The Case against Social Media Content Regulation

Reaffirming Congress' Duty to Protect Online Bias, "Harmful Content," and Dissident Speech from the Administrative State

By Clyde Wayne Crews, Jr.

June 2020

ISSUE ANALYSIS 2020 NO. 4

COMPETITIVE ENTERPRISE INSTITUTE

CEI

The Case against Social Media Content Regulation

Reaffirming Congress' Duty to Protect Online Bias, "Harmful Content," and Dissident Speech from the Administrative State

By Clyde Wayne Crews, Jr.

Executive Summary

As repeatedly noted by most defenders of free speech, expressing popular opinions never needs protection. Rather, it is the commitment to protecting dissident expression that is the mark of an open society. On the other hand, no one has the right to force people to transmit one's ideas, much less agree with them.

However, the flouting of these principles is now commonplace across the political spectrum. Government regulation of media content has recently gained currency among politicians and pundits of both left and right. In March 2019, for example, President Trump issued an executive order directing that colleges receiving federal research or education grants promote free inquiry. And in May 2020 he issued another addressing alleged censorship and bias by allegedly monopolistic social media companies.

In this political environment, policy makers, pressure groups, and even some technology sector leaders—whose enterprises have benefited greatly from free expression—are pursuing the imposition of online content and speech standards, along with other policies that would seriously burden their emerging competitors.

The current social media debate centers around competing interventionist agendas. Conservatives want social media titans regulated to remain neutral, while liberals tend to want them to eradicate harmful content and address other alleged societal ills. Meanwhile, some maintain that Internet service should be regulated as a public utility.

Blocking or compelling speech in reaction to governmental pressure would not only violate the Constitution's First Amendment—it would require immense expansion of constitutionally dubious administrative agencies. These agencies would either enforce government-affirmed social media and service provider deplatforming—the denial to certain speakers of the means to communicate their ideas to the public—or coerce platforms into carrying any message by actively policing that practice. When it comes to protecting free speech, the brouhaha over social media power and bias boils down to one thing: The Internet—and any future communications platforms—needs protection from both the bans on speech sought by the left and the forced conservative ride-along speech sought by the right.

In the social media debate, the problem is not that big tech's power is unchecked. Rather, the problem is that social media regulation—by either the left or right—would make it that way. Like banks, social media giants are not too big to fail, but regulation would make them that way.

American values strongly favor a marketplace of ideas where debate and civil controversy can thrive. Therefore, the creation of new regulatory oversight bodies and filing requirements to exile politically disfavored opinions on the one hand, and efforts to force the inclusion of conservative content on the other, should both be rejected.

Much of the Internet's spectacular growth can be attributed to the immunity from liability for user-generated content afforded to social media platforms—and other Internet-enabled services such as discussion boards, review and auction sites, and commentary sections—by Section 230 of the 1996 Communications Decency Act. Host takedown or retention of undesirable or controversial content by

"interactive computer services," in the Act's words, can be contentious, biased, or mistaken. But Section 230 does not require neutrality in the treatment of user-generated content in exchange for immunity. In fact, it explicitly protects non-neutrality, albeit exercised in "good faith."

Section 230's broad liability protection represented an acceleration of a decades-long trend in courts narrowing liability for publishers, republishers, and distributors. It is the case that changes have been made to Section 230, such as with respect to sex trafficking, but deeper, riskier change is in the air today, advocated for by both Republicans and Democrats. It is possible that some content removals may happen in bad faith, or that companies violate their own terms of service, but addressing those on a case-by-case basis would be a more fruitful approach. Section 230 notwithstanding, laws addressing misrepresentation or deceptive business practices already impose legal discipline on companies.

Regime-changing regulation of dominant tech firms—whether via imposing online sales taxes, privacy mandates, or speech codes—is likely not to discipline them, but to make them stronger and more impervious to displacement by emerging competitors.

The vast energy expended on accusing purveyors of information, either on mainstream or social media, of bias or of inadequate removal of harmful content should be redirected toward the development of tools that empower users to better customize the content they choose to access.

Existing social media firms want rules they can live with—which translates into rules that future social networks cannot live with. Government cannot create new competitors, but it can prevent their emergence by imposing barriers to market entry.

At risk, too, is the right of political—as opposed to commercial—anonymity online. Government has a duty to protect dissent, not regulate it, but a casualty of regulation would appear to be future dissident platforms.

The Section 230 special immunity must remain intact for others, lest Congress turn social media's economic power into genuine coercive political power. Competing biases are preferable to pretended objectivity. Given that reality, Congress should acknowledge the inevitable presence of bias, protect competition in speech, and defend the conditions that would allow future platforms and protocols to emerge in service of the public.

The priority is not that Facebook or Google or any other platform should remain politically neutral, but that citizens remain free to choose alternatives that might emerge and grow with the same Section 230 exemptions from which the modern online giants have long benefited. Policy makers must avoid creating an environment in which Internet giants benefit from protective regulation that prevents the emergence of new competitors in the decentralized infrastructure of the marketplace of ideas.

Introduction

> [A]t some level the question of what speech should be acceptable and what is harmful needs to be defined by regulation.[1]
>
> —Facebook CEO Mark Zuckerberg, to reporters after meeting with French President Emmanuel Macron in Paris, May 10, 2019

> Congress shall make no law … abridging the freedom of speech, or of the press.
>
> —U.S. Constitution, Amendment I

As repeatedly noted by most defenders of free speech, expressing popular opinions never needs protection. Rather, it is the commitment to protecting dissident expression that is the mark of an open society. On the other hand, no one has the right to force people to transmit one's ideas, much less agree with them.

However, the flouting of these principles is now commonplace across the political spectrum. Government regulation of media content seemed unthinkable not so long ago, yet it has recently gained currency among politicians and pundits of both left and right. In March 2019, for example, President Trump issued an executive order directing that colleges receiving federal research or education grants promote free inquiry.[2] In May 2020 he issued another addressing alleged censorship and bias by allegedly "monopolistic" social media companies.[3]

In this political environment, policy makers, pressure groups, and even some technology sector leaders—whose enterprises have benefited greatly from free expression—are pursuing the imposition of online content and speech standards, along with other policies that would seriously burden their emerging competitors. Examples of what many wish to regulate include political neutrality, bias, harmful content, bots, advertising practices, privacy standards, election "meddling," and more.[4]

The current social media debate boils down to competing interventionist agendas.

The current social media debate boils down to competing interventionist agendas. Conservatives want social media titans regulated to remain neutral, while liberals tend to want them to eradicate harmful content and address other alleged societal ills. Meanwhile, Google and Facebook now hold that Internet service should be regulated as a public utility.

Either blocking or compelling speech in reaction to governmental pressure would not only violate the Constitution's First Amendment—it would require immense expansion of constitutionally dubious administrative agencies.[5] These agencies would either enforce government-affirmed social media and service provider deplatforming—the denial to certain speakers of the means to communicate

The Internet needs protection from both the bans on speech sought by the left and the forced conservative ride-along speech sought by the right.

their ideas to the public—or coerce platforms into carrying any message by actively policing that practice. When it comes to protecting free speech, the brouhaha over social media power and bias boils down to one thing: The Internet needs protection from both the bans on speech sought by the left and the forced conservative ride-along speech sought by the right. So do future communications platforms.

As all-encompassing as today's social media platforms seem, they are only a snapshot in time, prominent parts of a virtually boundless and ever-changing Internet and media landscape. The Internet represents a transformative leap in communications not because of top-down rules and codes governing acceptable expression, but because it has radically expanded broadcast freedom to mankind. More is published in a day than could formerly be produced in months or even years.[6]

How Public Policy Has Protected Online Free Speech

In the early days of the commercial Internet, different moderating policies of firms like Prodigy and Compuserve raised serious concerns over who could be held liable for defamation, libel, and other harms: Would the responsible party be the host or the person who wrote or uploaded the content?[7] This was a question ultimately resolved by Congress rather than the courts.

Much of the Internet's spectacular growth can be attributed to the immunity from liability for user-generated content afforded to social media platforms—and other Internet-enabled services such as discussion boards, review and auction sites, and commentary sections—by Section 230 of the 1996 Communications Decency Act.[8] Host takedown or retention of undesirable or controversial content by "interactive computer services," in the Act's words, can be contentious, biased, or mistaken. But Section 230 does not require neutrality in the treatment of user-generated content in exchange for immunity. In fact, it explicitly protects non-neutrality, albeit exercised in "good faith." The law reads that providers will not be held liable for:

> [A]ny 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.[9]

In other words, you can say it, but no one is obligated to help you do so. Jeff Kosseff, Assistant Professor of Cybersecurity Law at the U.S. Naval Academy and author of *The Twenty-Six Words that Created the Internet*, maintains that without Section 230

"the two most likely options for a risk-averse platform would be either to refrain from proactive moderation entirely, and only take down content upon receiving a complaint, or not to allow any user-generated content."[10] Similarly, Internet Association President Michael Beckerman argues, "Eliminating the ability of platforms to moderate content would mean a world full of 4chans and highly curated outlets—but nothing in between."[11] (The online message board 4chan has become infamous for its bare-bones moderation and toleration of bigoted content.) None are required to act in a fair or neutral manner, and government cannot require them to do so.[12]

Section 230's "broad liability shield for online content distributors"—in the words of Mercatus Center scholars Brent Skorup and Jennifer Huddleston—represented an acceleration of a decades-long trend in courts narrowing liability for publishers, republishers, and distributors more generally,[13] as well as a concept of "conduit immunity" imparted to intermediaries.[14] It is the case that changes have been made to Section 230, such as with respect to sex trafficking.[15] But deeper, riskier change is in the air today, advocated for by both Republicans and Democrats.[16] It is possible that some content removals may happen in bad faith, or that companies violate their own terms of service, but addressing those on a case-by-case basis would be a more fruitful approach. Section 230 notwithstanding, laws addressing misrepresentation or deceptive business practices already expose companies to legal discipline. Still, some officials have called for using laws barring deceptive business practices to charge social media platforms with making false statements about viewpoint neutrality.[17]

Regime-changing regulation of dominant tech firms—whether via imposing online sales taxes,[18] privacy mandates,[19] or speech codes—is likely not to discipline them, but to make them stronger and more impervious to displacement by emerging competitors.[20] Given the proliferation of media competition across platforms and online infrastructure, none can be considered essential, much less monopolistic, as some critics claim. However, regulation can backfire and turn them into such. For example, Facebook CEO Mark Zuckerberg acknowledged, in testimony to Congress in 2018, that privacy regulation would benefit Facebook.[21] That sentiment was reiterated by Facebook policy head Richard Allan, who favors a "regulatory framework" to address disinformation and fake news.[22]

From a given corporation's perspective, such concessions are strategically more

Given the proliferation of media competition across platforms and online infrastructure, none can be considered essential, much less monopolistic.

Conservatives fixated on social media bias are reluctant to appreciate the immeasurable benefit they receive from Section 230.

favorable alternatives to the threatened corporate breakups, large fines, or even personal liability for management.[23] While LinkedIn and Reddit leaders have cautioned against social media regulation,[24] several leading tech corporate chiefs—including Apple's Tim Cook, Twitter's Jack Dorsey, Snap, Inc.'s Evan Spiegel, Y Combinator's Sam Altman, and former Instagram CEO Kevin Systrom—have expressed support for regulating elements of big tech, in social media and elsewhere.[25] None has been as prominent and unambiguous in support for top-down regulation as Facebook's Zuckerberg, who in a March *Washington Post* op-ed called for governments to bar certain kinds of "harmful" speech and require detailed official reporting obligations for tech firms. This proposal is in direct conflict with the protections of Section 230.[26]

Conservatives fixated on social media bias are reluctant to appreciate the immeasurable benefit they receive from Section 230.[27] It has never acted as a subsidy to anyone, applying equally to all—publishers, like newspapers, have websites, too. Even if biases by some platforms were a valid concern, there is no precedent for the reach conservatives enjoy now.[28] Those who complain of bias or censorship on YouTube—such as Prager University, for example—pay nothing for the hosting that can reach millions and stand to benefit from similar freedom. Just this year, the Ninth Circuit Court of Appeals ruled that, "[D]espite YouTube's ubiquity and its role as a public-facing platform, it remains a private forum, not a public forum subject to judicial scrutiny under the First Amendment."[29] This disintermediation—the rapid erosion of the influence of major media gatekeepers—has enabled the growth of a more diverse landscape, thanks in large part to the collapse of barriers to entry, including cost.

Most ominously, conservatives fail to appreciate the dangers of common cause with advocates of content or operational regulation on the left. Given the ideologically liberal near-monoculture at publicly funded universities, major newspapers, and networks, the vast preexisting administrative apparatus in the federal government—and in management and corporate culture for most of Silicon Valley, for that matter—it is the left that has more to lose from *not* regulating the Internet as the sole cultural medium not largely dominated by liberal perspectives.

Nothing is more fully open to independent or dissenting voices than then Internet; regulation would change that. For that reason alone, tomorrow's conservatives need to rely upon Section 230 immunities more than ever to preserve their voices. Any expansion of federal agency oversight

of Internet content standards stand ultimately to be repurposed to the aims of the left in the long run.

Yet, the threat of online speech regulation now comes in bipartisan clothing. The Deceptive Experiences to Online Users Reduction (DETOUR) Act (S. 1084), cosponsored by Sens. Mark Warner (D-VA) and Deb Fischer (R-NE), seeks to address "dark patterns" and the alleged tricking of users into handing over data.[30] Warner seeks still broader regulation of tech firms including changes to Section 230,[31] but probably will not agree with conservatives on what constitutes disinformation or valid exercise of the civil right of anonymous communication.[32]

At bottom, neither left nor right now defends the right to platform bias. Both sides must hit pause, in order to protect the right to express controversial viewpoints enshrined in the First Amendment and affirm the property rights of "interactive computer services" of today and tomorrow. The opponents, superficially in conflict, agree in principle that government should have the final say. In the wake of any bipartisan tech regulation "victory," entrenched unelected bureaucrats at Washington regulatory agencies will have free rein to define "objectivity" as they see fit— highly likely to the detriment of conservatives and classical liberals.

Countering the Tech Regulatory Campaign of the Right

Unlike the left and its emphasis on culling "harmful content," conservatives seek forced carriage in service of political neutrality; they want content included, not removed. Many on the right insist bias prevails and that monopolistic social media routinely censor search results and user-generated content. To supposedly remedy that situation, they would alter Section 230's immunities and require objectivity and even official certifications of non-bias—to be determined by tomorrow's bureaucrats. On Twitter, President Donald Trump thundered at "the tremendous dishonesty, bias, discrimination and suppression practiced by certain companies. We will not let them get away with it much longer."[33] He has also expressed a desire to sue social media firms.[34]

Then in July 2019, Sens. Ted Cruz (R-TX) and Josh Hawley (R-MO) wrote to the Federal Trade Commission (FTC) seeking investigation into how major tech companies curate content, while —echoing progressive calls for regulation—accusing social media of being "powerful enough to—at the very least—sway elections." "They control the ads we see, the news we read, and the information we digest," they complain. "And they actively censor some content and amplify other content based on algorithms and

Neither left nor right now defends the right to platform bias.

Control, amplification, or content removal by private actors are not coercion or censorship, but elemental to free speech.

intentional decisions that are completely nontransparent."[35] Meanwhile, many on the left hold the same elitist opinion of people's faculties. Sen. Hawley has now introduced several pieces of nanny-state legislation that should be of concern in today's environment.[36]

Lost in all this are the simple facts that social media cannot censor and a that non-depletable Internet cannot be monopolized unless government circumscribes it. Control, amplification, or content removal by private actors are not coercion or censorship, but elemental to free speech. Manipulating an algorithm is likewise an exercise of free speech, even if the July 2019 White House Social Media Summit maintained otherwise.[37] Censorship requires government force to either block or compel speech, and there can be no private media monopoly so long as there is no government censorship.[38] One has a right to speak, but no one exercising that right has a right to force others to supply them with a Web platform, newspaper, venue, or microphone.[39]

The Constitution places limits on *state* actors, yet Hawley asserts social media must "abide by principles of free speech and First Amendment."[40] These vital principles apply to *government*, not to the population generally or to communications enabled by private companies.

Hawley's own legislation, the Ending Support for Internet Censorship Act (S. 1914), would limit Section 230 immunities, deny property rights, compel transmission of speech, and create a large administrative bureaucracy by requiring that a "covered company" obtain an "immunity certification" from the Federal Trade Commission, assuring a majority of the unelected commissioners every two years that it does not moderate content provided by others in a politically biased way.[41] In similar spirit, the Stop the Censorship Act (H.R. 4027), sponsored by Rep. Paul Gosar (R-AZ), would limit moderation of "objectionable" content.[42] These legislative proposals are highly problematic. One cannot prove a negative. The premise is inoperable, susceptible to partisanship, and hostile to free speech.

Discrimination and bias are the essence of healthy debate, and mandating neutrality by altering Section 230—or via any other means—would remove the right of *conservatives* to "discriminate" on potentially dominant alternative platforms that could emerge in coming years or decades (just as Google and Facebook emerged to displace prior leaders).

But that is not all. Sen. Hawley also has set his sights on many tech companies' business model. Hawley

has complained: "These companies and others exploit this harvested data to build massive profiles on users and then rake in hundreds of billions of dollars monetizing that data."[43] Indeed, big tech firms use data in extraordinarily sophisticated ways, but so do popular conservative media sites. The *Drudge Report* looks like 1990s vintage, but it sports a sophisticated architecture underneath the hood.[44] Perhaps "information wants to be free," but it also wants to be monetized.[45] Another Hawley-sponsored bill, the Social Media Addiction Reduction Technology (SMART) Act (S. 2314), would mean future conservative platforms could not monetize and survive as easily.[46] Specifically, it would require online content providers to tread carefully over how they write headlines. The bill stipulates:

> Not less frequently than once every 3 years, the [Federal Trade] Commission shall submit to Congress a report on the issue of internet addiction and the processes through which social media companies and other internet companies, by exploiting human psychology and brain physiology, interfere with free choices of individuals on the internet (including with respect to the amount of time individuals spend online).[47]

The current antitrust debate is inextricably bound with the online speech controversy. Yet, concepts like "common carrier" and "essential facility," which have been used to rationalize regulation, are not applicable either to a virtually limitless Internet or to its future capabilities.[48] Like the expanding universe, the healthy Internet, with all its potential, remains unbounded and not monopolizable. Legislation would change that.

In today's environment, big tech firms should defend the principle of and right to bias both for themselves and for others, even as they articulate that they strive toward some measure of objectivity, which can be a selling feature.

Competing Biases Are Preferable to Pretended Objectivity

Social media firms deny they are biased. Google Vice President Karan Bhatia, for example, denies bias in content display or search results.[49] He testified as such in July 2019 to the Senate Judiciary Committee, pointing to external validating studies.[50] Bhatia reasonably asserts: "Our users overwhelmingly trust us to deliver the most helpful and reliable information out there. Distorting results for political purposes would be antithetical to our mission and contrary to our business interests."[51] To an unappreciated degree, people's

Like the expanding universe, the healthy Internet, with all its potential, remains unbounded and not monopolizable. Legislation would change that.

Unknown, undiscovered, or unrealized emergence of bias will likely increase as human knowledge increases.

own online behavior, not externally imposed bias, will influence algorithm functionality and what they see.[52]

Twitter has likewise proclaimed itself an "open communications platform." Twitter CEO Jack Dorsey similarly claimed, in testimony to Congress in 2018, that it does not base decisions on political ideology.[53] In April 2019 testimony, Twitter Public Policy and Philanthropy Director Carlos Monje told the Senate Judiciary Committee: "We welcome perspectives and insights from diverse sources and embrace being a platform where the open and free exchange of ideas can occur."[54]

Google's 2018 report "The Good Censor," described in the Senate Judiciary hearing as an internal assessment and marketing exercise, defended "balance," and "well ordered spaces for safety and civility." These are worthy goals, but, as we have seen, "censoring" can only be a term of art as Google used it in the report (and for which it drew avoidable criticism).[55] In any event, many policy makers will never be convinced of non-bias. A negative cannot be proven, nor can total neutrality be achieved given the inevitability of bias in human communication.[56] Unknown, undiscovered, or unrealized emergence of bias will likely increase as human knowledge increases. Algorithms understandably boost content that generates likes, shares, and other interactions.[57] They also undertake the error-prone and thankless task of looking for and rooting out "toxicity."[58]

The upshot is that Google results can never be objective in a way that can satisfy everybody, and there is nothing wrong with that. Policies will always be in flux and there can be vagueness and lack of transparency ripe for misunderstanding.[59] The sole remedy, "All search results must appear first," is an absurdity.[60] In a fluid environment, it is not reasonable to say bias is not reflected in decisions made or in algorithmic results, but revealed or overt bias can be more honest than an insincere, pretended objectivity. Besides, search has evolved into swiping and talking as means of interface, which do not always involve Google and typing text.[61]

In the July Senate hearing, the promise extracted from Google to grant access to its records on advertisements and videos pulled sets a terrible precedent. While moves like Facebook's response of appointing Sen. Jon Kyl to lead a bias audit[62] may yield some helpful transparency proposals, they will resolve nothing as far as competing complaints of bias are concerned.[63] But if conservatives, liberals, or some alliance of them triumph in the quest for content regulation, that would impose control and censorship on *everyone*.[64] That is why competing biases and algorithms are paramount as a matter of *principle*, whether or not bias exists in select circumstances.

The Danger of Progressive Regulation of "Harmful Content"

> "I think a lot of regimes around the world would welcome the call to shut down political opposition on the grounds that it's harmful speech,"
>
> —Federal Communications Commissioner Brendan Carr[65]

Some politicians, dominant social media firms, and activists propose to expunge what they see as objectionable content online. They point to hate speech, disinformation, misinformation, and objectionable, harmful, or dehumanizing content.[66] Since "misinformation" can translate into "things we disagree with," this inventory can be expected to grow. Disagreeable or hateful speech is nonetheless constitutionally protected.[67]

The leading edge of social media regulation consists of a March 2019 proposal from Facebook founder and CEO Mark Zuckerberg and a white paper from Sen. Mark Warner entitled, "Potential Policy Proposals for Regulation of Social Media and Technology Firms."[68]

Zuckerberg asserts, "I believe we need a more active role for governments and regulators." He endorses alliances with governments around the world to police harmful online speech, a move that would erect impenetrable global barriers to future social media alternatives to Facebook. In his March 2018 *Washington Post* op-ed, "The Internet Needs New Rules," Zuckerberg said:

> Lawmakers often tell me we have too much power over speech, and frankly I agree. I've come to believe that we shouldn't make so many important decisions about speech on our own. So we're creating an independent body so people can appeal our decisions. We're also working with governments, including French officials, on ensuring the effectiveness of content review systems. …
>
> One idea is for third-party bodies to set standards governing the distribution of harmful content and measure companies against those standards. Regulation could set baselines for what's prohibited and require companies to build systems for keeping harmful content to a bare minimum.[69]

To date only Facebook has publicly called for this degree of engagement from governments, but Facebook's influence alone could be enough to give it momentum. In any event, such government enforcement of "community standards" gives politicians and bureaucrats veto power over critical political speech. While Google, Facebook, Twitter, Pinterest, and their brethren cannot "censor" as

Some politicians, dominant social media firms, and activists propose to expunge what they see as objectionable content online.

Free speech in the U.S. is not subject to limitation by majority vote.

private media and social media platforms, in the Zuckerberg formulation, deplatforming will be preordained, baked into the ecosystem and constraining emergent networks to the regulatory vision of "baselines for what's prohibited."[70] Once this path is chosen, would a reasonable person expect for the forbidden content list to shrink or expand over time? And while in the U.S. such requirements may be ultimately struck down on First Amendment grounds, it could take years of litigation—and much damage to free speech in the meantime—to reach that result.

Zuckerberg's proposals also would inflict painful compliance burdens that would severely hobble Facebook's smaller competitors:

> Facebook already publishes transparency reports on how effectively we're removing harmful content. I believe every major internet service should do this quarterly, because it's just as important as financial reporting. Once we understand the prevalence of harmful content, we can see which companies are improving and where we should set the baselines.[71]

Facebook's efforts to secure global input on content review decisions can be admirable so long as the company is describing policies it intends to adopt for itself.[72] But the more ambitious campaign to transcend self-policing is troubling. Having benefited from Section 230 immunities in the U.S. that boosted it to global stature (other firms enjoyed this immunity, too), Facebook now is urging speech standards and reporting burdens imposed on the online companies of the future. Such a government partnership scheme would go a long way toward making the dominance of today's largest social media firms permanent.

It matters not if Facebook were to partner with "thoughtful governments that have a robust democratic process."[73] Free speech in the U.S. is not subject to limitation by majority vote. Speech is routinely criminalized throughout the world, however, by these same "robust" democracies.[74] The Brennan Center for Justice has noted how political pressure from governments has influenced what information the public sees—and surely will do so again. There is no way to know the nature of the internal decision process and no judicial review of it.[75] Removing content at the behest of political leaders, subject to jail or fine, is a scenario playing out worldwide,[76] while real voices against tyranny get silenced.[77] George Washington University law professor Jonathan Turley deemed France one of the greatest global threats to free speech.[78] Yet, rather than defend free expression on principle, Facebook has

pledged a partnership with French courts against online hate speech and to hand over information about its users.[79] A similar circumstance that garnered some criticism has been Google's alleged cooperation with Chinese authorities on a censored search engine.[80]

Social media firms' yielding to authoritarian governments will have grave repercussions for expression. While Americans' free speech rights are protected by the First Amendment to the Constitution, social media giants that cooperate with foreign governments' censorship efforts threaten free expression even in the U.S. In essence, it enables censorious governments to export their Internet laws globally.[81] Ominously, all this gives politicians more weapons to help them work around the First Amendment.

Similarly, the administrative apparatus that some Republicans favor expanding to monitor political objectivity circumvents constitutional speech protections. Private entities are incapable of censorship, but reconfiguring them as semi-governmental oversight bodies with ability to suppress would change that. Such a move would revoke big tech companies' status as market entities and convert them into the "essential" facilities they otherwise could never be. The pertinent risk, then, may not be ill-considered reform of Section 230 immunities. Rather, regulation or laws that "set baselines" could perform an end run around Section 230, leading to a reformulation of indemnification perhaps more powerful for Facebook's new incarnation, but that effectively moots much of Section 230 for other social platforms.

Securing compromises and adoption of industry standards certified by governmental bodies would prevent alternative platforms—existing or emerging—from being able to facilitate the unfettered free expression that powered Facebook's growth. This would help Facebook avoid breakup and fines and help it maintain its dominant position, lest it become the next MySpace. The result would be a new business model for the biggest of big tech, one based on central oversight of speech in an environment in which Section 230 would be less critical to their success. As *Vox*'s Peter Kafka observed:

> [M]aybe the giant platforms are now so enormous that they don't need to distribute an infinite amount of content anymore—maybe they could survive by bringing in enormous but manageable amounts of content, which they could actually review before publishing—kind of like a media company. This used to be an unthinkable thought, and still seems to be if you talk to the people who run the platforms.

Private entities are incapable of censorship, but reconfiguring them as semi-governmental oversight bodies with ability to suppress would change that.

Bias becomes a public policy issue only when government joins efforts to regulate content and speech.

> But maybe that's where we are headed, like it or not.[82]

In July 2018, nearly a year before Zuckerberg's declaration, the *Columbia Journalism Review* reported on a leaked draft white paper from Sen. Mark Warner containing a wide-ranging slate of proposals to regulate content, speech, and anonymity under the justification of combating trolls, misinformation, and election interference.[83] The paper, titled "Potential Policy Proposals for Regulation of Social Media and Technology Firms," expressed alarm that "bots, trolls, click-farms, fake pages and groups, ads and algorithm-gaming can be used to propagate political disinformation."[84] Its proposed solutions included labeling of automated "bot" accounts; limiting certain elements of anonymity; placing limitations on Section 230 immunity for re-uploaded content; liability for defamation, false light, and deep fakes; and defining certain services to be essential facilities.[85]

Warner's proposals, which, as *Axios*' David McCabe notes, had been "circulated in tech policy circles,"[86] did not recommend corporate breakup.[87] Sen. Warner later reacted favorably to Zuckerberg's new-rules-for-the-Internet manifesto, declaring:

> I'm glad to see that Mr. Zuckerberg is finally acknowledging what I've been saying for past two years: The era of the social media Wild West is over. … Facebook needs to work with Congress to pass effective legislative guardrails, recognizing that the largest platforms, like Facebook, are going to need to be subject to a higher level of regulation in keeping with their enormous power.[88]

Social media companies have guardrails now, and competition for authentication and anonymity and other competitive disciplines can add more of them. It is legislation and regulation, not their absence, that threaten to remove them and undermine one of America's bedrock principles.

Whether search results or the presentation of content by big tech are biased or not, suspicion prevails because left-of-center perspectives prevails at major mainstream institutions like print and broadcast media editorial management, college campuses, and even big tech workforces. For example, *The Washington Post* has not endorsed a Republican since it began endorsing presidential candidates in 1976 (sitting out 1988).[89] *The New York Times* has not endorsed one since Dwight D. Eisenhower.[90] So, biases? Yes, but bias becomes a public policy issue only when government joins efforts to regulate content and speech.

The Vulnerability of Dissent to the "Harmful Content" Sledgehammer

Freedom of expression is paramount. There is no political right not to be offended. Congress needs to preserve the right to express both popular and unpopular opinions.[91] That requires continuing to allow curation that protects alternative viewpoints with the same immunities Facebook and other social media have enjoyed to date. That means no compulsory participation in Facebook's "baselines for what's prohibited," Warner's "the Wild West is over" claim, Hawley's government affirmations of objectivity, or whatever other speech control schemes emerge in the future.

This section will mention some controversial issues not to take positions but to illustrate why people must retain rights of expression protected from government administrators. Positions that were unremarkable among liberals a generation ago can now lead to career loss, even for CEOs.[92] These include the opposition to illegal immigration of former President Barack Obama and Sen. Charles Schumer (D-NY),[93] the opposition to birthright citizenship of former Sen. Harry Reid (D-NV),[94] or Obama's former opposition to gay marriage.[95]

Political correctness can have grave implications when moving from voluntary settings to a legally enforced regime. Such a regime could come about in unexpected ways. For instance, the Change the Terms Coalition—a grouping of mostly progressive organizations that includes the Center for American Progress, Southern Poverty Law Center, and others—declares:

> While some companies are taking steps in the right direction to reduce hateful activities online, anti-hate provisions in most companies' terms of service are not enough. To ensure that companies are doing their part to help combat hateful conduct on their platforms, organizations in this campaign will track the progress of major tech companies—especially social media platforms—to adopt and implement these model corporate policies.[96]

To be fair, the petition itself expresses concern over government involvement in speech that historically "disproportionately silenced activists and minorities" and acknowledges that hate crimes are already illegal.[97] However, the coalition holds that, while the First Amendment protects even hate speech,

> [O]utside the United States, speech laws vary wildly from one country to another. It is preferable

Anti-harmful-speech principles may be unimpeachable as internal corporate policy, but that changes when a firm like Facebook cooperates with governments, including in turning over user information.

> to develop a set of policies that major tech companies can apply globally so that hateful actors cannot launder their activity by routing their traffic through a different jurisdiction.[98]

The concern here is that the laundering will wash out in the opposite direction, cleansing even non-hate speech. Like Facebook's own "baseline" principles and other promises regarding harmful content, which Change the Terms argues do not go far enough,[99] the policies can be admirable, but they can also be myopic and beholden to one viewpoint.[100] "Hateful activities" defined by liberals are far from the only objectionable phenomena online.[101]

This is why Congress has to be uncompromising in protecting clashing viewpoints from "cancel culture." Sen. Ben Sasse (R-NE) stressed in a 2018 exchange with Zuckerberg that "[a]dults need to engage in vigorous debates"[102] over controversial issues like late-term abortion without being flagged as haters. Yet even in April 2019, Twitter and Facebook officials could not assure senators that certain remarks by Mother Teresa on abortion did not constitute hate speech.[103] The freedom to engage such matters does not *have* to be supported by corporations such as Facebook or Twitter, of course, but *somewhere*. In the 2018 hearing, Zuckerberg himself struggled to define hate speech clearly.[104] In 2019, Facebook's own new Civil Rights Audit took up the task. Among other declarations, hate speech is defined there:

> … as a direct attack on people based on "protected characteristics"—race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity, and serious disease or disability. Facebook also provides some, but not all, of the same protections for immigration status. An "attack" for hate speech purposes is defined as violent or dehumanizing speech, statements of inferiority, expressions of contempt or disgust, or calls for exclusion or segregation.[105]

Again, such anti-harmful-speech principles may be unimpeachable as internal corporate policy, but that changes when a firm like Facebook cooperates with governments, including in turning over user information. The "speech laws" that the Change the Terms Coalition notes "vary wildly from one country to another" include those of China, Russia, and myriad other illiberal regimes.

A report commissioned by Google and conducted by a team led by former Arizona Republican Sen. John Kyl, intended to address conservative criticisms of bias by the company,

appeared to highlight concerns with how motives would be ascribed to some and not others by Facebook's hate speech policy.

> [I]nterviewees' concerns stemmed both from the notion of having a "hate speech" policy in the first place and from unfair labeling of certain speech as "hate speech." … The term "hate speech" is itself controversial, insofar as it may incorrectly ascribe motive in many cases.[106]

The arbiters ascribing hate to others are themselves agenda-driven and can have credibility problems of their own.[107] For example, the Kyl report noted that, "Many conservatives view the SPLC [Southern Poverty Law Center, a member of the Change the Terms Coalition] as an extreme organization intent on defaming conservatives."[108] Should today's expanding inventory of "protected characteristics" policies become incorporated into compulsory "baselines for what's prohibited and ... systems for keeping harmful content to a bare minimum," much can deemed off-limits that deserves debate.

Conservatives have their view of what counts as extremism and liberals have theirs. Therefore, especially in so tense an environment, there need to be fora to talk about the most polarizing of issues. David Thunder, a professor at the Institute for Culture and Society at the University of Navarra in Pamplona, Spain, wrote of the need for leeway in discussion:

> [M]any forms of offensive speech are not black and white. For instance, speech that contests dominant narratives about political and social authority, law, marriage, gender, religion or national identity may be deeply unpopular and offensive to many, yet offer intelligent critiques of conventional wisdom and not constitute any genuine incitement to hatred or violence.[109]

For instance, calls for slavery reparations—redistributing assets from one group to another based on race—are unlikely to draw ire from establishment press outlets, while opposing them could well be deemed "harmful."[110] Again the intent here is not to defend or excoriate particular speech, harmful or otherwise. Rather, it is to demonstrate that the tenor of today's "harmful content" campaigns tend toward affirmation of progressive ideologies.[111] Those assuming they are not in the left's crosshairs as spewing "harmful content" might note that some progressive commentators have even denounced classical liberalism as an authoritarian and racist doctrine.[112] The above reservations are meant to illustrate why administrative agencies should not be allowed anywhere near

Conservatives have their view of what counts as extremism and liberals have theirs.

Administrative agencies should not be allowed anywhere near the Internet's volume knob, much less its off button.

the Internet's volume knob, much less its off button.

A Thought Experiment: Socialist Advocacy as "Harmful" Speech

The media often refer to "incitement" as a phenomenon largely of the political right. Yet, the violence committed by actual socialist regimes to coerce human beings into participating in utopian schemes has been plain sight for decades, but concern about socialist advocacy is absent in the appeals from Warner, Zuckerberg, or Change the Terms.[113]

To illustrate, consider the following thought experiment. As the noted Austrian economist Ludwig von Mises noted, in his classic 1944 work, *Bureaucracy*:

> The champions of socialism call themselves progressives, but they recommend a system which is characterized by rigid observance of routine and by a resistance to every kind of improvement. They call themselves liberals, but they are intent upon abolishing liberty. They call themselves democrats, but they yearn for dictatorship. They call themselves revolutionaries, but they want to make the government omnipotent. They promise the blessings of the Garden of Eden, but they plan to transform the world into a gigantic post office. Every man but one a subordinate clerk in a bureau.[114]

Given socialism's grim historical record, it would not be too far-fetched for a content regulation authority to flag socialist advocacy as "misinformation" or "harmful."

For example, take the Green New Deal. If fully implemented, it would cause untold hardship for millions and bring much of the economy under Washington's control.[115] A chief architect of the proposal, Saikat Chakrabarti, chief of staff to Rep. Alexandria Ocasio-Cortez (D-NY), acknowldedged that the Green New Deal "wasn't originally a climate thing at all." Rather, he added, "we really think of it as a how-do-you-change-the-entire-economy thing."[116] The costs for such a transformation would be enormous. Yet, no one is calling to shut down debate on the Green New Deal.

Imagine if Zuckerberg were specifically referencing socialism when he proclaimed at Facebook's 2019 F8 Developer Conference:

> We're taking a more proactive role in making sure that all of our partners and developers use our services for good. ... We're very focused on making sure that our recommendations and discovery services aren't highlighting groups or people who are repeatedly sharing misinformation or harmful content and we're

> working hard to completely remove groups if they exist primarily to violate our policies or do things that are dangerous." [Emphasis added][117]

Obviously, we do not advocate removal of harmful socialist content. We merely observe the glaring contradiction that socialism, even with its dismal track record, is not targeted for removal in any content moderation formulation.

The Right's Misguided Call to Compel "Unbiased" Speech

Both the left's banned speech and the right's compelled speech agendas would require a substantial government apparatus to oversee them. The right's concern is the left's dominance of discourse, but as the preceding section makes clear, treating Facebook, Google, Twitter and the like as monopolies or common carriers in need of FTC regulation and reporting duties would make the problem worse. Efforts to certify "objectivity" will neither protect the public nor safeguard conservative speech. Instead, it will deliver the Internet into the administrative state's clutches. If today's upset conservatives prevail in their quest for social media regulation, they will have helped erect a permanent machinery to police online speech that they are in no foreseeable circumstance likely to control (not that anyone should).

Arbitrary thresholds at which regulation kicks into effect and becomes binding are also troubling. A company eligible for Hawley's FTC objectivity certification is one with more than 30 million active monthly users in the U.S. or 300 million worldwide, or with more than $500 million in global annual revenue. Other elements of Hawley's legislative agenda, such as the SMART Act's burdensome reporting requirements, would also balloon the federal bureaucracy.

The damage is compounded by the bipartisan Designing Accounting Safeguards to Help Broaden Oversight and Regulations on Data (DASHBOARD) Act (S.1951), sponsored by Sens. Warner and Hawley. It would require a "commercial data operator"—defined as an entity that "(A) generates a material amount of revenue from the use, collection, processing, sale, or sharing of the user data; and (B) has more than 100,000,000 unique monthly visitors or users in the United States for a majority of months during the previous 1-year period"—to:

- At least every 90 days, "provide each user of the commercial data operator with an assessment of the economic value that the

Each bit of technology regulation that conservatives support expands the arbitrary administrative state they claim to oppose.

commercial data operator places on the data of that user;"
- Describe the types of data collected and any tangential uses of it; and
- Observe newly imposed limits on data retention and the ability to delete it.[118]

These invasive requirements represent a major potential incursion into online speech. The Competitive Enterprise Institute's Patrick Hedger observes that the bill is "vague, arbitrary, picks winners and losers, delegates too much power to agencies, and inserts government into an area where markets are working just fine.[119]

The Federal Trade Commission would enforce that, while the Securities and Exchange Commission would oversee annual or quarterly filings (parallel to financial filings) related to the value of aggregate data, as well as develop the accounting schemes to facilitate said filing. With so much "administering" being sought by Republicans, the Federal Communications Commission (FCC) will seek a piece of the action, once the tenure of deregulatory-minded chairman Ajit Pai ends. And sure enough, a proposed Trump social media executive order obtained by CNN affirmed that FCC would have a role.[120] At that point, the Department of Justice would become involved in social media regulation. Perhaps more agencies will, too, as many of them have civil rights offices.

Despite superficial differences, the common denominator of the ostensibly opposing demands from left and right on social media is their calls to concentrate more power in federal administrative agencies. Each bit of technology regulation that conservatives support expands the arbitrary administrative state they claim to oppose. They may wish to abolish the Consumer Financial protection Bureau, but they will open a Consumer Data Protection Bureau, perhaps in the same luxurious offices. Over time, the window of what counts as "political unbiased content moderation by covered companies" good enough for an "immunity certification from the Federal Trade Commission" will lead to real suppression of conservative ideas. No coordination, collusion, or conspiracy is needed for this result to emerge. As the Hoover Institution's John Cochrane notes:

> When vast majorities of the bureaucracy belong to one political party, when government employee unions funnel unwitting contributions to candidates of that party, and when strong ideological currents link decisions across agencies, explicit cooperation is less necessary.[121]

Whether a Zuckerberg, Warner, or Hawley lights the fuse, an administrative apparatus to oversee speech will increase the size of government and thereby undermine individual liberty, free speech, private property rights, and other institutions of liberty.

Property Rights and Non-Depletable Cyberspace: "Media," Including Social Media, Is Plural

In February 2007, *The Guardian* ran the headline, "Will MySpace Ever Lose Its Monopoly?"[122] Years later, younger folks have abandoned Facebook, while growth continues among older users.[123] Big tech cannot stop anyone from reaching anyone else and sharing ideas.

Facebook as an entity is a singular social *medium*. Twitter is also a social *medium*. Displaced transitory giants like MySpace and America Online were singular. Social *media*, though, is a *plural* concept. Social media trends fluctuate; communications media options are potentially boundless. In the frenzy of the content moderation debate, we often forget that Facebook and Google are the gauzy film atop the deeper actual Internet. One can be a "never Googler"—as the rapid growth of the privacy-protecting search engine DuckDuckGo[124] indicates—and presumably a "never YouTuber."[125] We are likely to witness the emergence of larger, decentralized online companies not envisioned today.[126]

Still further, media need not be "social" to be *mass*; alternative non-social media on the right, like the *Drudge Report*, *Daily Caller*, *Breitbart*, and other right-leaning reporting and talk radio remain formidable as sources of information. Semi-social conduits such as comment sections in news articles may exceed some social media platforms in reach.[127]

With respect to its very limited role in Internet governance, the core public policy duty for Congress is to foster the creation and expansion of private property rights and communications wealth on existing and future platforms and in the coding that enables them.[128] Conservatives who turn their backs on private property rights in social media disputes over bias will render themselves defenseless against leftist resistance to property rights in more complicated policy settings. Conservatives committed the same error by endorsing net neutrality legislation to ban "blocking" and "throttling."[129] Such yielding on core principles on relatively "easy" matters makes the expansion of the institutions of liberty far more difficult.

Consumers possess the power, wherewithal, and user tools to protect themselves from harmful content as well as to create it.

The social media giants are not the Internet.

Government Regulation Can Absolve Social Media Companies of Responsibility and Preempt Consumer Self-Help

Consumers possess the power, wherewithal, and user tools to protect themselves from harmful content as well as to create it. Users customize and filter what they see, deliberately or by habit, and can use tools like Google's SafeSearch or Twitter's Quality Filter. They are the innovators on gaming platforms. The ultimate user tool is the ability to not listen or participate.

Regulation, by contrast, can worsen outcomes by passing the buck of seemingly intractable content moderation problems, while entrenching the dominant positions of big tech's current major players.[130] That is, some leading social media would love to be relieved of the grief it gets from both left and right. As Mark Jamison of the American Enterprise Institute notes:

> Facebook headaches would become somebody else's problem. By effectively handing the policing of "harmful content" over to an independent oversight group and governments, the plan would rid Facebook of responsibility for user-provided content.[131]

Regulation will preempt private efforts to develop sophisiticated user tools and databases. Mistakes will be made, but much will be learned from them.[132] Policy makers should remain at arms' length. One-size-fits-all "solutions" for the supposed problems bedeviling big tech will prevent the evolution and competition that need to happen among platforms. Options for degrees of openness, insularity, authentication, and third-party moderation can emerge and benefit the public. The potentialities are boundless, and too little recognized in today's debate.

Again, the emphasis here is media, not medium. The social media giants are not the Internet, but a proprietary sliver of it that happens to have been gathered into a pile in the early 21st century. Neither censorship, handholding, nor administratively determined "objectivity" are sound policy as consumers decide whether to continue to embrace traditional social media, warts and all, or to move instead toward as-yet-unknown options and resolutions on a limitless medium. It makes the most sense for policy makers and the public to assume biases of one sort or another, for those to be dealt with accordingly by critically thinking adults on both the service and user sides, and to revel in

the new forms of wealth and customer welfare afforded by them.

Conclusion

In the social media debate, the problem is not that big tech's power is unchecked. Rather, the problem is that social media regulation by either the left or right would make it that way. Zuckerberg's speech controls and Hawley's ostensibly opposite compelled speech both lead to bigger government lording over Internet platforms, complete with onerous filings to agencies and other burdens. Like banks, social media giants are not too big to fail, but regulation would make them that way.

American values strongly favor a marketplace of ideas where debate and civil controversy can thrive. By contrast, attempts by tech companies uniting with the government to create new regulatory oversight bodies and filing requirements to exile politically disfavored opinions on the one hand, and force the inclusion of conservative content on the other, should both be rejected.

The vast energy expended on accusing purveyors of information, either on mainstream or social media, of bias or of inadequate removal of harmful content should be redirected toward protecting the right for future platforms to be biased in any direction, and toward fostering the development of tools that can empower users to better customize the content they choose to access.

Existing social media firms want rules they can live with—which translates into rules that future social networks cannot live with. Government cannot create new competitors, but it can prevent their emergence by imposing barriers to market entry.

At risk, too, is the right of political—as opposed to commercial—anonymity online.[133] Government has a duty to protect dissent, not regulate it, but a casualty of regulation would appear to be future conservative-leaning platforms.

Mark Zuckerberg remarked about content decisions, "[I]f we were starting from scratch, we wouldn't ask companies to make these judgments alone."[134] That is exactly what both tech firms and policy makers should do. Operating as a free platform for expression is what made Facebook the giant it is today. Facebook is a large presence in commercial and political speech in a major medium where it remains free.

The Section 230 special immunity must remain intact for others, lest Congress turn social media's mere economic power into genuine coercive political power. Were Congress to impose

Government cannot create new competitors, but it can prevent their emergence by imposing barriers to market entry.

social media content, tomorrow's threat to expression will be government's biases and policy "algorithms."

Competing biases are preferable to pretended objectivity. Congress should reject policies such as those such as those proposed by Zuckerberg, Hawley, and Warner—who may be not such strange bedfellows after all.[135] Instead, lawmakers should acknowledge the inevitable presence of bias, protect competition in speech, and defend the conditions that would allow future platforms and protocols to emerge in service of the public.

The priority is not that Facebook or Google or any other platform should remain politically neutral, but that citizens remain free to choose alternatives that might emerge and grow with the same Section 230 exemptions from which the modern online giants have long benefited. Policy makers must avoid creating an environment in which Internet giants benefit from protective regulation, reporting requirements, and thresholds that prevent the emergence of new competitors in the decentralized infrastructure of the marketplace of ideas.

NOTES

1 Angela Charlton, "New French Rules for Facebook? Zuckerberg Likes the Idea," Associated Press, May 10, 2019, https://www.apnews.com/52cbe54ca38c49ab88d73bb1c098e1d7.

2 White House, "Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities," March 21, 2019, https://www.whitehouse.gov/presidential-actions/executive-order-improving-free-inquiry-transparency-accountability-colleges-universities/.

3 Brian Fung, Ryan Nobles, and Kevin Liptak, "Trump signs executive order targeting social media companies," *CNN*, May 28, 2020, https://www.cnn.com/2020/05/28/politics/trump-twitter-social-media-executive-order/index.html.

4 For a conventional view see Margaret O'Mara, "Letting the Internet Regulate Itself Was a Good Idea—in the 1990s," *New York Times*, July 5, 2019, https://www.nytimes.com/2019/07/05/opinion/tech-regulation-facebook.html.

5 Philip Hamburger, *Is Administrative Law Unlawful?* (Chicago: University of Chicago Press, 2014). David S. Schoenbrod, *Power Without Responsibility: How Congress Abuses the People through Delegation* (New Haven, Connecticut: Yale University Press, 1993). F. H. Buckley, *The Once and Future King: The Rise of Crown Government in America* (New York: Encounter Books, 2014).

6 Jeff Schultz, "How Much Data is Created on the Internet Each Day?" Micro Focus Blog, October 10, 2017, https://blog.microfocus.com/how-much-data-is-created-on-the-internet-each-day/. Alyssa Newcomb, "How Many Pages It Takes to Print the Entire Internet," ABC News, May 11, 2015, https://abcnews.go.com/Technology/pages-takes-print-entire-internet/story?id=30956365.

7 Electronic Frontier Foundation, CDA 230, accessed May 5, 2020, https://www.eff.org/issues/cda230/legislative-history.

8 47 U.S.C. §230, Section 230 of the Communications Decency Act of 1996, https://www.law.cornell.edu/uscode/text/47/230.

9 Ibid.

10 Jeff Kosseff, "Correcting a Persistent Myth About the Law that Created the Internet," *The Regulatory Review*, July 15, 2019, https://www.theregreview.org/2019/07/15/kosseff-correcting-persistent-myth-about-law-that-created-the-internet/. Kosseff is also author of *The Twenty-Six Words That Created the Internet* (Ithaca, New York: Cornell University Press, 2019). Michael

11 Beckerman, "Congress has a Critical Decision to Make about Future of the Internet," *Fox News*, June 8, 2019, https://www.foxnews.com/opinion/michael-beckerman-congress-faced-with-critical-decision-on-future-of-internet.

12 Jared Schroeder, "Efforts to Compel Social Media 'Fairness' Go Afoul on Freedom of Expression," *The Hill*, August 13, 2019, https://thehill.com/opinion/civil-rights/457297-efforts-to-compel-social-media-fairness-go-afoul-on-freedom-of. Brent

13 Skorup and Jennifer Huddleston, "The Erosion of Publisher Liability in American Law, Section 230, and the Future of Online Curation," Mercatus Center Working Paper, July 2019, https://www.mercatus.org/system/files/skorup-publisher-liability-mercatus-working-paper-v1.pdf.

14 Carl Szabo, "Section 230 Is the Internet Law that Stops the Spread of Extremist and Hate Speech," *Morning Consult*, August 27, 2019, https://morningconsult.com/opinions/section-230-is-the-internet-law-that-stops-the-spread-of-extremist-and-hate-speech/.

15 Jeffrey Neuburger, "FOSTA Signed into Law, Amends CDA Section 230 to Allow Enforcement Against Online Providers for Knowingly Facilitating Sex Trafficking," Proskauer New Media and Technology Law Blog, April 11, 2018, https://newmedialaw.proskauer.com/2018/04/11/fosta-signed-into-law-amends-cda-section-230-to-allow-enforcement-against-online-providers-for-knowingly-facilitating-sex-trafficking/.

16 Elizabeth Nolan Brown, "Section 230 Is the Internet's First Amendment. Now Both Republicans and Democrats Want to Take It Away," *Reason.com*, July 29, 2019, https://reason.com/2019/07/29/section-230-is-the-internets-first-amendment-now-both-republicans-and-democrats-want-to-take-it-away/.

17 Ryan Tracy, "Big Tech Is a Likely Target at White House Social-Media Summit," *Wall Street Journal*, Ryan Tracy, July 10, 2019, https://www.wsj.com/articles/big-tech-is-a-likely-target-at-white-house-social-media-summit-11562751015.

18 Jessica Melugin, "The Real Reason Amazon Flip-Flopped on Internet Sales Taxes," *Forbes*, June 3, 2013, https://www.forbes.com/sites/realspin/2013/06/03/the-real-reason-amazon-flip-flopped-on-internet-sales-taxes/#611028257944.

19 Elizabeth Schulze, "Mark Zuckerberg Says He Wants Stricter European-Style Privacy Laws—But Some Experts are Questioning His Motives," *CNBC*, April 1, 2019, https://www.cnbc.com/2019/04/01/facebook-ceo-zuckerbergs-call-for-gdpr-privacy-laws-raises-questions.html.

20 Cory Doctorow, "Regulating Big Tech Makes Them Stronger, Do They Need Competition Instead," *The Economist*, June 6, 2019, https://www.economist.com/open-future/2019/06/06/regulating-big-tech-makes-them-stronger-so-they-need-competition-

21 instead. Clyde Wayne Crews Jr., "Mark Zuckerberg Testimony: Will Washington Cast the First Stone at Facebook?" *Forbes,* April 8, 2018, https://www.forbes.com/sites/waynecrews/2018/04/08/mark-zuckerberg-testimony-will-washington-cast-the-first-stone-at-facebook/#5fb9330b2f132018.

22 "We Accept This Requires Regulatory Framework, Says Facebook VP," *CNBC*, November 27, 2018, https://www.cnbc.com/video/2018/11/27/we-accept-this-requires-regulatory-framework-says-facebook-vp-of-policy.html.

23 Heather Stewart and Alex Hern, "Social Media Bosses Could be Liable for Harmful Content, Leaked UK Plan Reveals," *The Guardian*, April 4, 2019, https://www.theguardian.com/technology/2019/apr/04/social-media-bosses-could-be-liable-for-harmful-content-leaked-uk-plan-reveals.

24 Rolfe Winkler, "LinkedIn's Co-Founder Warns of Perils in Regulating Big Tech," *Wall Street Journal*, September 26, 2018, https://www.wsj.com/articles/linkedins-co-founder-warns-of-perils-in-regulating-big-tech-1537967181; "Reddit Co-Founder 'Very Nervous' About Regulations for Social Media" (video), *Yahoo Finance*, February 21, 2019, https://finance.yahoo.com/video/reddit-co-founder-very-nervous-211837872.html.

25 Selina Wang, "Twitter's Jack Dorsey Adds His Voice to Support of Regulation in Tech," *Bloomberg*, April 3, 2019, https://www.bloomberg.com/news/articles/2019-04-03/twitter-s-dorsey-adds-his-voice-to-support-of-regulation-in-tech. Katie Robertson, "Evan Spiegel on the Call for Regulation," *New York Times*, March 1, 2019, https://www.nytimes.com/2019/03/01/business/evan-spiegel-sam-altman-new-work-summit.html. Salvador Rodriguez, "Former Instagram CEO: Policing Social Media is Important to the Future of the World," *CNBC*, November 14, 2018, https://www.cnbc.com/2018/11/14/kevin-systrom-social-media-needs-to-be-policed.html. Shannon Liao, "Tim Cook Says Tech Needs to be Regulated or It Could Cause 'Great Damage to Society'," *The Verge*, April 23, 2019, https://www.theverge.com/2019/4/23/18512838/tim-cook-tech-regulation-society-damage-apple-ceo.

26 Mark Zuckerberg, "The Internet needs new rules. Let's start in these four areas," *Washington Post*, March 30, 2019, https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f_story.html?noredirect=on&utm_term=.cd7a0187eaaf.

27 News Release, "14 Conservative and Free Market Groups Ask Congress to Protect Section 230," NetChoice, July 10, 2019, https://netchoice.org/14-conservative-and-free-market-groups-ask-congress-to-protect-section-230/.

28 Taylor Hatmaker, "The Right Wants to Blow up the Internet to Punish Big Tech," *Daily Beast*, July 13, 2019, https://www.thedailybeast.com/the-right-wants-to-blow-up-the-internet-to-punish-big-tech.

29 Jessica Melugin, "Federal Court Rightly Affirms Online Platforms' First Amendment Rights," *OpenMarket*, Competitive Enterprise Institute, February 28, 2020, https://cei.org/blog/federal-court-rightly-affirms-online-platforms-first-amendment-rights.

30 Office of Sen. Mark Warner, "Senators Introduce Bipartisan Legislation to Ban Manipulative 'Dark Patterns,'" news release, April 9, 2019, https://www.warner.senate.gov/public/index.cfm/2019/4/senators-introduce-bipartisan-legislation-to-ban-manipulative-dark-patterns.

31 Diane Bartz, "U.S. Senator Warner Eyes Social Media Bills for Hate Speech, Data Portability," *Reuters*, April 11, 2019, http://news.trust.org/item/20190411221126-8277f.

32 See the Warner White Paper Draft "Potential Policy Proposals for Regulation of Social Media and Technology Firms," 2018, at https://graphics.axios.com/pdf/PlatformPolicyPaper.pdf#_ga=2.264215045.863640255.1563228787-239234713.1563228787.

33 @realdonaldtrump, Twitter post, July 11, 2019, 11:52 AM, https://twitter.com/realdonaldtrump/status/1149345678814060545.

34 Alyza Sebenius and Ben Brody, "Trump Says U.S. Should Sue Facebook, Google," *Bloomberg*, June 26, 2019, https://www.bloomberg.com/news/articles/2019-06-26/trump-says-u-s-should-sue-facebook-google-in-latest-complaint.

35 Sens. Josh Hawley and Ted Cruz, letter to the Federal Trade Commission, July 15, 2019, https://www.hawley.senate.gov/sites/default/files/2019-07/2019-07-15_FTC-Letter-Content-Moderation-Practices.pdf.

36 Josh Hawley, "Big Tech's 'Innovations' that Aren't," *Wall Street Journal*, August 28, 2019, https://www.wsj.com/articles/big-techs-innovations-that-arent-11567033288. Eric Boehm, "Josh Hawley: What Has Technology Done for Us Lately?" *Reason*, July 31, 2019, https://reason.com/2019/07/31/josh-hawley-what-has-technology-done-for-us-lately/. Andy Kessler, "Social Media and Hawley's Folly," *Wall Street Journal*, August 11, 2019, https://www.wsj.com/articles/social-media-and-hawleys-folly-11565551761.

37 White House, Remarks by President Trump at the Presidential Social Media Summit, July 12, 2019, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-presidential-social-media-summit/.

38 Clyde Wayne Crews, Jr., "Counterpoint: A Defense of Media Monopoly," *Communications Lawyer*, Fall 2003, pp. 13-17, https://www.americanbar.org/content/dam/aba/publishing/communications_lawyer/forums_communication_comlawyer_fall03_crews.authcheckdam.pdf. Clyde Wayne Crews, Jr. "Comments of Competitive Enterprise Institute in FCC "Future of Media Proceeding GN Docket No 10 25, May 7, 2010, https://www.scribd.com/document/135189382/Wayne-Crews-Comments-of-Competitive-Enterprise-Institute-in-FCC-Future-of-Media-Proceeding-GN-Docket-No-10-25.

39 Clyde Wayne Crews Jr, "Social Media Filtering is not Censorship, *Forbes*, April 26, 2018, https://www.forbes.com/sites/waynecrews/2018/04/26/social-media-filtering-is-not-censorship/#41ae148e438d.

40 White House Social Media Summit, 2019.

41 Office of Sen. Josh Hawley, "Senator Hawley Introduces Legislation to Amend Section 230 Immunity for Big Tech Companies," news release June 19, 2019, https://www.hawley.senate.gov/senator-hawley-introduces-legislation-amend-section-230-immunity-big-tech-companies; "Ending Support for Internet Censorship Act," https://www.hawley.senate.gov/sites/default/files/2019-06/Ending-Support-Internet-Censorship-Act-Bill-Text.pdf.

42 Makena Kelly, "Big Tech's Liability Shield Under Fire Yet Again from Republicans," *The Verge*, July 28, 2019, https://www.theverge.com/2019/7/28/8933871/big-techs-liability-shield-under-fire-yet-again-from-republicans.

43 Office of Sen. Josh Hawley, "Senator Hawley to Introduce Legislation to Give the American People a 'Do Not Track' Option," news release, May 20, 2019, https://www.hawley.senate.gov/senator-hawley-introduce-legislation-give-american-people-do-not-track-option.

44 Alexis C. Madrigal, "Drudge Report Looks Old-School, but Its Ad Targeting Is State-of-the-Art," *The Atlantic*, March 5, 2012, https://www.theatlantic.com/technology/archive/2012/03/drudge-report-looks-old-school-but-its-ad-targeting-is-state-of-the-art/253902/.

45 Quote origin attribution on Wikipedia at https://en.wikipedia.org/wiki/Information_wants_to_be_free.

46 The Social Media Addiction Reduction Technology (SMART) Act (S. 2314), https://www.congress.gov/116/bills/s2314/BILLS-116s2314is.pdf. Emily Birnbaum, "GOP Senator Introduces Bill Banning 'Addictive' Social Media Features," *The Hill*, July 30, 2019, https://thehill.com/policy/technology/455235-gop-senator-introduces-bill-banning-addictive-social-media-features.

47 S. 2314.

48 On the damage of forced access to infrastructure and technology generally, see Adam Thierer and Clyde Wayne Crews Jr., eds., *What's Yours is Mine: Open Access and the Rise of Infrastructure Socialism* (Washington, D.C.: Cato Institute, 2003). http://books.google.com/books?id=M2Maq5n3jkMC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

49 Karan Bhatia, "Google VP Karan Bhatia: Google Isn't Politically Biased and Doesn't Censor Conservative Speech, *Fox News*, July 15, 2019, https://www.foxnews.com/opinion/google-vp-karan-bhatia-conservative-speech-bias-censorship. See Google community guidelines at https://www.youtube.com/yt/about/policies/#community-guidelines.

50 However, a criticism is that those lacked access to proprietary information. "Google Rewards Reputable Reporting, Not Left-Wing Politics," *The Economist*, June 8, 2019, https://www.economist.com/graphic-detail/2019/06/08/google-rewards-reputable-reporting-not-left-wing-politics.

51 "Google and Censorship through Search Engines," Hearing, Senate Judiciary Committee, Subcommittee on the Constitution, July 16, 2019, https://www.judiciary.senate.gov/meetings/google-and-censorship-though-search-engines. A hearing was held in the House the same day: House Committee on the Judiciary, Hearing, "Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship," July 16, 2019, https://judiciary.house.gov/legislation/hearings/online-platforms-and-market-power-part-2-innovation-and-entrepreneurship.

52 Testimony of Francesca Tripodi, Before the Senate Judiciary Committee, Subcommittee on the Constitution, Hearing on Google and Censorship through Search Engines, July 16, 2019, https://www.judiciary.senate.gov/imo/media/doc/Tripodi%20Testimony1.pdf.

53 Mallory Locklear, "Jack Dorsey: Twitter isn't Guided by 'Political Ideology,'" *Engadget*, September 4, 2018, https://www.engadget.com/2018/09/04/jack-dorsey-twitter-not-guided-political-ideology/.

54 Testimony of Carlos Monje, Director, Public Policy and Philanthropy, Twitter, Inc., Before the United States Senate Committee on the Judiciary, Subcommittee on the Constitution, April 10, 2019, https://www.judiciary.senate.gov/imo/media/doc/Monje%20Testimony.pdf

55 Mike Masnick, "The Good Censor Document Shows Google Struggling with the Challenges of Content Moderation," TechDirt, October 17, 2018, https://www.techdirt.com/articles/20181014/00295940834/good-censor-document-shows-google-struggling-with-challenges-content-moderation.shtml.

56 A recent coalition letter signed by this writer's organization, the Competitive Enterprise Institute, urges caution on making changes to Section 230 liability for user-generated content and stresses that "neutral" presentation of content is impossible (as even chronology presents a form of bias) and that "platform moderation is complicated and also essential for civil discourse," but that a "preferred standard of content moderation is just that—a preference." Geoffrey Manne, "Section 230 Principles for Lawmakers and a Note of Caution as Trump Convenes His 'Social media summit,'" *Truth on the Market*, July 11, 2019, https://truthonthemarket.com/2019/07/11/section-230-principles-for-lawmakers/. Liability for User-Generated Content Online: Principles for Lawmakers, Coalition letter, July 11, 2019, https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2992&context=historical. July 10, 2019 coalition letter to House and Senate Leadership: https://techfreedom.org/academics-civil-society-caution-lawmakers-considering-amending-section-230/ and https://cei.org/content/cei-joins-coalition-letter-support-section-230.

57 Siva Vaidhyanathan, "Why Conservatives Allege Big Tech Is Muzzling Them," *The Atlantic*, July 28, 2019, https://www.theatlantic.com/ideas/archive/2019/07/conservatives-pretend-big-tech-biased-against-them/594916/.

58 Dennys Antonialli, "Drag Queen vs. David Duke: Whose Tweets Are More 'Toxic'?" *Wired*, July 25, 2019, https://www.wired.com/story/drag-queens-vs-far-right-toxic-tweets.

59 Shannon C. McGregor and Daniel Kreiss, "Conservatives Say Google and Facebook are Censoring Them. Here's the Real Background," *Washington Post*, https://www.washingtonpost.com/politics/2019/08/01/are-google-facebook-censoring-conservatives-problem-is-more-widespread-than-that/?noredirect=on.

60 Clyde Wayne Crews Jr. and Alberto Mingardi, "Government to Google: All Search Results Must Appear First," McClatchy News, July 12, 2011, https://cei.org/content/government-google-all-search-results-must-appear-first.

61 Mark Ward, "Why Search is No Longer All about Google," *BBC News*, July 12, 2019, https://www.bbc.com/news/technology-48866151.

62 Valerie Richardson, "Facebook Taps Former Republican Senator to Probe Claims of Anti-Conservative Bias, *Washington Times*, May 2, 2018, https://www.washingtontimes.com/news/2018/may/2/facebook-brings-in-jon-kyl-to-probe-political-bias/.

63 Senator Jon Kyl, Covington Interim Report, August 2019, https://fbnewsroomus.files.wordpress.com/2019/08/covington-interim-report-1.pdf?mod=article_inline. Jon Kyl, "Why Conservatives Don't Trust Facebook," *Wall Street Journal*, August 20, 2019, https://www.wsj.com/articles/why-conservatives-dont-trust-facebook-11566309603.

64 Clyde Wayne Crews Jr., "Facebook Report on Bias Overlooks Looming Threats of Speech Regulation," *OpenMarket*, Competitive Enterprise Institute, August 20, 2019, https://cei.org/content/facebook-report-bias-overlooks-looming-threats-speech-regulation.

65 "FCC Commissioner Carr Pushes back on Zuckerberg's Call to Censor the Internet," *The Federalist* (radio show), April 10, 2019, https://thefederalist.com/2019/04/10/fcc-commissioner-carr-pushes-back-zuckerbergs-call-censor-internet/.

66 As the Change the Terms coalition letter on user-generated content stated: "The government shouldn't require—or coerce—intermediaries to remove constitutionally protected speech that the government cannot prohibit directly. Such demands violate the First Amendment." "Twitter bans 'dehumanizing' posts toward religious groups," Associated Press, July 9, 2019, https://apnews.com/905d3a919d9a4c20bb62837116e16506.

67 Liability for User-Generated Content Online: Principles for Lawmakers, July 11, 2019.

68 Office of Sen. Mark Warner, "Potential Policy Proposals for Regulation of Social Media and Technology Firms," White Paper 2018, https://graphics.axios.com/pdf/PlatformPolicyPaper.pdf#_ga=2.264215045.863640255.1563228787-239234713.1563228787.

69 Zuckerberg, "The Internet needs new rules."

70 Clyde Wayne Crews Jr., "Real Sin for Social Media Companies Not 'Censorship,' but Getting into Bed with Government," *OpenMarket* blog, Competitive Enterprise Institute, August 7, 2018, https://cei.org/blog/real-sin-social-media-companies-not-censorship-getting-bed-government.

71 Zuckerberg, "The Internet needs new rules."

72 David Ingram, "Facebook names 20 people to its 'Supreme Court' for content moderation," *NBC News,* May 6, 2020, https://www.nbcnews.com/tech/tech-news/facebook-names-20-people-its-supreme-court-content-moderation-n1201181. Brent Harris, "Getting Input on an Oversight Board," Facebook Newsroom, April 1, 2019, https://newsroom.fb.com/news/2019/04/input-on-an-oversight-board/. The Oversight Board charter is available at Nick Clegg, "Charting a Course for an Oversight Board for Content Decisions," Facebook Newsroom, January 28, 2019, https://newsroom.fb.com/news/2019/01/oversight-board/. Navneet Alang, "Inside Facebook's global constitutional convention," *The Week*, May 12, 2019, https://theweek.com/articles/840591/inside-facebooks-global-constitutional-convention. https://newsroom.fb.com/news/2019/06/global-feedback-on-oversight-board/. Facebook's Civil Rights Audit—Progress Report, June 30, 2019, https://fbnewsroomus.files.wordpress.com/2019/06/civilrightaudit_final.pdf. Sheryl Sandberg, "A Second Update on Our Civil Rights Audit, Facebook Newsroom, June 30, 2019, https://newsroom.fb.com/news/2019/06/second-update-civil-rights-audit. Brent Harris, "Global Feedback and Input on the Facebook Oversight Board for Content Decisions," Facebok Newsroom, June 27, https://about.fb.com/news/2019/06/global-feedback-on-oversight-board/. Ina Fried and Rebecca Falconer, "Facebook Vows Misinformation Crackdown Ahead of 2020 Election, Census," *Axios*, June 30, 2019, https://www.axios.com/facebook-civil-rights-audit-2020-election-census-ed689151-f53b-49a5-b67a-0da99e095185.html.

73 Angela Charleton, "New French Rules for Facebook? Zuckerberg Likes the Idea," Associated Press, May 10, 2019, https://www.courthousenews.com/new-french-rules-for-facebook-zuckerberg-likes-the-idea/.

74 Charmaine Yoest, "The Rise of Artificial Freedom," *RealClearPolitics*, May 16, 2019, https://www.realclearpolitics.com/articles/2019/05/16/the_rise_of_artificial_freedom_140351.html.

75 Faiza Patel, "How Trump's Pressure on Google Threatens Government Manipulation of Search Results," Brennan Center for Justice, September 5, 2018, https://www.brennancenter.org/blog/how-trumps-pressure-google-threatens-government-manipulation-search-results.

76 Jillian C. York, "How American Corporations Are Policing Online Speech Worldwide," *Gizmodo*, July 10, 2019, https://gizmodo.com/how-american-corporations-are-policing-online-speech-wo-1836010637.

77 Gurpatwant Singh Pannun "How Big Tech Silences American Voices against Tyranny Abroad," *Observer*, August 3, 2019, https://observer.com/2019/08/big-tech-censorship-tyranny-abroad/.

78 Jonathan Turley, "France has Turned into One of the Worldwide Threats to Free Speech," *The Hill*, July 6, 2019, https://thehill.com/opinion/civil-rights/451813-france-has-turned-into-one-of-the-worldwide-threats-to-free-speech.

79 Mark Scott and Zachary Young, "France and Facebook Announce Partnership Against Online Hate Speech," *Politico*, November 12, 2018, https://www.politico.eu/article/emmanuel-macron-mark-zuckberg-paris-hate-speech-igf/. "In a World First, Facebook to Give Data on Hate Speech Suspects to French Courts," *Reuters*, June 25, 2019, http://news.trust.org/item/20190625180830-9jept and https://www.dailymail.co.uk/news/article-7180593/In-world-Facebook-data-hate-speech-suspects-French-courts.html.

80 Ryan Gallagher, "Google Employees Uncover Ongoing Work on Censored China Search," *The Intercept*, March 4, 2019, https://theintercept.com/2019/03/04/google-ongoing-project-dragonfly/.

81 Sam Schechner and Jacob Gershman, "Google Case Asks: Can Europe Export Privacy Rules World-Wide?" *Wall Street Journal*, September 9, 2018, https://www.wsj.com/articles/local-internet-laws-threaten-to-go-global-1536490801.

82 Peter Kafka, "Washington's First Attempt at Regulating Big Tech Is a Joke," *Vox Recode*, June 21, 2019, https://www.vox.com/recode/2019/6/21/18693505/facebook-google-twitter-regulate-big-tech-hawley-bill-congress.

83 Matthew Ingram, "Leaked White Paper Proposes Congressional Regulation of Social Media," *Columbia Journalism Review*, https://www.cjr.org/the_new_gatekeepers/congress-white-paper-platforms.php; see also David McCabe, "Scoop: 20 Ways Democrats Could Crack Down on Big Tech," *Axios*, July 30, 2018, https://www.axios.com/mark-warner-google-facebook-regulation-policy-paper-023d4a52-2b25-4e44-a87c-945e73c637fa.html.

84 Warner White Paper, 2018, p. 2.

85 Warner White Paper "Potential Policy Proposals for Regulation of Social Media and Technology Firms" 2018.

86 McCabe, *Axios*, 2018.

87 Adi Robertson, "Sen. Mark Warner Floats Major Tech Company Regulations that Don't Include Breakups," *The Verge*, July 30, 2018, https://www.theverge.com/2018/7/30/17629854/mark-warner-tech-company-legislation-white-paper-privacy-misinformation-competition.

88 Lauren Feiner, "Sen. Mark Warner Praises Mark Zuckerberg's Call for Tech Regulation," *CNBC*, April 1, 2019, https://www.cnbc.com/2019/04/01/elizabeth-warren-praises-facebook-ceos-calls-for-tech-regulation.html.

89 Patrick Pexton, "The Post's Endorsements Historically Tend Democratic," *Washington Post*, November 2, 2012, https://www.washingtonpost.com/opinions/patrick-pexton-the-posts-endorsements-historically-tend-democratic/2012/11/02/6890a49a-250a-11e2-ba29-238a6ac36a08_story.html?utm_term=.eb7c78ea39a6.

90 "New York Times Endorsements through the Ages" *New York Times*, September 23, 2016, https://www.nytimes.com/interactive/2016/09/23/opinion/presidential-endorsement-timeline.html.

91 Frank Miniter, "Twitter Banned John Lott for What?" *America's 1st Freedom*, National Rifle Association, July 12, 2019, https://www.americas1stfreedom.org/articles/2019/7/12/twitter-banned-john-lott-for-what/.

92 Sarah McBride, "Mozilla CEO Resigns, Opposition to Gay Marriage Drew Fire," *Reuters*, April 3, 2014, https://www.reuters.com/article/us-mozilla-ceo-resignation/mozilla-ceo-resigns-opposition-to-gay-marriage-drew-fire-idUSBREA321Y320140403.

93 Lukas Mikelionis, "Democrats' Illegal Immigration Tune has Changed Over Years Despite Incoming Caravan," *Fox News*, October 24, 2018, https://www.foxnews.com/politics/democrats-illegal-immigration-tune-has-changed-over-years-despite-incoming-caravan.

94 Reid said "no sane country" would have birthright citizenship. "Harry Reid on Immigration," *C-SPAN* (video and transcript), September 20, 1993, https://www.c-span.org/video/?c4548849/harry-reid-immigration. Tamar Lapin, "Trump Uses Old Obama Clip to Make Immigration Point," *New York Post*, October 23, 2018, https://nypost.com/2018/10/23/trump-uses-old-obama-clip-to-make-immigration-point/.

95 Katy Steinmetz, "See Obama's 20-Year Evolution on LGBT Rights," *Time*, April 10, 2015, https://time.com/3816952/obama-gay-lesbian-transgender-lgbt-rights/.

96 Center for American Progress, "Civil Rights, Anti-Hate, Racial Justice and Open Internet Organizations Release 'Change the Terms' to Help Internet Companies Combat Hateful Activity Online," news release, October 25, 2018, https://www.americanprogress.org/press/release/2018/10/25/459714/release-civil-rights-anti-hate-racial-justice-open-internet-organizations-release-change-terms-help-internet-companies-combat-hateful-activity-online/. Henry Fernandez, "Curbing Hate Online: What Companies Should Do Now," Center for American Progress, October 25, 2018, https://www.americanprogress.org/issues/immigration/reports/2018/10/25/459668/curbing-hate-online-companies-now/. Center for American Progress, Appendix: Recommended Internet Company Corporate Policies and Terms of Service to Reduce Hateful Activities, 2018, https://cdn.americanprogress.org/content/uploads/2018/10/24111621/ModelInternetCompanies-appendix.pdf.

97 Change the Terms coalition FAQ, accessed September 9, 2019, https://www.changetheterms.org/coalition.

98 Ibid.

99 "Facebook Civil Rights Audit Takes Important Steps, Not Significant Strides, Says Change the Terms Coalition," *Medium*, June 30, 2019, https://medium.com/@changetheterms/facebook-civil-rights-audit-takes-important-steps-not-significant-strides-says-change-the-terms-a11ef19e335.

100 Jason L. Riley, "Hate Crime Hoaxes Are More Common Than You Think," *Wall Street Jour*nal, June 25, 2019, https://www.wsj.com/articles/hate-crime-hoaxes-are-more-common-than-you-think-11561503352.

101 Clyde Wayne Crews Jr., "Is There a Downside to Activist Groups Pressuring Social Media about What Speech to Allow?" *Forbes*, October 30, 2018, https://www.forbes.com/sites/waynecrews/2018/10/30/is-there-a-downside-to-activist-groups-pressuring-social-media-about-what-speech-to-allow/#2c8272ff79ec.

102 Exchange between Sen. Ben Sasse and Mark Zuckerberg, "Facebook and Free Speech: 'Adults Need to Engage in Vigorous Debates,'" *Wall Street Journal*, April 13, 2018, https://www.wsj.com/articles/notable-quotable-facebook-and-free-speech-1523658405. Mairead McCardle, "Sasse Grills Zuckerberg: If You're Going to Police Hate Speech, Can You Define It?" *National Review*, April 10, 2018, https://www.nationalreview.com/news/ben-sasse-mark-zuckerberg-hate-speech-policy-definitions/.

103 Claude Thompson, "Social Media Chiefs Left Speechless When Asked if Mother Teresa Abortion Quotation Is Hate Speech," *Examiner*, April 10, 2019, https://www.washingtonexaminer.com/news/social-media-chiefs-left-speechless-when-asked-if-mother-teresa-abortion-quotation-was-hate-speech.

104 Lauretta Brown, "Zuckerberg Can't Define 'Hate Speech' in Senate Hearing Despite Pushing to Police It," *Townhall*, April 11, 2018, https://townhall.com/tipsheet/laurettabrown/2018/04/11/zuckerberg-cant-define-hate-speech-in-senate-hearing-despite-pushing-to-police-it-n2469747.

105 Facebook's Civil Rights Audit, 2019, p.7.

106 Kyl, Interim Report, 2019, p. 3.

107 Jessica Prol Smith, "The Southern Poverty Law Center Is a Hate-Based Scam that Nearly Caused Me to Be Murdered, *USA Today*, August 17, 2019, https://www.usatoday.com/story/opinion/2019/08/17/southern-poverty-law-center-hate-groups-scam-column/2022301001/.

108 Kyl, Interim Report, 2019, p. 3.

109 David Thunder, "Do We Want Google, Twitter and Facebook to Be Sole Gatekeepers of Public Speech?" *Irish Times*, July 22, 2019, https://www.irishtimes.com/opinion/youtube-row-raises-serious-questions-on-censorship-by-tech-giants-1.3961497.

110 P.R. Lockhart, "The 2020 Democratic Primary Debate over Reparations, Explained," *Vox*, June 19, 2019, https://www.vox.com/policy-and-politics/2019/3/11/18246741/reparations-democrats-2020-inequality-warren-harris-castro.

111 Facebook, "Dangerous Individuals and Organizations," accessed March 23, 2020, https://www.facebook.com/communitystandards/dangerous_individuals_organizations.

112 Zach Carter, "For Fancy Racists, Classical Liberalism Offers Respect, Intrigue," *HuffPost*, August, 19, 2018, https://www.huffpost.com/entry/racists-classical-liberalism-classic-rock-fraud_n_5b6b232ee4b0fd5c73dff019. Jamelle Bouie, "The Enlightenment's Dark Side," *Slate*, June 5, 2018, https://slate.com/news-and-politics/2018/06/taking-the-enlightenment-seriously-requires-talking-about-race.html.

113 Thomas C. Leonard, *Illiberal Reformers* (Princeton, New Jersey: Princeton University Press, 2016).

114 Ludwig von Mises, *Bureaucracy* (New Haven, Connecticut: Yale University Press, 1944), p. 125, https://mises-media.s3.amazonaws.com/Bureaucracy_3.pdf.

115 Kent Lassman and Daniel Turner, "What the Green New Deal Could Cost a Typical Household," Competitive Enterprise Institute/Power the Future, July 20, 2019, https://cei.org/content/what-green-new-deal-could-cost-typical-household.

116 David Montgomery, "AOC's Chief of Change: Saikat Chakrabarti Isn't Just running Her Office. He's Guiding a Movement," *Washington Post Magazine*, July 10, 2019, https://www.washingtonpost.com/news/magazine/wp/2019/07/10/feature/how-saikat-chakrabarti-became-aocs-chief-of-change/?noredirect=on.

117 Facebook 2019 F8 Developer Conference, YouTube video https://www.youtube.com/watch?v=UtxPdezclYw&t=400s. Cat Zakrzewski, "Analysis: Facebook's New Emphasis on Groups Could Leave It More Vulnerable to Disinformation, *Daily Herald*, April 4, 2019, https://www.dailyherald.com/business/20190504/analysis-facebooks-new-emphasis-on-groups-could-leave-it-more-vulnerable-to-disinformation.

118 Designing Accounting Safeguards to Help Broaden Oversight and Regulations on Data Act (S.1951), https://www.congress.gov/116/bills/s1951/BILLS-116s1951is.pdf.

119 Competitive Enterprise Institute, "Senate Bill Targets Big Tech but Empowers Regulators over Consumers or Investors," news release, June 24, 2019, https://cei.org/content/senate-bill-targets-big-tech-empowers-regulators-over-consumers-or-investors.

120 Competitive Enterprise Institute, "Draft White House Executive Order Aimed at Social Media Companies Would Violate First Amendment," news release, August 9, 2019, https://cei.org/content/draft-white-house-executive-order-aimed-social-media-companies-would-violate-first-amendment.

121 John Cochrane, "The Rule of Law in the Regulatory State," White Paper, June 2015, p. 6. http://faculty.chicagobooth.edu/john.cochrane/research/papers/rule%20of%20law%20and%20regulation%20essay.pdf.

122 Victor Keegan, "Will MySpace Ever Lose Its Monopoly?" *The Guardian*, February 7, 2007. http://www.theguardian.com/technology/2007/feb/08/business.comment

123 Kate Gibson, "Facebook's Biggest Problem Isn't Privacy—It's Young People," *CBS News*, August 29, 2018, https://www.cbsnews.com/news/facebooks-biggest-problem-isnt-privacy-its-young-people/.

124 John Paul Titlow, "How DuckDuckGo Rode A Wave of Post-Snowden Anxiety to Massive Growth," *Fast Company*, June 19, 2015, https://www.fastcompany.com/3046943/how-duckduckgo-rode-a-wave-of-post-snowden-anxiety-to-massive-growth. DuckDuckGo Traffic, accessed March 23, 2020, https://duckduckgo.com/traffic.

125 Greg Bensinger, "Never-Googlers: Web users take the ultimate step to guard their data," *Washington Post*, July 23, 2019, https://www.thehour.com/news/article/Never-Googlers-Web-users-take-the-ultimate-step-14116157.php.

126 L. Todd Wood, "Big Tech Is Dying, Soon to Be Replaced, They Just Don't Know It Yet," *CDMedia*, https://creativedestructionmedia.com/news/business/2019/07/07/big-tech-is-dying-soon-to-be-replaced-they-just-dont-know-it-yet/.

127 Ranking of top websites in the U.S. as of March 23, 2020, https://www.similarweb.com/top-websites/united-states.

128 Arthur L. Herman, "Google's Unstable Empire," *National Review*, September 13, 2019, https://www.nationalreview.com/magazine/2018/10/01/life-after-google-blockchain-book-review/. Tunku Varadarajan, "Sage Against the Machine," *Wall Street Journal*, August 31, 2018, https://www.wsj.com/articles/sage-against-the-machine-1535747443.

129 Daniel Lyons, "Analyzing the Republican Net Neutrality Bills, *AEIdeas*, American Enterprise Institute, April 18, 2019, http://www.aei.org/publication/analyzing-the-republican-net-neutrality-bills/.

130 Andrea O'Sullivan, "Mark Zuckerberg Confirms: Regulation Would Be Good for Facebook," *The Bridge*, Mercatus Center, April 10, 2019, https://www.mercatus.org/bridge/commentary/mark-zuckerberg-confirms-regulation-would-be-good-facebook.

131 Mark Jamison, "To 'Protect' Facebook, Mark Zuckerberg Mimics AT&T in the 20th Century," *RealClearMarkets*, April 12, 2019, https://www.realclearmarkets.com/articles/2019/04/12/to_protect_facebook_mark_zuckerberg_mimics_att_in_the_20th_103694.html.

132 Emma Llanso, "Platforms Want Centralized Censorship. That Should Scare You," *Wired*, April 18, 2019, https://www.wired.com/story/platforms-centralized-censorship/.

133 Clyde Wayne Crews, Jr. "Cybersecurity and Authentication: The Marketplace Role in Rethinking Anonymity—Before Regulators Intervene," *Knowledge, Technology & Policy*, Vol. 20 (August 18, 2007), pp. 97–105, https://link.springer.com/article/10.1007/s12130-007-9010-z.

134 Zuckerberg, "The Internet needs new rules."

135 Nellie Bowles, "Fighting Big Tech Makes for Some Uncomfortable Bedfellows," *New York Times*, July 14, 2019, https://www.nytimes.com/2019/07/14/technology/big-tech-strange-bedfellows.html?auth=login-email&login=email.

About the Author

Clyde Wayne Crews, Jr. is Vice President for Policy at the Competitive Enterprise Institute (CEI). He is widely published and a contributor at *Forbes*. A frequent speaker, he has appeared at venues including the DVD Awards Showcase in Hollywood, European Commission–sponsored conferences, the National Academies, the Spanish Ministry of Justice, and the Future of Music Policy Summit. He has testified before Congress on various policy issues. Crews has been cited in dozens of law reviews and journals. His work spans regulatory reform, antitrust and competition policy, safety and environmental issues, and various information-age policy concerns.

Alongside numerous studies and articles, Crews is co-editor of the books *Who Rules the Net? Internet Governance and Jurisdiction* and *Copy Fights: The Future of Intellectual Property in the Information Age*. He is co-author of *What's Yours Is Mine: Open Access and the Rise of Infrastructure Socialism* and a contributing author to other books. He has written in the *Wall Street Journal*, *Chicago Tribune*, *Communications Lawyer*, *International Herald Tribune*, and other publications. He has appeared on Fox News, CNN, ABC, CNBC, and the PBS News Hour. His policy proposals have been featured prominently in the *Washington Post*, *Forbes*, and *Investor's Business Daily*.

Before coming to CEI, Crews was a scholar at the Cato Institute. Earlier, Crews was a legislative aide in the U.S. Senate, an economist at Citizens for a Sound Economy and the Food and Drug Administration, and a fellow at the Center for the Study of Public Choice at George Mason University. He holds a Master's of Business Administration from the College of William and Mary and a Bachelor's of Science from Lander College in Greenwood, South Carolina. While at Lander, he was a candidate for the South Carolina state senate. A dad of five, he can still do a handstand on a skateboard and enjoys custom motorcycles.

COMPETITIVE ENTERPRISE INSTITUTE

The Competitive Enterprise Institute promotes the institutions of liberty and works to remove government-created barriers to economic freedom, innovation, and prosperity through timely analysis, effective advocacy, inclusive coalition-building, and strategic litigation.

COMPETITIVE ENTERPRISE INSTITUTE

1310 L Street NW, 7th Floor

Washington, DC 20005

202-331-1010

cei.org