

January 19<sup>th</sup>, 2022

Dear Members of the Senate Judiciary Committee:

I write to express concerns with S. 2992, the “American Innovation and Choice Online Act,” legislation sponsored by Sen. Amy Klobuchar (D-Minn.) that upends decades of antitrust precedent and gives unelected bureaucrats new power to pick economic winners and losers. If implemented, S.2992 will raise prices on families already struggling with inflation and break services Americans use every day.

The original bill targeted companies with a market capitalization over \$550 billion and 50 million monthly users. **Sen. Klobuchar’s manager’s amendment broadens the criteria for a “covered platform” even further to include privately held companies with annual revenue of more than \$30 billion, ensnaring companies in the grocery, agriculture, and professional services sectors.**

Using market capitalization or annual revenue to dictate how a company should operate is a radical departure from how U.S. law is typically written. In a search of all current federal statutes, the phrase “market capitalization” comes up in only five, none of which is about determining how a business is run based on this paper valuation.

S. 2992 shifts antitrust law away from the long-held consumer welfare standard, which protects consumers from harm, toward a European-style approach that protects individual competitors in a given market. This legislation bans companies over a government-determined size from selling or providing private-label products on their own platforms, a practice beneficial to consumers but negatively branded as “self-preferencing.”

While antitrust crusaders may paint self-preferencing in a bad light, it is not a business practice endemic to the companies this legislation targets. Brick-and-mortar retailers often promote their own generic products next to brand-name goods via preferable shelf space or promotional devices like coupons, end-caps, and window displays. This common business practice benefits shoppers through lower prices and more choices.

Banning self-preferencing would take away choice and access to generic products for American consumers, the vast majority of which are at a lower price point than name-brand goods. Families are already struggling with 7 percent inflation thanks to the reckless tax-and-spend policies of the Biden Administration. The last thing they need is reduced access to generic goods they are reaching for just to make ends meet.

This legislation would also interfere with goods and services Americans use every day, a classic case of needless government intervention in the private sector. Amazon would no longer be able to sell AmazonBasics products or provide free two-day Prime shipping. Google would no longer be able to display YouTube links, restaurant reviews, or Maps directions when searched. Apple could no longer preinstall apps on their devices, making your new iPhone virtually useless out of the box.

Conservatives should be wary of giving the Biden Administration any new antitrust authority, as this legislation does. If a company has been found to violate S.2992, it may be subject to a penalty of up to 15 percent of total revenues for a year. Depending on profit margins, this fine could easily be more than double the profit a given company makes in a year.

The left has not been shy about their plan to use antitrust law to push a progressive social agenda, and **Sen. Klobuchar’s manager’s amendment shows that this legislation goes far beyond Big Tech.** Sen. Klobuchar has repeatedly said that she wants to go after every industry “from cat food to caskets.”

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Ultimately, this bill does nothing to stop conservative censorship, will increase inflation concerns for American families, and gives the Biden Administration sweeping new power to reshape the economy in service of a progressive social agenda.

Onwards,



Grover G. Norquist  
President, Americans for Tax Reform