

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mrs. BLACKBURN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Tennessee.

FREE SPEECH

Mrs. BLACKBURN. Madam President, it seems like every other week we turn on the TV only to hear a pundit declare that we are living in the most divisive time in the history of our Nation. Now, as I am sure many would point out, especially if we were having this discussion on social media, those who lived through the Civil War and other contentious eras might have something to say about that, but we can all agree it is a contentious time.

What I know for sure is this: Every single day I see the American people losing the hope they once had in the absolute inviolability of our fundamental right to free speech and expression. They may not be too worried about official action changing those rights, but what they do see is a dwindling respect for what those rights mean outside of the context of what lawyers and lawmakers understand as protected speech. They are not thinking about Supreme Court cases. They are wondering what changed in the hearts and minds of their countrymen to turn simple disagreements into all-out war. They long for the days when they would have friendly banter with their neighbors and with their friends and discuss the issues of the day.

Well, over the past few months, I have watched this national discourse spiral to the point where most people I talked to back home believe that civil debate is just about impossible, and it worries them. What happened to mutual respect? What happened to point-counterpoint? What happened to civil discourse in the public square? What happened to sitting around the table after a Sunday School class and talking about how what you have discussed applies to the issues of the day? Have we lost it?

I have witnessed obvious efforts to threaten and intimidate conservative activists. I have watched these go unchecked by powerful legal figureheads who should have known better. And what is worse, these threats and intimidation tactics have spilled over into the online platforms millions of Americans use to check the news, stay connected to friends, and share updates on the lives of their families.

Now, I think we can agree that most of our friends in Silicon Valley who are in charge of those platforms harbor some liberal bias. That being said, I think we can also agree that doesn't mean they can't be objective when it comes to things like content moderation. Of course, that is not how it

works out in real life. The modern era's hostility toward debate provides those platforms with a perverse incentive just to flip the switch, shut down conservative voices, and then suggest that we had it coming all along: You shouldn't have been saying such. Well, we all know that this seems to be a one-sided argument.

Now, those in this Chamber who follow technology policy know that Big Tech uses the liability shield granted under section 230 of the Communications Decency Act to justify this type of censorship. In part, the statute reads:

No provider or user of an interactive computer service shall be held liable on account of—any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

Remember that “otherwise objectionable” catchall. That is going to be important. Congress originally constructed those provisions to protect startups and innovators from frivolous content moderation lawsuits that could either bankrupt their firms or severely restrict their access to venture capital. But, in reality, Big Tech has abused this privilege.

Now, listen to this part because this also is as important as that “otherwise objectionable” phrase. Congress originally constructed these provisions of section 230 to protect startups and innovators from frivolous content moderation lawsuits that could either bankrupt their firms or severely restrict their access to venture capital. This was done because the internet was in its infancy, and people wanted to make certain they could get their sea legs underneath them, have a little space, and be able to innovate. If they made mistakes, they would be able to rectify those mistakes and not get sued.

Those days are long gone, and, yes, Big Tech has abused this privilege. They became very comfortable with looking at section 230 and using it as a way to issue take-down notices, as a way to restrict content, and as a way to manipulate prioritization. It came in line with their thought processes and their ideas, but, in reality, we know that this has become an excuse to censor content that they disagree with in principle, and, in doing so, they have damaged—perhaps in some ways irreparably—the integrity of the national discourse.

The problem isn't just that they have unilaterally imposed their own preferred content filter into the browser and news feeds of millions of Americans and manipulated the availability and quality of the information; it is that in the process of doing so, they have trained their customers to expect that filter to cover their real-world interactions with people whose beliefs are much more diverse than those of the Silicon Valley's wealthiest residents.

You know, this is one of those Hollywood versus the heartland sorts of issues. They think they know better than the people across this country, so they feel that they can impose their own filter onto your browser and your news feed and thereby manipulate the availability and the quality of information to which you are going to have access, and they are doing it because they can, they think, because they have been using 230 as their shield.

Last week, I joined my colleagues Senators WICKER and GRAHAM to introduce the Online Freedom and Viewpoint Diversity Act, and I thank them for their willingness to work with me and to move a product to completion and introduction. To introduce this legislation means we are introducing accountability into our dealings with this notoriously opaque and unregulated industry.

To be clear, this piece of legislation isn't meant to construct a new set of guide rails that will let Washington dictate the inner workings of a platform's content moderation strategy. What it does is change the language of the existing statute to clarify some ambiguous terminology. Basically, you are clarifying who can use liability protection, when they can use it, how they can use it, and where it can be applied.

First and foremost, the bill clarifies those scenarios when an online platform's decision to restrict access—restrict it, censoring, diminishing, pushing it back—to certain types of content will result in their losing that section 230 shield. Did they do it because they wanted to or did they do it because it is language that should be shielded and taken down?

This provision will address those famously vague content moderation policies that are almost impossible for users to challenge. How many times have you looked at terms of service and how many times have you looked at community standards and said: I can't figure out what this means. Guess what. Most people cannot. And the online platform—it is fine with them if you can't figure it out. It gives them more latitude.

Next, it conditions the content moderation liability shield on a reasonableness standard. In order to be protected from liability, a tech company may only restrict access to content where it has an “objectively reasonable belief” that the content falls within a certain specified category.

So the purpose of this is to take away the benefit of the doubt. We want them to really think before restricting content. What they have done is just take it down—no fear that their hands would be slapped. And what do we know about Big Tech? They are going to push the envelope until they get their hands slapped.

So, instead of giving them the benefit of the doubt, the next time they decide they are going to go in here and they are going to take something down, we

want to give them pause. They need to think before they do that.

Our update removes the “otherwise objectionable” standard that I mentioned previously, and it replaces it with some specific terms that would protect platforms when they remove content that promotes terrorism, promotes self-harm, or is unlawful.

You know, it is a good thing when Congress can be specific in what they mean and when they can be specific in the intent of the law. Changing this language would provide that specificity that is needed.

Last but not least, the bill clarifies the definition of “information content provider” to include a person or entity that creates, develops, or editorializes information provided through the internet or any other online platform.

Now, this will help online publishers, periodicals, and websites that are news websites. But then you have Big Tech block them because somebody puts up something in the comment section that Big Tech doesn’t like. Of course, we all are familiar with Mark Zuckerberg saying that his company, Facebook, works more like a government than a corporation. So, this pulls back on what they have used as their control.

There has been a lot of discussion in this Chamber regarding the best way to handle section 230. Many argue that we would all be better off if Congress wiped the statute off the books and just got rid of it completely. But I will tell you, I fully believe that is a misguided approach. That strategy will not temper the effects of Big Tech’s bias because their bias stretches far beyond interactions that raise section 230 concerns.

This isn’t a simple issue. Those of us who have been working on section 230 for years are still studying the ripple effects these changes will bring. What we know for sure is that simply closing the book on section 230 via congressional decree would be like casting a protest vote against Big Tech’s bad behavior. It would be absolutely pointless.

Until we recognize the importance of clarifying and preserving liability protections for the internet we have now and not—not—the internet we had in 1996, Big Tech will keep pushing the boundaries until private corporations will become judge and jury over not only how Americans discover new information but what information is actually there to discover.

It is time for the U.S. Senate to step up, to do the work, and to write those changes into law.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Mark C. Scarsi, of California, to be United States District Judge for the Central District of California.

Mitch McConnell, Martha McSally, Tom Cotton, Rob Portman, Kevin Cramer, John Barrasso, Roy Blunt, John Boozman, Marco Rubio, Richard Burr, Mike Crapo, Roger F. Wicker, John Cornyn, Lamar Alexander, John Thune, Steve Daines, James Lankford.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Mark C. Scarsi, of California, to be United States District Judge for the Central District of California, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Louisiana (Mr. CASSIDY), the Senator from North Dakota (Mr. CRAMER), the Senator from Montana (Mr. DAINES), the Senator from Louisiana (Mr. KENNEDY), the Senator from Kansas (Mr. MORAN), the Senator from North Carolina (Mr. TILLIS), and the Senator from Pennsylvania (Mr. TOOMEY).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. COONS), the Senator from California (Ms. HARRIS), the Senator from Washington (Mrs. MURRAY), and the Senator from Vermont (Mr. SANDERS), are necessarily absent.

The PRESIDING OFFICER (Mr. SULLIVAN). Are there any other Senators in the Chamber desiring to vote or change their vote?

The yeas and nays resulted—yeas 77, nays 12, as follows:

[Rollcall Vote No. 169 Ex.]

YEAS—77

Alexander	Ernst	Menendez
Baldwin	Feinstein	Murkowski
Barrasso	Fischer	Murphy
Bennet	Gardner	Paul
Blackburn	Graham	Perdue
Blunt	Grassley	Peters
Boozman	Hassan	Portman
Braun	Hawley	Reed
Brown	Heinrich	Risch
Burr	Hoeven	Roberts
Capito	Hyde-Smith	Romney
Cardin	Inhofe	Rosen
Carper	Johnson	Rounds
Casey	Jones	Rubio
Collins	Kaine	Sasse
Cornyn	King	Schatz
Cortez Masto	Lankford	Scott (FL)
Cotton	Leahy	Scott (SC)
Crapo	Lee	Shaheen
Cruz	Loeffler	Shelby
Duckworth	Manchin	Sinema
Durbin	McConnell	Smith
Enzi	McSally	Stabenow

Sullivan	Udall	Wicker
Tester	Warner	Young
Thune	Whitehouse	

NAYS—12

Blumenthal	Hirono	Schumer
Booker	Klobuchar	Van Hollen
Cantwell	Markey	Warren
Gillibrand	Merkley	Wyden

NOT VOTING—11

Cassidy	Harris	Sanders
Coons	Kennedy	Tillis
Cramer	Moran	Toomey
Daines	Murray	

The PRESIDING OFFICER. On this vote, the yeas are 77, the nays are 12.

The motion is agreed to.

The majority leader.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII, the confirmation vote with respect to the Scarsi nomination occur at 10:30 a.m. tomorrow; further, if cloture is invoked on the Blumenfeld nomination, the postcloture time with respect to the Blumenfeld nomination expire at 2:15 p.m. tomorrow, the Senate vote on confirmation of the nomination, and following disposition of the Blumenfeld nomination, the Senate vote on the motions to invoke cloture on the Holcomb and Robinson nominations in the order listed; further, if cloture is invoked on the Holcomb nomination, the postcloture time with respect to the nomination expire at 5:15 p.m. tomorrow and the Senate vote on the confirmation of the nomination. I further ask that if cloture is invoked on the Robinson nomination, the postcloture time expire at a time to be determined by the majority leader in consultation with the Democratic leader on Wednesday, September 16; finally, that if any of the nominations are confirmed, the motions to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate’s action.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Ridgway, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

In executive session the Presiding Officer laid before the Senate a message