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Testimony from:
Steven Greenhut, Western Region Director, R Street Institute

In OPPOSITION to HB 2662, “Prohibitions; Digital application distribution platforms.”

February 9, 2022

House Judiciary Committee

Chairman and members of the committee,

My name is Steven Greenhut. I am the Sacramento-based Western region director for the R Street Institute, 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. Technology regulation is one of our focus areas. This is why House Bill 2662 is of special interest to us.

One of the core principles of the free market is that private businesses—rather than government regulators or lawmakers—set the terms of their own business practices. Nobel laureate economist Milton Friedman detailed the three proper roles of government: “It should provide for military defense of the nation. It should enforce contracts between individuals. It should protect citizens from crimes against themselves or their property.”¹

Micromanaging a private business to give a leg up to other private businesses—or to hobble a politically unpopular company—certainly does not fit in any of those “legitimate” categories. We cannot speak to the motives behind HB 2662, which would ban app developers from using their own digital application stores as the exclusive means to accept payments, but we cannot understand how any lawmaker who dons the free-enterprise mantle could support it, even if they are frustrated with the overall policies of the nation’s major tech firms.

Like most government meddling in the marketplace, this legislation will have unintended—but not unforeseen—consequences. The bill has the potential to upend the marketplace for applications that consumers download onto their smart phones and other electronic devices. That will harm consumers and may even harm the app developers that the bill claims to protect. Google and Apple will adapt to any new rules, of course, but the ensuing disruptions could be substantial.²

App stores reflect the wonders of the digital marketplace. As an R Street report has explained, they “created a new means of distribution that allowed even the smallest developers to reach a global market while providing consumers with a convenient and trusted source for new apps.”³ In other words,



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the app stores gave even the smallest developer unparalleled market access—the equivalent of giving a mom-and-pop business shelf space in Wal-Mart or Costco.

Many of us recall the early days of smart phones, when consumers took security risks in downloading interesting but unknown apps. Most came with a fee. With the current app store setup, the major developers vet the offerings in advance, thus assuring consumers that they will not wreak havoc on their phones or computers. The public can download most apps for free. The number of choices is almost incomprehensible, with millions of apps available through App Store and Google Play.⁴ Consumers can also easily pay for their purchases through a trustworthy payment system that lessens concerns about fraud and protects their financial privacy.⁵

Of course, there is no such thing as a free lunch. The application stores charge app developers a small annual fee to register and a commission on any sales made through the platform, with large developers paying as much as 30 percent of sales. Typically, smaller developers pay a 15 percent commission. But developers whose applications may be downloaded for free pay no commission—and 90 percent of the apps available in the two major stores may likewise be downloaded at no charge.⁶

We understand why app developers would prefer to pay a lower rate, just as we understand why companies that sell their products in large retail stores would prefer that the retailers receive a smaller cut. The issue is not about the proper size of the commission, however, but about the right of store owners to negotiate their own business terms with their clients—and the proper role of government in regulating businesses.

Unlike bills in some other states, Arizona's HB 2662 does not mandate "sideloading"—in which the platforms offer apps from third-party sources.⁷ Sideloading is particularly problematic because it forces the companies to offer products that they have not vetted. However, mandating the use of third-party payment systems, as HB 2662 would do, provides a free-rider situation. It lets the developers enjoy the benefits of the app store without having to pay a fee. It seems obvious that lawmakers would see the problem if a bill forced any other retailer to adopt similar rules. It is wrong to toss aside basic principles because of pique over a particular company.

Practically speaking, the legislation likely will raise costs for consumers. By reducing payments to the companies that operate the distribution platforms, it will force up costs for the remaining apps—and it could reduce the various security and marketing services provided to app developers.⁸ That means app developers would have to provide those services themselves, which could also lead to higher consumer costs. We see no compelling reason that the government should impose inefficiencies into the market.



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Nevertheless, our main objection to the legislation is less practical and more philosophical in that it allows the government to supplant existing contracts. We therefore respectfully oppose HB 2662.

Best regards,

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¹ “Book Summary: Capitalism and Freedom, by Milton Friedman,” Shortform, last accessed Feb. 7, 2022. https://www.shortform.com/summary/capitalism-and-freedom-summary-milton-friedman?gclid=Cj0KCQiA3fiPBhCCARIsAFQ8QzUJhpSXDrosJQusDeT9xs2dz8TmjolK1503AX36Dk7RYMAm4X8iZ1UaArkXEALw_wcB.

² Wayne Brough et al., “Coalition Opposes State App Store Mandates,” R Street Institute, April 20, 2021. <https://www.rstreet.org/2021/04/20/coalition-opposes-state-app-store-mandates>.

³ Wayne Brough, “The Open App Markets Act would raise app store prices and decrease security,” R Street Institute, Feb. 2, 2022. <https://www.rstreet.org/2022/02/02/the-open-app-markets-act-would-raise-app-store-prices-and-decrease-security>.

⁴ “Mobile App Download Statistics & Usage Statistics (2022),” BuildFire, last accessed Feb. 7, 2022. <https://buildfire.com/app-statistics/#:~:text=Key%20Mobile%20App%20Statistics%20for%202022&text=21%25%20of%20Millennials%20open%20an,and%2030%20apps%20each%20month>.

⁵ Wayne Brough, “The Online App Store Ecosystem,” R Street Institute, April 6, 2021. <https://www.rstreet.org/2021/04/06/the-online-app-store-ecosystem>.

⁶ Ibid.

⁷ Jeremy Laukkonen, “What is Sideloading?” *Lifewire*, Sept. 10, 2021. <https://www.lifewire.com/sideloading-4158932>.

⁸ Wayne Brough, “In Opposition to Bill H 140, An Act Promoting Competition Among App Stores,” R Street Institute, Oct. 27, 2021. <https://www.rstreet.org/2021/10/27/in-opposition-to-bill-h-140-an-act-promoting-competition-among-app-stores>.