

September 11, 2019

The Honorable Roy Blunt, Chairman  
The Honorable Amy Klobuchar, Ranking Member  
United States Senate Committee and Rules and Administration  
305 Russell Senate Office Building  
Washington, DC 20510-6325

Dear Chairman Blunt and Ranking Member Klobuchar,

We write to you regarding the continued conduct of the Senate Judiciary Committee's "Tech Task Force" that we believe violates the Senate Rules of Procedure concerning open meetings, public notice, and recording of Committee meetings. This Committee has jurisdiction over matters that concern Senate Rules and Regulations. Standing Rules of the Senate. Rule 25.1.n. On August 1, 2019 we asked this committee to open an investigation and make a determination.<sup>1</sup> We have received no response.

According to POLITICO, the "Tech Task Force" will hold another closed-door meeting tomorrow with industry lobbyists in a Senate hearing room to discuss a matter of widespread public concern.<sup>2</sup> As with prior meetings, there is no public notice, no opportunity for the public or the press to attend, and no plan to create a record. A quick scan of the web page "Hearings and Meetings" for the Committee makes no mention of an event that will take place in the Committee hearing room,

The Senate Rules of Procedure establish a strong presumption that meetings of the Senate shall be open to the public. "Each meeting of a committee, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, . . ." Rule 5(b). Exceptions to this presumption are set out in six narrow categories concerning:

- (1) national defense;
- (2) internal staff management or procedure;
- (3) allegations of crime or misconduct,
- (4) disclosure of the identity of a law enforcement agent
- (5) trade secrets protected by law

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<sup>1</sup> Letter from EPIC to Chairman Roy Blunt and Ranking Member Amy Klobuchar, S. Comm. and Rules and Administration (Aug. 1, 2019), <https://epic.org/privacy/EPIC-SRC-SJCTechTaskForce-Aug2019.pdf>.

<sup>2</sup> Alexandra Levine, *Senate Tech Task Force Tackles Portability*, POLITICO Morning Tech (Sept. 11, 2019), <https://www.politico.com/newsletters/morning-tech/2019/09/11/whos-who-on-tech-in-the-new-european-commission-476415> ("Sen. Marsha Blackburn 's (R-Tenn.) tech task force will hold its latest closed-door roundtable session tomorrow afternoon, according to a spokesperson. On the agenda: data portability, the concept that consumers ought to be able to transport their personal information between online services. Participants slated to attend include Rob Chesnut, general counsel at Airbnb; James Emeott, senior counsel on privacy at Lyft; and James Rooke, general manager at FreeWheel. The bipartisan working group, co-chaired by Sen. Dianne Feinstein (D-Calif.), huddled with privacy officers from Snap, Salesforce, Mozilla and Match for its first off-the-record session in July. Critics have called for the meetings to be open to the public.")

(6) other provisions of law or Government regulations.

There is also no indication that any of the provisions that would justify a closed-door meeting of a Committee would apply to tomorrow's meeting.

Committees are also required to inform the public "the date, place, and subject matter of any hearing to be conducted by the committee on any measure or matter at least one week before the commencement of that hearing unless the committee determines that there is good cause to begin such hearing at an earlier date." Rule 4(b).

Further, Committees are required to "prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting or conference whether or not such meeting or any part thereof is closed under this paragraph." Rule 5(e)(1). And, "Except with respect to meetings closed in accordance with this rule, each committee and subcommittee shall make publicly available through the Internet a video recording, audio recording, or transcript of any meeting not later than 21 business days after the meeting occurs." Rule 5(e)(2)(A).

As we've previously written, a member of the Senate Judiciary Committee convened a closed-door meeting on June 18, 2019 for a "Tech Task Force" to "tackle tech industry issues on privacy, data security, censorship, antitrust and competition." The meeting was held in the hearing room of the Senate Judiciary Committee.<sup>3</sup> The Meetings included four industry lobbyists, members of the Senate and their staff. The public and the press were not notified of the meeting, nor were they invited, nor was a record of the meeting created. There is also no indication that any of the provisions that would justify a closed-door meeting of a Committee would apply.

We contacted the Senator's staff regarding this matter. We urged her to convene public meetings, to invite non-industry representatives to participate and to create a public record of the proceeding. We were told that the Senator intends to continue these closed-door sessions, that she has no intent to create a record of these proceedings, and had made no commitment to invite non-industry groups to participate.

Having tried to resolve this matter directly with the Member, we write to you to again ask that you open an investigation, make a determination, and then instruct the Member to conduct meetings in accordance with the Senate Rules and Regulations.

Open meetings, public notice, and hearing records are central to the integrity of the United States Senate. Thank you for your attention to this matter.

Sincerely,

/s/ Marc Rotenberg  
Marc Rotenberg, President  
EPIC

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<sup>3</sup> *Blackburn Convenes First Judiciary Committee Tech Task Force Meeting* (June 18, 2019), <https://www.blackburn.senate.gov/blackburn-convenes-first-judiciary-committee-tech-task-force-meeting>