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Testimony from:

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In OPPOSITION HB 6055, "An Act Relating to Commercial Law—General Regulatory Provisions—
Deceptive Trade Practices"

March 29, 2021

House Committee on Innovation, Internet, and Technology

Chair and members of the committee,

My name is Wayne Brough, and I am the program director for Technology and Innovation for the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including technology and innovation. That is why HB 6055 is of special interest to us.

We are concerned that HB 6055 would fundamentally reshape the market for applications downloaded to smartphones and other devices in ways that can harm both consumers and app developers. More specifically, HB 6055 states that a digital application distribution platform cannot (1) "Require a developer to use a digital application distribution platform or digital transaction platform as the exclusive mode of distributing a digital product," or (2) "Require a developer to use an in-application payment system as the exclusive mode of accepting payment from a user to download a software application or purchase a digital or physical product through a software application."

This legislation fundamentally alters the most widely used business model for the distribution and purchase of apps, such as Google Play or the Apple App Store. Amazon, Samsung, Sony and others also have app stores. These platforms provide consumers a wide range of choices while offering developers an effective and trusted platform for selling their products. In fact, they facilitated the transition from cell phones to smart phones, providing tremendous value to consumers who rely on these devices for everything from email and finding directions, to watching videos and staying in touch with friends and family through social media platforms.

All of this has been made possible through easy access to applications that are quickly downloaded to a smartphone. Apple pioneered this approach through the creation of its App Store, which launched in 2008. Since that time, the number of apps available for purchase has increased from 500 to more than 2 million. A large part of this growth is due to the App Store's new strategies for selling software, which eliminated the need to first go to a brick-and-mortar store or scour the web for applications. Direct downloads from the store are convenient, and, just as importantly, safe and secure.

The App store now provides consumers access to applications that can help them with virtually every aspect of their day. And given the standards established by the App store, consumers can download with confidence. Apple examines all of the available apps in an effort to eliminate malware and minimize any cybersecurity threats. The App store has also created a secure payment system to avoid fraud and protect the consumer's financial privacy.

At the same time, the App store offers even the smallest developers a global reach. In fact, the App Store has a customer base of 1.5 billion users, with 500 million visits weekly. It provides storage for apps and the technology to deliver the app to consumers. Coupled with quality and security measures, the App Store has created an expansive global market that makes it easy to reach new customers. In exchange for these benefits, the App Store collects a service fee of 30 percent of sales revenue (this drops to 15 percent for annual follow-on sales) as well as a service fee on microtransactions within an app. It should be noted that these fees only apply to apps that are sold; the thousands and thousands of free apps do not pay these charges. Importantly, these fees are voluntary and are part of the private contracts entered into by app developers who choose to use a particular distribution platform. These fees are similar to those charged by other online application distribution platforms.

Platforms such as the App Store or Google Play provide far more than just a payment system. There are a host of benefits that developers would otherwise need to supply on their own. None of these are costless, and developers, like any business, choose those strategies that provide the greatest return. With more than 2 million apps in the App Store, however, it appears that there is a revealed preference for its use for distribution and sales.

We are concerned HB 6005 would disrupt this ecosystem by allowing alternative payment systems that would allow developers to sidestep the fee sharing established by contracts with the distribution platforms. These changes may generate adverse impacts for both consumers and software developers. First, consumers may face higher prices as the distribution platforms attempt to recover the costs of the services provided by the platform. Revenues lost to alternative payment mechanisms would basically be replaced by higher prices on those remaining in the system. Alternatively, the bundle of services provided by the distribution platforms could be reduced, pushing costs back to developers to provide the services themselves. Either way, such alternatives introduce inefficiencies into a market that has worked remarkably well for distributing applications to billions of consumers across the globe.

This raises another concern about HB 6055. Namely, the internet is inherently global in scope. As such, state level regulations can be problematic, particularly when a number of states have introduced legislation imposing new regulations on distribution platforms. Imposing myriad state level regulations on a business model that operates at a much larger scale will increase compliance costs while providing few, if any, benefits for consumers. Should there be concerns over the economic characteristics of distribution platforms, they are more appropriately addressed at the federal level; there are significant constitutional concerns to impose such regulations at the state level.

For these reasons, we respectfully oppose the HB 6055.

Thank you for your time.

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