

“Proposals to Strengthen the Antitrust Laws and Restore Competition Online”

**United States House of Representatives
Committee on the Judiciary
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Statement for the Record

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Chairman Cicilline, Ranking Member Sensenbrenner, Chairman Nadler, Ranking Member Jordan, and members of the committee, thank you for the opportunity to testify today.

A growing bipartisan consensus is emerging against the power of the Big Tech companies. This consensus is based on the recognition that corporate hegemony – that is, concentrated power exercised at scale – can be a threat to individual liberty, the free market, and independent thought in a free society.

To that end, I started the Internet Accountability Project (IAP) with Mike Davis in September of 2019 to give a voice to conservatives concerned about the growing, concentrated power of Big Tech. Since founding the group last year, our concerns have only been amplified by the COVID-19 pandemic, the upcoming election, and the role Big Tech plays in both.

In addition to raising awareness about the dangers of corporate power exercised at this scale, IAP has focused its efforts on three areas of policy remedy: antitrust enforcement, data privacy and ownership, and reform of Section 230 – which one pro-tech law professor has identified as Big Tech’s “implicit financial subsidy.”¹

My remarks today will focus on the viewpoint discrimination exercised by these platforms and its downstream effects, and on Sec. 230 reform and antitrust enforcement as potential remedies to the broad and multifaceted issues that exist when corporate power is wielded without accountability against both independent thought and the free market.

I. Big Tech’s Viewpoint Discrimination

As these Big Tech companies have grown, so too has their ability to filter information for billions of people around the world – that is, to control what they see, when, and what they can say.

Through its dominance of the search engine market, Google now decides how to filter information for 92 percent of the world² – and 87 percent of the United States.³ One content decision by Google has enormous ramifications on what information is displayed, or what businesses are promoted. Facebook, with its nearly 3 billion active monthly users, has similar power to influence what users see and do not see.

Such decisions, when made at scale, have downstream effects on individual development of opinions and beliefs. They can single-handedly change the shape of markets – as is evidenced in the market disruptions that occur every time Google updates its core algorithm.

¹ Eric Goldman, *Want to Kill Facebook and Google? Preserving Section 230 is Your Best Hope*, in *NEW CONTROVERSIES IN INTERMEDIARY LIABILITY LAW ESSAY COLLECTION* (Tiffany Li ed., 2019), available at https://law.yale.edu/sites/default/files/area/center/isp/documents/new_controversies_in_intermediary_liability_law.pdf.

² *Search Engine Market Share Worldwide*, STATCOUNTER, <https://gs.statcounter.com/search-engine-market-share>. (last visited Sept. 30, 2020).

³ *Search Engine Market Share United States of America*, STATCOUNTER, <https://gs.statcounter.com/search-engine-market-share/all/united-states-of-america>. (last visited Sept. 30, 2020).

Conservatives feel the exercise of this power acutely. Content moderation and market power has been used by some of the major tech platforms with impunity against conservative political ads, fundraising opportunities, conservative news outlets, and even against the Twitter accounts belonging to members of this committee.

While such concerns are routinely dismissed as “anecdotal,” or “unproven,” the lack of transparency provided by these companies into their decision-making, and their promotion and amplification of algorithms, renders those claims as unverifiable as the ones they seek to invalidate. In other words, neither claim can be affirmatively proven or disproven.

As *VICE News* remarked after an image of Twitter’s internal content moderation panels leaked, prominently displaying the phrases “search blacklist” and “trends blacklist” (emphasis added):

We can’t say with 100 percent certainty how the “Blacklist” tags work because we don’t have full visibility into Twitter’s moderation mechanism. We can see its public facing policy, but not debates inside of the company, and more critically, the technical process by which accounts are suspended, banned, or prevented from appearing in search.

This opacity creates a situation where a devastating lapse in Twitter’s security leads to a leaked image of an internal panel that contains the word “Blacklist,” which Twitter doesn’t use when talking about moderation, and which sounds more sinister than it is. **For years, academics, journalists, and yes, conservatives, have been demanding more transparency; these are the kinds of scandals that happen when a company’s internal language is different from its carefully crafted blog posts and announcements.**⁴

Mark MacCarthy, a senior fellow at the Institute for Technology Law and Public Policy at Georgetown Law, has also noted that the easiest way to dispel accusations of bias is for the tech companies to allow researchers to look under the hood:

If social media companies are selectively enforcing their rules more vigorously against conservatives than against other points of view, independent researchers should be able to verify this if they have sufficient access to social media data.⁵

To date, however, none of the Big Tech companies have provided regular and system wide algorithmic and content moderation transparency; though, depending on how President Trump’s recent executive order on Sec. 230 is implemented, they may soon be required to do so. In the meantime, conservatives are left with case after case of what appears to be a systemic double standard applied by employees of these tech companies, whose staff are notably liberal.⁶

⁴ Emanuel Maiberg, *Twitter ‘Blacklists’ Lead the Company Into Another Trump Conspiracy*, VICE (July 16, 2020), https://www.vice.com/en_us/article/n7wxd/twitter-blacklists-lead-the-company-into-another-trump-supporter-conspiracy.

⁵ Mark McCarthy, *Trump’s Social Media Executive Order is a Huge Opportunity*, THE HILL (May 30, 2020), <https://thehill.com/opinion/technology/500248-trumps-social-media-executive-order-is-a-huge-opportunity>.

⁶ See, e.g., Steven Onerly, *Twitter Public Policy Director Decamps for Biden Transition Team*, POLITICO (Sept. 17, 2020), <https://www.politico.com/news/2020/09/17/twitter-public-policy-director-decamps-for-biden-transition-team-417293>; Emily Birnbaum, *Trump Supporters are on the Attack Against Yoel Roth. Twitter is Standing by Him*,

The control that a handful of corporations have over speech has become clear during COVID-19, and the runup to the 2020 election.

Facebook has taken on “fact-checking” with new parameters and absurd outcomes using the notably opaque and subjective category of “missing context.” Already, this has been used by PolitiFact to remove digital ads from conservative groups like the American Principles Project.

Facebook recently applied this same cudgel against conservative comedian Tim Young, who wrote an opinion piece speculating on what President Obama would have done if he had been presented with a Supreme Court vacancy. Absurdly, a fact check by *USA Today* claimed that an opinion piece speculating about a hypothetical scenario was too dangerous to appear on Facebook or Instagram (owned by Facebook) without a warning label.⁷

These platforms are also now in the medical profession, insofar as they determine what constitutes “appropriate” medical information for their users. Google, Facebook, YouTube, Twitter, and other platforms have banned board-certified physicians from discussing the efficacy of hydroxychloroquine as a COVID-19 treatment,⁸ and positing alternative viewpoints about viral spread and how best to contain it.⁹

In April, Facebook made headlines by removing content promoting anti-lockdown protests for violating social distancing guidelines in certain jurisdictions.¹⁰ However, Facebook embraced no such pseudo-governmental enforcement role against more recent protest activities organized on their platform in violation of local ordinances.¹¹

PROTOCOL (May 27, 2020), <https://www.protocol.com/yoel-roth-twitter-president-tweets>; Sheera Frenkel, *Facebook Employees Stage Virtual Walkout to Protest Trump Posts*, THE NEW YORK TIMES (June 1, 2020), (<https://www.nytimes.com/2020/06/01/technology/facebook-employee-protest-trump.html>); Jillian D’Onfro, *Leaked Video Shows Upset Alphabet Executives Responding to President Trump’s Election in Company-wide Meeting*, CNBC (Sept. 12, 2018), <https://www.cnbc.com/2018/09/12/leaked-video-from-alphabet-tgif-meeting-after-president-trump-election.html>; Joana Pearlstein, *Techies Donate to Clinton in Drove. Trump? Not so much*, WIRED (Aug. 31, 2016), <https://www.wired.com/2016/08/techies-donate-clinton-drove-trump-not-much/>; Fredreka Schouten, *Employees of Four Big Tech Companies show lopsided support for Biden campaign*, CNN (Sept. 28, 2020), <https://www.cnn.com/2020/09/28/politics/big-tech-joe-biden/index.html>.

⁷ Tim Young (@TimRunsHisMouth), TWITTER, (Sept. 24, 2020, 11:27 PM), <https://twitter.com/TimRunsHisMouth/status/1309333695032184832?s=20>.

⁸ Jon Passantino and Oliver Darcy, *Social Media Giants Remove Viral Video with false coronavirus claims that Trump tweeted*, CNN (July 28, 2020), <https://www.cnn.com/2020/07/28/tech/facebook-youtube-coronavirus/index.html>.

⁹ Hal Scherz, *Why Banning Doctors with Different Ideas is Bad for Public Health*, THE FEDERALIST (May 8, 2020), <https://thefederalist.com/2020/05/08/why-banning-doctors-with-different-ideas-from-youtube-is-bad-for-public-health/>.

¹⁰ Georgia Wells and Andrew Restuccia, *Facebook Puts Limits on Protest Organizers*, THE WALL STREET JOURNAL (Apr. 20, 2020), <https://www.wsj.com/articles/facebook-curbs-organizing-of-lockdown-protests-11587419628>.

¹¹ New Black Panther Block Party for Self-Defense, New Black Panther Block Party, FACEBOOK (Aug. 28, 2020), [https://www.facebook.com/events/2297086643933094/?acontext=%7B%22event_action_history%22%3A\[%7B%22mechanism%22%3A%22search_results%22%2C%22surface%22%3A%22search%22%7D\]%7D](https://www.facebook.com/events/2297086643933094/?acontext=%7B%22event_action_history%22%3A[%7B%22mechanism%22%3A%22search_results%22%2C%22surface%22%3A%22search%22%7D]%7D).

Google's YouTube recently removed an interview with Dr. Scott Atlas, a neuroradiologist and professor at Stanford University Medical Center and an advisor on the White House Coronavirus Task Force. The interview was a data-driven discussion about the social harms of sustained lockdowns. Notably, the interview, which was broadcast in June, was not declared to be "medical misinformation" until after Dr. Atlas joined the White House's Coronavirus Task Force in August.

The platforms routinely cite the World Health Organization (WHO) as the arbiter of what can and cannot be said about medical science on its platform. However, the WHO has shown it can be swayed by China's Communist Party, and as recently as January confidently relayed Chinese assertions that there is "no clear evidence of human-to-human transmission" of the virus.¹²

Facebook has also acted as the arbiter of due process rights for Kyle Rittenhouse, the teen charged with fatally shooting two people amid the riots in Kenosha, Wisconsin. Rittenhouse's attorney says his client acted in self-defense, but Facebook has blocked all posts in praise and support of him, and taken down links to contribute to his legal defense.¹³ Facebook, by its own admission one of the most powerful speech companies in the world,¹⁴ has already declared him guilty of mass violence, and restricted the use of its platform to reflect their subjective, extralegal judgement.

Google has unprecedented power to filter information for most of the planet and seems to flex this muscle with impunity. A 2019 investigation by the *Wall Street Journal* found that Google "made algorithmic changes to its search results that favor big businesses over smaller ones," and modified search results around subjects like abortion and immigration.¹⁵ In June, Google demonstrated how much power it has to demonetize entire news sites for minor violations of its ad policies.¹⁶ In July, the search engine inexplicably stopped presenting search results for several leading conservative websites.¹⁷ Breitbart News has presented analysis suggesting conservative sites are routinely downgraded.¹⁸

The gatekeeping role of these mega-platforms is taking on broad and opaque roles as it relates to the upcoming election. Big Tech's influence on voter behavior has already been well-

¹² World Health Organization (@who), TWITTER, (Jan. 14, 2020, 6:18 AM), <https://twitter.com/WHO/status/1217043229427761152?s=20>.

¹³ The Editorial Board, *Facebook's Rittenhouse Mistake*, THE WALL STREET JOURNAL (Sept. 4, 2020), <https://www.wsj.com/articles/facebooks-rittenhouse-mistake-11599260134>.

¹⁴ Tony Romm, *Zuckerberg: Standing for Voice and Free Expression*, THE WALL STREET JOURNAL (Oct. 17, 2019), <https://www.washingtonpost.com/technology/2019/10/17/zuckerberg-standing-voice-free-expression/>.

¹⁵ Kirsten Grind, Sam Schechner, Robert McMillan, and John West, *How Google Interferes with its Search Algorithms and Changes Your Results*, THE WALL STREET JOURNAL (Nov. 15, 2019), <https://www.wsj.com/articles/how-google-interferes-with-its-search-algorithms-and-changes-your-results-11573823753>.

¹⁶ Ben Domenech and Sean Davis, *NBC Tries to Cancel a Conservative Website*, THE WALL STREET JOURNAL (June 17, 2020), <https://www.wsj.com/articles/nbc-tries-to-cancel-a-conservative-website-11592410893>.

¹⁷ Rod Dreher, *Google Blacklists Conservative Websites*, THE FEDERALIST (July 21, 2020), <https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/>.

¹⁸ Allum Bokhari, *Election Interference: Google Purges Breitbart from Search Results*, BREITBART NEWS (July 28, 2020), <https://www.breitbart.com/tech/2020/07/28/election-interference-google-purges-breitbart-from-search-results/>.

documented. Center-left leaning research psychologist Dr. Robert Epstein testified before the Senate Judiciary Committee that Google “displays content to the American public that is biased in favor of one political party.” He estimated Google’s search behavior, which he tested against other search engines in the weeks leading up to the 2016 election, swung as many as 2.6 million votes to Clinton. He also estimates that Google’s algorithmic filtering has “been determining the outcomes of upwards of 25 percent of the national elections worldwide since at least 2015.”¹⁹

Facebook and other tech platforms are reportedly “war gaming” different election outcomes, as well as meeting with government officials about “potential threats to election integrity.” “Digital platforms,” according to reports, are now as important as state and local elections agencies in “protecting public confidence” as it relates to “faith in democracy.”²⁰

The legality of content moderation itself is not at issue—but rather, the profound impact these actions have on the nature of free thought and expression when done at the scale at which these companies exist. A single algorithmic decision made by a private corporation, accountable to no one, changes what kind of viewpoints and information are available to billions of people around the world.

The appropriate remedy is not to suppress speech or politicize the platforms themselves, but to reform the tools these platforms use to control what we see, and to ensure that consumers have the power to engage with that process. It is also incumbent upon our antitrust enforcement agencies to ensure that whatever actions these tech companies are taking, they are not doing so with monopoly power.

II. Remedies

a. Section 230

A comprehensive approach to combating Big Tech’s power will include reforms to Sec. 230, Big Tech’s congressionally created liability shield. Multiple Sec. 230 reform efforts are simultaneously happening at once, but all of them share one common goal: to make the recipients of Sec. 230’s benefits more transparent and accountable to their users in exchange for the statutory legal privilege they receive.

The initial intent and purpose of Section 230 was to provide a very narrow immunity designed to give platforms the freedom to filter content that is “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable” without fear of liability.

Unfortunately, embedded in that section is a catch-all phrase, “otherwise objectionable,” that gives tech platforms discretion to censor anything that *they* deem “otherwise objectionable.” Such broad language lends itself in practice to arbitrariness.

¹⁹ *Google and Censorship through Search Engines: Hearing Before the United States Senate Judiciary Subcomm. on the Const.*, 116 Cong. 1 (2019) (Statement of Dr. Richard Epstein), <https://www.judiciary.senate.gov/imo/media/doc/Epstein%20Testimony.pdf>.

²⁰ Kyle Daley, *Chaos Scenarios drive ‘Gatekeepers’ Election Prep*, AXIOS (Sept. 3, 2020), <https://www.axios.com/2020-election-gatekeepers-chaos-scenarios-84181512-1fca-4b84-8c10-e95e02e95f61.html>.

The intended protections were designed to protect the “good Samaritan” behavior of these platforms to remove smutty content online at a time when infant tech companies needed protection from massive liability. In today’s Big Tech era, it has created extraordinary legal protections for these massive companies from lawsuits that challenge their suppressive, discriminatory power over the lawful viewpoints of everyday Americans.

Conservatives are concerned with both sides of the Sec. 230’s judicially bloated immunity: that which empowers tech platforms to engage in viewpoint discrimination without recourse, and the shield it gives to tech companies to ignore the harmful content that facilitates unlawful conduct. The parade of horrors is long and indefensible, and includes child pornography, revenge porn, and terrorist conduct.

As law professor Mary Graw Leary stated in testimony to the Senate Judiciary Committee earlier this year, Sec. 230 “was created with the goal of shielding children from objectionable content, protecting good Samaritans, and protecting a nascent internet. The internet is no longer nascent, and children are at risk of exploitation at unprecedented levels.”²¹

This latter part is, disturbingly, true. A *New York Times* report published in February revealed that reports of online sexual abuse grew by more than 50 percent in 2019, “an indication that many of the world’s biggest technology platforms remain infested with the illegal content.”²² Between 2017 and 2018, the National Center for Missing and Exploited Children’s CyberTipline saw a 541 percent increase in videos reported containing the sexual abuse of children.²³

Some argue that it is simply the prosecutorial arm of the Department of Justice (DOJ) that needs better resourcing. However, the issue for the tech platforms is less the prosecution of offenders than it is their failure to remove the images from circulation. In one case presented to the Senate Judiciary Committee, images of one child’s abuse were on more than 160,000 websites.²⁴ There is far more these platforms can do to target the preservation and circulation of this content.

As Senator John Kennedy (R-La.) put it in March, “some people respond to light, others respond to heat, and I bet if we took away the 230 protection, these companies would feel both light and heat.”²⁵

²¹ The EARN It Act: Holding the Tech Industry Accountable in the Fight Against Online Child Exploitation: *Hearing Before the United States Senate Judiciary Comm.*, 116 Cong. 2 (2020) <https://www.judiciary.senate.gov/meetings/the-earn-it-act-holding-the-tech-industry-accountable-in-the-fight-against-online-child-sexual-exploitation>.

²² Gabriel J.X. Dance and Michael H. Keller, *Tech Companies Detect a Surge in Vides of Child Sexual Abuse*, THE NEW YORK TIMES (Feb. 20, 2020), <https://www.nytimes.com/2020/02/07/us/online-child-sexual-abuse.html>.

²³ *Id.*

²⁴ The EARN It Act: Holding the Tech Industry Accountable in the Fight Against Online Child Exploitation: *Hearing Before the United States Senate Judiciary Comm.*, 116 Cong. 2 (2020) (Statement by Nicole, Mother of a Child Whose Sexually Abusive Images were Circulated Online) <https://www.judiciary.senate.gov/imo/media/doc/Nicole%20Testimony.pdf>.

²⁵ The EARN It Act: Holding the Tech Industry Accountable in the Fight Against Online Child Exploitation: *Hearing Before the United States Senate Judiciary Comm.*, 116 Cong. 2 (2020)

The DOJ recently put forward a proposal that aims to address both viewpoint bias and the harmful content which Sec. 230 enables. A summary of their proposal is as follows:

Incentivizing Online Platforms to Address Illicit Content

- The DOJ has proposed denying Sec. 230 protections to truly bad actors that “purposely facilitate or solicit third-party content or activity that would violate federal criminal law.”
- The DOJ’s reform also carves out from a liability shield any material that includes child exploitation and sexual abuse, terrorism, and cyber-stalking.
- Also left unprotected by Sec. 230 would be any platform that had actual knowledge or notice that the third-party content violated federal criminal law or was otherwise provided with a court judgment holding that the content is unlawful in any respect.

Clarifying Federal Enforcement Capabilities to Address Unlawful Content

- The DOJ reform legislation also increases the protection of Americans by making clear that Sec. 230 does not bar civil enforcement actions brought by the federal government.

Promoting Competition

- The DOJ also would reform Sec. 230 to explicitly clarify that federal anti-trust claims are not barred by Sec. 230, which only protects against the publication of third-party speech and not liability for anti-competitive behavior.

Promoting Open Discourse and Greater Transparency

- The DOJ reform proposal would specifically replace the vague “otherwise objectionable” language in (c)(2) with “unlawful” and “promotes terrorism.” This would focus on the core objective of Sec. 230 and remove platforms’ ability to remove content arbitrarily based on subjective determinations.
- The draft legislation adds a statutory definition of “good faith” in order to provide more accountability and transparency and to prevent hiding behind the Sec. 230 shield regardless of intent.
- Lastly, the DOJ suggests explicitly overruling *Stratton Oakmont, Inc. v Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. 1995) to clarify that a platform’s removal of content does not, on its own, render the platform a publisher or speaker for all the content on its site.

Given how pervasive content curation is on online platforms, I believe Congress should consider whether this blanket immunity continues to be justified when platforms actively amplify or suppress the content of others – either through human moderators or their algorithms.

b. Antitrust

Antitrust enforcement, the subject of this committee's remit, is equipped to tackle Big Tech's anti-competitive dominance in multiple sectors of the marketplace.

This committee has heard testimony about various antitrust concerns: if and how Amazon prioritizes its products and services over those of its partners and competitors; Google's dominance in online advertising; Facebook's acquisition strategy for smaller competitors; and if and how Apple favors its own products through the App Store. You have also heard compelling testimony from small businesses about wanton and aggressive anti-competitive behavior by Big Tech giants.

Small businesses are not the only competitors impacted, however. Entire industries are at the mercy of Big Tech's power. As the National Association of Broadcasters told this committee in a statement earlier this month:

It is no answer to tell broadcasters that, if they feel disadvantaged by the policies and revenue opportunities offered by the dominant platforms, they can decline to publish their content on Google, YouTube or Facebook and forego availability via various apps or devices. Because hundreds of millions of U.S. consumers use Facebook, Google and YouTube, and own smartphones, tablets and smart speakers produced by companies like Apple and Amazon, local stations have no real choice. Beyond offering over-the-air services, broadcasters must be available on all major platforms and types of devices to remain relevant to audiences and advertisers in the digital age. As a result, TV and radio stations lack bargaining power when dealing with the digital giants that have become gatekeepers for content providers, including local media outlets, seeking to reach audiences and monetize their content online. The digital giants have clear financial incentives to keep consumers engaged with their own platforms, content and apps, and lack effective incentives to adopt policies and practices that promote or financially reward the providers of other content, including local news.

In short, the dominance of the leading digital platforms significantly and increasingly impairs broadcasters' ability to earn the ad revenues needed to support production of local news and information.²⁶

News publishers have also long argued that Google uses its dominance to force publishers to give up their content without adequate compensation. As the News Media Alliance put it:

In today's digital age, the tech giants' dual control over news distribution and monetization threatens the very survival of news organizations. These tech giants use secret, unpredictable algorithms to determine how and even whether content is delivered to readers. They scrape news organizations' content and use it to their own ends, without

²⁶ Online Platforms and Market Power, Part I: The Free and Diverse Press: *Hearing Before the United States House Judiciary Comm. on Antitrust, Commercial and Admin. Law*, 116 Cong. 2 (2020) (Statement by Gordon H. Smith) http://www.nab.org/documents/newsRoom/pdfs/09220_HJC_Local_Journalism_At_Risk_Submission.pdf.

permission or remuneration for the companies that generated the content in the first place. They also suppress news organizations' brands, control their data, and refuse to recognize and support quality journalism. In effect, a couple of dominant tech platforms are acting as regulators of the digital news industry. Only these regulators are unconstrained by legislative or democratic oversight. And their primary motivation is not to serve the public interest, but rather to maximize their own advertising revenues. Indeed, two dominant platforms—Google and Facebook—now take the vast majority of U.S. online ad revenue through their online advertising services, leaving news organizations with little to reinvest in high-quality, original journalism. They capture that revenue in two ways. First, they scrape news organizations' content and display it on their own pages, where they can monetize it through ads. Second, they control the advertising technology news organizations use to sell ads on their own sites, and the platforms charge increasingly exorbitant fees for the use of those technologies.²⁷

While Congress cannot enforce the antitrust law itself, it has a critical role to play in performing the oversight which ensures the responsible agencies are adequately policing the market. It is critical that these agencies have both the congressional support and resources to assess the growing dominance of billion-dollar companies in the market. Many times, this involves reviewing if previous agency decisions were wisely made.

For example, William Kovacic, appointed by President George W. Bush to the Federal Trade Commission and later its chair, voted to approve Google's acquisition of the ad technology company DoubleClick. Kovacic recently told the *New York Times*, "If I knew in 2007 what I know now, I would have voted to challenge the DoubleClick acquisition."²⁸

Many on the Right take issue with the use of antitrust enforcement against Big Tech firms. Their claims are generally summarized as follows:

- Antitrust is being used by conservatives as a political tool to go after Big Tech platforms they do not like.
- Antitrust cannot solve speech concerns
- Discussions of antitrust enforcement are actually proxies for updating antitrust law away from the consumer welfare standard.

I will take these claims one at a time. First, the bipartisan efforts and wide-ranging remedies under discussion make clear that there is growing awareness among legislators that Big Tech's unchecked power in specific circumstances warrants review. Big Tech isn't being singled out for

²⁷ Online Platforms and Market Power, Part I: The Free and Diverse Press: *Hearing Before the United States House Judiciary Comm. on Antitrust, Commercial and Admin. Law*, 116 Cong. 2 (2020) (Statement by David Chavern) (<https://docs.house.gov/meetings/JU/JU05/20190611/109616/HHRG-116-JU05-Wstate-ChavernD-20190611.pdf>).

²⁸ Steve Lohr, *This Deal Helped Turn Google into an Ad Powerhouse. Is that a Problem?*, THE NEW YORK TIMES (Sept. 21, 2020), <https://www.nytimes.com/2020/09/21/technology/google-doubleclick-antitrust-ads.html>.

its own sake; rather, specific actions – antitrust violations, viewpoint discrimination, and the facilitation of various criminal acts – are being targeted.

Second, antitrust’s application to “speech concerns” may not be direct, but proper enforcement of the law against violations could certainly have tangential effects. Antitrust enforcement does not occur in a vacuum. Enforcing against the monolithic dominance of these companies in one sector, if warranted, could free up the market in such a way that concerns over viewpoint bias could be competed away in ways which Big Tech’s market dominance now makes impossible.

Third, it is the view of myself and the Internet Accountability Project that our antitrust laws do not need to be updated; that the laws on the books are sufficient for tackling per se violations of antitrust as they exist in the tech sector. Antitrust enforcement is law enforcement. As conservatives, we do not support legal amnesty for those who violate our nation’s laws – and this should extend to corporations who violate competition laws in the market.

Conservatives who rightly champion the innovation generated by a free market should be equally vigilant about maintaining its integrity. To repurpose the old adage from Ronald Reagan, “trust, but verify.”

As Congressman Ken Buck (R-Colo.), a member of this committee, has rightly noted:

Big isn’t inherently bad and we should celebrate American success stories. However, when companies use their success as a bat to bludgeon smaller rivals, Congress must address the root causes of these inequities to ensure the American dream remains attainable for all Americans.²⁹

III. Conclusion

When it comes to the expansive power of Big Tech, the question really distills to one of who will rule. In America, it should not be the bureaucrats; it should not be the mob; it should not be the tech oligarchs. Rather, in America, it is the people who rule through our system of self-government. “I will not willingly cede more power to anyone, not to the state, not to General Motors, said William F Buckley in *Up From Liberalism*. “I will hoard my power like a miser, resisting every effort to drain it away from me.”³⁰

Conservatism follows a tradition of skepticism when it comes to concentrations of power. In 1960, Barry Goldwater wrote *Conscience of a Conservative*. Goldwater – America’s first libertarian politician, according to Reason magazine³¹ – had a prescient and applicable reminder for American conservatives today. “Let us henceforth make war on all monopolies—whether

²⁹ Ken Buck, David Peterson, Michael Sall, and Sam Ashenberner, *Breaking Up or Better Regulating Big Tech?*, THE WALL STREET JOURNAL (Sept. 20, 2020), <https://www.wsj.com/articles/breaking-up-or-better-regulating-big-tech-11600622572>.

³⁰ WILLIAM F. BUCKLEY, JR., UP FRONT LIBERALISM 1 (1959)

³¹ Robert W. Poole, Jr., *In Memoriam: Barry Goldwater – Obituary*, REASON, Aug. 1998, at https://arquivo.pt/wayback/20090628123204/http%3A//findarticles%2Ecom/p/articles/mi_m1568/is_n4_v30/ai_20954419/.

corporate or union,” he noted. “The enemy of freedom is unrestrained power, and the champions of freedom will fight against the concentration of power wherever they find it.”³²

But perhaps it is Russell Kirk, one of the founding fathers of conservative thought, who surmised the challenge most aptly: “Our conservative task is to reconcile personal freedom with the claims of modern technology, and to try to humanize an age in which [Permanent] Things are in the saddle.”³³

³² BARRY M. GOLDWATER, *CONSCIENCE OF A CONSERVATIVE* 1 (1971).

³³ RUSSELL KIRK, *RUSSELL KIRK’S GUIDE TO CONSERVATISM* 1 (1957).