NetChoice

NetChoice works to make the Internet safe for free enterprise and free expression.

November 17, 2026

Senate Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510

Re: NetChoice Opposition to S. 69, the COLLUDE Act

Dear Members of the Senate Committee on Commerce, Science, and Transportation:

NetChoice respectfully urges you to oppose S. 69, the Curtailing Online Limitations that Lead Unconstitutionally to Democracy's Erosion (COLLUDE) Act. We agree with the bill's core principle: the government must never coerce private companies into suppressing lawful speech, which is why we enthusiastically supported the passage of the JAWBONE Act. But COLLUDE gets the solution exactly wrong. Rather than hold the government accountable, it penalizes the companies subjected to coercion, discourages them from exposing government pressure, and invites courts to second-guess private content moderation.

The bill's central flaw is that it penalizes the wrong party. When a government official coerces a platform into removing lawful speech, it is the official who violates the First Amendment. Yet the COLLUDE Act leaves that official untouched and strips protections from the company that was pressured. Courts could weigh the severity of the government's pressure when setting damages, but that would not stop lawsuits from being filed. For many companies, especially smaller ones, a single round of discovery-heavy litigation could be ruinous regardless of the outcome.

The bill would also backfire on transparency. Companies have become far more willing to disclose government pressure over content. Some have told congressional investigators that officials pressed them to remove lawful posts that did not violate their policies, acknowledged they should have resisted, and restored the affected accounts. These disclosures happened because companies chose to come forward. Under the COLLUDE Act, every such admission would become evidence against the company itself. Platforms would have every reason to stay silent, making government pressure harder for Congress and the public to detect.

The market is also moving on its own. Platforms have shifted from centralized, top-down moderation toward user-driven tools such as community-written notes, reducing the opportunities for officials to lean on a handful of decision-makers. The COLLUDE Act would freeze that progress by exposing every past and present moderation choice to litigation.

The bill would also draw the government deeper into content moderation, not out of it. Federal courts would have to decide whether individual moderation decisions, or entire policies, were shaped by

government influence, and each lawsuit would require a judge to scrutinize a private company's editorial choices. The Supreme Court has recognized that when platforms curate and moderate third-party content, they are engaged in expressive activity protected by the First Amendment. [1]Plaintiffs of any political persuasion could use these suits to pressure platforms into changing how they moderate, which is the very kind of outside pressure the bill claims to oppose. A law meant to separate government from private speech decisions would instead make federal courts permanent participants in them.

The COLLUDE Act also raises serious constitutional problems. It removes protections only from social media platforms above arbitrary size or user thresholds, while other online services and individual users could act on government requests and keep theirs. The Supreme Court has long been skeptical of speaker-based laws, warning that they are all too often a means to control content and subjecting them to strict scrutiny when they reflect a content preference.[2] If government-influenced moderation were truly the harm, the bill would apply evenly. Instead, it targets particular companies rather than the conduct it claims to address.

Finally, the bill is unnecessary because tools to stop government censorship already exist, and they are aimed at the right party. Executive Order 14149 bars any federal department, agency, officer, employee, or agent from using federal resources to unconstitutionally abridge Americans' free speech, and directs the Attorney General to investigate past federal conduct that conflicts with that policy.[3] Federal employees who unlawfully pressure platforms can be disciplined or removed through existing adverse-action procedures, and political appointees serve at will. [4]Congress can also hold officials accountable directly through oversight, as the House Judiciary Committee's investigation has shown.[5] Each of these remedies addresses the government actor. The COLLUDE Act addresses only the private company.

The right response to government censorship is to hold the government accountable. The COLLUDE Act instead punishes private companies, discourages transparency, invites courts into private editorial decisions, and singles out a disfavored set of speakers. For these reasons, NetChoice respectfully urges the Committee to oppose S. 69. We welcome the opportunity to discuss these concerns with you and your staff.

Sincerely,

Amy Bos

Vice President of Government Affairs, NetChoice[6]

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[1] Moody v. NetChoice, LLC, 603 U.S. 707, 731 (2024).
[2] Citizens United v. FEC, 558 U.S. 310, 340 (2010); Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 658 (1994); see also Sorrell v. IMS Health Inc., 564 U.S. 552, 564 (2011).
[3]Exec. Order No. 14149, §§ 3(a)-(b), 90 Fed. Reg. 8243 (Jan. 28, 2025).

[4] 5 U.S.C. §§ 7512-7513.

[5] See 5 U.S.C. § 7511(b)(1)-(2) (excluding Senate-confirmed appointees and positions of a confidential, policy-determining, policy-making, or policy-advocating character from adverse-action protections).
[6] The views of NetChoice expressed here do not necessarily represent the views of all NetChoice members.