June 15, 2023

Senator Chuck Schumer,
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schumer

We are writing to express concern about the closed-door briefings on AI policy now taking place in the US Senate.[1] According to the Washington Post, this week you "hosted the first of three private AI briefings for lawmakers."[2] While we support the commitment that you have made to advance bipartisan AI legislation in this Congress,[3] we object to the process you have established.

The work of the Congress should be conducted in the open.[4] Public hearings should be held. If the Senators have identified risks in the deployment of AI systems, this information should be recorded and made public. The fact that AI has become a priority for the Senate is even more reason that the public should be informed about the work of Congress.

In our comprehensive report *AI and Democratic Values Index,* we review the AI policies and practices of governments around the world.[5] Following a methodology to assess alignment with democratic values, we specifically examine whether countries have provided a "meaningful" opportunity for public participation in the development of AI Policies and also whether governments make information about AI policies publicly accessible.[6]

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[1] The **Center for AI and Digital Policy** is an independent non-profit research organization that assesses national AI policies and practices, trains AI policy leaders, and promotes democratic values for AI. **Encode Justice** is a coalition of youth activists and changemakers fighting for human rights, accountability, and justice under AI.

[2] Christano Lima, *Inside the Senate's crash course on 'AI 101',* Washington Post, June 14, 2023, https://www.washingtonpost.com/politics/2023/06/14/inside-senates-crash-course-ai-101/

[3] https://www.democrats.senate.gov/newsroom/press-releases/schumer-launches-major-effort-to-get-ahead-of-artificial-intelligence

[4] Marc Rotenberg and Merve Hickock, *Regulating A.I.: The U.S. Needs to Act,* The New York Times, March 6, 2023. (attached).

[5] Center for AI and Digital Policy, *Artificial Intelligence and Democratic Values* (CAIDP 2023), https://www.caidp.org/reports/aidv-2022/

[6] Id. at 1131.

> Q5. Has the country established a process for meaningful public participation in the development of a national AI Policy?
> Q6. Are materials about the country's AI policies and practices readily available to the public?

We have found that the United States often fails this critical test for transparency. For example, the National Security Commission on AI conducted its work in secret in violation of the Federal Advisory Committee Act.[7] The National AI Intelligence Committee ignored the public comments it received.[8] And the Federal Trade Commission has refused to state whether it has opened an investigation into OpenAI as we requested in March.[9]

We have acknowledged (and we are actively promoting) the recent announcements of several federal agencies, including NTIA, OSTP, and PCAST, to provide opportunities for public comment on AI policies.[10] But even these Requests for Comments lack the force of rulemaking that would lead to regulation. Meanwhile, the OMB rulemaking to establish regulations for the use of AI across the federal government is more than two years behind schedule.[11]

As you must surely know, the Standing Rules of the Senate disfavor secret proceedings.[12] For example, a vote of the Senate is required for a Session with Closed Doors, and that may only occur when the discussion "may require secrecy." Rule XXI. The entire deliberative process of the Senate presumes public debate and discussion.

James Madison reminds us that "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."[13]

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[7] *Federal Judge Orders National Security Commission on Artificial Intelligence to Open Meetings and Records to Public,* Law and Crime, June 1, 2020, https://lawandcrime.com/high-profile/federal-judge-orders-national-security-commission-on-artificial-intelligence-to-open-meetings-and-records-to-public/

[8] CAIDP, *National AI Advisory Committee,* https://www.caidp.org/resources/naiac/

[9] CAIDP, *In the Matter of OpenAI,* https://www.caidp.org/cases/openai/

[10] CAIDP, *Public Voice,* https://www.caidp.org/public-voice/

> Note (Spring 2023) - The United States has launched several new request for public comment on AI policy. CAIDP has prepared several webpages to promote public participation in the comment process. The topics and agencies include:
> - *National Telecommunications and Information Administration (NTIA) - AI Accountability*
> - *Office of Science and Technology Policy (OSTP) - National AI Strategy*
> - *Office of Science and Technology Policy (OSTP) - Workers and AI*
> - *President's Council of Advisors on Science and Technology (PCAST) - Generative AI*

[11] CAIDP Letter to Shalanda Young, Director Office of Management and Budget, Apr. 24, 2023, https://www.caidp.org/app/download/8454950563/CAIDP-Statement-OMB-04242023.pdf

[12] Standings Rules of the Senate, 117th Congress, https://www.govinfo.gov/content/pkg/SMAN-117/pdf/SMAN-117.pdf

[13] Library of Congress, *James Madison to W. T. Barry, August 4, 1822*, https://www.loc.gov/resource/mjm.20_0155_0159/?sp=1&st=text

We respectfully ask that you provide to us:

1) A list of the topics and participants for the briefings that have occurred, as well as copies of materials that were distributed, and

2) An assurance that future briefings will be open to the public

We would welcome an opportunity to provide a public briefing to members of the Senate regarding AI policies. We have worked closely with many governments and international organizations, including the Council of Europe, the G7, the European Parliament, the OECD, and UNESCO, on the development of AI policies and practices that advance democratic values. Given the opportunity, we would highlight recent developments around the world that should be of interest to the US Senate.

As we make this request, we also ask you to consider the other organizations and individuals who are often excluded from the AI policy process, including those who are directly impacted by poorly conceived AI systems. Public meetings and formal opportunities for public participation, the foundation of democratic governance, helps ensure that all voices will be heard.

Thank you for your attention to this letter. We look forward to your response.

Sincerely,

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cc: Senator Richard Blumenthal (D-Conn.)
        Senator Mike Rounds (R-S.D.)
        Senator Brian Schatz (D-Hawaii)
        Senator Todd C. Young (R-Ind.)

The New York Times

Regulating A.I.: The U.S. Needs to Act

Representative Ted Lieu met in January with the head of OpenAI, the lab that developed ChatGPT.
Alyssa Schukar for The New York Times

To the Editor:

Re "A.I. Regulation Can Be Puzzle to Lawmakers" (front page, March 4):

The recent coverage of Washington's response to artificial intelligence is a welcome shift toward an overdue policy debate. But the challenge ahead is not so much about educating lawmakers about new technology — technologies are always changing — as it is about establishing the necessary safeguards to protect the public.

At the Center for A.I. and Digital Policy, we have closely examined A.I. policies and practices around the world. Europe has taken the lead with the proposed European Union A.I. act. The Council of Europe is drafting the first global convention on A.I.

UNESCO, with widespread global support, is beginning the implementation of the Recommendation on the Ethics of Artificial Intelligence. China is moving forward with both an aggressive research agenda and a comprehensive regulatory strategy. Most countries have established national A.I. strategies.

In contrast, the absence of a coherent national policy for A.I. in the United States is striking. While President Biden has taken several steps to promote cooperation among democratic nations on A.I. policy and establish rules to govern A.I., Congress appears to be taking a wait-and-see attitude, holding closed-door meetings without public hearings that could explore the challenges ahead.

This strategy poses a real risk to principles of fairness and accountability, public safety and national security. Lawmakers need to act now to protect the public from the dangers of unregulated A.I.

We need to prioritize laws that promote algorithmic transparency and limit algorithmic bias. We need to ensure fairness, accountability and traceability across the A.I. life cycle. With A.I.'s ability to amplify risk to a catastrophic scale, waiting until harms emerge may be too late.

Marc Rotenberg
Merve Hickok
Washington
Mr. Rotenberg is president and founder of the Center for A.I. and Digital Policy, a global research organization. Ms. Hickok is the chair and research director of the center.