# *Congress Should Reject Proposed AI Antitrust Exemption*

*Problems with Collaboration on Adversarial Threats and Security Risks Act (S.5105/H.R.9914)*

AMERICAN ECONOMIC LIBERTIES PROJECT

## Bipartisan Lawmakers, Antitrust Experts, Leading AI Industry Voices Agree Antitrust Exemption is Unnecessary, Could Harm Competition

Amidst intense debates over the regulation of artificial intelligence (AI), AI companies are seeking an antitrust exemption to coordinate a "slow down" in the development of frontier models. Last month, *Semafor* reported that several Senators are attempting to attach a provision to the annual National Defense Authorization Act (NDAA) that would give AI labs an antitrust exemption. The antitrust exemption appears to be based on S.5105, the Collaboration on Adversarial Threats and Security Risks Act (CATSRA), co-sponsored by Senators Adam Schiff (D-CA) and Jim Banks (R-IN). Companion legislation (H.R. 9914) has been introduced in the House by Reps. Robert Latta (R-OH) and George Whitesides (D-CA).

### Leading Antitrust and Technology Lawmakers from Both Parties Oppose an AI Antitrust Exemption

**Senator Elizabeth Warren (D-MA),** Ranking Member, Senate Banking Committee
"Antitrust law already has an exception for companies working together on safety issues; there's no need for any additional antitrust waivers." "I understand that big companies love antitrust waivers, but no."

**Senator Ted Cruz (R-TX),** Chairman, Senate Commerce Committee
"To watch AI CEOs saying, 'We're about to destroy the world, so [let us] lock in our monopoly status and prevent any innovation from challenging us,' is just lunacy."

**Senator Josh Hawley (R-MO)**, Chairman, Senate Judiciary Committee, Subcommittee on Crime and Counterterrorism
"There is absolutely no world in which I will consent to giving the most powerful companies in the history of the world — a small group of three or four of them — antitrust exemptions so they can what … collude together? Absolutely no way that's happening."

**Senator Richard Blumenthal (D-CT)**, Ranking Member, Senate Homeland Security & Governmental Affairs Committee, Permanent Subcommittee on Investigations
"[AI labs] don't need a waiver to prevent catastrophic consequences as long as they're cooperating with some kind of governmental rubric or oversight."

### Prominent Antitrust Experts Agree an Antitrust Exemption for AI is Unwise, Unnecessary

**Lina Khan**, Former Chair, Federal Trade Commission (2021-2025)
"There's absolutely nothing stopping [AI labs] from slowing down the pace of these model development, and you don't actually need an antitrust exemption…. [I]t was that call for an antitrust exemption that set off a lot of red flags for people, because it suggested that maybe what is being asked for is some type of regulatory immunity and diverting attention from the fact that these companies do have all the authority and ability to do what they say needs to be done."

**Jonathan Kanter**, Former Assistant Attorney General, Department of Justice Antitrust Division (2021-2024)
Rejected the need for "any sort of antitrust exemption [for AI labs]," explaining "these companies do not need to coordinate in order to deliver safe and secure products to society…. There are areas where there is legitimate collaboration in the context of safety and security. For example, having a clearinghouse to properly share threats, malicious bots, or other things that you can create a repository for so that everyone can build safer products. Those are the kinds of

collaboration that happen in other industries and you don't need an antitrust exemption because the antitrust laws don't prohibit that kind of work."

**Antitrust Experts Have Explained that AI Labs Do Not Need an Antitrust Exemption to Promote Safety, Reduce Catastrophic Risk**

**David Lawrence**, Former Policy Director and Chief of the Competition Policy and Advocacy Section, Department of Justice Antitrust Division (2019-2026)
**"**Antitrust law would not prohibit an agreement among competing AI companies to slow progress in order to reduce catastrophic risk…. Suffice it to say that catastrophic risks reduce output. They cut off all output should the catastrophe arise, and in the meanwhile they discourage investment. So agreements that prevent them increase output and promote competition. The antitrust laws absolutely permit what would ordinarily be per se unlawful competitor agreements when they are subordinate and collateral to a productive joint arrangement that increases output…. Suffice it to say, that AI competitors agreeing on measures to reduce catastrophic risks—if appropriately crafted—could certainly qualify. The Antitrust Division previously took a similar position, publicly, on cybersecurity coordination among antivirus firms."

**Fiona Scott Morton**, Former Chief Economist, Department of Justice Antitrust Division (2011-2012)
"[S]tates, without any action from Congress or the White House, can provide AI companies with immunity from federal antitrust laws. All a state needs to do is articulate its policy interest (such as protecting its citizens from mass annihilation) and develop a scheme to oversee the conduct. Companies cooperating with each other under such a scheme cannot be held liable under federal antitrust laws. The relevant doctrine is called station-action immunity. As the name suggests, it provides immunity to private actors from federal antitrust laws, so long as the state's policy of displacing competition is 'clearly articulated and affirmatively expressed' and the private conduct is 'actively supervised by the state'…. State-action immunity for the AI industry benefits both the companies and the public. Companies obtain immunity from federal antitrust laws and can propose safeguards they believe will be effective to protect us all. The entire scheme is voluntary to enter, but compliance is not voluntary after the companies commit to certain behaviors. The public is ensured that any self-regulation or agreement between competitors advances AI product safety without limiting competition in other aspects of the companies' businesses. State supervisors will be in the room, overseeing and approving every aspect of the collaboration. Best of all, no federal legislation is required to implement the scheme."

## AI Industry Leaders Agree an Antitrust Exemption is Unnecessary,

**Jenson Huang**, CEO, Nvidia
"The fact that we need new laws, new antitrust laws, or new regulations, so that these companies could do their fundamental engineering and do it properly before they release products, that is just completely unnecessary. We have plenty of laws. We have plenty of regulations that govern the reliability and the functionality of products."

**Chris Lehane**, Chief Global Affairs Officer, OpenAI
Explained that OpenAI was operating "under the premise there is no need for an antitrust exemption [for AI]." "We do believe there is a real way to be able to work with other AI frontier labs on sharing information on standards." "We've already been doing work for several weeks on that front with a number of other labs."

**Aidan Gomez**, CEO, Cohere
"Should a handful of select, market-dominant AI companies from Silicon Valley get to define the rules and safety standards of a generational technology for the entire world? All the while simultaneously determining how fast this technology progresses?... Once again using fear under the pretext of protecting the public, these oligopolies are now requesting to bend competition rules and be permitted to dictate the terms for everyone else. A wolf in sheep's clothing, a cartel by any other name."