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(Original Signature of Member)

117TH CONGRESS  
1ST SESSION

**H. R. ■ ■**

To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. CICILLINE introduced the following bill; which was referred to the Committee on ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

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**A BILL**

To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Choice and  
5 Innovation Online Act”.

6 **SEC. 2. UNLAWFUL DISCRIMINATORY CONDUCT.**

7 (a) **VIOLATION.**—It shall be unlawful for a person op-  
8 erating a covered platform, in or affecting commerce, to

1 engage in any conduct in connection with the operation  
2 of the covered platform that—

3 (1) advantages the covered platform operator's  
4 own products, services, or lines of business over  
5 those of another business user;

6 (2) excludes or disadvantages the products,  
7 services, or lines of business of another business user  
8 relative to the covered platform operator's own prod-  
9 ucts, services, or lines of business; or

10 (3) discriminates among similarly situated busi-  
11 ness users.

12 (b) OTHER DISCRIMINATORY CONDUCT.—It shall be  
13 unlawful for a person operating a covered platform, in or  
14 affecting commerce, to—

15 (1) restrict or impede the capacity of a business  
16 user to access or interoperate with the same plat-  
17 form, operating system, hardware and software fea-  
18 tures that are available to the covered platform oper-  
19 ator's own products, services, or lines of business;

20 (2) condition access to the covered platform or  
21 preferred status or placement on the covered plat-  
22 form on the purchase or use of other products or  
23 services offered by the covered platform operator;

24 (3) use non-public data obtained from or gen-  
25 erated on the platform by the activities of a business

1 user or its customers that is generated through an  
2 interaction with the business user's products or serv-  
3 ices to offer or support the offering of the covered  
4 platform operator's own products or services;

5 (4) restrict or impede a business user from ac-  
6 cessing data generated on the platform by the activi-  
7 ties of the business user or its customers through an  
8 interaction with the business user's products or serv-  
9 ices, such as contractual or technical restrictions  
10 that prevent the portability of such data by the busi-  
11 ness user to other systems or applications;

12 (5) restrict or impede covered platform users  
13 from un-installing software applications that have  
14 been preinstalled on the covered platform or chang-  
15 ing default settings that direct or steer covered plat-  
16 form users to products or services offered by the  
17 covered platform operator;

18 (6) restrict or impede businesses users from  
19 communicating information or providing hyperlinks  
20 on the covered platform to covered platform users to  
21 facilitate business transactions;

22 (7) in connection with any user interfaces, in-  
23 cluding search or ranking functionality offered by  
24 the covered platform, treat the covered platform op-

1 erator’s own products, services, or lines of business  
2 more favorably than another business user;

3 (8) interfere or restrict a business user’s pricing  
4 of its goods or services;

5 (9) restrict or impede a business user, or a  
6 business user’s customers or users, from interoper-  
7 ating or connecting to any product or service; and

8 (10) retaliate against any business user or cov-  
9 ered platform user that raises concerns with any law  
10 enforcement authority about actual or potential vio-  
11 lations of State or Federal law.

12 (c) AFFIRMATIVE DEFENSE.—

13 (1) IN GENERAL.—Subsection (a) and (b) shall  
14 not apply if the defendant establishes by clear and  
15 convincing evidence that the conduct described in  
16 subsections (a) or (b)—

17 (A) would not result in harm to the com-  
18 petitive process by restricting or impeding le-  
19 gitimate activity by business users; or

20 (B) was narrowly tailored, could not be  
21 achieved through a less discriminatory means,  
22 was nonpretextual, and was necessary to—

23 (i) prevent a violation of, or comply  
24 with, Federal or State law; or

1 (ii) protect user privacy or other non-  
2 public data.

3 (2) AVAILABILITY OF AFFIRMATIVE DE-  
4 FENSE.—Notwithstanding any other provision of  
5 law, whether user conduct would constitute a viola-  
6 tion of section 1030 of title 18, United States Code,  
7 is not dispositive of whether the defendant has es-  
8 tablished the affirmative defense under this section.

9 (d) COVERED PLATFORM DESIGNATION.—The Fed-  
10 eral Trade Commission or Department of Justice shall  
11 designate a covered platform for the purpose of imple-  
12 menting and enforcing this Act. Such designation shall—

13 (1) be based on a finding that the criteria set  
14 forth in subsection (f)(4)(i)-(iii) are met;

15 (2) be issued in writing and published in the  
16 Federal Register; and

17 (3) will apply for ten years from its issuance re-  
18 gardless of whether there is a change in control or  
19 ownership over the covered platform unless the Com-  
20 mission or the Department of Justice removes the  
21 designation pursuant to subsection (f).

22 (e) REMOVAL OF COVERED PLATFORM DESIGNA-  
23 TION.—The Commission or the Department of Justice  
24 shall—

1           (1) consider whether its designation of a cov-  
2           ered platform pursuant to subsection (d) should be  
3           removed prior to the expiration of the ten-year pe-  
4           riod if the covered platform operator files a request  
5           with the Commission or the Department of Justice,  
6           which shows that the online platform is no longer a  
7           critical trading partner; and

8           (2) determine whether to grant a request sub-  
9           mitted under paragraph 1 not later than 120 days  
10          after the date of the filing of such request.

11          (f) REMEDIES.—

12           (1) CIVIL PENALTY.—Any covered platform op-  
13          erator who is found to have violated subsections (a)  
14          or (b) shall be liable to the United States or the  
15          Commission for a civil penalty, which shall accrue to  
16          the United States, in an amount not more than the  
17          greater of—

18                   (A) 15 percent of the total United States  
19                   revenue of the person for the previous calendar  
20                   year; or

21                   (B) 30 percent of the United States rev-  
22                   enue of the person in any line of business af-  
23                   fected or targeted by the unlawful conduct dur-  
24                   ing the period of the unlawful conduct. This  
25                   civil penalty may be recovered in a civil action

1 brought by the United States or the Commis-  
2 sion.

3 (2) REMEDIES IN ADDITION.—Remedies pro-  
4 vided in this subsection are in addition to, and not  
5 in lieu of, any other remedy available under Federal  
6 or State law.

7 (A) RESTITUTION; CONTRACT RESCISSION  
8 AND REFORMATION; REFUNDS; RETURN OF  
9 PROPERTY.—The Assistant Attorney General of  
10 the Antitrust Division, the Commission, or the  
11 attorney general of any State may seek, and the  
12 court may order, with respect to the violation  
13 that gives rise to the suit, restitution for losses,  
14 rescission or reformation of contracts, refund of  
15 money, or return of property.

16 (B) DISGORGEMENT.—The Assistant At-  
17 torney General of the Antitrust Division or the  
18 Commission may seek, and the court may  
19 order, disgorgement of any unjust enrichment  
20 that a covered platform operator obtained as a  
21 result of the violation that gives rise to the suit.

22 (C) INJUNCTIONS.—The Assistant Attor-  
23 ney General of the Antitrust Division or the  
24 Commission may seek, and the court may

1 order, relief in equity as necessary to prevent,  
2 restrain, or prohibit violations of this Act.

3 (D) CONFLICT OF INTEREST.—

4 (i) If the fact finder determines that  
5 a violation of this Act arises from a con-  
6 flict of interest related to the covered plat-  
7 form’s concurrent operation of multiple  
8 lines of business, the court shall consider  
9 requiring divestiture of the line or lines of  
10 business that give rise to such conflict.

11 (ii) For purposes of this section, the  
12 term “conflict of interest” includes the  
13 conflict of interest that arises when—

14 (I) a covered platform operator  
15 owns or controls a line of business,  
16 other than the covered platform; and

17 (II) the covered platform’s own-  
18 ership or control of that line of busi-  
19 ness creates the incentive and ability  
20 for the covered platform to—

21 (aa) advantage the covered  
22 platform operator’s own prod-  
23 ucts, services, or lines of business  
24 on the covered platform over  
25 those of a competing business or



1 a business that constitutes nas-  
2 cent or potential competition to  
3 the covered platform operator; or  
4 (bb) exclude from, or dis-  
5 advantage, the products, services,  
6 or lines of business on the cov-  
7 ered platform of a competing  
8 business or a business that con-  
9 stitutes nascent or potential com-  
10 petition to the covered platform  
11 operator.

12 (3) REPEAT OFFENDERS.—If the fact finder  
13 determines that a covered platform has engaged in  
14 a pattern or practice of violating this Act, the court  
15 shall consider requiring that the Chief Executive Of-  
16 ficer forfeit to the United States Treasury any com-  
17 pensation received by that person during the 12  
18 months preceding or following the filing of a com-  
19 plaint for an alleged violation of this Act.

20 (g) DEFINITIONS.—In this section:

21 (1) ANTITRUST LAWS.—The term “antitrust  
22 laws” has the meaning given the term in subsection  
23 (a) of section 1 of the Clayton Act (15 U.S.C. 12).

24 (2) BUSINESS USER.—The term “Business  
25 User” means a person that utilizes or plans to uti-

1 lize the covered platform for the sale or provision of  
2 products or services.

3 (3) COMMISSION.—The term “Commission”  
4 means the Federal Trade Commission.

5 (4) COVERED PLATFORM.—The term “covered  
6 platform” means an online platform—

7 (A) that has been designated as a “covered  
8 platform” under section 2(d); or

9 (B) that—

10 (i) at the time of the Commission’s or  
11 the Department of Justice’s designation  
12 under section 2(d), or any of the twelve  
13 months preceding that time, or in any of  
14 the 12 months preceding the filing of a  
15 complaint for an alleged violation of this  
16 Act—

17 (I) has at least 50,000,000  
18 United States-based monthly active  
19 users on the online platform; or

20 (II) has at least 100,000 United  
21 States-based monthly active business  
22 users on the platform;

23 (ii) is owned or controlled by a person  
24 with net annual sales, or a market capital-  
25 ization greater than \$600,000,000,000, ad-

1           justed for inflation on the basis of the  
2           Consumer Price Index, at the time of the  
3           Commission’s or the Department of Jus-  
4           tice’s designation under section 2(d) or any  
5           of the two years preceding that time, or at  
6           any time in the 2 years preceding the filing  
7           of a complaint for an alleged violation of  
8           this Act; and

9           (iii) is a critical trading partner for  
10          the sale or provision of any product or  
11          service offered on or directly related to the  
12          online platform.

13          (5) COVERED PLATFORM OPERATOR.—The  
14          term “covered platform operator” means a person  
15          that owns or controls a covered platform.

16          (6) CRITICAL TRADING PARTNER.—The term  
17          “critical trading partner” means a trading partner  
18          that has the ability to restrict or impede—

19                  (A) the access of a business user to its  
20                  users or customers; or

21                  (B) the access of a business user to a tool  
22                  or service that it needs to effectively serve its  
23                  users or customers.

1           (7) PERSON.—The term “person” has the  
2 meaning given the term in subsection (a) of section  
3 1 of the Clayton Act (15 U.S.C. 12).

4           (8) DATA.—

5           (A) IN GENERAL.—Not later than six  
6 months after the date of enactment of this Act,  
7 the Commission shall adopt rules in accordance  
8 with section 553 of title 5, United States Code,  
9 to define the term “data” for the purpose of  
10 implementing and enforcing this Act.

11           (B) DATA.—The term “data” shall include  
12 information that is collected by or provided to  
13 a covered platform or competing business or a  
14 potential competing business that is linked, or  
15 reasonably linkable, to a specific user or cus-  
16 tomer of the covered platform or a competing  
17 business or a potential competing business.

18           (9) BUSINESS USER.—The term “business  
19 user” means a person that utilizes or plans to utilize  
20 the covered platform for the sale or provision of  
21 products or services.

22           (10) ONLINE PLATFORM.—The term “online  
23 platform” means a website, online or mobile applica-  
24 tion, operating system, digital assistant, or online  
25 service that—

1 (A) enables a user to generate content that  
2 can be viewed by other users on the platform or  
3 to interact with other content on the platform;

4 (B) facilitates the offering, sale, purchase,  
5 payment, or shipping of goods or services, in-  
6 cluding software applications, between and  
7 among consumers or businesses not controlled  
8 by the platform; or

9 (C) enables user searches or queries that  
10 access or display a large volume of information.

11 (11) CONTROL.—The term “control” with re-  
12 spect to a person means—

13 (A) holding 25 percent or more of the  
14 stock of the person;

15 (B) having the right to 25 percent or more  
16 of the profits of the person;

17 (C) having the right to 25 percent or more  
18 of the assets of the person, in the event of the  
19 person’s dissolution;

20 (D) if the person is a corporation, having  
21 the power to designate 25 percent or more of  
22 the directors of the person;

23 (E) if the person is a trust, having the  
24 power to designate 25 percent or more of the  
25 trustees; or

1 (F) otherwise exercises substantial control  
2 over the person.

3 (h) ENFORCEMENT.—

4 (1) IN GENERAL.—The Commission, Depart-  
5 ment of Justice, and any attorney general of a State  
6 subject to the requirements in paragraph (4) shall  
7 enforce this Act in the same manner, by the same  
8 means, and with the same jurisdiction, powers, and  
9 duties as though all applicable terms and provisions  
10 of the Federal Trade Commission Act (15 U.S.C. 41  
11 et seq.) or the Clayton Act (15 U.S.C. 12 et seq.),  
12 as appropriate, were incorporated into and made a  
13 part of this Act.

14 (2) UNFAIR METHODS OF COMPETITION.—A  
15 violation of this Act shall also constitute an unfair  
16 method of competition under section 5 of the Fed-  
17 eral Trade Commission Act (15 U.S.C. 5).

18 (3) COMMISSION INDEPENDENT LITIGATION AU-  
19 THORITY.—If the Commission has reason to believe  
20 that a covered platform violated this Act, the Com-  
21 mission may commence a civil action, in its own  
22 name by any of its attorneys designated by it for  
23 such purpose, to recover a civil penalty and seek  
24 other appropriate relief in a district court of the  
25 United States against the covered platform operator.

1           (4) PARENS PATRIAE.—Any attorney general of  
2           a State may bring a civil action in the name of such  
3           State for a violation of this Act as parens patriae on  
4           behalf of natural persons residing in such State, in  
5           any district court of the United States having juris-  
6           diction of the defendant, and may secure any form  
7           of relief provided for in this section.

8           (i) EMERGENCY RELIEF.—

9           (1) The Commission, Assistant Attorney Gen-  
10          eral of the Antitrust Division, or any attorney gen-  
11          eral of a State may seek a temporary injunction re-  
12          quiring the covered platform operator to take or stop  
13          taking any action for not more than 120 days and  
14          the court shall grant such relief if the Commission,  
15          the United States, or the attorney general of a State  
16          proves—

17                 (A) there is a plausible claim that a cov-  
18                 ered platform operator took an action that vio-  
19                 lates this Act; and

20                 (B) that action impairs the ability of at  
21                 least one company to compete with the covered  
22                 platform.

23          (2) The emergency relief shall not last more  
24          than 120 days from the filing of the complaint.

1           (3) The court shall terminate the emergency re-  
2           lief at any time that the covered platform operator  
3           proves that the Commission, the United States, or  
4           the attorney general of the State seeking relief  
5           under this section has not taken reasonable steps to  
6           investigate whether a violation has occurred.

7           (4) Nothing in this subsection prevents or limits  
8           the Commission, the United States, or any attorney  
9           general of any State from seeking other equitable re-  
10          lief as provided in subsection (h) of this section.

11          (j) STATUTE OF LIMITATIONS.—A proceeding for a  
12          violation of this section may be commenced not later than  
13          6 years after such violation occurs.

14          **SEC. 3. JUDICIAL REVIEW.**

15          (a) IN GENERAL.—Any party that is subject to a cov-  
16          ered platform designation under section 2(d) of this Act,  
17          a final order issued in any district court, or a final order  
18          of the Commission issued in an administrative adjudica-  
19          tive proceeding may within 30 days of the issuance of such  
20          order, petition for review of such order in the United  
21          States Court of Appeals for the District of Columbia Cir-  
22          cuit.

23          (b) TREATMENT OF FINDINGS.—In a proceeding for  
24          judicial review of a covered platform designation under to  
25          section 2(d) of this Act or a final order of the Commission,



1 the findings of the Commission or the Assistant Attorney  
2 General as to the facts, if supported by evidence, shall be  
3 conclusive.

4 **SEC. 4. BUREAU OF DIGITAL MARKETS.**

5 (a) **ESTABLISHMENT OF BUREAU.**—As soon as prac-  
6 ticable, but not later than 180 days after the date of en-  
7 actment of this Act, the Federal Trade Commission shall  
8 establish within the Commission a bureau of digital mar-  
9 kets for purposes of enforcement of this Act.

10 (b) **LEADERSHIP.**—The head of the Bureau of Digital  
11 Markets shall be the Director of the Bureau of Digital  
12 Markets, who shall—

13 (1) report directly to the Chair of the Federal  
14 Trade Commission; and

15 (2) be appointed by the Chair of the Federal  
16 Trade Commission.

17 (c) **BUREAU STAFF.**—The Bureau of Digital Markets  
18 shall retain or employ legal, technology, economic, re-  
19 search, and service staff sufficient to carry out the func-  
20 tions, powers, and duties of the Bureau.

21 (d) **REPORTING REQUIREMENT.**—Not later than 1  
22 year after the date of enactment of this Act, the Bureau  
23 of Digital Markets shall on an annual basis publish and  
24 submit a report to the Committee on the Judiciary of the  
25 House of Representatives and the Committee on the Judi-

1 ciary of the Senate describing the Bureau's enforcement  
2 activities during the previous 12-month period.

3 **SEC. 5. ENFORCEMENT GUIDELINES.**

4 (a) **IN GENERAL.**—Not later than 1 year after the  
5 date of enactment of this Act, the Commission and the  
6 Assistant Attorney General of the Antitrust Division shall  
7 jointly issue guidelines outlining policies and practices, re-  
8 lating to agency enforcement of this Act, with the goal  
9 of promoting transparency and deterring violations.

10 (b) **UPDATES.**—The Commission and the Assistant  
11 Attorney General of the Antitrust Division shall update  
12 the joint guidelines issued under subsection (a), as needed  
13 to reflect current agency policies and practices, but not  
14 less frequently than once every 4 years beginning on the  
15 date of enactment of this Act.

16 (c) **OPERATION.**—The Joint Guidelines issued under  
17 this section do not confer any rights upon any person,  
18 State, or locality, nor shall operate to bind the Commis-  
19 sion, Department of Justice, or any person, State, or local-  
20 ity to the approach recommended in such Guidelines.

21 **SEC. 6. SUITS BY PERSONS INJURED.**

22 (a) **IN GENERAL.**—Except as provided in subsection  
23 (b), any person who shall be injured in his business or  
24 property by reason of anything forbidden in this Act sue  
25 therefor in any district court of the United States in the

1 district in which the defendant resides or is found or has  
2 an agent, without respect to the amount in controversy,  
3 and shall recover threefold the damages by him sustained,  
4 and the cost of suit, including a reasonable attorney's fee.  
5 The court may award under this section, pursuant to a  
6 motion by such person promptly made, simple interest on  
7 actual damages for the period beginning on the date of  
8 service of such person's pleading setting forth a claim  
9 under the antitrust laws and ending on the date of judg-  
10 ment, or for any shorter period therein, if the court finds  
11 that the award of such interest for such period is just in  
12 the circumstances. In determining whether an award of  
13 interest under this section for any period is just in the  
14 circumstances, the court shall consider only—

15           (1) whether such person or the opposing party,  
16           or either party's representative, made motions or as-  
17           serted claims or defenses so lacking in merit as to  
18           show that such party or representative acted inten-  
19           tionally for delay, or otherwise acted in bad faith;

20           (2) whether, in the course of the action in-  
21           volved, such person or the opposing party, or either  
22           party's representative, violated any applicable rule,  
23           statute, or court order providing for sanctions for  
24           dilatory behavior or otherwise providing for expedi-  
25           tious proceedings; and

1           (3) whether such person or the opposing party,  
2           or either party's representative, engaged in conduct  
3           primarily for the purpose of delaying the litigation  
4           or increasing the cost thereof.

5           (b) AMOUNT OF DAMAGES PAYABLE TO FOREIGN  
6 STATES AND INSTRUMENTALITIES OF FOREIGN  
7 STATES.—

8           (1) Except as provided in paragraph (2), any  
9           person who is a foreign state may not recover under  
10          subsection (a) an amount in excess of the actual  
11          damages sustained by it and the cost of suit, includ-  
12          ing a reasonable attorney's fee.

13          (2) Paragraph (1) shall not apply to a foreign  
14          state if—

15                (A) such foreign state would be denied,  
16                under section 1605(a)(2) of title 28, immunity  
17                in a case in which the action is based upon a  
18                commercial activity, or an act, that is the sub-  
19                ject matter of its claim under this section;

20                (B) such foreign state waives all defenses  
21                based upon or arising out of its status as a for-  
22                eign state, to any claims brought against it in  
23                the same action;

24                (C) such foreign state engages primarily in  
25                commercial activities; and

1 (D) such foreign state does not function,  
2 with respect to the commercial activity, or the  
3 act, that is the subject matter of its claim  
4 under this section as a procurement entity for  
5 itself or for another foreign state.

6 (c) INJUNCTIVE RELIEF.—Any person, firm, corpora-  
7 tion, or association shall be entitled to sue for and have  
8 injunctive relief, in any court of the United States having  
9 jurisdiction over the parties, against threatened loss or  
10 damage by a violation of this Act, when and under the  
11 same conditions and principles as injunctive relief against  
12 threatened conduct that will cause loss or damage is  
13 granted by courts of equity, under the rules governing  
14 such proceedings, and upon the execution of proper bond  
15 against damages for an injunction improvidently granted  
16 and a showing that the danger of irreparable loss or dam-  
17 age is immediate, a preliminary injunction may issue: Pro-  
18 vided, That nothing herein contained shall be construed  
19 to entitle any person, firm, corporation, or association, ex-  
20 cept the United States, to bring suit for injunctive relief  
21 against any common carrier subject to the jurisdiction of  
22 the Surface Transportation Board under subtitle IV of  
23 title 49. In any action under this section in which the  
24 plaintiff substantially prevails, the court shall award the

1 cost of suit, including a reasonable attorney's fee, to such  
2 plaintiff.

3 **SEC. 7. RULE OF CONSTRUCTION.**

4 Nothing in this Act shall be construed to limit any  
5 authority of the Attorney General or the Federal Trade  
6 Commission under the antitrust laws, the Federal Trade  
7 Commission Act (15 U.S.C. 45), or any other provision  
8 of law or to limit the application of any law.

9 **SEC. 8. SEVERABILITY.**

10 If any provision of this Act, an amendment made by  
11 this Act, or the application of such provision or amend-  
12 ment to any person or circumstance is held to be unconsti-  
13 tutional, the remainder of this Act and of the amendments  
14 made by this Act, and the application of the remaining  
15 provisions of this Act and amendments to any person or  
16 circumstance shall not be affected.