



March 5, 2019

The Honorable Roger Wicker
Chairman
Senate Committee on Commerce,
Science, and Transportation
U.S. Senate
512 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
Ranking Member
Senate Committee on Commerce,
Science, and Transportation
U.S. Senate
512 Dirksen Senate Office Building
Washington, D.C. 20510

Toi Hutchinson
State Senator
Illinois
President, NCSL

Jon Heining
General Counsel
Legislative Council
Texas
Staff Chair, NCSL

William Pound
Executive Director

Re: Federal Pre-emption of State Data Privacy Laws

Dear Chairman Wicker, Ranking Member Cantwell:

On behalf of the National Conference of State Legislatures (NCSL) we write to express our concern about the lack of representation of state lawmakers and other state government officials in the Committee's February 27 hearing on Policy Principles for a Federal Data Privacy Framework. Witnesses and Committee members repeatedly called for pre-emption of state data privacy laws and decried the significant and diligent efforts of states to act in an area where Congress has failed, including a witness citing alleged drafting errors and failures in states legislation, but no representatives from states were consulted or represented in the discussion. This process has been a failure of federalism and we call on the Committee to engage in proper consultation with states going forward.

NCSL shares Chairman Wicker's goals to protect consumers, ensure simple privacy statements, take action against bad actors, and provide a framework that supports innovation. However, under the tradition of state authority and states' ability to more directly respond to specific constituent needs, we urge the Committee to avoid pre-empting the good work states have done in this area. We appreciate the Committee's acknowledgement of state leadership, and states will continue to thoroughly contemplate the needs of consumers and industry to achieve control, accountability, access, and fair enforcement in data privacy laws.

We were heartened by Ranking Member Cantwell's acknowledgment that pre-emption for its own sake could be harmful and that there can be meaningful legislation without pre-emption. As one witness stated, pre-emption assumes that Congress has figured out solutions to all of the complex challenges in data privacy. NCSL is willing to partner with the Committee to provide resources, share lessons learned, and highlight perspectives of those affected by the contemplated legislation.

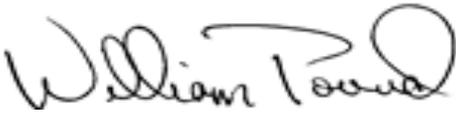
The hearing also included consideration of rulemaking authority and enforcement by states' attorneys general without consultation of states. Enforcement by a state's attorneys general is not true sovereignty if states are not

also given the ability to regulate. Further, the Committee's own witnesses acknowledged the complimentary role of state and federal enforcement along with industry self-regulation as the strongest option for consumers.

While there may be some role for a federal standard in data privacy, Congress must work closely with states and recognize state current authority. We urge the Committee to engage in proper consultation of state legislators when discussing the impact of federal pre-emption in data privacy. We welcome the opportunity to work with you and your staff on this issue.

Please contact NCSL staff Abbie Gruwell (202) 624-3569 abbie.gruwell@ncsl.org with any questions or concerns. Thank you.

Sincerely,

A handwritten signature in black ink that reads "William T. Pound". The signature is written in a cursive style with a large, looping initial "W".

William T. Pound
Executive Director, NCSL