

November 8, 2021

The Honorable Chuck Schumer, Majority Leader
The Honorable Mitch McConnell, Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi, Speaker
The Honorable Kevin McCarthy, Minority Leader
United States House of Representatives
Washington, D.C. 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, and Minority Leader McCarthy,

We, the undersigned civil rights, civil liberties, and consumer protection organizations, write to express our support for three crucial provisions of the Build Back Better Act (H.R. 5376): sections 31501 and 62002, which will provide \$500 million each for the Federal Trade Commission's data protection and antitrust activities, and section 31502, which will give the FTC authority to obtain first-time civil penalties against companies that engage in unfair or deceptive trade practices. Together, these measures will significantly strengthen the Commission's hand against discriminatory and abusive data practices and the businesses that engage in them.

The Act's increased funding for the FTC is pivotal. The Commission is badly understaffed and under-resourced, which limits its ability to address an ever-deepening crisis of exploitative data practices.¹ Allocating \$1 billion for data protection and antitrust work and establishing a bureau in the FTC to address privacy, civil rights, and data security matters will go far in addressing these problems. This is particularly critical in light of numerous security breaches that lead to identity fraud, which cost consumers an estimated \$13 billion in 2020 alone.² A better funded and organized Commission will be better equipped to prevent unfair and deceptive data practices, which disproportionately harm people of color and low-income communities. For

¹ Letter from Twenty-Seven Civil Rights, Civil Liberties, & Consumer Protection Orgs. to Majority Leader Schumer et al. (Sept. 23, 2021), <https://advocacy.consumerreports.org/wp-content/uploads/2021/09/Group-letter-in-support-of-FTC-privacy-funding.pdf>.

² *Total Identity Fraud Losses Soar to \$56 Billion in 2020*, Javelin (Mar. 23, 2021), <https://www.businesswire.com/news/home/20210323005370/en/Total-Identity-Fraud-Losses-Soar-to-56-Billion-in-2020>.

example, as the FTC noted in its recent report *Serving Communities of Color*, people of color are disproportionately affected by fraud.³

Giving the FTC first-time civil penalty authority is equally important. Existing law severely constrains the Commission’s power to impose financial consequences on companies that violate civil and privacy rights. Unless a company is already under an FTC consent decree, the Commission can generally only obtain civil penalties if a business violates a cease-and-desist order or a trade regulation rule, both of which require a lengthy administrative process. Instead, violators typically just sign an order promising not to do it again. Given the Commission’s limited staff and capacity to oversee an \$18 trillion economy, unscrupulous actors know there is a relatively low chance of getting caught by the FTC. Those that do should not get what amounts to a “Get Out of Jail Free” card for their first offense. Enabling the Commission to seek civil penalties against first-time violators of the FTC Act will be a powerful deterrent against exploitative data practices and a key tool for holding lawbreaking companies accountable.

We thank you for your work to protect civil rights and privacy and urge you to pass the Build Back Better Act with these essential provisions included.

Sincerely,

Access Now

Americans for Financial Reform

Asian Americans Advancing Justice – AAJC

California Reinvestment Coalition

CAMEO - California Association for Micro Enterprise Opportunity

Center for Democracy & Technology

Center for Digital Democracy

Center for Responsible Lending

Color Of Change

Common Sense

Consumer Action

Consumer Federation of America

Consumer Federation of California

Consumer Reports

Electronic Frontier Foundation

Electronic Privacy Information Center

³ Fed. Trade Comm’n, *Serving Communities of Color: A Staff Report on the Federal Trade Commission’s Efforts to Address Fraud and Consumer Issues Affecting Communities of Color* at 40 (Oct. 2021), https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.

Fairplay
Fight for the Future
Free Press Action
The Greenlining Institute
HTTP
Legal Aid of Marin
Media Alliance
Muslim Advocates
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low-income clients
National Consumers League
New America's Open Technology Institute
NYU Stern Center for Business and Human Rights
Oakland Privacy
Parent Coalition for Student Privacy
Public Citizen
Public Good Law Center
Public Knowledge
Public Law Center
U.S. PIRG