



Testimony in Support of
H.78, Massachusetts Consumer Data Privacy Act, and
H.104/S.29/S.45, Massachusetts Data Privacy Act

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Before the General Court of Massachusetts
Hearing of the Joint Committee on Advanced Information
Technology, the Internet, and Cybersecurity

Representative Tricia Farley-Bouvier, Chair
Senator Michael Moore, Chair
Wednesday, April 9, 2025,
Hearing for bills concerning data use and
data privacy and cybersecurity

Co-Chairs Moore and Farley-Bouvier, members of the committee, thank you for inviting me to speak to you today in support of two privacy bills, the Massachusetts Consumer Data Privacy Act (H. 78) and the Massachusetts Data Privacy Act (H. 104, S. 29, S. 45), and thank you for your clear hard work on this important issue.

My name is Eric Null, I am the co-director of the privacy & data program at the Center for Democracy & Technology, a thirty-year-old nonpartisan, nonprofit organization focusing on protecting individual rights, civil rights, and civil liberties in the digital age. While there are many great aspects of these bills, I will focus here on three issues: (1) moving us beyond the notice-and-consent regime to a data minimization regime; (2) protecting civil rights; and (3) ensuring strong enforcement.

First, one of the primary goals of privacy legislation should be to move us beyond the failed notice-and-consent regime, which has been dominant since the 1990s, and ultimately places the privacy burden on already-overburdened individuals. However, we know people don't view privacy policies as effective or useful.¹ We know people don't read privacy policies.² And we know that privacy policies, if people did read them, would require hundreds of hours per year to read.³ As a result, people have a sense of futility and feel a lack of control over privacy risks, and they often underestimate the risks of disclosing data.⁴

Both bills CDT supports would shift the primary privacy burden to the companies who benefit most from the collection and exploitation of data. The bills accomplish that through strong data minimization provisions that, unlike many other states, require companies to justify their data practices in the first instance. Data minimization helps prevent privacy harms at the outset, because data a company does not have cannot lead to downstream harm through misuse, unauthorized access or disclosure, or some other harmful action. Data minimization is also bipartisan: a recent Consumer Reports survey

¹ Sixty-one percent of adults consider privacy policies to be an ineffective way for companies to explain data practices, and almost seventy percent consider privacy policies to be just something to "get past." Colleen McClain *et al*, *How Americans View Data Privacy*, Pew Research Center (2023), <https://www.pewresearch.org/internet/2023/10/18/how-americans-view-data-privacy>.

² Fifty-six percent of American adults say they agree to privacy policies without reading them, compared to only eighteen percent who say they rarely or never agree without reading. *Id*.

³ A 2008 study estimated that people would spend 244 hours per year, or forty minutes a day, reading privacy policies if they read all policies that apply to them. Aleecia M. McDonald & Lorrie Faith Cranor, *The Cost of Reading Privacy Policies*, *I/S: A Journal of Law and Policy for the Information Society* 540, 560 (2008),

https://www.technologylawdispatch.com/wp-content/uploads/sites/26/2013/02/Cranor_Formatted_Final1.pdf. Privacy policies have only gotten longer since. Ryan Amos *et al*, *Privacy Policies Over Time: Curation and Analysis of a Million-Document Dataset*, In Proceedings of the Web Conference (2021), <https://arxiv.org/pdf/2008.09159>.

⁴ Wenjun Wang *et al.*, *An Exploration of the Influencing Factors of Privacy Fatigue Among Mobile Social Media Users From the Configuration Perspective*, *Scientific Reports* (2025), <https://www.nature.com/articles/s41598-024-84646-z>.

found that seventy-two percent of Republicans and seventy-nine percent of Democrats “support a law that limits companies to using only the data they need to provide their service.”⁵

Second, these bills provide increased civil rights protections. Privacy rights are civil rights. A privacy law should protect civil rights because we have already seen data being used in a discriminatory way, particularly through the training of, and decisions made by, algorithms. For instance, credit scores and the factors used to calculate them are deeply correlated with race. According to the Brookings Institute, Black and Hispanic individuals are much more likely to have credit scores below 620 than white individuals.⁶ And facial recognition software exhibits similar biases, leading to the misidentification and wrongful arrests of three Black men: Robert Williams, Nijeer Parks, and Michael Oliver.⁷

Last, privacy laws are only as strong as their enforcement. Privacy laws should be enforced through multiple channels. Both of these bills provide the Massachusetts Attorney General with rulemaking authority and civil penalty authority, and provide individuals with a private right of action. That way, both the state and individuals can ensure privacy is protected. To ensure proper enforcement, the AG should be appropriated enough funds to build a dedicated office and team, like in Texas.⁸

If you would like to contact me, my email address is enull@cdt.org. Thank you for your time.

⁵ Scott Medintz, *Americans Want Much More Online Privacy Protection Than They’re Getting*, Consumer Reports (Nov. 20, 2024), <https://www.consumerreports.org/electronics/privacy/americans-want-much-more-online-privacy-protection-a9058928306>.

⁶ “More than 1 in 5 Black individuals have FICOs below 620, as do 1 in 9 among the Hispanic community, while the same is true for only 1 out of every 19 white people.” Aaron Klein, *Reducing Bias in AI-Based Financial Services*, Brookings Inst. (July 10, 2020), <https://www.brookings.edu/articles/reducing-bias-in-ai-based-financial-services>.

⁷ Khari Johnson, *How Wrongful Arrests Based on AI Derailed 3 Men’s Lives*, WIRED (Mar. 7, 2022), <https://www.wired.com/story/wrongful-arrests-ai-derailed-3-mens-lives>.

⁸ Texas built a \$5 million privacy-specific enforcement team and they have been out ahead on enforcement efforts. Cobun Zweifel-Keegan, *A View from DC: the Price of Privacy Enforcement*, IAPP (Feb. 28, 2025), <https://iapp.org/news/a/a-view-from-dc-the-price-of-privacy-enforcement>.