CALIFORNIA PRIVATE PROTECTION AGENCY

TRANSCRIPTION OF RECORDED BOARD MEETING

JULY 28, 2022

SACRAMENTO, CALIFORNIA

Present (Via Zoom):

TRINI HURTADO, Moderator

JENNIFER M. URBAN, Chairperson

ANGELA SIERRA, Board Member

CHRIS THOMPSON, Board Member

LYDIA DE LA TORRE, Board Member

VINHCENT LE, Board Member

BRIAN G. SOUBLET, General Counsel

MAUREEN MAHONEY, Deputy Director

NELSON R. RICHARDS, Staff Attorney

MILAD DALJU, Board counsel

Transcribed by: Colin Richilano,

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Phoenix, Arizona

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MS. URBAN: Thank you very much and thanks, everyone, for your patience while we got our technical ducks in a row.

So good morning. I'm pleased to welcome everyone to this special meeting of the California Privacy Protection Agency Board. My name is Jennifer Urban. I am the chairperson of the board for the agency. Today is July 28th, 2022, and this is a special meeting pursuant to Government Code Section 11125.4, about which I will explain more in a moment.

Before we get started with the substance of the meeting, as usual, I have some logistical announcements. First, I would like to please ask everyone to check that your microphone is muted when you are not speaking. Today's meeting will be run according to the Bagley-Keene Open Meeting Act, as required by law. Additionally, please note that this meeting is being recorded.

We are meeting remotely today, in accordance with Government Code Section 11133 as amended by SB 189. Members of the public are welcome to join via Zoom, video conference or telephone and directions for joining the meeting are in the meeting notice.

After each agenda item, there will be an opportunity

for questions and discussion by the board members. I will also ask for public comment on each agenda item. Each speaker in the public comments session will be limited to three minutes per agenda item.

Let's take a moment now for those of you who might wish to participate to note that if you wish to speak on an item, you will please use the raise your hand function, which is in the reaction feature on the bottom of your Zoom screen. So if you would like to take a moment to locate that now, please do.

Please also note that our moderator will call on you after you raise your hand and will request that you unmute yourself for comment. When your comment is completed, the moderator will mute you. It is helpful if you identify yourself, but this is entirely voluntary and you can input a pseudonym when you log into the meeting as well.

My thanks to the board members for their service and everyone working to make the meeting possible, especially everyone on staff at the California Privacy Protection Agency and the Office of the Attorney General supporting us today, particularly for a special meeting, which requires a lot of work on short notice.

Mr. Milad Dalju, who is acting as our meeting counsel -- thank you, Mr. Dalju -- Ms. Trini Hurtado, who

is our moderator, and Ms. Stacy Heinsen, who organized administrative staffing and resources.

I would also like to thank Brian Soublet, our interim general counsel, Nelson Richards, California Privacy Protection Agency attorney who is here with us today, and Von Chitambira, who is our deputy director of administration.

And as ever, I would like to express my gratitude for the team at the Department of Consumer Affairs for managing our communications and the Business, Consumer Services and Housing Agency, Department of Consumer Affairs, Department of General Services, The Office of the Attorney General, and other agencies who continue to support us.

I now call this special meeting to order at 9:05 a.m. and will ask our moderator, Ms. Hurtado, to please conduct the roll call.

MS. HURTADO: Yes, good morning.

Ms. Urban?

MS. URBAN: Present.

MS. HURTADO: Ms. De La Torre?

MS. DE LA TORRE: Present.

MS. HURTADO: Mr. Le?

MR. LE: Present.

MS. HURTADO: Ms. Sierra?

MS. SIERRA: Present.

MS. HURTADO: Mr. Thompson?

MR. THOMPSON: Present.

MS. HURTADO: All members are present.

MS. URBAN: Thank you very much, Ms. Hurtado. The board has established a quorum. I would like to let the board members know that we will take a roll call vote on action items.

Now, as I mentioned, this is a special meeting of the board called pursuant to Government Code Section 11125.4, which is part of the Bagley-Keene Open Meeting Act, which allows for board meeting on forty-eight hours' notice instead of our usual ten days' notice for certain purposes when necessary. In particular, this meeting has been called pursuant to Government code Section 1125.4(a)(2), which allows for special meetings to consider proposed legislations.

As indicated in the agenda, we have convened a special meeting today to discuss a matter of proposed legislation on which the board must consider immediate action.

The Bagley-Keene Open Meeting Act at Government Code Section 11125.4(c) requires that the board make a finding of necessity to hold a meeting on less than ten days' advance notice before we proceed. Specifically, to

continue with the special meeting, the board must determine whether the delay necessitated by providing ten days' notice would pose a substantial hardship on the board or that immediate action is required to protect the public interest or both.

The finding of necessity must be made by a duly seconded motion in open session. Please also note that to pass or carry, the motion to adopt the finding must receive a supermajority vote, either a unanimous vote if less than two-thirds of the members are present or if more members are present, a two-thirds majority. So today, we would need a two-thirds majority, which because we are five members I believe is four out of five. If the motion does not pass or carry by the required supermajority vote, the special meeting cannot go forward. The finding of necessity requires specific factual findings. These finding will be set forth in the motion.

So I will put the motion on the table with the findings, ask for a movement and a second, then call for board discussion and comment, so we all know what we're talking about, then I will call for public comment before we vote.

Accordingly, may I please have a motion and a second to adopt the following. Factual finding one: The board

finds that providing ten days' advance notice of this meeting would pose a substantial hardship on the board and immediate action is required by the board to protect the public interest, in that the House of Representatives of the United States Congress is actively pursuing a bill, the American Data Protection and Privacy Act (sic), that seeks to preempt much of the California Consumer Privacy Act of 2018 as amended by the California Privacy Rights Act of 2020, and that would have substantial effects on California law and its protections for Californians and that similar bills may be under development in the United States House of Representatives and the United States Senate.

Finding two: The board finds that the United States House of Representatives advance the American Data Privacy -- Protection and Privacy Act (sic), excuse me, out of the Energy and Commerce Committee last week.

Finding three: The board finds that if the board had to wait a full ten days to meet, to discuss and provide guidance on this legislation, the board could be deprived of the ability to timely take guidance from staff on the effect of this federal legislation on California law, Californians, and the agency, and to deliberate and provide timely direction to agency staff regarding the agency's position or positions and guidance

to Congress on the legislation.

Finding four: The board finds that if it is not able to meet prior to Congress taking further steps to advance the American Data Protection and Privacy Act (sic) or similar legislation, California law could be severely effective -- affected. California privacy rights could be compromised and the public interests could be harmed.

Finding five: Based on these facts and circumstances, insufficient time exists for the board to provide ten days' advanced notice of this special meeting and meeting upon short notice is necessary and proper.

May I thus please have a motion to adopt these factual findings and to determine that, one, providing ten days' advanced notice pursuant to Government Code Section 11125 would impose a substantial hardship on the board, two, immediate action is necessary to protect the public interest, and three, it is necessary and proper to proceed with this special meeting pursuant to Government Code Section 11125.4(c).

MS. DE LA TORRE: I so move.

MS. URBAN: Thank you, Ms. de la Torre.

Is there a second to the motion?

MS. SIERRA: I will second.

MS. URBAN: Thank you, Ms. Sierra. The motion has

been made by Ms. de la Torre and seconded by Ms. Sierra. Thank you very much.

Now, are there questions or comments from board members on the pending motion? Okay. Thank you very much.

In that case, is there any public comment from those in the audience on the pending motion?

MS. HURTADO: I see no hands raised at this time.

MS. URBAN: Thank you very much, Ms. Hurtado. I'll pause once more for any thoughts that might have occurred to members of the board. And seeing none, I will call the question and ask Ms. Hurtado to conduct a roll call vote. The motion will carry or pass if it receives a unanimous vote or a vote of four to five.

Ms. Hurtado -- or excuse me. Four. Of at least four members in favor.

Ms. Hurtado, would you please perform the roll call vote?

MS. HURTADO: Yes.

Ms. de la Torre?

MS. DE LA TORRE: Aye.

MS. HURTADO: Mr. Le?

MR. LE: Aye.

MS. HURTADO: Ms. Sierra?

MS. SIERRA: Aye.

MS. HURTADO: Mr. Thompson?

MR. THOMPSON: Aye.

MS. HURTADO: Chair Urban?

MS. URBAN: Aye.

MS. HURTADO: All are ayes.

MS. URBAN: Thank you very much, Ms. -- thank you very much, Ms. Hurtado. The required supermajority is achieved and the motion carries by a vote of five to zero.

Given that the motion carries, we will continue with a special meeting and move to agenda item two, which is discussion and possible action on proposed federal privacy legislation, including the American Data Protection and Privacy Act (sic) and similar legislation. As noted, this discussion and possible action is under the authority of Government code 11125.4(a)(2).

I now draw your attention to the materials for agenda item two, which includes two short memos from our deputy director for policy and legislation, Maureen Mahoney, some letters from the governor of California, some attorneys general, and the speaker of the California Assembly, as well as the current version of the ADPPA.

I'm delighted now to introduce Maureen Mahoney, our deputy director of policy and legislation, who will be briefing us today. She joined the California Privacy

Protection Agency on May 4th. As deputy director of policy and legislation, she manages the agency's policy and legislative portfolio, which includes providing technical advice and assistance to us and to the California Legislature on privacy legislation and working with authorities in California in other jurisdictions to ensure consistent privacy protections per our responsibility under 1798.199.40.

Deputy director Mahoney joined the agency from Consumer Reports, where she worked for nearly a decade on privacy and technology issues including privacy, data security, data breach notification, right to repair, and telemarketing legislation. Before that, she received her PhD in history from the University of Wisconsin-Madison.

I will now hand things over to Deputy Director Mahoney. Please hold your questions until the presentation is complete -- unless, of course, Deputy Director, say if you prefer otherwise -- and after we hear from our deputy director, we will have some discussion.

MS. MAHONEY: Thank you, Chairperson, members of the board. I'm here to present an analysis and recommended agency position on HR8152, the ADPPA, a federal privacy bill that advanced out of the United States House of Representatives Energy and Commerce Committee last week.

It provides the right to access, delete, and correct covered data, with additional protections for sensitive covered data. There's data minimization language as well.

However, it seeks to broadly preempt state comprehensive privacy laws, including the California Consumer Privacy Act, Colorado Privacy Act, and the Connecticut Data Privacy Act, as well as data book and registry laws in California, Vermont, and Maine's broadband privacy law. It provides specific carveouts for some sectoral privacy laws, it's just those relating to employee privacy and facial recognition, some specific laws such as the Illinois Biometric Information Privacy Act, and portions of certain laws, such as the negligent data breach private right of action in the state's CPA.

However, most protections Californians currently enjoy under the CPA would likely be preempted, including notably the CCPA's floor for privacy protections, California's ability to strengthen the law in the future, and the agency's ability to protect Californian's privacy rights under the California law.

ADPPA would extend certain privacy protections to states where they do not currently exist. However, due to its broad potential language, ADPPA would likely have significant effects on California law. These could

include removing the unique floor for privacy protections created by the CPRA, the CPRA amendments to the CCPA state that it may be amended by the legislature, provided that such amendments are consistent with and further the purpose of and intent of the act. This means that currently California enjoys a floor of privacy protections. Second, creating a ceiling on privacy protections for Californians that could be raised only by Congress. This could immediately affect several privacy bills from advancing through the California Legislature in its current session that likely would be preempted by ADPPA. It could prevent future fixes by the California legislature, by California regulation, or by citizen ballot initiative intended to respond to future threats to Californians' privacy. Other states would also not be able to respond on behalf of their citizens.

And third, substantially affecting the agency's ability to fulfill its responsibilities as mandated by the CPRA. In passing the CPRA, Californians created the agency, invested it with the responsibility and authority to implement and enforce the CCPA, and this includes issuing regulations, auditing businesses' compliance, and providing administrative enforcement of the CCPA on behalf of Californians. Preempting most of the substantive provisions of the law that created the agency

as the ADPPA seeks to do could nearly eliminate the agency's ability to carry out its mandate of protecting the privacy of California residents under California law.

ADPPA currently purports to provide the agency with the ability to enforce a new federal law. However, the language in the bill still raises significant uncertainties for the agency if it were it to seek to enforce the federal bill as the California legislature may need to take separate action to give the agency the ability to enforce the federal law.

And finally, in some cases ADPPA provisions would provide substantially less protection to Californians than they currently enjoy under the CCPA as amended by CPRA. I'll just provide one example: removing the opt out of automated decision-making. CPRA directs the agency to develop regulations providing access and optout rates with respect to automated decision-making and requiring meaningful information about the logic of such decisions, protections that are not included in the federal bill. And these are crucial components of any privacy and civil rights law. And I'll refer the board to staff's written analysis and the meeting materials for additional examples.

So staff has two recommendations. One is to oppose the ADPPA as it advanced out of the House Energy and

Commerce Committee and second is to oppose any bill that seeks to preempt the California Consumer Privacy Act or provides substantially weaker protections than the CCPA as amended by CPRA or prevents the agency California legislature or voters to the ballot initiative from strengthening the privacy protections for Californians in the future or significantly compromises the agency's authority or ability to fulfill its statutory responsibility and mandate on behalf of Californians. Thank you and I'm available to answer any questions.

MS. URBAN: Thank you very much, Deputy Director Mahoney. We really appreciate that thorough and yet very well digested analysis.

We'll undertake some discussion. For everyone on the board, let's undertake some discussion, after which I will formulate any appropriate motion or motions. Then once we have those on the table, then we will ask for public comment, once everyone in the audience can hear what we have to say to begin.

I'll go ahead and begin. Thank you again, Deputy Director Mahoney, for briefing us on this crucial issue and for all of the staff who have been working to understand the issue and to bring it to us.

I'm very concerned about the effect that the American Data Protection and Privacy Act (sic) and any

federal bills with similar preemption provisions would have on Californians and California law. When I say that, I do want to be clear that I certainly commend Congress, and the House Energy and Commerce Committee especially, for working I think very sincerely and hard to protect Americans' privacy rights. Californians, for fifty years at least, have enjoyed privacy rights in our Constitution and have continuously built on those. And we certainly think that Americans generally should have the privacy rights that they deserve. I really appreciate the work that the sponsors of the ADPPA and the other bills have been undertaking.

At the same time, it is the agency's role and our responsibility to act as what our implementing legislation, the initiative proposition 24, calls an independent watchdog to protect Californians' privacy rights. Our law is very clear about our role. At 1798.199.40(c) of the California Civil Code, "the agency shall, through the implementation of this title, protect the fundamental privacy rights of natural persons with respect to the use of their personal information", and 40(l), "the agency shall perform all acts necessary and appropriate in order to exercise its power, authority, and jurisdiction to balance the goals of strengthening consumer privacy while giving attention to the impact on

businesses".

Our role is very clear and our role was set out for us directly by the California voters in the initiative statute proposition 24, the California Privacy Rights Act of 2020. Given that, I greatly respect Congress's efforts here, but I must say that I support staff's recommendation that we do not support it as drafted and that we -- and I would say we need to register some very specific concerns.

First is timing. Californians have these rights and protections right now, today. Today Californians can exercise the right to access, the right to opt out, the right to delete today. Right now today the attorney general in California is enforcing rights on behalf of Californians and has been for a while. Right now today we have a set of regulations promulgated by the attorney general to give guidance to California consumers and businesses and the agency is undertaking another round of regulations. I am very concerned about what might happen with the implementation of a new federal law with regards to the rights that Californians have today.

That brings me to the fact that I feel it is really important to emphasize the point that Deputy Director Mahoney made about the floor and privacy protections that Californians voted for in the initiative process and the

ability for California to respond to Californians, both consumers and businesses, with regard to future changes.

In the initiative process, Californians amended the existing CCPA to require that any amendments by the California legislature be consistent with and further the purpose of the Act. In practical terms, this prevents unnecessary weakening of the law.

The federal law does not have this protection and it would preempt, that is remove, this protection for Californians. Even if the ADPPA itself were the strongest possible law today, it could be weakened in the future. And as a member of this board, I do not feel as though I can support a bill when my role and duty is as set forth in our initiative, to protect Californians. And this is such a fundamental part of that protection.

This is not because I doubt this Congress's intentions. It is because it is a possibility that Californians specifically chose to guard against in the initiative process and it is because that choice, as set forth in Speaker Rendon's letter, to which I direct everyone who's interested, California's protective floor is a response, a direct response, to something we have already seen attempted in California and have every reason to believe will be attempted in the future.

Similarly, the ceiling. So the federal law as

currently drafted, or bill as currently drafted, would set a ceiling by preempting California and other states' ability to amend the law with regard to things covered by the federal law in the future. In my view, it is again the agency's responsibility to stand up for Californians here. 1798.199.40(h) says that the agency "shall monitor relevant developments relating to the protection of personal information and in particular, the development of information and communication technologies and commercial practices". We actually have that responsibility. And I believe that it is our job not to abdicate that responsibility.

Now, again, I do appreciate that having harmonization is a valuable thing for Americans. And again, we have a duty to promote consistent application of privacy laws. I also greatly appreciate the thought that many of the people working on the bill in Congress, its drafters, have applied. So there are a number of important carveouts from preemption. A number of federal laws that already existed. A number of existing state laws to recognize the innovation in the states. For example, the Biometric Information Privacy Act out of Illinois, one of the bill's drafters' state, which was a very innovative law and it's carved out of the preemption. These carveouts recognize innovation in the

states and previous work at the federal level. California should be fully recognized, too.

I also want to thank our representative Eshoo for proposing an amendment that would have the ADPPA continue and be strong, but would allow states to build on it in the future. That, I think, was a very important intervention and I want to thank our California coalition of representatives who are on the Energy and Commerce Committee, all of whom voted for it. It did not ultimately pass, but I think that was a very important recognition of the fact that while Congress can set a very useful floor and protect privacy rights for all Americans, states need to be able to be responsive. And California in particular, I feel, needs to be aware of its protections via the floor. I think we should -- we should take very step we can to make sure that Californians don't lose that protection.

So in the end, I support the conclusions and the memos from staff. I would like to also see room for staff to -- I would like to see room for staff, excuse me, to oppose on behalf of the agency as needed. I would also like to see room for staff to be able to support a different federal bill or a changed federal bill that would fulfil Californians' interest. For example, would have a true floor and didn't undermine California's

rights. It didn't have the kind of ceiling that would prevent California or other states from protecting their residents' rights in the future. So I would like to see all of those things. I would like to support those conclusions and I would like to, if we can, provide a positive path forward for staff on behalf of the agency.

So that's my sort of general take on the issue and I would like to hear from other board members. Could you use your raise your hand either physically or the little icon, if you would like to speak? Thank you.

Mr. Thompson and then Ms. de la Torre and then Ms. Sierra.

MR. THOMPSON: Thank you, Chairperson Urban. I agree with your comment. I think you summed up the situation very well.

You know, I would consider myself to be pro-innovation and pro business. I'm also pro-privacy. And for that reason, I'm glad that Congress is acting in this area to create a federal privacy law.

It appears to me that there is a false choice in this bill, however, and that needs to be called out and has been called out, effectively, by the governor, by the speaker of the assembly, by Attorney General Bonta and nine other attorneys general.

And the false choice is that the bill is -- the

federal bill is treating privacy rights as though they are in limited supply. And the strong rights of Californians and others have to be taken away in order to provide weaker rights federally. And I think that is a false choice. And it has been very well articulated by a number of the people mentioned, Speaker Rendon, Governor Newsom, Attorney General Bonta, Representative Eshoo, and others that there is an alternative. And the alternative is that we can have both. We can have a federal floor that enables states to continue to innovate in this policy area.

It's been done in a number of areas previously where there is continued state latitude to act. The one I'm most familiar with is the clean air act, which I think is a similar set of circumstances where a state, in this case and in that case California, acted first. And the federal government recognized the need for the state to continue to act in that regard.

As has been pointed out by others, the Health Insurance Portability Act and Gramm-Leach-Bliley also have similar federal floors that don't allow states to continue to act.

There's a concept that gets talked about a lot in Washington DC And elsewhere that states are the laboratories of democracy. And really, California's

action here has been a catalyst for federal action. California and Colorado and Connecticut -- I don't know if there's something about states that start with C -- that have acted in this regard have really driven the policy debate here.

And one of the things that we don't want to get lost is that technological innovation moves really fast. Government does not move as fast as technological innovation, but the states are in a much better position to respond and to continue to keep up with technological innovation than the federal government. I say that as somebody who worked for the federal government for a long time.

In this area, California's been active for years and you know, has been involved in this activity for many years while the federal government has just been putting its shoes on to get involved. And we need to be able to continue to act to protect Californians' rights and to drive forward and adapt to other technological standards or technological innovation.

So I agree with your analysis. I agree that we need to continue to act in accordance with demanded -- mandate of roughly fifty-six percent of California voters who wanted strong privacy protections. And voice our opinion and support for our California delegation and other

elected leaders acting to protect the rights of Californians in this regard. I have a few other thoughts on this, but I will hold them for later.

MS. URBAN: Wonderful. Thank you very much, Mr. Thompson.

Ms. de la Torre and then Ms. Sierra.

MS. DE LA TORRE: Thank you. I want to start by thanking Deputy Director Mahoney for all the work that she has done for us in terms of analyzing the federal proposal, presenting it to us right now, and just following up with the quick developments in Washington. I'm sure that she has put long hours into this. And I just want to, on behalf of myself and I'm sure on behalf of all the other members of the board to thank her for the work that she has done already and to encourage her to just keep doing what she's doing because she's really valuable for the agency and for us.

I couldn't agree more with the words that were expressed by our chairperson Ms. Urban in terms of the mandate that this agency has. And I think that the thoughts that Mr. Thompson share, in terms of the false choice narrative, are also very important and I have them in mind.

There is a couple of things that I also wanted to mention in addition to the ones that have already been

mentioned. And if Ms. Mahoney will allow me, they include some questions and I hope that you might be able to answer, but it is okay if maybe we haven't done yet the analysis to have an answer for them.

So the first question that I have is in regards to this preemption, right, there is -- the logic of preemption to me doesn't really align with ensuring that Californians or for that much or residents of any state enjoy the highest possible privacy protections. There is other ways to deal with that, share power between the states and federal that will enable that. And they are basically what Mr. Thompson just described and Ms. Urban referred to.

But there's an argument to be made in preemption where it can be necessary to preempt a state law when there is misalignment between the state law and the federal law in a way that might either make compliance impossible or maybe confuse consumers.

As Mr. Soltani knows well, and I know well, the CPRA was really designed to increase the protections enjoyed by Californians so as to enable basically equivalence between the protections in California and the protections in Europe. And therefore, it's a structure in a way that's fully compatible with the European framework and other international frameworks.

So my question for Direct Mahoney is whether perhaps the federal law is misaligned with those international frameworks in a way that creates incompatibilities with California. And the reasoning for the question is that if the federal law is also aligned with this framework, in my view then there's no possibility of incompatibility between the federal law and the state law, right. Like, we are all aligned with this international frameworks. I don't see a logic for preemption based on the idea that we're creating some form of inconsistency that will prevent compliance or potentially confuse consumers. Have we analyzed this and is there an answer that you could provide, Ms. Mahoney?

MS. MAHONEY: That's a very good question. While I can't speak to incompatibility with ADPPA with international frameworks, I do agree that carving out California or allowing for a true floor in allowing the states to go further, it you know, fully support interoperability because California in its statute directs us to work towards compatibility and interoperability with other jurisdictions in other states and internationally. So I would agree that, you know, preemption does not necessarily provide better protections in terms of interoperability.

MS. DE LA TORRE: And a follow-up question, and

again to the extent that we have done this analysis, it is also clear to me that there's an opportunity for California to seek what is called adequacy when it comes to crossover data transfers from the European Union and other similar frameworks. In my opinion, California has the strongest path to adequacy that we have ever had in any jurisdiction in this country. It seems to me that the preemption as proposed will significantly limit, if not completely foreclose, the possibility of California seeking adequacy. Is that how you understand the preemption, Ms. Mahoney, in terms of the possible effects?

MS. MAHONEY: My understanding that, you know, one of the goals in adopting the CPRA was to work towards adequacy with international models, so I would agree that preemption would raise concerns in that respect.

MS. DE LA TORRE: Thank you. And I have a final comment, and this comes from, you know, having dedicated several years to study privacy laws at the state level. As I read the preemption clause, it's really broad. I mean, it sits on top of an also really broad law. I don't have a historical reference for something like this happening in the U.S. in the area of privacy before. So it states, if I am correct, that no state or political subdivision can basically enact it, enact a law that will

catch up on anything that's covered by the federal law other than -- and then there's exceptions.

Si the first comment there is that if we're saying no state or political subdivision, we're not only talking about preempting the states. We're also talking about preempting counties and preempting cities from enacting any law that would touch upon anything that is covered by this very broad federal law. Is that reading correct, Ms. Mahoney?

MS. MAHONEY: I agree that the preemption language is quite broad and it could affect additional jurisdictions. You know, I will point out that there are certain carveouts for certain, you know, sectoral privacy issues, but I agree with your statement.

MS. DE LA TORRE: Thank you so much. I understand, again, that this is not within the mandate of something that will be done by the agency, but I notice that there is different organizations in the privacy sphere that have taken positions on the federal law. And I wonder if any of these organizations has done a research to compare the federal law, not only with CPRA, but also with these other, multiple state laws here in California and other states or local laws; that they will de facto be preempting. Is there a list? Has anybody compiled a list of what will be basically found to be invalid if

this law is enacted as it is, to your knowledge?

MS. MAHONEY: I don't believe that anyone's done a full comprehensive list, although certainly there have been discussions about some of the bills, some of the laws that will be affected.

MS. DE LA TORRE: Thank you. I think that it seems to me really unwise to broadly preempt laws that nobody has taken the time to identify or analyze. We can be talking not only about weakening the rights of Californians as it was described by our deputy director, which will be within the mandate of the agency, but also multiple other state laws that are in assistance, multiple other political subdivision laws, laws from cities or counties. And this is particularly concerning to me in an era where we're looking at a situation where Roe has been repealed.

I think that at the minimum, we should identify the laws that might be currently offering protections for women who are seeking reproductive healthcare, whether here in California or in other states that may today enjoy protections of laws that can be repealed without -- now it seems to me -- any analysis or thought. And for those reasons, in addition to the reasons that Ms. Urban summarized well and Mr. Thompson also summarized really well, I fully support the recommendation of the staff.

I want to have -- last thing that I wanted to share, but I'm going to reserve that for the end of the conversation. Thank you so much for answering my questions, Ms. Mahoney.

MS. URBAN: Thank you very much, Ms. De La Torre.

And Ms. Sierra, you have a comment? And I believe we will be circling back. Oh, after Mr. Le. All right. Please go ahead, Ms. Sierra.

MS. SIERRA: Okay. (Indiscernible). Thank you so much, Chair Urban. And I'm not sure my hand is still up, though over that.

So I am very much in agreement with the comments and the concerns that have been expressed this morning. And I too, Ms. Mahoney, thank you so much for your work on this. This is, you know, such a critical juncture for all of us and the information you provided has been extremely helpful.

So again, I do share the concerns and I too just feel, you know, such a responsibility to our state and to, you know, the voters who expressed, you know, their will in proposition 24 and the CPRA. And I too also agree that the provision that provides the floor in California and does expressly provide that California can amend and strengthen state privacy laws in the future, that it is just a critical aspect of a CPRA. And I just

feel that that in itself, you know, can't get lost. Especially in this area in which we all, you know, in this country are going to be facing. We're in an area where there's going to be technology innovations has been brought up.

And I agree with the sentiment and I think it's been proven through our leadership in California on privacy and other issues that the states are in the best position to really react and address to changes in technology. And we are going to be able to be far more nimble in that area. And so you know, those reasons to me really impact, you know, my feeling of support, fully support of the staff's recommendations in this area.

And you know, the other point I just wanted to make is that I am also concerned about any provisions that are going to cause uncertainty with respect to the enforcement that our agency and the states are really responsible and in a good position to enforce as regulators in this area. And having been a civil prosecutor in the past at the California Department of Justice, you know, I just have a real concern that to the extent that there are the enforcement provisions and the enforcement authority for the states and our agency with respect to either investigations or bringing actions, if those are weakened or just if there are issues of not as

much clarity or confusion about those that that can really weaken our effectiveness as an agency, whether it's enforcing federal law or state law. And ultimately, that would really be to the detriment of consumers. So I'm really concerned about those areas as well.

And with that, again, I echo the concerns that had been expressed. I really do -- I think Mr. Thompson's point about the false choice, I fully agree with that. You know, that there is room for federal legislation. I think this work is so important. But at the same time, allowing the states to be able to address what is going to be very important for its residents. So thank you.

MS. URBAN: Thank you very much, Ms. Sierra.

Mr. Le, you had your hand up, you had your hand down. Is your hand up?

MR. LE: Yes, my hand is up.

MS. URBAN: Wonderful. Please go ahead.

MR. LE: Yeah, I'm not going to say too much. I believe, you know, Chair Urban and the rest of the board members have already articulated many of the points I wanted to make here. I very much support the ADPPA as a floor, not a ceiling for privacy rights. And I think based on the discussions we've had here today, you know, our mandate and the recommendations of the staff, you know, I'm inclined to oppose the ADPPA, unless it is

amended in such a way that it preserves the rights of Californians that we currently have under the CPRA that we have today. And also in a way that preserved the right for California to legislate to protect kids' privacy. You know, privacy around reproductive health care or you know, efforts to limit biometric surveillance and things like that.

I mean, staff have covered in their memo many of the ways that the ADPPA would not quite live up to the standards that the CPRA already has given Californians. You know, I want to highlight in particular that, you know, preemption would mean that Californians no longer have the right to opt out of automated decision-making. You know, something that our subcommittee has been working on. Or to get meaningful information when an automated system profiles them or makes a high stakes decision around who has access to jobs, health care, credit, housing, you name it.

I think California's law covers more service providers, you know, such as those processing data for government entities. I think the CCPA, with the help of the AG, clearly covers inferences made around us that the ADPPA does not protect as clearly. You know, it requires -- it allows the agency to do audits. It requires impact assessments from more types of businesses

whose processing presents a significant risk to our privacy. And also, you know, it gives California the ability to enforce this law where the FTC may not have the resources or the attention to focus on California. So while I am excited about the prospect of a national privacy law, I believe it does not need to come at the expense of the privacy rights we have here in California.

So I believe as a board member, you know, it's my responsibility to protect and strengthen California's privacy rights. And so I think I'm inclined to join with the governor, the attorney general, the speaker of the house, to voice concern around the preemption in the ADPPA and will likely vote to oppose it unless amended.

MS. URBAN: Thank you very much, Mr. Le.

I want to briefly circle back in response to some comments that my fellow board members made. And I'm fully in agreement with, I think, everything that I've heard here today. I would also like to emphasize Mr. Thompson's point about a false choice and I would like to emphasize Ms. de la Torre's point, which I would sum up is about unintended consequences. When a change this substantial is made to preempt so broadly what states, counties, cities, other jurisdictions are doing, that will have a very broad reaching effect, some of which will be very specific.

Ms. De La Torre mentioned women seeking reproductive health care. There may be children seeking to get away from an abusive situation. There may be, you know, any number of specific scenarios that we may not have thought of right now this second and that Congress has not thought of right now this second that this could affect.

And so while, again, I really do support what Congress is generally doing here, I worry greatly about the breadth of the preemption and how far it would end up reaching. And I'm concerned that even with the things that we've identified today, we haven't been able to do a full accounting, as Ms. De La Torre suggested. And of course we don't know exactly what the future holds. So I would hope that Congress would be willing to future proof its law and to allow states to act on behalf of their residents.

All right. After listening -- well, actually, I believe that Ms. De La Torre may have had another point and possibly Mr. Thompson.

Did you want to circle back? Please raise your hand if you would like.

Yes, Ms. de la Torre. You're still on mute.

MS. DE LA TORRE: Thank you. I just wanted to circle back to suggest that one of the course of actions that the agency could take is related to promoting

awareness. And this is within our mandate under California Civil Code 1798.199.40(d). It's the mandate of the agency to promote public awareness and understanding of the risks, rules, responsibilities, safeguards, and rights in relation to the collection, use, sale, and disclosure of personal information, including the rights of minors. I do not read this mandate as limited to CCPA and CPRA and I think it's really important for us to consider even though we still have limited staff and limited resources. Whether it should be a priority of the agency moving forward to work on a public awareness campaign so that the public can understand the rights that they currently have, as Ms. Urban pointed, right now. Because it is important for them to be aware of those rights in order for them to be understanding what will be the consequences of an enactment of a law the preempts those rights at the federal level.

And again, I understand that we have limited resources. Mr. Soltani has just, you know, done an amazing job himself, just supporting so many different initiatives. And we have the rule making, which requires a lot of resources. But I think at this point, it's wise to pause for a second and think if rule making should be our top priority in terms of enforcement or maybe there

is room to make public awareness also a top priority at this point.

MS. URBAN: Thank you, Ms. De La Torre.

Mr. Le, I believe you are on the public awareness subcommittee.

MR. LE: Yeah. Yeah, I just wanted to note that, you know, that is something that's come up in a public awareness subcommittee. We actually have -- Mr. Soltani has been actually great in getting us resources to do a public awareness campaign and you know, that is definitely -- is in the works to inform Californians about the rights they have. Yeah, I don't know if now is the right time to maybe share some more about that, but just to let you know, it's in the books. There's budget for it. And then -- yeah, hopefully that will be ruling out in the next -- you know, shortly.

MS. URBAN: Thank you, Mr. Le. That is, I'm heartened to hear that as well.

And Mr. Thompson?

MR. THOMPSON: Thank you. I was going to ask Ms. Mahoney to elaborate on a point that was in her memorandum. Because I think it's helpful to illustrate what the actual effects of this proposed legislation could be on the rights that people have in the state of California currently. In my experience and observation,

people want privacy protection. That is something that they value. And it is the job of government, us and others, to make the barriers to them getting those privacy -- or securing their privacy protections if they so choose, to make sure the barriers are not inordinately high.

And one of the things that jumped out to me, Ms. Mahoney, in your memorandum is on page 3, the section about adding a requirement to authenticate global optout requests. I was wondering if you could briefly describe the difference between what a person who is under California's current law would experience versus this proposed law.

MS. MAHONEY: Sure, so as you noted, one of the most important things with respect to any privacy law is making sure that consumers can easily take advantage of those rights. And a key part of that in California, which is currently required by regulation is added to the statute by proposition 24, is requiring businesses to honor browser privacy controls as a global optout, so that consumers don't have to go to hundreds if not thousands of different sites one by one in order to exercise their preferences.

In California, this statute has -- and regulations have also been designed to not add any unnecessary

friction in that process. For example, you know, not allowing businesses to pummel consumers with authentication or verification requests when they do that. So that would subvert the intent of providing smooth optout if your inbox is filling up with requests to confirm that you actually wanted to do that. And new language that has been put into the ADPPA could potentially compromise that and undermine kind of the smooth operation of a global optout.

MR. THOMPSON: Thank you.

So in my words, that would be if I signal that I want to opt out, I should not be repeatedly asked are you sure, are you sure, are you sure, are you sure? Can you please prove you're Chris Thompson? And those are -- those are the differences in what people in California experience versus what would be the experience, potentially, under the federal bill, is the repeated request to verify that you actually do want the privacy protections you indicated you wanted and that you are who you say you are.

The other quick point I wanted to make, obviously we are most familiar with and are charged with the privacy protections of consumers in the State of California. And you included in the packet the letter from the -- I think it's ten attorneys general. But wanted to just highlight

that this is not only about California, it is about other states as well. And the ability of other states to act in this area and to protect the states that already have acted in this area.

And I was -- it's gratifying to see that the attorneys general in California, Connecticut, Illinois, Maine, Massachusetts, Nevada, New Jersey, New Mexico, New York, and Washington state are all voicing a similar view. So I would repeat, we are charged with protection of privacy rights in California, but this is about more than just California.

MS. URBAN: Thank you very much, Mr. Thompson.

So I certainly don't want to cut off discussion, but I will go ahead and pause for a moment to let you know, as I've been listening and having read the materials, what I think might be a model to start with, in terms of how we might offer a position and provide direction and authority to staff.

I'll first say that Ms. de la Torre's point about public awareness -- I think that's something that we, by affirmation, you know, could all nod and say yeah, yes, we think that's a great idea. But with regards to taking positions and providing sufficient authority, I suggest that we consider three motions. And we could combine them. I just find it mentally easier to make sure we

have our points very, very clear for staff separately.

So I suggest that I first request a motion to approve agency staff's recommendation to oppose the American Data Privacy and Protection Act as currently drafted. And I will get to what might happen if it would change.

And then I suggest that second, I would request a motion to approve agency staff's recommendation to oppose any federal bill that seeks to do the things that are listed in Ms. Mahoney's memo, which is preempt the California Consumer Privacy Act, provide substantially weaker protections than the CCPA as amended by the CPRA, prevents the agency, California Legislature, or voters through ballot initiative from strengthening privacy protections for Californians in the future -- I might add or generally responding to technological, social, and business changes -- or significantly compromises the agency's authority or ability to fulfill its statutory responsibilities or mandate on behalf of Californians. And I think that we could sort of have an introduction that this was the staff's judgment, so that they have the ability to respond as things change, if they do.

And then in terms of my desire and I think others' desire, to be clear that we do appreciate federal work that would protect privacy rights for all Americans

without compromising states' ability to act, I might suggest having a motion to authorize agency staff to support a federal bill that does X, Y, or Z in their judgment. And I would suggest that doesn't broadly preempt our act or that in general does create a true floor for privacy protection that protects Californians current rights and that California and other states could build on in the future.

And we could work on the wording, but in general, those would be the sort of three points that I suggest that we -- that we hit when authorizing staff and giving them some guidance.

And do we have any comments on that sort of formulation, did I miss anything, does that make sense?

MS. DE LA TORRE: That makes sense.

MR. THOMPSON: I think what you described -- sorry. Go ahead, Ms. de la Torre.

MS. DE LA TORRE: No. Go ahead. I was just saying that it makes sense to me.

MR. THOMPSON: Yeah, it makes sense to me as well, the elements you described, and I would defer to your judgment on whether it's one or multiple motions.

MS. URBAN: Thank you, Mr. Thompson and Ms. de la Torre.

Anyone else? All right. Then I will try to put

those into motion language and once we have them on the table, we will take public comment, so the public has all the information for public comment.

First, may I have a motion to approve agency staff's recommendation to oppose the American Data Privacy Protection Act (sic) as currently drafted?

MR. LE: I'll so move.

MS. URBAN: Thank you, Mr. Le.

May I have a second?

MR. THOMPSON: Second.

MS. URBAN: Thank you, Mr. Thompson.

The motion is made by Mr. Le and seconded by Mr. Thompson.

Second, may I have a motion to approve agency staff's recommendation to oppose any federal bill that in agency staff's judgment seeks to broadly preempt the California Consumer Privacy Act or provides substantially weaker protections than the California Consumer Privacy Act as amended by the California Privacy Rights Act or prevents the agency, the California legislature, or voters through the ballot initiative from strengthening privacy protections for Californians in the future or generally responding to technological, social, or business change or significantly compromises the agency's authority or ability to fulfill its statutory

responsibilities and mandate on behalf of Californians?

MS. SIERRA: I will so move.

MS. URBAN: Thank you, Ms. Sierra.

Do I have a second?

MS. DE LA TORRE: I second.

MR. LE: I'll --

MS. URBAN: Thank you, Ms. de la Torre.

I have a motion from Ms. Sierra and a second from Ms. de la Torre.

Third, may I have a motion to approve agency staff -- excuse me. Let me start over. I have to think it through.

Third, may I have a motion to authorize agency staff to support any federal bill that does not, in staff's judgment, preempt the California Privacy Protection Act of 2018 as amended by the California Privacy Rights Act in 2020 or that in general creates a true floor for privacy protection that protects Californians current rights and that California and other states could build on in the future.

MR. THOMPSON: So moved.

MS. URBAN: Thank you, Mr. Thompson.

Do I have a second?

MS. SIERRA: I'll second.

MS. URBAN: Thank you, Ms. Sierra.

I have a motion from Mr. Thompson and a second from Ms. Sierra.

So those motions are now on the table and I would like to ask for public comment. And just to remind everyone of the process, please use the raise your hand function and our moderator, Ms. Hurtado, will call on you. She needs to call on you and unmute you, just so you know. So she'll let you know when you can talk. Each speaker is limited to three minutes.

In addition, I need to please remind everyone that as required by the Bagley-Keene Open Meeting Act, our discussion is limited to this agenda item. Other topics, for example the current rulemaking, are not proper topics for discussion. And this is always important. It's especially important for a special meeting.

And in addition, as a reminder, the board generally really can only listen and not respond directly. It may seem as though we're being unresponsive, but we do not intend this and we are listening.

So with that, is there any public comment from the audience on this item or these motions?

MS. HURTADO: Yes, and I just promoted him over. And he went away.

MR. PARAMPATHU: I'm here --

MS. HURTADO: Okay. We'll go to the --

MR. PARAMPATHU: -- if it was me.

MS. HURTADO: Oh, there you are. Mr. -- I don't want to mess up your last name. So you now have three minutes and your time starts now.

MR. PARAMPATHU: Thank you.

Good morning, chair members. George Parampathu, speaking on behalf of ACLU California Action. We strongly oppose the ADPPA's inclusion of a broad preemption clause. Any federal privacy law should serve as a floor, providing baseline protections for all Americans, not as a ceiling limiting stronger state laws.

The ADPPA's preemption clause will not just constrain California's ability to protect privacy rights going forward, but will also wreak havoc on all levels of existing state privacy protections.

As noted by Deputy Director Mahoney, the ADPPA will erase much of this agency's regulations and authority, strike out bio-components of the California Consumer Privacy Act and other laws passed by our legislature, override crucial portions of the California Privacy Rights Act passed directly by Californians, and undermine our Constitution's guarantee of an inalienable right to privacy. We strongly urge the agency to voice concerns about the ADPPA's preemption clause directly to Congress. Thank you.

MS. URBAN: Thank you very much, Mr. Parampathu.

Ms. Hurtado, do we have further public comment?

MS. HURTADO: Yes, we do. One moment, please.

Mr. Webber, you are next to speak. I will be moving you over. It will be just one moment.

The next speaker is Barry Webber. And it seems like --

MS. URBAN: Thank you. And I will add one more piece of information for speakers, which is that you're welcome to turn on your camera or not. I forgot to mention that. It's up to you if you are participating via the Zoom platform.

MS. HURTADO: Mr. Webber? Okay. Mr. Webber, you may unmute yourself at any time. You have three minutes. and your time starts now.

MR. WEBER: Thank you. This is Barry Weber from Assured SPC. We're a consulting organization who helps other organizations implement sensible privacy and data security programs.

So I really appreciate this meeting -- it's very timely -- and support everything that has been said in this -- in this meeting. This is just -- I think the work that the CPPA does is -- is incredibly good.

The one thing I want to mention, which was I thought very innovative, was the discussion associated with

awareness campaigns. And it struck me that I know that the attorney general's office of Colorado also has funds for awareness campaigns. And just as a suggestion, it may be an interesting thing to do to consider collaborating across states in a message not only to the individual states, but to the populations in general about privacy and a useful way of communicating the issues that the CPPA is raising at this time. Thank you.

MS. URBAN: Thank you very much, Mr. Weber.

Ms. Hurtado?

MS. HURTADO: Yes, one moment.

Our next speaker is Thomas Gerhart.

Mr. Gerhart, one moment while I move you over. Just be one moment. Okay. Oh, there he is.

Okay. Mr. Gerhart, you have three minutes to speak.

I just saw him move over. Okay. For whatever reason, it's not allowing me to move him over. I will allow him to talk.

This will not allow you to turn your camera on, Mr. Gerhart, but you are able to speak. You may speak now. You have three minutes.

MR. GERHART: Hello. My name is Thomas Gerhart. I'm just a concerned citizen on the matter. I really appreciate what the board is doing.

I wanted to go on record and say, you know, I like

the idea of the cross state line collaboration. I feel like not only is there the opportunity there for the public interest -- or the informational campaigns, but there may be some alternatives or some ability to create some sort of, like, a petition for citizens to sign and then, you know, on the state levels work with our state legislators in the House of Representatives to maybe build some opposition beyond just, you know, taking a position, opposing a bill, and talk to them about what we would like to see in it.

And especially I think it would add a little bit more strength behind what we're doing, or what you're doing, for our privacy laws and trying to protect them from this if, you know, us and Colorado and I -- I've already forgotten the third state that starts with a C. But if we call kind of came together and said hey, look. We have this many citizens who have signed this petition. It could be a joint position that we sign, where you specify what state you're from. This is our position on it. We don't want to see our privacy laws undermined. You can build up a floor for the states who don't have privacy laws, but you shouldn't limit the states that do, if you could push forward these changes, in addition to taking your position opposing the ADPPA.

Thank you very much for the time and thank you for

all that you're doing.

MS. URBAN: Thank you very much, Mr. Gerhart.

Ms. Hurtado?

MS. HURTADO: Okay. Our next speaker is Jodi Masters-Gonzalez. It will be just one moment.

MS. URBAN: You know, Ms. Hurtado, I was just noticing I think Mr. Weber is still promoted. Maybe was he --

MS. HURTADO: That's my issue. I can't get him back over there.

MS. URBAN: Okay. Sorry, Mr. Weber, but you are still promoted. But we did appreciate your comment.

MS. HURTADO: Okay. Jodi Masters-Gonzalez. We're just waiting for her to move over.

MS. MASTERS-GONZALEZ: Good morning. Are you able to hear me?

MS. HURTADO: Yes, you are able -- yes, we can hear you. Your time starts now.

MR. MASTERS-GONZALEZ: Great. I just want to say thank you very much to the California Privacy Protection Agency Board for holding this special meeting and inviting us to speak. I am a researcher at AI ethics, algorithmic risk. Public policy is where my domain of research and practice lies. I'm also a fellow and certified auditor of independent AI systems, which is

actually a governance, oversight, and accountability framework.

And in this area, I strongly oppose the federal legislation, in particular the components that remove protection from opting out of the automated decision-making. As some of you know or may not fully aware that there -- the number of bills and legislation that's been proposed across the board in the last 12 months related to these types of systems, the volume is unreal, it's so much.

And we absolutely -- automated decision-making is a hundred percent what is here, what is coming with full force. And we have to do everything we can to protect our citizens and their rights and their ability to opt out, as well as, you know, other associated capabilities. But opting out, for sure, you know, is a really good first step and we have to protect that. Thank you very much.

MS. URBAN: Thank you very much, Dr. Masters-Gonzalez.

Ms. Hurtado, is there further public comment?

MS. HURTADO: Yes, the next commenter is Haley Tsukayama.

Okay. Ms. Tsukayama, I'm just going to allow you to talk. So that means that your camera won't be available,

but you can speak freely. You've been unmuted. You now have three minutes to speak.

MS. TSUKAYAMA: Hi. I'm Haley Tsukayama. I'm a senior legislative activist at the Electronic Frontier Foundation. I just really want to thank you all for talking about this subject today, and we really appreciate the agency's work here.

EFF is not in opposition to this bill, but we have serious concerns, which we have communicated to Congress. We've written letters and blog posts particularly around the issue of preemption, which is one of our three major issues with the bill. I do want to echo what many of you have said, which is that, you know, we support the staff conclusions that this would broadly preempt many laws in California and that, you know, we have a firm position as an organization not to let federal laws roll back privacy protections we have currently on the books in the states.

You know, obviously, this is a California agency, but this is a national issue. As Ms. Mahoney mentioned, you know, we're really looking at laws being rolled back; broadband privacy laws, genetic information privacy laws being rolled back across the country. And then of course freezing states from being able to act in the future; that's really concerning to us.

There are, of course, privacy law models for floor

not ceiling, the Health Information Privacy -- sorry, Health Information Portability and Accountability Act (sic) is a floor, not a ceiling. The Fair Credit Reporting Act is a floor, not a ceiling. We have mentioned this to Congress and we're really glad to see you all speak up, so thank you so much.

MS. URBAN: Thank you very much.

MS. HURTADO: Okay. Our next speaker is going to be Alastair MacTaggart.

Mr. MacTaggart, you've been unmuted. You now have three minutes.

MR. MACTAGGART: Okay. Thank you. Can you hear me?

MS. HURTADO: Yes.

MR. MACTAGGART: Thank you, Chair Urban and the rest of the board. My name's Alastair MacTaggart, and I'm the founder of Californians for Consumer Privacy. And our organization's spearheaded efforts along with many other speaker groups today to help establish the California Consumer Privacy Act and then the California Privacy Rights Act, which is prop 24. And I would like to voice strong support for the staff recommendation that came in the memos and the board votes today and generally, for support for any proposals which seek to protect the law from being preempted.

I would like to commend the work of Deputy Director

Dr. Mahoney and thank the governor and Speaker Rendon and the attorney general for their strong advocacy against the subject of preemption.

You know, there's a lot to like in ADPPA for much of America. But it would represent a giant step backwards for Californians in many really important areas, including government surveillance and including, you know, auditing and including, you know, many other areas.

And so you know, one of the speakers talked about a citizen petition. We had a citizen petition, which 9.4 million Californians voted for, so. I would urge the board to do whatever it takes to get the message out. You have a lot of financial resources and the statute specifically instructs the board and the agency to engage in public awareness around risks to privacy.

This is a vital risk to the privacy of Californians today and I think you have absolutely statutory authority to expend resources and really raise the alarm that this proposal -- which is purported to be stronger than California, it's actually massively weaker in many areas and would really hurt the hard-won privacy rights of Californians.

Thank you for your time and thank you again for all your work. All the board members I know worked incredibly hard on this, as well as Director Ashkan and

Deputy Director Mahoney and the rest of the staff. So I wanted to thank everybody, and that's my comment.

MS. URBAN: Thank you very much, Mr. MacTaggart.

Ms. Hurtado, do we have further public comment?

MS. HURTADO: Yes, we do. The next public comment is going to be -- I'm assuming it's WA People's Privacy.

You've been unmuted. You now have three minutes.

MS. MORALES: Thank you so much. I hope you can hear me.

MS. HURTADO: Yes, we can.

MS. MORALES: Cool. My name is Maya Morales. I'm an organizer zooming in from Washington State, and I would like to thank you all so much for your work on data privacy.

After working to pass several municipal ballot initiatives with a group of other organizers in 2021, including a privacy protecting law, I founded and organized the entity called WA People's Privacy here, with sights on passing strong data privacy laws and restrictions on surveillance in both Washington State and possibly other states.

Organizers here worked so hard to stop a weak bill from passing in our state. And not only do Washington residents value privacy, the good majority of us also value the right to access abortion and genderaffirming

health care, the right to public assembly, and environmental and climate justice work. These are all activities under threat in our nation right now.

When I learned that the ADPPA would preempt stronger laws, I immediately realized that both California and Washington state would be key players. And we all dug into a deep reading of the bill with other Washington privacy organizers.

People all over the country want the right to protect our privacy via the democratic process. And in a ever-evolving landscape of surveillance threats and data harms that are continually growing and changing, states, counties, and municipalities must be able to meet the needs of our residents.

It's important to be crystal clear about who preemption serves and who it harms. Preemption privileges the needs of corporations over the needs of people. So the decision that California will make on preemption, whether to advocate for a singular exemption for its own state or whether to defend the rights of all states in this moment in solidarity with people all over this nation, it really hits to the core of our democracy and the rights and liberties that we all hold valuable.

Tech and data harms have developed far faster than our laws have. And the idea of preempting future laws,

even if there are a few carveouts in that preemption, is deeply unwise. It's important to note that this is unfavored -- it is unfavored in marginalized communities that will, of course, take the brunt of preemptive laws. Preemption will prevent states, counties, and municipalities all over this nation from using the law to further protect immigrants of color, LGBTQIA folks, black and indigenous and people of color who are overtargeted by surveillance, and poor and houseless individuals, and even with those with issues of language and disability access that are not addressed by the ADPPA.

I really appreciate the comments of Ms. de la Torre and Mr. Thompson regarding the gravity of this board's decision and I really appreciate your time.

MS. URBAN: Thank you very much, Ms. Morales.

Ms. Hurtado, do we have further public comment?

MS. HURTADO: Yes, our next speaker is Jon.

Jon, you have been unmuted. You now may speak. You have three minutes. It begins now.

MR. PINCUS: Thank you for the opportunity to comment today and thank you for all the work you've been doing on this issue. And in particular to Ms. Mahoney, for her extraordinary efforts.

I'm Jon Pincus, a technologist and entrepreneur. I lived in California for years and may well move back

there in the future, but currently live in Bellevue, Washington.

I fully support the first two motions and would ask you to strengthen the third to authorize agency staff to support a federal bill that doesn't preempt CPRA and that in general creates a floor that California and other states can build on in the future. So we place the or with an and.

As you highlight, the preemption clause not only eliminates existing state laws like CPRA and local laws like Seattle's broadband privacy ordinance, it also puts a ceiling on these future protections. Washington's AG opposes preemption and so do grassroots activists across the state, including WA People's Privacy.

As Ms. de la Torre highlighted, the threats to privacy in post-Roe world really emphasize what's at stake. Here's how Kim Clark of Seattle nonprofit Legal Voice has described ADPPA in a Spokane Spokesman Review article earlier this week.

"This bill, at least from the perspective of pregnant people, it really doesn't do much. ADPPA's preemption would prevent states like ours, who do value privacy, from doing more, from providing stronger protections".

And as Ms. Morales pointed out, the same loopholes

and exemptions in ADPPA that make it easy for so called crisis pregnant centers to share data with vigilantes and red state law enforcement also allow targeting of immigrants, LGBTQ-plus people, unhoused people, people receiving state benefits; all the other groups who are most impacted by surveillance and data abuse. Preemption stops our states from protecting them as well.

Again, I agree with what everybody has said. ADPPA does have some very good features and hopefully at least some of these problems will be fixed before it hits the floor. Even so, even if all the issues CCPA and EFF and ACLU and WA People's Privacy and others have identified with ADPPA were somehow magically addressed, preemption would still be a problem. Technology changes quickly and as Chris Thompson quoted Louis Brandeis, states are the laboratories of democracy.

As a tech leader, California's particularly well-placed to help here, as is Washington. So thank you again for fighting for privacy rights for people in California and all across the country.

MS. URBAN: Thank you very much, Mr. Pincus

Ms. Hurtado, is there any further public comment?

MS. HURTADO: Yes, we have one more speaker, Jon Leibowitz.

Mr. Leibowitz, you've been unmuted. You now have

three minutes. Your time starts now.

MR. LEIBOWITZ: Okay. Thank you. Thank you so much. And I want to thank everybody who has spoken and of course everybody on the panel. You know, we all share the same goal.

So for those of you who don't know me, I'm the former FTC chair, appointed by President Obama. And when I worked at the FTC, we brought major cases against Google and Facebook for not honoring their privacy commitments. We called for a strong federal law in 2012 that would give all consumers control -- all Americans more control over their data. I don't have a claim here. I'm just speaking on behalf of myself and really for stronger protections for all Americans.

So Mr. Thompson said that California -- he's absolutely right, and Mr. Pincus said this too -- is a laboratory for democracy. It certainly is, and you passed the first privacy law and that's critically important. We wouldn't be moving federally, I suspect -- or the federal -- or the Congress wouldn't be moving if it wasn't for the California law, in part. But the House bill, I believe, though certainly not perfect, is far stronger than existing California law. And let me tell you why I believe that.

So first of all, it has greater civil rights

protections. And I think that's why -- that is why a lot of the civil rights groups support -- as well as privacy groups, of course -- support the federal legislation.

Second, it has greater protection for kids. It would force Google, Facebook, and other large data collectors to stop the kind of willful blindness they've engaged in that allows them to advertise to kids in ways that would be illegal if they knew that they were advertising to kids. So they'll have to combine databases.

Third, it has a private right of action, which California only has for a breach, and it has a private right of action for a violation; that's why many businesses oppose the legislation.

And most importantly, it has stronger privacy protections. Data minimization, a universal optout potential for consumers, authorized by FTC rulemaking, more resources for the FTC, and fining authority for the FTC, which is enormously important.

If a federal law passes, Californians will immediately have greater privacy protections. And if it fails, the biggest winners --

MS. HURTADO: Thirty seconds.

MR. WEBBER: Okay. Thank you.

Are the cyberazi who hoover up all of our data.

Data moves interstate commerce. We need a national solution. But we'll only have a robust federal law if everyone makes some sacrifices, including businesses, including states. And so I would urge you to change these recommendations from oppose the ADPPA to work more -- to work to make them better.

And with that, I will stop speaking. And thank you so much for --

MS. URBAN: Thank you very much, Mr. Leibowitz.

Ms. Hurtado, do we have any further public comment?

MS. HURTADO: That was the last public comment for right now.

MS. URBAN: Okay. Thank you very much.

And our many thanks to everyone who took the time to call in and give us their thoughts today. They were all very valuable.

I will first pause and ask if the board has further commentary before we take up the motions.

Yes, Ms. de la Torre?

MS. DE LA TORRE: I will appreciate an opportunity to discuss the suggestion that was made by one of the commenters for the third motion, to potentially --

MS. URBAN: Mr. Pincus?

MS. DE LA TORRE: Yeah.

MS. URBAN: Um-hum. Sure, absolutely. All right.

Thank you, Ms. de la Torre. Why don't we start with that.

So what we have on the table is a motion that gives staff discretion to support any federal bill that in staff's judgment doesn't broadly preempt the California Privacy Protection Act of 2018 as amended by the California Privacy Rights Act of 2020 or that in general creates a true floor for privacy protection, that protect Californians' current rights, and that California and other states could build on in the future.

Mr. Pincus' suggested amendment would be to change or to and so that the motion gives staff authorization to support a federal bill that doesn't preempt, in their judgment, broadly and that creates a true floor.

My own view of this is I very much appreciate the thought and the friendly amendment -- I think it's a friendly amendment -- from Mr. Pincus. I think that I would prefer to go with more discretion for staff, just to give them room to maneuver. But I certainly endorse the sort of underlying substantive animation of Mr. Pincus' comment. That's my initial thought. Are there other thoughts from board members?

MS. DE LA TORRE: My thoughts are in line with the thoughts expressed by Chairman Urban. I think it's important to enable staff to have flexibility, given that

this is a area where things are quickly developing. At the same time, I think it's important, even if it's not part of the motion itself, to express support for the idea that was mentioned by several commenters of collaborating with other states or with organizations that seek to raise awareness.

And have in mind that this law does not only affect the CPRA in California, but all states, all counties, and all municipalities across the U.S. With that, I'm comfortable with voting in favor of the motion as presented.

MS. URBAN: Thank you, Ms. de la Torre.

In that case, what I propose is that we go through the motions and vote, and then we do our two affirmations. One from earlier, which I did get nods from everyone, but I think it would be helpful to do after we've had the chance to hear from the public as well, with regards to public awareness. And then we can see if there's affirmation to give the staff the board's sense of the importance of both of those components of the motion and the importance of this issue not just for California, but for other states, municipalities, and counties. Does that capture what you were thinking, Ms. de la Torre? Please feel free to amend, too.

MS. DE LA TORRE: Yes, thank you; that's perfect.

MS. URBAN: Okay. All right. So with that, we have on the table three motions. And first, I will request -- or excuse me. First, I will ask for a vote on a motion duly seconded to approve agency staff's recommendation to oppose the American Data Privacy Protection Act as currently drafted.

Ms. Hurtado, could you please call the roll vote?

MS. HURTADO: Yes.

Ms. de la Torre?

MS. DE LA TORRE: Aye.

MS. HURTADO: Mr. Le?

MR. LE: Aye.

MS. HURTADO: Ms. Sierra?

MS. SIERRA: Aye.

MS. HURTADO: Mr. Thompson?

MR. THOMPSON: Aye.

MS. HURTADO: Chair Urban?

MS. URBAN: Aye.

MS. HURTADO: We have five ayes and zero nays.

MS. URBAN: Thank you very much, Ms. Hurtado. The motion passes with a vote of five to zero.

Second, I will please vote on a motion to approve agency staff's recommendation to oppose any federal bill that in agency staff's judgment seeks to broadly preempt the California Consumer Privacy Act or provides

substantially weaker protections than the CPA as amended by the California Privacy Rights Act or prevents the agency, the California Legislature, or voters through the ballot initiative from strengthening privacy protections for Californians in the future or responding to technological, social, or business changes or significantly compromises the agency's authority or ability to fulfill its statutory responsibility and mandate on behalf of Californians. This motion has been made and duly seconded.

Ms. Hurtado, could you please call the roll call vote?

MS. HURTADO: Yes.

Ms. de la Torre?

MS. DE LA TORRE: Aye.

MS. HURTADO: Mr. Le?

MR. LE: Aye.

MS. HURTADO: Ms. Sierra?

MS. SIERRA: Aye.

MS. HURTADO: Mr. Thompson?

MR. THOMPSON: Aye.

MS. HURTADO: Chair Urban?

MS. URBAN: Aye.

MS. HURTADO: There were five ayes and zero nays.

MS. URBAN: Thank you very much, Ms. Hurtado. The

motion passes with a vote of five to zero.

Third, I ask the board to vote on the motion to authorize agency staff to support a federal bill, any -- excuse me. Let me start over, just so I have it exactly right in the transcript.

Third, I ask the board to vote on a motion to support -- sorry. I think I've been talking too much. I'm just going to pause for one second and then I'm going to start over.

Third, I ask the board to please vote on a motion to authorize the agency staff to support any federal bill that does not, in the agency staff's judgment, broadly preempt the California Privacy Protection Act of 2018 as amended by the California Privacy Rights Act of 2020, or that in general creates a true floor for privacy protection that protects Californians' current rights and that California and other states could build on in the future. This motion has been made and duly seconded.

Ms. Hurtado, could you please conduct the roll call vote?

MS. HURTADO: Yes.

Ms. de la Torre?

MR. THOMPSON: Aye.

MS. HURTADO: Mr. Le?

MR. LE: Aye.

MS. HURTADO: Ms. Sierra?

MS. SIERRA: Aye.

MS. HURTADO: Mr. Thompson?

MR. THOMPSON: Aye.

MS. HURTADO: Chair Urban?

MS. URBAN: Aye.

MS. HURTADO: Five ayes and zero nays.

MS. URBAN: Thank you, Ms. Hurtado, and thank you to the board. The motion carries with a vote of five to zero. Now we will take up the affirmations.

I would actually like to start with the affirmation Ms. de la Torre spoke of most recently that in response to our public commenter, Mr. Pincus, since we just did that motion.

Mr. Pincus pointed out that we have an or in our motion, so in theory, staff could support a bill that did one of those two things rather than both of those two things. And he also, as other speakers did, mentioned the importance of other states' ability to protect their residents, also being protected.

With that, I suggest that the board, by affirmation, offer its sense and guidance to staff to be aware that both of those components of the motion are important and both should be considered carefully and that the staff also consider the effect of anything that Congress is

doing on Californians and how it would affect other states. And as Ms. de la Torre pointed out, also counties and municipalities.

This we can do with general, I think, nodding of heads. If people agree, the staff, I think, will have the information they need to move forward. Thank you very much. I see nods from everyone.

And so staff, please let us know if you have any further questions, but if you feel like you have good direction -- and Deputy Director Mahoney is nodding -- we will move forward with that.

Second, Ms. de la Torre introduced a topic to the board discussion that I think was generally supported by the board and got a lot of support as well, and public comments, which is to give staff the sense that we agree with suggestions to invest in public awareness efforts, in order for Californians to understand the rights that they have and for everyone to understand how this particular federal bill or other laws might affect those. Did I get that summarized okay? Okay. Thank you, Ms. de la Torre.

And Mr. Le also spoke up as one of the members of the Public Awareness subcommittee. Did I cover everything from your point of view? Wonderful.

All right. Then, again, by affirmation, if we can

give staff our sense on that, please just nod. Great. Wonderful. I have nods from all of the board members and ask that the staff please take that into account. Thank you very much.

Given that, that is the end of the business that I have for this agenda item. But before we leave, I want to be sure that board members have an opportunity to say anything else that they have not yet had the chance to say on this agenda item.

Yes, Ms. de la Torre?

MS. DE LA TORRE: I just quickly wanted to thank the other board members for their contributions to this discussion. I think it has been really helpful to hear not only my voice, but the voices of the other board members and the commenters. And I just wanted to stress that this is understanding the mandate of the agency as so well was summarized by Ms. Urban and the fact that we are facing a false choice, as Mr. Thompson mentioned, the uncertainties around enforcement that could be brought by a federal law that Ms. Sierra mentioned and all of the different aspects that were highlighted by Mr. Le and in particular those that relate to automated decision-making, which is a fast-evolving field, I am truly satisfied that we came to where we are, which is unanimous support for the staff position.

And the final thing is, I want to highlight -- and I understand that the mandate of the agency is limited to California, but I was to highlight that we all have families that live in other states; that we have kids that go to college in other states. So the idea of collaboration with other states and to consider the aspects, in terms of preemption for municipalities, there could be today a law in Atlanta providing limited but needed privacy protections for women seeking reproductive health care in that state. And that law can be preempted. I think that it is the job of the federal legislature to consider those aspects and analyze them before acting.

So just summarizing, my thing was just to thank the other board members, summarize all of the contributions, and thank the staff for the work that they have done so far. Thank you.

MS. URBAN: Thank you very much, Ms. de la Torre.

Other final comments? Yes, Mr. Soltani.

MR. SOLTANI: Thank you, Chairperson Urban.

I just wanted to thank -- take a moment to thank the board for their strong and vocal support of this incredibly important and essential issue that affects, as mentioned, not just Californians' privacy, but the privacy of an entire country.

As indicated in the comments by the board and the public, privacy is an incredibly complicated issue. And while I appreciate suggestions by advocates and others on how they feel it may be stronger than the California law, I assure you that in my and staff's expert opinion, it is not. Not only for the constitutionally protected floor that California provides, but also from the substantive provisions that we have in our statute and our regulations. As Board Member Thompson alluded to, while the rest of the country is getting started, California has a great deal more experience in not only legislating, but also implementing and enforcing the privacy protections in our law.

I too worked at the FTC on enforcement on those rare cases the last commenter mentioned and feel that the California law not only provides stronger protections, but also is better interoperable with frameworks in other states and internationally and better enforceable.

I also wanted to thank and share my deepest gratitude for the hard work by Deputy Director Mahoney and the rest of this team that they've undertaken to get us here. I've witnessed the hours and hours of calls that they've all participated in and really want to appreciate and take a moment to appreciate their work.

Thank you all for the clear guidance, and I look

forward to implementing this direction with staff. Thank you.

MS. URBAN: Thank you, Executive Director Soltani.

And thank you as well for your work, as well as Deputy Director Mahoney's work, and the work of legal staff and others behind the scenes, who have been working truly, I think, night and day to understand the implications of the proposals for California and for the agency in our mandate, so that the board could understand it.

I also want to extend my thanks to my fellow board members for being willing to, you know, join a very quick notice meeting, to have come to this meeting so prepared, and to have thought so carefully about these issues on behalf of Californians. It makes me very proud to be part of this board and to have the ability and the honor of representing Californians' interests in this area.

I also, again, want to reiterate my thanks to Congress for working on this really important issue and also for working to accommodate California's and other states' concerns. Obviously, we do not think that that work is done, but we do support privacy for all Americans. We simply can't support it at the expense of Californians.

Thank you all very, very much. And with that, we

will move to agenda item number three, which is adjournment.

May I have a motion to adjourn the meeting?

MR. THOMPSON: So moved.

MS. URBAN: Thank you very much, Mr. Thompson. Is there a second?

MR. LE: I'll second.

MS. URBAN: Thank you, Mr. Le.

I have a motion and a second to adjourn the meeting. The board will now vote whether to approve the motion.

Ms. Hurtado, could you please conduct the roll call vote?

MS. HURTADO: Yes.

Ms. de la Torre?

MR. THOMPSON: Aye.

MS. HURTADO: Mr. Le?

MR. LE: Aye.

MS. HURTADO: Ms. Sierra?

MS. SIERRA: Aye.

MS. HURTADO: Mr. Thompson?

MR. THOMPSON: Aye.

MS. HURTADO: Chair Urban?

MS. URBAN: Aye.

MS. HURTADO: There are five ayes and zero nays.

MS. URBAN: Thank you very much, Ms. Hurtado.

And thank you again to all of my fellow board members. The motion passes with a vote of five to zero and a special meeting of the California Privacy Protection Agency Board is now adjourned. Thank you all.

(End of recording)

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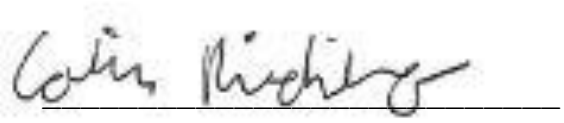

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