request.

Alabama Beverage Licensees Association
Alabama Grocers Association
Alabama Restaurant & Hospitality Association
Alabama Retail Association
Alaska Cabaret, Hotel, Restaurant and Retailers Association
Arizona Restaurant Association
Arizona Retailers Association
Arizona Lodging & Tourism Association
Arkansas Grocers & Retail Merchants Association
Arkansas Hospitality Association
United Beverage Retailers of Arkansas
California Grocers Association
California Restaurant Association
California Retailers Association
Coloradans for S.A.F.E.T.Y.
Colorado Hotel and Lodging Association
Colorado Restaurant Association
Colorado Retail Council
Connecticut Food Association
Connecticut Package Stores Association
Connecticut Restaurant Association
Connecticut Retail Network
Delaware Food Industry Council
Delaware Restaurant Association
Delaware Small Beverage License Council
Florida Independent Spirits Association
Florida Restaurant & Lodging Association
Florida Retail Federation
Georgia Alcohol Dealers Association
Georgia Food Industry Association
Georgia Hotel & Lodging Association
Georgia Restaurant Association
Georgia Retailers
Hawaii Food Industry Association
Hawaii Restaurant Association
Retail Merchants of Hawaii

Idaho Lodging & Restaurant Association
Idaho Retailers Association
Illinois Hotel & Lodging Association
Illinois Licensed Beverage Association
Illinois Restaurant Association
Illinois Retail Merchants Association
Indiana Association of Beverage Retailers
Indiana Restaurant & Lodging Association
Indiana Retail Council
Iowa Grocery Industry Association
Iowa Restaurant Association
Kansas Chamber
Kansas Restaurant & Hospitality Association
Kansas Retail Council
Retail Grocers Association of Kansas & Missouri
Kentucky Association of Beverage Retailers
Kentucky Grocers & Convenience Store Association
Kentucky Restaurant Association
Kentucky Retail Federation
Louisiana Restaurant Association
Louisiana Retailers Association
Hospitality Maine
Retail Association of Maine
Maryland Association of Chain Drug Stores
Maryland Food Industry Council
Maryland Retailers Alliance
Restaurant Association of Maryland
Maryland State Licensed Beverage Association
Massachusetts Food Association
Massachusetts Restaurant Association
Massachusetts Package Stores Association
Retailers Association of Massachusetts
Michigan Restaurant & Lodging Association
Michigan Retailers Association
Minnesota Grocers Association
Hospitality Minnesota
Minnesota Retailers Association
Mississippi Hospitality and Restaurant Association
Missouri Grocers Association
Missouri Restaurant Association
Missouri Retailers Association
Montana Restaurant Association
Montana Retail Association
Montana Tavern Association

Nebraska Grocery Industry Association
Nebraska Hospitality Association
Nebraska Retail Federation
Nevada Restaurant Association
Retail Association of Nevada
New Hampshire Grocers Association
New Hampshire Lodging & Restaurant Association
New Hampshire Retail Association
New Jersey Food Council
New Jersey Liquor Stores Alliance
New Jersey Restaurant & Hospitality Association
New Jersey Retail Merchants Association
New Mexico Restaurant Association
New Mexico Retail Association
Food Industry Alliance of New York
New York Retailers Alliance
New York State Liquor Store Association
New York State Restaurant Association
Retail Council of New York State
Carolinas Food Industry Council
North Carolina Restaurant & Lodging Association
North Carolina Retail Merchants Association
North Dakota Grocers Association
North Dakota Hospitality Association
North Dakota Retail Association
Ohio Council of Retail Merchants
Ohio Grocers Association
Ohio Hotel & Lodging Association
Ohio Restaurant & Hospitality Alliance
Oklahoma Grocers Association
Oklahoma Restaurant Association
Oklahoma Retail Merchants Association
Retail Liquor Association of Oklahoma
Oregon Restaurant & Lodging Association
Oregon Retail Council
Pennsylvania Food Merchants Association
Malt Beverage Distributors Association of Pennsylvania
Pennsylvania Restaurant & Lodging Association
Pennsylvania Retailers Association
Asociación de Restaurantes de Puerto Rico
Rhode Island Hospitality Association
Rhode Island Liquor Operators Collaborative
South Carolina Restaurant & Lodging Association
ABC Stores of South Carolina
South Carolina Retail Association

South Dakota Grocers Association
South Dakota Hospitality Association
South Dakota Licensed Beverage Dealers & Gaming Association
South Dakota Restaurant Association
South Dakota Retailers Association
Tennessee Grocers & Convenience Store Association
Tennessee Hospitality & Tourism Association
Tennessee Retail Association
Tennessee Wine & Spirits Retailers Association
Texas Hotel & Lodging Association
Texas Package Stores Association
Texas Restaurant Association
Texas Retailers Association
Utah Food Industry Association
Utah Restaurant Association
Utah Retail Merchants Association
Vermont Chamber of Commerce Hospitality Division
Vermont Retail and Grocers Association
Virginia Food Industry Association
Virginia Restaurant, Lodging, & Travel Association
Virginia Retail Federation
Washington Food Industry Association
Washington Hospitality Association
Washington Retail Association
Restaurant Association of Metropolitan Washington
West Virginia Hospitality and Travel Association
West Virginia Retailers Association
Wisconsin Restaurant Association
Tavern League of Wisconsin
Wyoming Hospitality and Travel Coalition
Wyoming State Liquor Association