To: The House Committee on Commerce and Economic Development
From: JR Kenney, Vermont Alliance of Boys and Girls Clubs
Re: H.121 An act relating to enhancing consumer privacy
March 1, 2024

To the members of the House Committee on Commerce and Economic Development. My name is JR Kenny and I am the Director of Government Relations for Boys & Girls Clubs of America and a Board member of the Vermont Alliance of Boys & Girls Clubs. Thank you for allowing me to provide testimony on H. 121, Vermont Data Privacy Act.

I am here today representing the Vermont Alliance of Boys & Girls Clubs, made up of the four Boys & Girls Clubs in Vermont – Brattleboro, Burlington, Rutland and Vergennes. Collectively, these organizations operate 11 sites and serve nearly 1,800 youth annually.

Boys & Girls Clubs operate within a federated-model. Each organization is an independent 501c3 organization, governed by its own board, responsible for its own fundraising and utilizes resources provided by BGCA, the national organization – such as training, programs, strategic planning support, board development and data and insights.

Nonprofit organizations, like Boys & Girls Clubs, have incentives to respect individuals' privacy and dutifully manage personal information provided by or about donors, beneficiaries, users, Club members and others.

Fundraising activities are essential to the financial stability of nonprofit organizations, and maintaining that data is vital for donation campaigns and other promotional events that generate revenue. Careful recordkeeping is also required under IRS rules.

Similar to many other nonprofits, Boys & Girls Clubs collect limited data with users' consent only to the extent necessary to serve them with high-quality programming and to report necessary data to funders or to Boys & Girls Clubs of America for the purpose of learning, studying, and continuous quality improvement. Boys & Girls Club organizations steward the data collected to maintain relationships with supporters and donors and to further their mission in the community.

Charitable nonprofits, like Boys & Girls Clubs, have unique circumstances – By law, charities are not using program or fundraising data to enrich themselves. They have been certified by the federal government in pursuit of a charitable mission, and their actions are already required to live up to that commitment.

If enacted as currently written, there are several concerns that our Clubs have regarding the current legislation.

- **Cost** - A privacy law that does not exempt nonprofits—particularly small 501(c)(3) organizations—will impose potentially large and unnecessary costs and compliance burdens on these organizations. This is especially true for smaller nonprofits, that may not have the backing of a national organization. These costs will detract from the public service missions of nonprofits and inhibit our ability to provide services to youth in our local communities, taking resources away from our missions.

    - Every dollar that a public non-profit must devote to data privacy compliance is a dollar that we cannot use to further our mission. Donors expect their funds to support the mission, not staffing a department for handling consumer data questions and data portability support requests. Donors can already read privacy policies and charity watchdog ratings to see how their data is used.

    - One example is in Colorado, which did NOT include a nonprofit exemption, there have been organizations that have had to spend up to $40,000 on consultants to help them comply with new regulations.

- **Data Sharing Challenges** - Nonprofits that are federated networks, such as Boys & Girls Clubs, could be subject to certain restrictions, as national offices and regional affiliates may be considered “third parties” to each other - a controller / processor relationship if you will - which could create limitations on data sharing within organizations that consumers closely associate.

- As organizations that operate as part of a singular network, this data sharing between national and local is absolutely critical to meeting the organization's mission, identifying trends and challenges, and informing opportunities for innovation. Sharing limited types of data between these affiliated organizations is essential to the nonprofit mission.

- **Compliance** - Most nonprofits have typically been considered exempt from FTC consumer protection enforcement and exempt in the majority of state laws. Most nonprofits already collect limited data with users' consent only to the extent necessary to serve them. This potential state legislation could impose obligations a lot faster than public charities can afford to meet them. Things like privacy impact assessments and risk assessments are time-consuming, challenging, and costly for nonprofits. To require charities that are not selling personal information to conduct costly risk assessments for data processing activities, including low-risk processing, would be unnecessarily burdensome.

Recommendation

In closing, Boys & Girls Clubs of Vermont would urge for the implementation of an entity level exemption for tax-exempt public charities, which would not undermine the privacy objectives of H121.

If entity level exemptions will not be granted, we urge the committee to push back the enactment date for nonprofit organizations, increase the applicability threshold from 6,500 to 100,000, and provide additional guidance development for non-profit organizations.

Nonprofit organizations limit data collection to only what the organization needs to meet their missions and personal data collection is limited to legitimate activities related to the organization's tax-exempt purpose and not sold by the organization. Even California, the first state in the country to pass a comprehensive consumer data privacy law, has exempted nonprofits in its data privacy bill.