



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 19, 2018

The Honorable Jeb Hensarling
Chairman
The Committee on Financial Services
U.S. House of Representatives
Rayburn HOB, 2228 Independence Ave. SW
Washington, DC 20215

The Honorable Maxine Waters
Ranking Member
The Committee on Financial Services
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, DC 20215

The Honorable Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions &
Consumer Credit
U.S. House of Representatives
2230 Rayburn House Office Building
Washington, DC 20215

Honorable Wm. Lacy Clay
Ranking Member
Subcommittee on Financial Institutions &
Consumer Credit
U.S. House of Representatives
2428 Rayburn House Office Building
Washington, DC 20215

Dear Committee Leaders:

We, the undersigned Attorneys General, write to provide our thoughts on the proposed Data Acquisition and Technology Accountability and Security Act, a draft bill released by Reps. Luetkemeyer and Maloney on February 16, 2018. As the chief consumer protection officials in our states, we are on the front lines of helping our residents take steps to prevent identity theft in the wake of numerous data breaches and holding accountable the companies who fail to secure our residents' data.

We know first-hand how alarmed and frustrated consumers are when they learn a company they trusted to protect their sensitive personal data has suffered a breach. We regularly hear from our consumers after a data breach, including scores of concerned consumers who reached out to our offices for help after the recent Equifax data breach that put over 145 million Americans at a life-time risk of identity theft. Unfortunately, the proposed Data Acquisition and Technology Accountability and Security Act appears to place Equifax and other consumer reporting agencies and financial institutions out of states' enforcement reach.

This bill totally preempts all state data breach and data security laws, including laws that require notice to consumers and state attorneys general of data breaches. In 2005, forty-four state attorneys general wrote a letter to Congress similar to this letter, opposing preemption of state breach notification laws. The letter stated:

Do not preempt the power of states to enact and enforce state security breach notification...Preemption interferes with state legislatures' democratic role as laboratories of innovation. The states have been able to respond more quickly to concerns about privacy and identity theft involving personal information, and have enacted laws in these areas years before the federal government.¹

We repeated that request in a similar letter to Congressional Leaders on July 7, 2015², and repeat it again in this letter. States have proven themselves to be active, agile, and experienced enforcers of their consumers' data security and privacy.³ With the increasing threat and ever-evolving nature of data security risks, the state consumer protection laws that our Offices enforce provide vital flexibility and a vehicle by which the States can rapidly and effectively respond to protect their consumers.

The proposed Data Acquisition and Technology Accountability and Security Act allows entities suffering breaches to determine whether to notify consumers of a breach based on their own judgment of whether there is "a reasonable risk that the breach of data security has resulted in identity theft, fraud, or economic loss to any consumer... ."

This is insufficient, and too late. First, it will result in less transparency to consumers. Time and again, we hear from our consumers that they want more transparency on data breaches and data security, not less. If any entity holds our sensitive information that is compromised, the consumers affected should be informed as soon as possible. The loss of personal information could be harmful, and it may be impracticable to determine what specific harm may occur following a breach. Allowing a breached company to determine whether a consumer already has been a victim of identity theft, fraud, or economic loss may thus result in fewer notifications to consumers who are at actual risk of harm. Second, even if a breached company does decide to give notice of the breach to affected consumers, the Bill allows them to notify the consumer after the harm already has occurred. Consumers must know right away if their data has been compromised so that they can take pro-active steps to protect themselves from identity theft before it happens, not after the fact.

Over the past decade, additional transparency about data breaches has been achieved due to state data breach notification requirements. With this transparency, our Offices have been able to learn about breaches and investigate the reasons for them. These investigations have

¹ Letter to Congressional Leaders from the National Association of Attorneys General (NAAG) (Oct. 27, 2005).

² Letter to Congressional Leaders from NAAG (July 7, 2015).

³ See Danielle K. Citron, *The Privacy Policymaking of State Attorneys General*, 92 *Notre Dame L. Rev.* 747 (2017), available at <https://scholarship.law.nd.edu/ndlr/vol92/iss2/5>

revealed that some entities have failed to take sufficient data security precautions. Understanding where data security failures occur has allowed us to require companies to implement data security fixes. For that reason, we urge you to avoid limiting our ability to learn about data breaches and to require companies to improve their data security measures going forward.

We understand that data breaches come in all sizes. While the breaches that Uber, Equifax, Target, Home Depot, Nationwide Insurance, and other large companies have experienced in recent years gained national media attention, most breaches are either local or regional in nature. The Data Acquisition and Technology Accountability and Security Act fails to acknowledge this fact by only addressing large, national breaches affecting 5,000 or more consumers and preventing attorneys general from learning of or addressing breaches that have a smaller national scale but nonetheless victimize our state residents. As just one example, of the over 21,000 breaches reported to the Massachusetts Attorney General's Office since 2008, each breach impacted, on average, just 488 Massachusetts residents.

Instead, we believe there is a place for both state and federal agencies to act to protect consumers' important personal information. Therefore, for the above-stated reasons, Congress should not preempt state data security and breach notification laws.

Sincerely,



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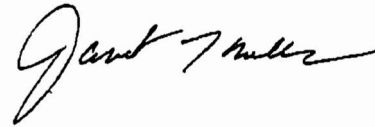
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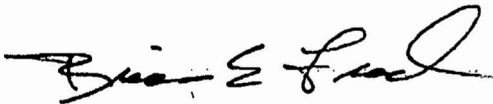
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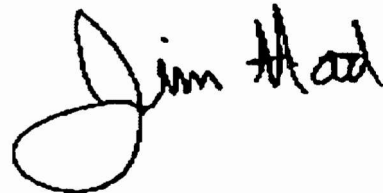
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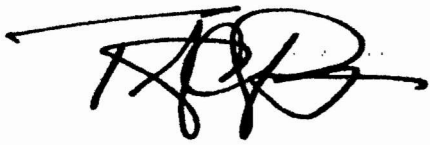
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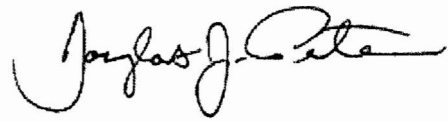
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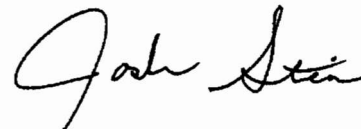
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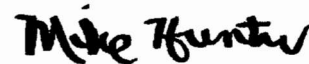
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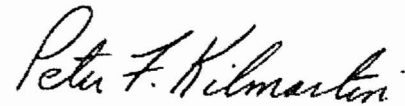
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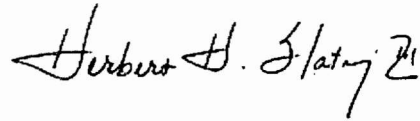
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