

Coalition Opposing Changes to 47 U.S. Code § 230 (Section 230) as Part of the National Defense Authorization Act

December 2, 2020

Honorable Senators and Representatives:

We the undersigned write today to express our grave concern regarding recent reports of changes to 47 U.S. Code § 230, commonly referred to as Section 230, as part of this year's National Defense Authorization Act (NDAA). Our message is simple: Regardless of one's view of Section 230, the consequences of curtailing or repealing it are far too great to render it a mere footnote to must-pass legislation.

Section 230 has been called the law that created Internet as we know it. It accomplished this through a simple premise: You are responsible for what you say or do online and the platform that hosts your content is not. This shield against intermediary liability has allowed countless online services, from the biggest names in Silicon Valley to the website currently being invented in an entrepreneur's garage, to grow and operate on a global scale.

Nascent companies deserve the same playing field that today's industry leaders enjoyed in their early days. Without fear of being held liable for the enormous volume of content generated by their users, a new generation of platforms—perhaps with content moderation more to the liking of critics on both the left and the right—can come into being. If Section 230 were to be repealed, or even watered down, this next generation of platform will likely be thwarted by liability threats. “Big tech” firms have the resources to comply with new mandates and regulations, so erecting this barrier to entry to nascent firms will artificially lock currently dominant firms in their lead positions.

The growing importance of the Internet to our economy has been accelerated by the need for social distancing during the COVID-19 pandemic. Online services have been crucial to allowing families to stay connected, informed, entertained, and supplied. Millions of students are learning remotely and businesses continue to reach their customers. The policy enshrined in Section 230 is the backbone of this lifeline. Ripping it away without proper consideration of the repercussions or alternatives will introduce catastrophic uncertainty into one of the few thriving parts of our economy. This includes not only social media platforms, but also review sites, home-sharing platforms, information services, blog comments, and even videoconferencing.

Some argue that Section 230 needs updating or has outlived its usefulness. We welcome that debate. But the debate must be held at length in order to sufficiently explore whether there are alternatives to better balance concerns about online content. The diversity of opinions regarding those alternatives and their consequences illustrates how much discussion is still needed. Any changes must be carefully considered before altering the status quo. An enormous portion of our

economy and society depends upon the balance struck by Section 230. Tipping the scales or removing Section 230 in haste will likely have harmful consequences.

One such consequence makes the inclusion of changes to Section 230 in the NDAA particularly egregious. The largest online technology firms are either based here in the United States, where there is a broad cultural consensus around free enterprise and free expression, or China, where no firm is beyond the authoritarian grip of the Communist Party. Abruptly upending the legal structure on which America's world-leading technology firms have come to rely would be an unforced error for national security of the most significant degree. It would risk ceding the future of the Internet to America's greatest geopolitical adversary.

More broadly, our greatest national defense is a strong economy. The economic consequences of changes to Section 230 have not been properly considered as part of this process.

The undersigned have long engaged in the debate surrounding Section 230 and will continue to respectfully do so. As scholars and policy analysts, we have no objection to carefully considering alternatives and weighing tradeoffs. But changing a law so fundamental to such a critical sector of our economy as a political bargaining chip for must-pass legislation is anything but judicious.

Sincerely,

Brandon Arnold
Executive Vice President
National Taxpayers Union

James Czerniawski
Policy Analyst, Tech and Innovation
Libertas Institute

Brent Wm. Gardner
Chief Government Affairs Officer
Americans for Prosperity

Patrick Hedger
Vice President of Policy
Taxpayers Protection Alliance

Doug Holtz-Eakin
President
American Action Forum *

Jennifer Huddleston
Director of Technology and Innovation Policy
American Action Forum *

Jessica Melugin
Director, Center for Technology and Innovation
Competitive Enterprise Institute

Eric Peterson
Director of the Pelican Center for Technology and Innovation
Pelican Institute

Steve Pociask
President / CEO
American Consumer Institute

Jason Pye
Vice President of Legislative Affairs
FreedomWorks

Carl M. Szabo
Vice President and General Counsel
NetChoice

Jeffrey Westling
Technology & Innovation Policy Fellow
R Street Institute

* Organization listed for identification purposes only