



February 8, 2021

*Senate Industry, Business and Labor Committee  
Testimony in Support of SB 2333 on behalf of David Heinemeier Hansson  
Chairman Jerry Klein*

Chairman Klein and members of the Senate Industry, Business and Labor Committee-

My name is David Heinemeier Hansson, and I'm the CTO and co-founder of Basecamp, a small internet company from Chicago that sells project-management software and email services.

I first testified on the topic of big tech monopolies at the House Antitrust Subcommittee's field hearing in Colorado just over a year ago<sup>1</sup>, where I described the fear and loathing many small software makers have toward the app store duopoly.

How fees upwards of 30% of revenue, applied selectively, and in many cases capriciously, put an enormous economic burden on many small software businesses. And how paired with the constant uncertainty as to whether the next software update will be rejected, or held for ransom, and put their entire businesses in jeopardy.

I was then merely speaking on behalf of my many fellow small business owners. As someone who'd heard the tragic stories from app store duopoly victims, whispered out of fear of further retribution, for the better part of the last decade.

Little did I know that just six months later, Basecamp would be in its own existential fight for survival<sup>2</sup>, after launching a new, innovative email service called HEY.com. Apple first approved our application to the App Store, only to revert themselves days later, after we had publicly launched to great critical acclaim. They demanded we start using their in-application payment system, such that they could take 30% of our revenues, or we'd be kicked off the App Store. A virtual death sentence for a new email service that was aiming to compete with the likes of Google's Gmail and Apple's own iCloud email hosting.

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<sup>1</sup> <https://m.signalvnoise.com/testimony-before-the-house-antitrust-subcommittee/>

<sup>2</sup> <https://hey.com/apple/>

Against all odds, and due to Apple's exceptionally poor timing and the bad PR that resulted from this skirmish happening during their yearly Developer Conference, we managed to beat back the bully, but so many other developers have tried the same and failed, or never dared try at all, and suffered in silence.

I concluded that original congressional testimony in January with a simple plea: "Help us, congress. You're our only hope." Meaning, the market is not going to correct itself. The free market depends on legislative guardrails that prevent monopolies from exploiting their outsized power, and preying on smaller competitors.

But when we were fighting for our survival and future over the stressful summer, whatever hope I had for congressional involvement seemed very far off. If your house is on fire, and you call for help, it's no good if the red engine arrives after daffodils have started growing where your house once were.

While I still hope we'll get relief from on a federal level, there are no bills currently under consideration. No specific proposals on the table. So if and when that happens, it will be too late for the many businesses that either get crushed in the interim or never got started out of the above-mentioned fear and loathing.

So I was extremely pleased to learn that this plea for help with the app store duopoly abuses was in fact being heard, it just so happened to be in the form of state senate bills, like SB 2333. And not only had the plea been heard, but it had been answered in the most succinct and effective manner possible!

After the recitals, the just 17 lines of SB2333 read like music. Written in a language I can understand without hiring counsel to parse it for me. It almost seems too good to be true! But I sincerely hope that it is not. That you will listen to the small software developers from all over the country, who are tired of being bullied and shaken down by a handful of big tech monopolists out of Seattle and Silicon Valley.

We need a fair digital marketplace free of monopoly abuse as much in Chicago as in Bismarck. And when it comes to the app store duopoly, no single change will have a greater impact than giving small software makers like us a choice when it comes to in-app payment systems, and protection from retaliation, if we refuse the onerous deal the monopolists are offering.

Apple and Google would like to take credit for all the jobs and all the progress that has happened on top of their mobile platforms. But that's a grotesque appropriation of the ingenuity and innovation that's happening all over the country. It's like if a shipping company wanted credit for all the products inside the containers it carried by rail or sea. Apple and Google may control tracks and shipping lanes, but without the work of millions of independent software makers, they'd have little to deliver to customers.

And handouts don't help either. We're not interested in a slightly lower rate on their obscene payment processing fees. We're interested in choice<sup>3</sup>. Unless we have choice, we'll never have a fair hand to negotiate, and the market forces that has driven credit-card processing fees down to around 2% can't work their magic.

North Dakota has the opportunity to create this level playing field, such that the next generation of software companies can be started there, and that if a team in Bismarck builds a better digital mouse trap, they won't be hampered by abusive, extortive demands for 30% of their revenue from the existing big tech giants.

It's simply obscene that a small software company that makes \$1,000,000 dollars in revenue have to send a \$300,000 check to Cupertino or Mountain View, rather than invest in growing their business, while Facebook makes billions off those same app stores without paying any cut of their revenues whatsoever.

You have the power to chart a new path for the entire country by taking care of software developers who already do or would like to call North Dakota home. It's incredibly inspiring to see a state senate that's not afraid to take on the biggest, most powerful tech giants in America, and write plain, simple rules that force them to give the next generation a chance.

Thank you so much for your consideration.



David Heinemeier Hansson  
CTO & Cofounder, Basecamp

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<sup>3</sup> <https://hey.com/apple/iap/>