



REINING IN BIG TECH'S CENSORSHIP OF CONSERVATIVES

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I. Introduction: Big Tech Is Out to Get Conservatives.

Time and again, Big Tech uses its power to suppress and marginalize conservative voices.¹ Evidence of both underlying bias and arbitrary censorship continues to mount, and these tendencies are shaping corporate policies and their implementation. Bias guides how companies censor certain speakers and content. And bias can inform decisions at the core of major tech companies and their offerings, such as what information or accounts to promote or downgrade; whether and how to use “blacklists”; what products to carry; and what customers or advertisers to work with.

Bias and censorship in Big Tech come as no surprise given the left-leaning corporate cultures of technology companies and Silicon Valley overall.² The cultural and political slant is also evident from how Silicon Valley rejects its own when they associate with or voice what are traditionally considered Republican or conservative views.³

Bias and censorship are also no surprise given the increasing power of America’s cancel culture. When there is conflict over contentious issues, the trend is to silence and suppress disfavored views rather than address reasonable arguments head on—the approach that best enriches America’s civic discourse.⁴ Instead and increasingly, it seems to be the case that when

¹ See, e.g., Sen. Marsha Blackburn, *Marsha Blackburn Report: Tackling Conservative Censorship*, CLARKSVILLE ONLINE (Aug. 16, 2020) (“[I]ncreasingly, companies like Google and Twitter have become comfortable with abusing Section 230 protections. Silicon Valley has crossed the line with irresponsible content moderation and outright censorship of conservative voices. Conservatives have suffered under liberal mob rule.”), <https://www.clarksvilleonline.com/2020/08/16/marsha-blackburn-report-tackling-conservative-censorship/>; Sen. Ted Cruz, *Mark Zuckerberg is right, Jack Dorsey is wrong*, THE HILL (Oct. 31, 2019) (opinion), <https://thehill.com/blogs/congress-blog/politics/468404-mark-zuckerberg-is-right-jack-dorsey-is-wrong?rd=1572554408>; Chris Rodrigo, *Jordan confronts tech CEOs over claims of anti-conservative bias*, THE HILL (July 29, 2020), <https://thehill.com/homenews/house/509619-jordan-confronts-tech-ceos-with-claims-of-anti-conservative-bias>.

² See, e.g., Peter Hassan, *THE MANIPULATORS* 14 (2020) (“Silicon Valley is staggeringly one-sided politically.”); Dan Boylan, *Silicon Valley an ‘extremely left-leaning place,’ admits Zuckerberg*, THE WASH. TIMES (Apr. 10, 2018), <https://www.washingtontimes.com/news/2018/apr/10/zuckerberg-admits-silicon-valley-extremely-left-le/>; Tyler O’Neil, *Survey: Widespread Fear Amongst Conservatives at Google, Facebook, Amazon, Apple*, PJ MEDIA (Feb. 2, 2018), <https://pjmedia.com/news-and-politics/tyler-o-neil/2018/02/02/survey-widespread-fear-amongst-conservatives-at-google-facebook-amazon-apple-n56044>.

³ See, e.g., Joe Concha, *Twitter CEO responds to backlash after eating at Chick-fil-A during Pride Month*, THE HILL (June 11, 2018), <https://thehill.com/homenews/news/391654-twitter-ceo-responds-to-backlash-after-eating-at-chick-fil-a>; Associated Press, *Mozilla CEO resignation raises free-speech issues*, USA TODAY (Apr. 4, 2014) (“The resignation of Mozilla’s CEO amid outrage that he supported an anti-gay marriage campaign is prompting concerns about how Silicon Valley’s strongly liberal culture might quash the very openness that is at the region’s foundation.”), <https://www.usatoday.com/story/news/nation/2014/04/04/mozilla-ceo-resignation-free-speech/7328759/>; Kirsten Grind & Keach Hagey, *Why Did Facebook Fire a Top Executive? Hint: It Had Something to Do With Trump*, WALL ST. J. (Nov. 11, 2018), <https://www.wsj.com/articles/why-did-facebook-fire-a-top-executive-hint-it-had-something-to-do-with-trump-1541965245>.

⁴ See generally *supra* n.1.

Americans “[w]rite what [they] think online . . . [they] will be silenced by the big tech companies.”⁵

Acting on bias and engaging in lopsided censorship are problematic because of how cancel culture conflicts with underlying American values—values that also animate the First Amendment’s protection against government censorship. At the end of the day, whether the censor is government⁶ or Big Tech,

You don’t have free speech when only one side is allowed to talk. You don’t have freedom when one side can be “canceled” for disagreeing with the other. In today’s world, opposing views aren’t challenged or debated, they’re censored⁷

This type of viewpoint discrimination is especially problematic when companies hold themselves out as fair-minded and politically neutral.

Concerns and considerations like these could be overlooked if tech companies were small, weak, or marginal. But Big Tech companies are large, powerful, and pivotal for much that occurs in America’s economic and civic marketplaces. This includes the marketplace of ideas. The majority of Americans use some form of social media,⁸ often to obtain news.⁹ Likewise, today’s public figures use Big Tech products and platforms to communicate directly with millions of Americans.¹⁰ If there was any doubt about Big Tech’s outsized role in American civic discourse, the prominence of recent news about how social media will approach election-related messages and advertising dispel that doubt.¹¹ Big Tech companies also act as important distribution channels for products and information outside of social media—such as when Google Search returns internet search results, or when Amazon opts to reject certain books and

⁵ Michael M. Grynbaum & Tiffany Hsu, *Advertisers Are Fleeing Tucker Carlson. Fox News Viewers Have Stayed.*, N.Y. TIMES (June 18, 2020) (quoting Tucker Carlson), <https://www.nytimes.com/2020/06/18/business/media/tucker-carlson-advertisers-ratings.html>.

⁶ Cf. Peter Overby, *IRS Apologizes For Aggressive Scrutiny Of Conservative Groups*, NPR, (Oct. 27, 2017), <https://www.npr.org/2017/10/27/560308997/irs-apologizes-for-aggressive-scrutiny-of-conservative-groups>.

⁷ Rep. Jim Jordan, *Reject the ‘cancel culture.’ Reelect Donald Trump as president*, THE PLAIN DEALER (Aug. 19, 2020) (opinion), <https://www.cleveland.com/opinion/2020/08/reject-the-cancel-culture-reelect-donald-trump-as-president-jim-jordan.html>.

⁸ *Social Media Fact Sheet*, PEW RESEARCH CENTER (June 12, 2019), <https://www.pewresearch.org/internet/fact-sheet/social-media/>.

⁹ See, e.g., Peter Suci, *More Americans Are Getting Their News From Social Media*, FORBES (Oct. 11, 2019), <https://www.forbes.com/sites/petersuci/2019/10/11/more-americans-are-getting-their-news-from-social-media/#26d7e7c13e17>.

¹⁰ See generally Patrick Van Kessel et al., *Congress Soars to New Heights on Social Media*, PEW RESEARCH CENTER (July 16, 2020), <https://www.pewresearch.org/internet/2020/07/16/congress-soars-to-new-heights-on-social-media/>.

¹¹ Jeff Horwitz, *Facebook to Limit Political Ads Week Before Election, Label Premature Calls*, WALL ST. J. (Sept. 3, 2020), https://www.wsj.com/articles/facebook-to-limit-political-ads-week-before-election-label-premature-calls-11599130800?mod=hp_lead_pos1; see also Dustin Volz & Emily Glazer, *Facebook and Other Tech Giants Gird for Chaotic Election*, WALL ST. J. (Aug. 12, 2020), <https://www.wsj.com/articles/facebook-and-other-tech-giants-gird-for-chaotic-election-11597272121>.

advertisements but publish others. And Big Tech is sophisticated, with numerous tools for censorship—some of which are difficult to detect when used.¹²

These concerns might also have less weight if Big Tech companies were more straightforward about acknowledging bias where it exists and arbitrary censorship when it occurs. Americans already expect certain positions and views from various types of editors and publishers, large and small. They act accordingly. Whether reading the *New York Times* or *The Federalist*, or watching CNN or Fox News, Americans generally grasp the premises and worldviews that inform what they hear, see, and read. But when it comes to companies like Twitter, Google, Facebook, or Amazon, consumers have had far less clarity for far too long.

Jeopardizing values essential to America’s civic tradition should cause bipartisan concern. All Americans should view suppression of free speech and lopsided censorship by apparently-neutral actors as dangerous.¹³ Democrats have repeatedly dismissed these concerns. But summary dismissal cannot change facts, nor does simply labeling censorship a “conspiracy theory” make it so. Likewise, that Republicans use social media well—and that their content often generates high user-engagement—does not erase bias or instances of one-sided censorship. And ignoring this issue does not diminish the threat that it may eventually pose to some Democrats, as well.¹⁴ As Republicans continue investigating these topics, both parties should take these concerns seriously.

¹² See, e.g., Peter Hasson, *Blacklist Valley: How Big Tech reshapes politics by censoring conservative ideas*, WASH. EXAMINER (Jan. 30, 2020) (opinion) (“The discussion about tech platforms and political bias often (and understandably) centers on what is or isn’t *allowed* on Google, YouTube, Facebook, and Twitter, but the other half of the picture is what is and isn’t *prioritized* on a platform. Broadly speaking, tech companies censor users and content in two ways. The first, which we’ll call ‘hard censorship,’ is pretty straightforward: deleting content or suspending users. The second method, which we’ll call ‘soft censorship,’ involves tech companies making content harder to find. Hard censorship is tearing down a roadside billboard; soft censorship is making the billboard difficult to see by erecting other billboards in front of it. Soft censorship by tech companies can be just as effective as hard censorship. Studies show that people rarely click past the first page of Google or YouTube results. Even fewer click past the second or third page. So, pushing a link off the first page (or two or three) of Google is nearly the same as removing it from Google results altogether. The same is true with your Facebook and Twitter feeds: Companies don’t have to delete content to make sure you don’t see it.”), <https://www.washingtonexaminer.com/opinion/blacklist-valley>.

¹³ See *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google*, Hearing before the Subcomm. on Antitrust, Commercial, and Admin. Law of the H. Comm. on the Judiciary, 116th Cong. (2020) (Ranking Member F. James Sensenbrenner) (“[C]ompanies like Facebook, Google’s YouTube, and Twitter have become the public square of today, where political debate unfolds in real-time. But reports that dissenting views—often conservative views—are targeted or censored is seriously troubling. Conservatives are consumers too, and they need the protection of the antitrust laws. The power to influence debate carries with it remarkable responsibilities.”).

¹⁴ See, e.g., Rod Dreher, *Google Blacklists Conservative Websites*, THE AMERICAN CONSERVATIVE (July 21, 2020) (blog) (“Well, here we are today. Nine out of ten people on the planet who use Internet search use Google—and today, these people can’t find this blog or other conservative blogs and websites using Google. This is a foreshadowing of the cancelling to come. If you are on the Left, but take a position contrary to the kind of techno-progressivism and globalism favored by Google and others in Silicon Valley, you’re going to be next.”), <https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/>.

Regardless of whether Democrats acknowledge this problem, Big Tech must be held accountable. The analysis that follows is intended to help Congress and the American people further explore the extent of Big Tech’s bias and lopsided censorship. The House and Senate are currently weighing whether to amend section 230 of the Communications Decency Act to hold Big Tech accountable. As it stands now, section 230 provides broad protections, shielding platforms from liability and accountability for content-moderation decisions. Just last week, a dozen Republicans on the House Judiciary Committee introduced legislation to substantially amend section 230.¹⁵ The Republican views contained in this document should inform the debate over this area of law, and broader discussions of issues Congress should consider regarding digital markets.

Lastly, those fed up with bias and capricious censorship—and recalling the Obama-Biden Administration’s cozy relationship with Big Tech—should not overlook the efforts of the Trump Administration both to address bias¹⁶ and take action through traditional antitrust investigations.¹⁷ But executive-branch action is not enough. In light of the evidence below, Congress should take measures that help to address undue censorship when it occurs.

II. Big Tech Companies Are Biased Against Conservatives, Have Censored Conservatives, and Have Discriminated Against Conservative Views in the Past.

Ten years ago, some might have argued with the idea that Big Tech companies are politically biased in ways that lead to unfair treatment of Americans of a particular political ideology. As Americans enter October 2020, however, the evidence of bias is clear. Even in recent months, Big Tech companies have shown Americans more examples of politically-motivated bias and censorship. The examples below are not exhaustive, but they reveal a troubling pattern of Silicon Valley engaging in ideological discrimination.

¹⁵ H.R. 8517 (“Protect Speech Act”), 116th Cong. (2020).

¹⁶ Executive Order 13925, 85 Fed. Reg. 34079 (May 28, 2020) (“Preventing Online Censorship”).

¹⁷ See, e.g., John McKinnon & Brent Kendall, *Justice Department, State Attorneys General to Confer on Google Antitrust Challenge*, WALL ST. J. (June 23, 2020), <https://www.wsj.com/articles/justice-department-state-attorneys-general-to-confer-on-google-antitrust-challenge-11592937476>; Brent Kendall & John McKinnon, *Justice Department, State Attorneys General Likely to Bring Antitrust Lawsuits Against Google*, WALL ST. J. (May 15, 2020), <https://www.wsj.com/articles/justice-department-state-attorneys-general-likely-to-bring-antitrust-lawsuits-against-google-11589573622>; Spencer Soper & Ben Brody, *Amazon Probed by U.S. Antitrust Officials Over Marketplace*, BLOOMBERG (Sept. 11, 2019), <https://www.bloomberg.com/news/articles/2019-09-11/amazon-antitrust-probe-ftc-investigators-interview-merchants>; Jack Kelly, *Justice Department Is Investigating Google, Apple, Facebook And Amazon For Monopolistic Activities*, FORBES (July 24, 2019), <https://www.forbes.com/sites/jackkelly/2019/07/24/justice-department-is-investigating-google-apple-facebook-and-amazon-for-monopolistic-activities/#2a676324ba6b>; Charlotte Henry, *DOJ and States Attorneys General Turning Antitrust Attention on Apple*, THE MAC OBSERVER (June 24, 2020), <https://www.macobserver.com/news/doj-states-attorneys-general-antitrust-apple/>; Steven Overly, *Facebook discloses FTC antitrust investigation underway*, POLITICO (July 24, 2019), <https://www.politico.com/story/2019/07/24/facebook-discloses-ftc-antitrust-investigation-underway-1432927>; Brent Kendall & Emily Glazer, *FTC Considering Deposing Top Facebook Executives in Antitrust Probe*, WALL ST. J. (July 17, 2020), <https://www.wsj.com/articles/ftc-considering-deposing-top-facebook-officials-in-antitrust-probe-11595019047#:~:text=Emily%20Glazer,-Biography&text=The%20Federal%20Trade%20Commission%20is,people%20familiar%20with%20the%20matter.>

These examples are not intended to establish that Big Tech companies always act on bias. But what these anecdotes suggest provides more than enough cause for concern. And, regardless of one's belief in discrimination against conservatives, there is ample reason to view Big Tech companies as exerting censorship and editorial decisions that warrant amending law.

A. Twitter

Any discussion of bias in Big Tech is incomplete without discussing Twitter.¹⁸ Yet, Democrats denied Republicans—and the American people—the opportunity to hear from Twitter at a hearing of the Subcommittee on Antitrust, Commercial, and Administrative Law in July 2020.¹⁹ The House Judiciary Committee Republicans are continuing to investigate Twitter's bias against conservatives,²⁰ and Senate Republicans have made similar inquiries.²¹ Concerns about how Twitter approaches certain speakers and content are more than justified. They stem from a growing list of examples where Twitter has censored conservatives—up to and including the President of the United States—or otherwise suppressed positions associated with some conservatives and Republicans.²²

Censoring Members of Congress. Perhaps the most prominent example of Twitter's mistreatment of certain views and speakers occurred in summer 2018. In July, Twitter temporarily “shadow-banned” prominent Republicans. These Republicans included Ranking Member Jim Jordan, Representative Matt Gaetz, Representative Devin Nunes, and former-Representative Mark Meadows.²³ Twitter also shadow-banned Ronna McDaniel, the chair of the

¹⁸ See, e.g., Letter from Jim Jordan Ranking, Member, H. Comm. on the Judiciary, and F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary to Mr. Jack Dorsey, CEO of Twitter (July 8, 2020) (detailing instances of censorship of conservatives and Republicans on Twitter; explaining how Twitter's approach suggests that “Twitter is not moderating user content in a viewpoint-neutral manner”).

¹⁹ See, e.g., Tristan Justice, *Twitter's Absence Loomed Large In Big Tech Hearing*, THE FEDERALIST (July 30, 2020) (“As Republicans made well-founded allegations of high-profile suppression of conservative speech on the internet, Twitter, a platform that has emerged as a primary culprit in online censorship, wasn't there for questioning even as the social media company has ramped up its untrustworthy fact-checking.”), <https://thefederalist.com/2020/07/30/twitters-absence-loomed-large-in-big-tech-hearing/>; see also Letter from Jim Jordan Ranking, Member, H. Comm. on the Judiciary to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (July 22, 2020).

²⁰ Letter from Jim Jordan, Ranking Member, H. Comm. on the Judiciary, and F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary to Mr. Jack Dorsey, CEO, Twitter (July 8, 2020).

²¹ See, e.g., Letter from Sen. Mike Lee, Chairman, Subcomm. on Antitrust, Competition Policy and Consumer Rights at the S. Comm. on the Judiciary, to Mr. Jack Dorsey, Mr. Sundar Pichai, Mr. Mark Zuckerberg, and Mr. Anthony Casalena (July 30, 2020), https://www.lee.senate.gov/public/_cache/files/89d2dcc8-3d2c-4fee-a6c5-d309ffcebf4/big-tech.pdf; see also, Art Raymond, *Lee says social media honchos are 'heavy-handed monopolists' and calls for answers on content moderation issues*, DESERET NEWS (July 31, 2019), <https://www.deseret.com/utah/2020/7/31/21349461/senator-mike-lee-censorship-breitbart-google-facebook-twitter-squarespace-antitrust-monopoly>.

²² Even as Twitter participates in the cancel culture, Twitter's leadership has suffered from the same treatment. See, e.g., Joe Concha, *Twitter CEO responds to backlash after eating at Chick-fil-A during Pride Month*, THE HILL (June 11, 2018), <https://thehill.com/homenews/news/391654-twitter-ceo-responds-to-backlash-after-eating-at-chick-fil-a>.

²³ See, e.g., Eliza Collins, *Report: Prominent Republicans see their influence limited on Twitter, Democrats don't*, USA TODAY (July 25, 2018) (“An analysis by Vice News found that some of Trump's closest allies don't

Republican National Committee.²⁴ Yet, Twitter did not ban a single Member of the 78-person Progressive Caucus,²⁵ or Ronna McDaniel’s counterpart, Democratic Party chair Tom Perez.²⁶ Responding to these events, Twitter CEO Jack Dorsey wrote at the time: “It suffices to say we have a lot more work to do to earn people’s trust on how we work.”²⁷ What Dorsey wrote in 2018 still rings true today—especially given recent news about Twitter’s ongoing use of blacklists.²⁸

As another example of Twitter’s bias, Twitter censored the campaign account of Senate Majority Leader Mitch McConnell and accounts of other conservatives after they posted videos of protestors calling for violence outside of Senator McConnell’s home.²⁹ Twitter claimed it applied relevant policies against calls for violence regardless of the speaker.³⁰ Yet, in the words of Senator McConnell’s campaign manager: “Twitter will allow the words ‘Massacre Mitch’ to trend nationally on their platform. But [Twitter] locks our account for posting actual threats against us.”³¹ The following day, national Republican groups announced their decision to boycott further paid advertising on Twitter until it stopped censorship.³² The company ultimately backed

immediately show up when you type in their names in Twitter’s search box. Influential Democrats did not appear to have the same problem.”), <https://www.usatoday.com/story/news/politics/onpolitics/2018/07/25/report-some-gopers-shadow-banned-twitter/836734002/>.

²⁴ *Id.*

²⁵ Alex Thompson, *Twitter appears to have fixed “shadow ban” of prominent Republicans like the RNC chair and Trump Jr.’s spokesman*, VICE NEWS (July 25, 2018), https://www.vice.com/en_us/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman.

²⁶ *Id.*

²⁷ Alex Thompson, *Twitter appears to have fixed search problems that lowered visibility of GOP lawmakers*, VICE NEWS (July 26, 2018), https://www.vice.com/en_us/article/vbj7w3/twitter-appears-to-have-fixed-search-problems-that-lowered-visibility-of-gop-lawmakers.

²⁸ Allum Bokhari, *Purported Internal Screenshots Reveal Twitter Has a ‘Search Blacklist’ and ‘Trends Blacklist’*, BREITBART NEWS (July 16, 2020) (“If the tags are applied to users to suppress their content and keep their tweets from appearing, or appearing prominently in trends and search, it would appear to be yet another contradiction of the company’s longstanding claim that it does not ‘shadowban’—or covertly suppress—its users. However, in a comment, a Twitter spokesman said ‘we’ve always been clear that not all tweets or accounts can appear in trends or search.’”), <https://www.breitbart.com/tech/2020/07/16/purported-internal-screenshots-reveal-twitter-has-a-search-blacklist-and-trends-blacklist/>; Andy Kessler, *Tech CEOs Deserve an Apology*, WALL ST. J. (July 26, 2020) (opinion) (explaining “hackers last week accessed the accounts of Joe Biden, Elon Musk, Barack Obama and others, and released screenshots showing a ‘secret admin panel.’ Twitter hasn’t denied the images were real and quickly took them down. The panel has buttons for ‘Trends Blacklist’ and ‘Search Blacklist’—the definition of shadow banning.”), https://www.wsj.com/articles/tech-ceos-deserve-an-apology-11595796522?st=vwtdt4ar3peimr6m&reflink=article_email_share.

²⁹ Gregg Re, *Twitter locks out McConnell’s campaign for posting video of calls for violence at his home*, FOX NEWS (Aug. 8, 2019), <https://www.foxnews.com/politics/twitter-locks-out-mcconnell-campaign-for-posting-video-of-calls-for-violence-at-mcconnells-home>.

³⁰ *Id.*

³¹ *Id.* (internal quotation marks omitted).

³² Emily Birnbaum, *Republican groups halt Twitter spending after McConnell account locked*, THE HILL (Aug. 8, 2019) (“‘From unnecessary censorship to suppression of conservative content, Twitter has shown an incredible amount of bias against Republicans,’ RNC chief of staff Richard Walters said in a statement to The Hill. ‘Any future ad money we were planning to spend on the site has been halted until Twitter adequately addresses its biases and assures conservatives that we are on a level playing field with the rest of the users on the site.’”), <https://thehill.com/policy/technology/456694-senate-republican-campaign-arm-says-it-will-stop-twitter-spending-over>; *id.* (“According to Twitter’s ad archives, the [National Republic Congressional Committee’s] account has

down.³³ But this example raises concern about Twitter’s power over other Americans who might be subject to similar treatment but unable to effectively fight back.

Just this summer, Twitter tried to suppress and “cancel” Senator Tom Cotton, again revealing bias and lopsided censorship. Senator Cotton recently described Twitter’s “ultimatum: delete the [offending] tweet or Twitter would permanently lock [the] account. [Twitter] gave [Cotton] only 30 minutes to comply.”³⁴ The offending phrase? “No quarter for insurrectionists, anarchists, rioters, and looters.”³⁵ But,

This was apparently too much for the professional umbrage-takers on Twitter. In high dudgeon, they exclaimed that “no quarter” once meant that a military force would take no prisoners, but instead shoot them.³⁶

But Democratic presidential candidate Pete Buttigieg and *The New York Times* have used this phrase, and it is frequently used—along with other military terms—in politics.³⁷ Twitter’s behavior here is troubling and revealing. Senator Cotton described Twitter’s systemic cultural bias, and the ramifications it should have:

Twitter began as an open platform committed to the free exchange of ideas; over time, it increasingly has taken upon itself the role of politically correct censor of thought-crime by elected officials and ordinary citizens alike. Not surprisingly, the censorship falls overwhelmingly on conservatives.

Though Twitter purports to police only threats of violence, the company won’t even cooperate with law enforcement investigating death threats against me and other legislators. And the orthodoxy starts at the top: CEO Jack Dorsey reportedly unfollowed the Twitter account of *The New York Times* Opinion section after it published my op-ed.

The censorship, the hypocrisy and the arbitrary action are reasons why Twitter and other social-media platforms face so much scrutiny today. Many legislators want to limit or eliminate their liability protections under Section 230 of the Communications Decency Act. The companies also face potential antitrust actions by the Department of Justice and state attorneys general.

spent over \$100,000 on advertising, while McConnell’s campaign account spent around \$7,500. Before the boycott, the RNC and Trump campaign had planned to spend \$300,000 to \$500,000 in the month of August alone.”)

³³ Alex Pappas, *Twitter unlocks Mitch McConnell’s campaign account after GOP fury*, FOX NEWS (Aug. 9, 2019), <https://www.foxnews.com/politics/twitter-unlocks-mitch-mcconnells-campaign-account-after-gop-fury>; Corky Siemaszko, *‘Team Mitch’ claims victory after Twitter unlocks McConnell’s campaign account.*, NBC NEWS (Aug. 9, 2019), <https://www.nbcnews.com/news/us-news/team-mitch-claims-victory-after-twitter-unlocks-mcconnell-s-campaign-n1040866>.

³⁴ Sen. Tom Cotton, *Twitter tried to censor me – and they lost*, FOX NEWS (June 17, 2020) (opinion), <https://www.foxnews.com/opinion/twitter-tried-censor-me-they-lost-sen-tom-cotton>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *See id.*

These social-media companies have improved the lives of Americans in many ways. But they should not be surprised public opinion is turning against them when they act as censors and moral scolds to millions of Americans. Nor should they expect to find many people rushing to their defense. In fact, to coin a phrase, those of us in their crosshairs might say: No quarter for Big Tech censorship.³⁸

Censoring Pro-Life Views. Twitter has also censored conservative speech, specifically speech against abortion. As now-Senator Marsha Blackburn described in 2018, Twitter temporarily censored one of her paid political advertisements in which she presented her opposition to abortion.³⁹ Twitter prohibited the Blackburn campaign from promoting a video with pro-life language that opposed “the sale of baby body parts,” deeming the language “inflammatory.”⁴⁰ But—at least to some—inflammatory language is exactly what is needed to urge others to protect the lives of unborn children. Senator Blackburn is now part of “the Republican-led fight to change internet regulations”⁴¹ and she and other Members of Congress have said that “Twitter should not be censoring the political speech of Americans.”⁴² Twitter also censored pro-life language, including that of the Susan B. Anthony (SBA) List, on other occasions.⁴³ Pro-abortion groups appear not to have received similar treatment.⁴⁴

Censoring the President. Some of the most recent, prominent examples of Twitter’s censorship relate to its suppression of President Donald Trump’s messages to the American

³⁸ *Id.*

³⁹ Michael Collins, *Rep. Marsha Blackburn: Social media is censoring conservative speech*, THE TENNESSEAN (Apr. 26, 2018), <https://www.tennessean.com/story/news/politics/2018/04/26/rep-marsha-blackburn-warns-social-media-censoring-conservative-speech/551572002/>.

⁴⁰ Erik Schelzig, *Twitter shuts down Blackburn campaign announcement video*, ASSOCIATED PRESS (Oct. 9, 2017) (“Blackburn, who is running for the seat being opened by the retirement of Tennessee Sen. Bob Corker, boasts in the ad that she ‘stopped the sale of baby body parts.’ A Twitter representative told the candidate’s vendors on Monday that the statement was ‘deemed an inflammatory statement that is likely to evoke a strong negative reaction’”), <https://apnews.com/0d8828bd7d204b40af61172628d0a7f6>.

⁴¹ Alexander Vuocolo, *Senator Marsha Blackburn Says Social Media ‘Censorship’ Will Not Stand*, CHEDDAR (June 19, 2020), <https://cheddar.com/media/senator-marsha-blackburn-says-social-media-censorship-will-not-stand>.

⁴² Letter from Senators Marsha Blackburn, Ted Cruz, Tom Cotton, and Marco Rubio to Mr. Jack Dorsey, CEO of Twitter (Feb. 6, 2020), <https://www.cruz.senate.gov/files/documents/Letters/2020.02.06%20-%20Letter%20to%20Jack%20Dorsey%20Twitter%20CEO%20on%20Iranian%20official%20use%20of%20platform.pdf.pdf>.

⁴³ Mike Brest, *Twitter flags Trump campaign and Matt Gaetz for anti-abortion content on eve of March for Life*, WASH. EXAMINER (Jan. 24, 2020) (“A Twitter representative confirmed to the *Washington Examiner* that both posts were accidentally flagged and that the error has been corrected.”), <https://www.washingtonexaminer.com/news/twitter-flags-trump-campaign-and-matt-gaetz-for-anti-abortion-content-on-eve-of-march-for-life>; see also *Here’s How Twitter is Censoring Our Pro-Life Message*, SUSAN B. ANTHONY LIST (Oct. 25, 2017) (“No advertiser is permitted to use the phrase ‘killing babies’. That’s what Twitter told us when they censored one of our videos.”), <https://www.sba-list.org/suzy-b-blog/heres-twitter-censoring-pro-life-message>; see also *Stifling Free Speech: Technological Censorship and the Public Discourse, Hearing before the Subcommittee on the Constitution of the Senate Judiciary Committee*, 116th Cong. (2019) (Testimony of the Hon. Marilyn Musgrave, Vice President of Gov. Affairs, Susan B. Anthony List).

⁴⁴ Lila Rose, *Twitter feigns political neutrality, but my pro-life organization sees the bias firsthand*, USA TODAY (Sept. 16, 2018) (opinion), <https://www.usatoday.com/story/opinion/voices/2018/09/16/twitter-political-bias-abortion-politics-planned-parenthood-social-media-column/1255803002/>.

people. So far in 2020, Twitter has censored a number of the President’s posts on its platform.⁴⁵ For example, on May 26, 2020, Twitter “fact-checked” President Trump’s tweets about mail-in ballots.⁴⁶ Twitter placed a label reading “Get the facts about mail-in ballots” and provided a link to related information.⁴⁷ According to Twitter’s spokesperson, the tweets “contain potentially misleading information about voting processes and have been labeled to provide additional context around mail-in ballots.”⁴⁸ But Twitter’s “fact check” was misleading,⁴⁹ and “raised questions about Twitter’s ability to serve as an independent service to fact check statements by Mr. Trump or other political figures on its service.”⁵⁰ In addition, the Twitter-curated information repeated a decidedly liberal perspective relating to election crimes and potential administrative error surrounding mail-in ballots.⁵¹

Twitter has censored some of the President’s other statements relating to the potential perils of voting by mail, as well.⁵² Twitter’s approach should trouble Americans, given that the backdrop for this topic is the larger dialogue in America about the safety and security of voting procedures during the pandemic. Many Republicans rightly fear that Democrats are seeking to rig the election by relying heavily on mail-in ballots, which do not have the same safeguards as in-person voting.⁵³ Against this backdrop, Twitter’s decisions to censor the President’s messages are not neutral—they suggest the President’s views are illegitimate in ways that are likely to help Democrats.

⁴⁵ See, e.g., Georgia Wells, *Inside Twitter’s Decision to Take Action on Trump’s Tweets*, WALL ST. J. (May 30, 2020), <https://www.wsj.com/articles/inside-twitters-decision-to-take-action-on-trumps-tweets-11590866833>.

⁴⁶ Rebecca Ballhaus & Georgia Wells, *Twitter Adds Fact-Check Notices to Trump Tweets on Mail-In Ballots*, WALL ST. J. (May 26, 2020), <https://www.wsj.com/articles/widower-asks-twitter-to-pull-trumps-false-tweets-on-death-of-joe-scarborough-aide-11590516200>; see also Letter from Jim Jordan Ranking, Member, H. Comm. on the Judiciary, and F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary to Mr. Jack Dorsey, CEO of Twitter (July 8, 2020).

⁴⁷ Rebecca Ballhaus & Georgia Wells, *Twitter Adds Fact-Check Notices to Trump Tweets on Mail-In Ballots*, WALL ST. J. (May 26, 2020), <https://www.wsj.com/articles/widower-asks-twitter-to-pull-trumps-false-tweets-on-death-of-joe-scarborough-aide-11590516200>.

⁴⁸ *Id.*

⁴⁹ *Id.* (explaining “Twitter’s fact check of Mr. Trump’s tweet appeared to contain its own misleading statement, however, stating that ‘mail-in ballots are already used in some states, including Oregon, Utah and Nebraska.’ That statement appears to conflate automatic all-mail voting with absentee ballots in regards to at least one state).

⁵⁰ *Id.*

⁵¹ See Letter from Jim Jordan Ranking, Member, H. Comm. on the Judiciary, and F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary to Mr. Jack Dorsey, CEO of Twitter (July 8, 2020).

⁵² Steven Nelson, *Twitter joins censorship barrage on Trump, says vote-twice advice ‘may be illegal’*, (Sept. 3, 2020), <https://nypost.com/2020/09/03/twitter-censors-trump-says-vote-twice-advice-may-be-illegal/>.

⁵³ See Republican Staff Report, *How Democrats Are Attempting to Sow Uncertainty, Inaccuracy, and Delay in the 2020 Election*, H. Comm. on the Judiciary & H. Comm. on Oversight & Reform 1 (Sept. 23, 2020) (explaining “some Democrat-run states have belatedly changed election administration procedures and moved to all-mail balloting—meaning that as many as 44 million total ballots will be mass-mailed to registered voters with no assurance the ballots reach the right person. This expansive and late shift to all-mail voting will create conditions ripe for election crime, errors, inaccuracy, and delay.”), <https://republicans-judiciary.house.gov/wp-content/uploads/2020/09/2020-09-23-How-Democrats-Are-Attempting-to-Sow-Uncertainty-Inaccuracy-and-Delay-in-the-2020-Election.pdf>.

Twitter has also censored President Trump’s messaging about the importance of maintaining order and the rule of law during recent rioting and looting in Democrat-run cities. During discussion of an “autonomous” zone in Washington, D.C., akin to the Seattle autonomous zone, Twitter censored the President’s statement promising to enforce the rule of law in the nation’s capital.⁵⁴ The President said:

There will never be an “Autonomous Zone” in Washington, D.C., as long as I’m your President. If they try they will be met with serious force!⁵⁵

Twitter labeled this Tweet as violating its policy prohibiting abusive behavior and specifically “the presence of a threat of harm against an identifiable group.”⁵⁶ But in times of unrest, the President’s message reflects important considerations relating to maintaining and enforcing the rule of law as appropriate and in the face of anarchical violence,⁵⁷ violence that many Democrats are unwilling to acknowledge or stand up against. In the words of the White House Press Secretary:

Let’s be clear about what just happened. Twitter labeled it “abusive behavior” for the President of the United States to say that he will enforce the law. Twitter says it is “abusive” to prevent rioters from forcibly seizing territory to set up a lawless zone in our capital.⁵⁸

While Twitter has been active in suppressing a Republican President’s political views relating to issues of national importance during a chaotic time, it has appeared less willing to censor voices on Twitter that actually incite hate and encourage genocide—like the current leadership of Iran. For example, on July 21, 2020, the Ayatollah Khamenei wrote on Twitter: “The Islamic Republic of Iran will never forget the martyrdom of Hajj Qasem Soleimani and will definitely strike a reciprocal blow to the US.”⁵⁹ On another occasion, he called Israel

⁵⁴ Rachel Lerman, *Twitter slaps another warning label on Trump tweet about force*, WASH. POST (June 23, 2020), <https://www.washingtonpost.com/technology/2020/06/23/twitter-slaps-another-warning-label-trump-tweet-about-force/>.

⁵⁵ President Donald J. Trump (@realDonaldTrump), TWITTER (June 23, 2020), <https://twitter.com/realDonaldTrump/status/1275409656488382465>.

⁵⁶ Rachel Lerman, *Twitter slaps another warning label on Trump tweet about force*, WASH. POST (June 23, 2020), <https://www.washingtonpost.com/technology/2020/06/23/twitter-slaps-another-warning-label-trump-tweet-about-force/>. Twitter subsequently changed the relevant label to read, “This Tweet violated the Twitter Rules about abusive behavior.” See President Donald J. Trump (@realDonaldTrump), TWITTER (June 23, 2020), <https://twitter.com/realDonaldTrump/status/1275409656488382465>.

⁵⁷ Letter from Jim Jordan Ranking, Member, H. Comm. on the Judiciary, and F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary to Mr. Jack Dorsey, CEO of Twitter (July 8, 2020).

⁵⁸ Kayleigh McEnany (@PressSec), Twitter (June 23, 2020), <https://twitter.com/PressSec/status/1275546706336116736>.

⁵⁹ Sayyid Ali Khamenei, @Khamenei, https://twitter.com/khamenei_ir/status/1285628755856195585, TWITTER (July 21, 2020).

“cancerous” and said it would be “undoubtedly uprooted and destroyed.”⁶⁰ On both occasions, Twitter took no action on the tweets.

Twitter has defended its approach to some of the Ayatollah Khamenei’s statements by saying “that when political leaders’ tweets are about ‘comments on political issues of the day’ or ‘foreign policy saber-rattling on military and economic issues,’ they are ‘generally not in violation of our Twitter rules.’”⁶¹ But Twitter has specific policies against hateful conduct⁶² and statements that “threaten violence against . . . a group of people.”⁶³ A tweet advocating for the destruction of Israel cannot reasonably be considered “foreign policy saber-rattling”—it is instead more accurately called hateful and threatening conduct. Twitter appears to have a double-standard in enforcing its rules.⁶⁴ As Ranking Member Jordan framed it at the Subcommittee’s July 29 hearing:

So you can threaten the citizens of this great country, the leader of the largest state sponsor of terrorism, that’s just fine. But, oh, the President says he’s not going to allow some autonomous zone in D.C., and he gets censored.⁶⁵

Twitter has also censored President Trump for statements relating to the COVID-19 pandemic.⁶⁶ The tech company censored videos of licensed medical professionals offering their views on COVID-19 that the President shared.⁶⁷ By taking this step, Twitter elevated its own views on public health and what health authorities the American people should trust, rather than

⁶⁰ See, e.g., Audrey Conklin, *Twitter defends not blocking Iran leader's tweets after blocking Trump's*, FOX BUSINESS (July 30, 2020) (“Khamenei’s tweets call Israel ‘cancerous,’ saying it will be ‘undoubtedly uprooted and destroyed,’ and say Iran will ‘support and assist any group anywhere who opposes and fights the Zionist regime.’”), <https://www.foxbusiness.com/technology/twitter-iran-leader-tweets-defense>; Rina Raphael, *Why won't Twitter suspend Iran's Supreme Leader after threatening tweet?*, FAST COMPANY (June 5, 2018), <https://www.fastcompany.com/40581489/why-this-threatening-tweet-by-the-iranian-supreme-leader-doesnt-violate-twiters-rules>.

⁶¹ Audrey Conklin, *Twitter defends not blocking Iran leader's tweets after blocking Trump's*, FOX BUSINESS (July 30, 2020), <https://www.foxbusiness.com/technology/twitter-iran-leader-tweets-defense>.

⁶² See, e.g., *Hateful conduct policy*, TWITTER, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>.

⁶³ *The Twitter Rules*, TWITTER, <https://help.twitter.com/en/rules-and-policies/twitter-rules>.

⁶⁴ Richard Grennell, @RichardGrennell, <https://twitter.com/RichardGrennell/status/1288453779747151873>, TWITTER (July 29, 2020) (“This should be something the US media reports. Wow.”; posting footage of a Twitter representative attempting to explain the discrepancy between how Twitter treats President Trump’s messages versus those of Ayatollah Khamenei).

⁶⁵ See *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google, Hearing before the Subcomm. on Antitrust, Commercial, and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2020) (statement of Ranking Member Jim Jordan).

⁶⁶ Rebecca Shabad, *Twitter removes tweet highlighted by Trump falsely claiming COVID-19 ‘cure’: It is the social media platform’s latest action against the president.*, NBC NEWS (July 28, 2020), <https://www.nbcnews.com/politics/donald-trump/twitter-removes-tweet-highlighted-trump-falsely-claiming-covid-cure-n1235075>.

⁶⁷ Edmund DeMarche, *Twitter deletes video promoted by Trump on hydroxychloroquine use for coronavirus*, FOX NEWS (July 28, 2020), <https://www.foxnews.com/politics/twitter-post-that-seems-to-show-doctors-praising-hydroxychloroquine-use-for-coronavirus>; cf. Letter from Sen. Mike Lee, Chairman, Subcomm. on Antitrust, Competition Policy and Consumer Rights at the S. Comm. on the Judiciary, to Mr. Jack Dorsey, Mr. Sundar Pichai, Mr. Mark Zuckerberg, and Mr. Anthony Casalena (July 30, 2020), https://www.lee.senate.gov/public/_cache/files/89d2dcc8-3d2c-4fee-a6c5-d309ffcebfb4/big-tech.pdf.

permitting citizens to decide. Twitter has engaged in other censorship in relation to COVID-19.⁶⁸ There can be legitimate differences of opinion among medical professionals about COVID-19. But rather than provide a forum for these differing opinions to be discussed freely, Twitter took it upon itself to act as the arbiter of what information was appropriate and what information was not.

Twitter's censorship of President Trump reached a point such that, in May, several Members of Congress—including former Ranking Member Collins and Representative Biggs—put forward a resolution disapproving of Twitter's "partisan and politically motivated content moderation."⁶⁹

Censoring Everyday Americans. Twitter's censorship of prominent Republicans and other well-known conservatives is troubling. And it appears that Twitter can and has censored individuals who are less prominent with more impunity.⁷⁰ When Twitter blocks an account, a national boycott or op-ed may not be the typical result; most users are unable to publicize censorship in ways that would force Twitter, or other Big Tech companies, to reconsider their biased approach. Politicians and others have drawn attention to how Twitter has censored certain conservative speakers.⁷¹ But there may be thousands more that Big Tech can effectively silence with no repercussions.⁷² Congress should act to address the limits on speech created by Twitter's bias and censorship.

⁶⁸ See, e.g., Deepa Seetharaman, *Facebook, Twitter Take Down Video of Trump Saying Children 'Almost Immune' From Covid-19*, WALL ST. J. (Aug. 5, 2020) ("The President was stating a fact that children are less susceptible to the coronavirus," said Trump campaign spokeswoman Courtney Parella. "Another day, another display of Silicon Valley's flagrant bias against this President, where the rules are only enforced in one direction. Social media companies are not the arbiters of truth."), <https://www.wsj.com/articles/facebook-twitter-take-down-video-of-trump-saying-children-almost-immune-from-covid-19-11596674533>; cf. Paige Leskin, *Trump is retweeting complaints of censorship after Facebook, YouTube, and Twitter take down hydroxychloroquine video*, BUSINESS INSIDER (July 28, 2020) ("Twitter temporarily limited some features Tuesday for Donald Trump Jr.'s Twitter account, in addition to deleting his tweet containing the Breitbart video. The company took similar actions later Tuesday against Kelli Ward, the chairwoman of the Arizona Republican Party, after she shared a clip on Twitter from the same video."), <https://www.businessinsider.com/trump-censorship-claims-twitter-youtube-facebook-hydroxychloroquine-doctors-video-removed-2020-7>.

⁶⁹ H. Res. 984, *Condemning Twitter's partisan censorship of President Donald J. Trump* (May 28, 2020) ("[c]ondemning Twitter's partisan censorship of President Donald J. Trump"), <https://www.congress.gov/bill/116th-congress/house-resolution/984/text?r=1&s=1>.

⁷⁰ See, e.g. Cathy Young, *How Facebook, Twitter silence conservative voices online*, THE HILL (Oct 28, 2016), <https://thehill.com/blogs/pundits-blog/media/303295-how-facebook-twitter-are-systematically-silencing-conservative>.

⁷¹ See Sen. Josh Hawley, @HawleyMO, TWITTER (Nov. 27, 2018), ("Twitter recently banned a Marine vet & conservative pundit, Jesse Kelly, without explanation. This follows Twitter's ban of Canadian feminist Megan Murphy for her speech. @jack told Congress Twitter doesn't target political speech. Is that true?"), <https://twitter.com/HawleyMO/status/1067483745261895681>; Joe Concha, *Conservative pundit Jesse Kelly's Twitter ban sparks outrage: 'New low'*, THE HILL (Nov. 26, 2018), <https://thehill.com/homenews/media/418186-conservative-pundit-jesse-kellys-twitter-ban-sparks-outrage-new-low>.

⁷² Executive Order 13925, 85 Fed. Reg. 34079 (May 28, 2020) ("Preventing Online Censorship").

B. Google and YouTube

Google and YouTube⁷³ manage information and control content in ways that have suppressed or discriminated against some conservative and Republican speakers and views.⁷⁴ This censorship is troubling because of how Americans rely on Google and YouTube for information. Yet a number of examples confirm both Google's involvement in various types of censorship and suggest that strong bias operates behind the scenes.

An initial example illustrates Google's power over the internet and content moderation. That power has come into focus in weeks leading up to the 2020 election with reports that Google may be "blacklisting" disfavored websites to prevent them from appearing in Google search results.⁷⁵ According to one account:

Google appeared to test its ability to blacklist conservative media Tuesday from its monopolized search engine which garners at least 3.5 billion online searches every day making up 94 percent of the internet's search share. Websites targeted, according to NewsBusters which itself was temporarily de-platformed, included the Washington Free Beacon, The Blaze, Townhall, The Daily Wire, PragerU, LifeNews, Project Veritas, Judicial Watch, The Resurgent, Breitbart, the Media Research Center, and CNSNews among others.⁷⁶

Other authors and media outlets have aired similar concerns.⁷⁷ Google denied that this episode was intentional, and some left-leaning publications also became unavailable.⁷⁸ But the fact that Google's infrastructure or operations permit this type of conduct is disconcerting. And the fact that, in this rare instance, the event appeared to affect both conservative and some liberal publications helps illustrate why censorship should be of bipartisan concern.

⁷³ Google's parent, Alphabet, also owns Youtube. Alejandro Alba, *A list—from A to Z—of all the companies, brands Google's Alphabet currently owns*, N.Y. DAILY NEWS (Aug. 11, 2015), <https://www.nydailynews.com/news/world/z-list-brands-companies-google-alphabet-owns-article-1.2321981>.

⁷⁴ See, e.g., Letter from Sen. Joshua Hawley to Sundar Pichai, CEO, Google (June 17, 2020), https://www.hawley.senate.gov/sites/default/files/2020-06/Hawley-Letter-Google-Federalist_0.pdf.

⁷⁵ See, e.g., Tristan Justice, *Google Appears To Test Its Ability To Blacklist Conservative Media Ahead Of Election*, THE FEDERALIST (July 21, 2020), <https://thefederalist.com/2020/07/21/google-appears-to-test-its-ability-to-blacklist-conservative-media-ahead-of-election/>.

⁷⁶ *Id.*

⁷⁷ See, e.g., Rod Dreher, *Google Blacklists Conservative Websites*, THE AMERICAN CONSERVATIVE (July 21, 2020) (blog) ("Well, here we are today. Nine out of ten people on the planet who use Internet search use Google — and today, these people can't find this blog or other conservative blogs and websites using Google. This is a foreshadowing of the cancelling to come. . . . We on the Right — especially religious people — have to prepare ourselves for life as dissidents under soft totalitarianism."), <https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/>; cf. Allum Bokhari, *Election Interference: Google Purges Breitbart from Search Results*, BREITBART NEWS (July 28, 2020), <https://www.breitbart.com/tech/2020/07/28/election-interference-google-purges-breitbart-from-search-results/>.

⁷⁸ Paul Best, *Google says 'technical error' responsible for some news sites' homepages not showing up in search results*, FOX BUSINESS (July 21, 2020), <https://www.foxbusiness.com/technology/google-says-technical-error-responsible-for-some-news-sites-homepages-not-showing-up-in-search-results>.

This episode follows consistent prior reports of Google’s anti-conservative bias⁷⁹ and its willingness to censor and affect politics behind the scenes—especially when it comes to the Trump Administration.⁸⁰ Discussions internal to Google after the 2016 election validate Republican concerns that Google’s employees are willing to use their power to affect politics:

According to leaked video from Google’s first all-hands meeting following the 2016 election, one top Google executive told employees that they must “work so hard” to ensure that the populist movement that helped to propel President Trump to the White House was nothing more than a “blip” in history. That same executive suggested during the meeting that it is “incredibly valuable” that “Google is a trusted source of information.”⁸¹

Google’s statement in response to this video was that employees’ statements in that particular meeting reflected individual employees’ personal opinions, not how Google operates or whether its decisions are biased.⁸² But Google’s statement provides little comfort, given how individual employees “can push for revisions in specific search results” in some instances, and are actively involved in curating information the public sees.⁸³

⁷⁹ See, e.g., Henry Fernandez, *Google engineer speaks out on the tech giant’s anti-conservative bias*, FOX BUSINESS (May 29, 2019), <https://www.foxbusiness.com/technology/google-engineer-speaks-out-on-the-tech-giants-anti-conservative-bias>; Kay James, *I wanted to help Google make AI more responsible. Instead I was treated with hostility.*, WASH. POST (Apr. 9, 2019) (opinion) (“Some Google employees were so alarmed by the prospect of a conservative invading their playground that they started a petition to have me removed from the panel. It gained more than 2,500 signatures. But the Google employees didn’t just attempt to remove me; they greeted the news of my appointment to the council with name-calling and character assassination. They called me anti-immigrant and anti-LGBTQ and a bigot. That was an odd one, because I’m a 69-year-old black woman who grew up fighting segregation.”), https://www.washingtonpost.com/opinions/i-wanted-to-help-google-make-ai-more-responsible-instead-i-was-treated-with-hostility/2019/04/09/cafd1fb6-5b07-11e9-842d-7d3ed7eb3957_story.html.

⁸⁰ See, e.g., John D. McKinnon & Douglas MacMillan, *Google Workers Discussed Tweaking Search Function to Counter Travel Ban*, WALL ST. J. (Sept. 20, 2018), <https://www.wsj.com/articles/google-workers-discussed-tweaking-search-function-to-counter-travel-ban-1537488472/>.

⁸¹ See Letter from Sen. Tom Cotton to Sundar Pichai, CEO, Google (July 31, 2020), https://www.scribd.com/document/471057230/200731-20Cotton-20ltr-20to-20Google-pdf#from_embed (citing Allum Bokhari, *The Google Tape: Google Global Affairs VP Kent Walker—‘History is on Our Side’*, BREITBART NEWS (Sept. 12, 2018), <https://www.breitbart.com/tech/2018/09/12/the-google-tape-google-global-affairs-vp-kent-walker-history-is-on-our-side/>).

⁸² *Id.*

⁸³ Kirsten Grind et al., *How Google Interferes With Its Search Algorithms and Changes Your Results: The internet giant uses blacklists, algorithm tweaks and an army of contractors to shape what you see*, WALL ST. J. (Nov. 15, 2019), <https://www.wsj.com/articles/how-google-interferes-with-its-search-algorithms-and-changes-your-results-11573823753>.

Since then, Google personnel have made other statements behind the scenes⁸⁴ that raise similar questions about Google’s willingness to influence politics⁸⁵ and its willingness to consider lopsided censorship.⁸⁶ The picture that has slowly emerged explains why, in 2020, Republicans remain skeptical about Google’s integrity and its approach.

Just as reports of bias behind the scenes justify skepticism now, allegations about Google’s censorship have increased weight because of how what Google says publicly about its products and approach differs from what actually occurs behind the scenes.⁸⁷ This is cause for bipartisan concern. For instance, according to a *Wall Street Journal* investigation in 2019

⁸⁴ *Why Silicon Valley is doing all it can to help the Biden-Harris ticket*, TUCKER CARLSON TONIGHT (Sept. 4, 2020) (transcript) (“Last year, a new video emerged. This video showed a woman . . . who works in the Artificial Intelligence Unit at Google confessing to trying to manipulate the 2020 election, the one underway now. [She] said, quote, ‘We all got screwed over in 2016. So we’re rapidly been like, what happened there? And how do we prevent it from happening again?’ Once again, she is speaking about the results of a free and fair democratic election that Google, the most powerful company in the world didn’t like, so they’re trying to make sure it never happens again.”), <https://www.foxnews.com/transcript/tucker-why-silicon-valley-is-doing-all-it-can-to-help-the-biden-harris-ticket>.

⁸⁵ Diana S. Correll, *Emails show Google executive discussing effort to encourage Latino vote, surprised so many voted for Trump*, WASH. EXAMINER (Sept. 10, 2018) (“According to an email chain between Google executives obtained by Fox News’ Tucker Carlson and Breitbart News, Google’s Multicultural Marketing development head Eliana Murillo sent out an email the day after the 2016 election detailing that Google had ‘supported partners like Voto Latino to pay for rides to the polls in key states,’ which she characterized as a ‘silent donation.’”), <https://www.washingtonexaminer.com/news/emails-show-google-executive-discussing-effort-to-encourage-latino-vote-surprised-so-many-voted-for-trump>; Tyler O’Neil, *Google Exec Boasted About Helping Hillary Clinton by Boosting Latino Turnout in 2016*, PJ MEDIA (Sept. 11, 2018) (describing how Google executive’s email “brags that the company used its power to ensure that millions of people saw certain hashtags and social media impressions with the goal of influencing their behavior during the election” (quoting Tucker Carlson)), <https://pjmedia.com/video/tyler-o-neil/2018/09/11/google-exec-boasted-about-helping-hillary-clinton-by-boosting-latino-turnout-in-2016-n91507>; Matthew Boyle, *‘Silent Donation’: Corporate Emails Reveal Google Executives’ Efforts to Turn Out Latino Voters Who They Thought Would Vote for Clinton*, BREITBART NEWS (Sept. 10, 2018), <https://www.breitbart.com/politics/2018/09/10/silent-donation-corporate-emails-reveal-google-executives-efforts-to-swing-election-to-hillary-clinton-with-latino-outreach-campaign/>.

⁸⁶ Peter Hasson, *EXCLUSIVE: Google Employees Debated Burying Conservative Media In Search*, THE DAILY CALLER (Nov. 29, 2018) (describing internal discussion for and against censorship; “‘Let’s make sure that we reverse things in four years,’ one engineer wrote in a thread that included a Google vice president.”; “Google employees similarly sought to manipulate search results to combat Trump’s travel ban”), <https://dailycaller.com/2018/11/29/google-censorship-conservative-media/>; Brian Flood, *Google staffers discussed burying conservative news outlets, but tech giant claims talks didn’t amount to anything*, FOX NEWS (Nov. 30, 2018), <https://www.foxnews.com/tech/google-staffers-considered-burying-conservative-news-outlets-but-tech-giant-claims-it-never-happened>.

⁸⁷ See, e.g., Kirsten Grind et al., *How Google Interferes With Its Search Algorithms and Changes Your Results: The internet giant uses blacklists, algorithm tweaks and an army of contractors to shape what you see*, WALL ST. J. (Nov. 15, 2019) (“Google executives have said repeatedly—in private meetings with outside groups and in congressional testimony—that the algorithms are objective and essentially autonomous, unsullied by human biases or business considerations. The company states in a Google blog, ‘We do not use human curation to collect or arrange the results on a page.’ It says it can’t divulge details about how the algorithms work because the company is involved in a long-running and high-stakes battle with those who want to profit by gaming the system. *But that message often clashes with what happens behind the scenes. Over time, Google has increasingly re-engineered and interfered with search results to a far greater degree than the company and its executives have acknowledged, a Wall Street Journal investigation has found.*” (emphasis added)), <https://www.wsj.com/articles/how-google-interferes-with-its-search-algorithms-and-changes-your-results-11573823753>.

involving over 100 interviews, “[d]espite publicly denying doing so, Google keeps blacklists to remove certain sites or prevent others from surfacing in certain types of results.”⁸⁸ The investigation described a process that reflects more employee involvement than one might expect based on Google’s public image and prior statements. For example, at Google, “[e]mployees can push for revisions in specific search results, including on topics such as vaccinations and autism.”⁸⁹ Human involvement amplifies the possibility that employee bias, even if not part of Google’s official corporate policy, affects some of what Google provides to the public. As another example:

In auto-complete, the feature that predicts search terms as the user types a query, Google’s engineers have created algorithms and blacklists to weed out more-incendiary suggestions for controversial subjects, such as abortion or immigration, in effect filtering out inflammatory results on high-profile topics.⁹⁰

Yet, immigration and abortion are two of the most important and contentious issues in public policy, not to mention the 2020 election. Google’s censorship will limit important and legitimate views on these topics—topics on which many Republicans have strong beliefs. Relatedly, Google’s approach to Search also returns results different than other search engines in some cases. In one analysis that searched for the term “abortion” across several search engines, links to the pro-abortion group Planned Parenthood came up much more often in Google than in other engines.⁹¹ And Google has also reportedly taken other steps that suggest biased treatment of certain views.⁹²

In addition to Google Search, Google’s censorship extends to how it treats certain advertisements and advertisers. For example, the Claremont Institute apparently experienced Google’s heavy-handed censorship when trying to place a straightforward advertisement for an anniversary dinner. As recounted:

⁸⁸ *Id.* (also explaining that “[t]hese moves are separate from those that block sites as required by U.S. or foreign law, such as those featuring child abuse or with copyright infringement, and from changes designed to demote spam sites, which attempt to game the system to appear higher in results”).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* (“The Journal tested the term ‘abortion’ in organic search results over 17 days in July and August. Thirty-nine percent of all results on the first page had the hostname www.plannedparenthood.org, the site of Planned Parenthood Federation of America, the nonprofit, abortion-rights organization. By comparison, 14% of Bing’s first page of search results and 16% of DuckDuckGo’s first page of results were from Planned Parenthood.”).

⁹² *Cf.* Letter from Senators Kelly Loeffler & Tom Cotton to the Hon. William Barr, U.S. Attorney General (July 23, 2020) (“A source from Google has also revealed that Google uses ‘blacklists’ and these lists are used to block conservative media from showing up in ‘featured snippets.’ These sites are further limited from showing up in search placements as Google considers them ‘fringe domains.’ Even where a user searches for an exact headline of an article that appears on a blacklisted website, they still may not find it.” (citations omitted)), https://www.scribd.com/document/470171115/DOJ-Google-5b1-5d#fullscreen&from_embed; see also Eric Lieberman, *Google’s New Fact-Check Feature Almost Exclusively Targets Conservative Sites*, THE DAILY CALLER (Jan. 9, 2018), <https://dailycaller.com/2018/01/09/googles-new-fact-check-feature-almost-exclusively-targets-conservative-sites/>.

On our American Mind website, the Claremont Institute recently launched a campaign to engage citizens in debate about what it means to be an American. We are warning about the danger to the republic posed by multiculturalism, identity politics and politically correct speech restrictions. Google decided that our writings violated the company’s policy on “race and ethnicity in personalized advertising” and prevented us from advertising to our own readers about our 40th-anniversary gala dinner We spent hours on the phone with Google only to be told there would be no appeal and that the only remedy would be to remove the content. . . . Then, after we raised the issue publicly, Google’s Washington office contacted us, told us it was a mistake, and restored our advertising rights. We appreciate their responsiveness and professionalism. But the company’s explanation raises far more questions than it answers⁹³

The flip-side of Google’s treatment of advertisers is how Google (and YouTube⁹⁴) can also “demonetize” certain publishers by threatening to or actually cutting off those publishers’ access to advertising revenue. For example, Google’s decisions recently jeopardized *The Federalist*’s funding. After readers’ comments on *The Federalist*’s website allegedly violated Google’s policies, Google threatened to demonetize *The Federalist*.⁹⁵ In response, *The Federalist* turned off the comment sections for its articles, and Google ultimately took no action.⁹⁶ However, Google appears to have unfairly singled out a conservative news outlet,⁹⁷ based on

⁹³ Ryan Williams, *Our Brush With Google Censorship: The Claremont Institute criticized the orthodoxies of multiculturalism. The company banned our ads.*, WALL ST. J. (May 7, 2019) (opinion) (asking why “Google’s censorship ‘mistakes’ always seem to cut against conservative speech?”), https://www.wsj.com/articles/our-brush-with-google-censorship-11557268757?mod=article_inline; see also David Marcus, *Google Ban On Claremont Institute Ad Is Another Black Eye For Big Tech*, THE FEDERALIST (May 7, 2019) (“Although Google’s reaction to Claremont is a particularly outrageous example of anti-conservative bias, it is far from an outlier.”; and, “If this is happening to Claremont, then it is almost certainly happening to individuals and groups that cannot muster the support Claremont could to address the situation.”), <https://thefederalist.com/2019/05/07/google-ban-claremont-institute-ad-another-black-eye-big-tech/>.

⁹⁴ See, e.g., Peter Hasson, *Google Has An Actual Secret Speech Police*, THE DAILY CALLER (Jan. 19, 2018) (explaining how YouTube can demonetize publishers’ YouTube content), <https://dailycaller.com/2018/01/19/google-youtube-censorship-demonetize-hate-speech/>.

⁹⁵ Adi Robertson, *Google Ads bans Zero Hedge for racist content, but reverses decision on The Federalist*, THE VERGE (June 16, 2020), <https://www.theverge.com/2020/6/16/21293285/google-ads-bans-the-federalist-zero-hedge-racist-content-discrimination-demonetization>; see also Josh Rivera, *Google pulls its ads from ZeroHedge, warns The Federalist about dangerous and derogatory speech*, USA TODAY (June 16, 2020), <https://www.usatoday.com/story/tech/2020/06/16/google-demonetizes-zerohedge-warns-federalist/3200491001/>.

⁹⁶ *Id.*

⁹⁷ See Letter from Sen. Ted Cruz to Mr. Sundar Pichai, CEO, Google (June 17, 2020) (“Google’s decision to target *The Federalist* is transparently politically motivated. Numerous ‘progressive’ media outlets allow comments, including, *Huffington Post*, *Mother Jones*, *Daily Kos*, *Talking Points Memo*, *Wonkette*, *Slate*, *Jezebel*, *The Root*, *Salon*, *The Intercept*, *The Young Turks*, and many others. I don’t know what the objectionable comments were that individual users might have posted on *The Federalist*, but any objective review would no doubt demonstrate at least as many profane, racist, or indefensible user comments on these other sites that would equally violate Google’s alleged standards. *** But one need not look that far. On any given day, there are thousands of profane, racist, and indefensible comments posted on YouTube, which is a wholly owned subsidiary of Google. *** Google’s actions yesterday were antithetical to American values.”), <https://www.cruz.senate.gov/files/documents/Letters/2020.06.17%20-%20Letter%20to%20Google%20re%20The%20Federalist%20-%20SFV.pdf>.

initial prompting from left-leaning media.⁹⁸ Google’s treatment of *The Federalist* also raises the possibility that Google may be inconsistent in relation to monitoring content on its own websites—which also can have inflammatory content in their comments sections.⁹⁹

Other examples further suggest Google’s biased approach. For instance, in 2019 Google temporarily labeled a pro-life film as “propaganda.”¹⁰⁰ The film focused on the former director of a Planned Parenthood clinic who later began working as a pro-life activist.¹⁰¹ According to a Google spokesperson, Google “analyzed web content on [the movie]” and “a large volume of it described the film as propaganda,” which led to the label in the first place.¹⁰²

Alphabet’s video-sharing platform YouTube has also engaged in censorship and suppression.¹⁰³ For instance, this spring, YouTube announced a policy of censoring certain content that conflicted with recommendations from the World Health Organization (WHO).¹⁰⁴ YouTube’s change coincided with heated controversy over and strong criticism of the WHO by President Trump and other Republicans for the WHO’s failures to stop the spread of COVID-19 from the People’s Republic of China.¹⁰⁵

YouTube has suppressed Republican speakers in other contexts.¹⁰⁶ For example, YouTube put certain videos from a conservative organization into a restricted mode, both stripping them of advertising and preventing them from being viewed in certain school and library computers.¹⁰⁷ Some of the clips had titles like “Why Isn’t Communism as Hated as

⁹⁸ Joshua Lawson, *Corporate Media Wants To Silence The Federalist Because It Can’t Compete*, THE FEDERALIST (Jun. 18, 2020), [https://thefederalist.com/2020/06/18/corporate-media-wants-to-silence-the-federalist-because-it-cant-compete/](https://thefederalist.com/2020/06/18/corporate-media-wants-to-silence-the-federalist-because-it-cant-compet/).

⁹⁹ *See id.*

¹⁰⁰ Joseph A. Wulfsohn, *Google under fire for dubbing ‘Unplanned’ film ‘propaganda’*, FOX NEWS (Apr. 12, 2019), <https://www.foxnews.com/tech/google-slammed-labeling-pro-life-film-unplanned-propaganda>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See, e.g.*, Press Release, Sen. Rand Paul, *Sen. Rand Paul Blasts YouTube for Censorship After Floor Speech is Removed* (Feb. 13, 2020) (“It is a chilling and disturbing day in America when giant web companies such as YouTube decide to censor speech. Now, even protected speech, such as that of a senator on the Senate floor, can be blocked from getting to the American people. This is dangerous and politically biased. . . . Apparently, YouTube has taken it upon itself to decide what questions can even be asked in the public debate, including on the Senate floor.”).

¹⁰⁴ Charlie Wood, *YouTube’s CEO suggested content that ‘goes against’ WHO guidance on the coronavirus will get banned*, BUSINESS INSIDER (Apr. 23, 2020), <https://www.businessinsider.com/youtube-will-ban-anything-against-who-guidance-2020-4>.

¹⁰⁵ *See, e.g.*, Dan Sanchez, *YouTube to Ban Content That Contradicts WHO on COVID-19, Despite the UN Agency’s Catastrophic Track Record of Misinformation*, FOUNDATION FOR ECONOMIC EDUCATION (Apr. 23, 2020), <https://fee.org/articles/youtube-to-ban-content-that-contradicts-who-on-covid-19-despite-the-un-agency-s-catastrophic-track-record-of-misinformation/>; Jerry Dunleavy, *‘Taking its cues from China’: House Republicans demand WHO hand over internal communications with Beijing*, WASH. EXAMINER (Apr. 10, 2020), <https://www.washingtonexaminer.com/news/taking-its-cues-from-china-house-republicans-demand-who-hand-over-internal-communications-with-beijing>.

¹⁰⁶ *See, e.g.*, Jacob Gershman, *Conservative Group Argues First Amendment Should Apply to YouTube*, WALL ST. J. (Aug. 27, 2019), <https://www.wsj.com/articles/conservative-group-argues-first-amendment-should-apply-to-youtube-11566937988>.

¹⁰⁷ *Id.*

Nazism?” and “Why Did America Fight the Korean War?”¹⁰⁸ According to Google, it “restricted five-minute, animated videos . . . not because of any alleged distaste for free-market or socially conservative principles, but due to its thematic content.”¹⁰⁹ After losing before the trial court, the plaintiff appealed to the Court of Appeals for the Ninth Circuit.¹¹⁰ During oral argument, a judge on the Ninth Circuit said the facts alleged made it seem “deeply disturbing” that YouTube censored the plaintiff’s videos.¹¹¹ And regardless of what one thinks of this particular incident, it does present serious concerns for those considering Big Tech’s approach to censorship.

Taking together, these examples of Google’s and YouTube’s actions suggest bias against conservative speakers and censorship of conservative viewpoints. But “canceling” a speaker or view does not prove a position false. Instead, and

[a]s George R. R. Martin has put it, “When you tear out a man’s tongue, you are not proving him a liar, you’re only telling the world that you fear what he might say.” . . . Americans of all stripes must speak out against the bullying tactics of those who stand against free speech and the values this country was built on—while they still can.¹¹²

C. Facebook

For years—and again in part due to events surrounding the 2016 election¹¹³—Republicans raised concerns about Facebook’s treatment of conservatives and their views.¹¹⁴ As a general matter, Facebook’s significant reach and corresponding power amplify the effect and consequences of content-moderation activity.¹¹⁵ Facebook’s power makes the possibility of anti-

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; Harper Neidig, *Judge dismisses lawsuit alleging Google censorship of conservative YouTube videos*, THE HILL (Mar. 27, 2018), <https://thehill.com/policy/technology/380455-judge-dismisses-lawsuit-alleging-google-censorship-of-conservative-youtube>.

¹¹¹ Jacob Gershman, *Conservative Group Argues First Amendment Should Apply to YouTube*, WALL ST. J. (Aug. 27, 2019), <https://www.wsj.com/articles/conservative-group-argues-first-amendment-should-apply-to-youtube-11566937988>.

¹¹² Joshua Lawson, *Corporate Media Wants To Silence The Federalist Because It Can’t Compete*, THE FEDERALIST (Jun. 18, 2020), <https://thefederalist.com/2020/06/18/corporate-media-wants-to-silence-the-federalist-because-it-cant-compete/>.

¹¹³ See, e.g., Michael Nunez, *Former Facebook Workers: We Routinely Suppressed Conservative News*, GIZMODO (May 9, 2016), <http://gizmodo.com/former-facebook-workers-we-routinely-suppressed-conser-1775461006>; cf. Steven Overly, *Conservatives, liberals slam Facebook bias audit*, POLITICO (Aug. 20, 2019) (“After reports in 2016 that the company’s employees may have suppressed stories from right-leaning publications and authors in its ‘Trending Topics’ feature, and subsequent pressure from Republicans including Sen. John Thune (R-S.D.), Facebook fully automated the feature in August 2016 to eliminate potential human bias. It later shuttered the feature altogether.”), <https://www.politico.com/story/2019/08/20/facebook-audit-conservative-bias-amid-criticism-1469287>.

¹¹⁴ Former Sen. Jon Kyl, *Why Conservatives Don’t Trust Facebook*, WALL ST. J. (Aug. 20, 2019) (opinion), <https://www.wsj.com/articles/why-conservatives-dont-trust-facebook-11566309603>.

¹¹⁵ See, e.g., Editorial Board, *Facebook’s Rittenhouse mistake*, WALL ST. J. (Sept. 4, 2020), https://www.wsj.com/articles/facebooks-rittenhouse-mistake-11599260134?mod=hp_opin_pos_1.

conservative bias all the more troubling.¹¹⁶ Past instances of bias justify continued scrutiny,¹¹⁷ especially as the country heads toward November's election.¹¹⁸

Facebook conducted its own investigation related to accusations of bias against conservatives. The investigation was led by former Senator Jon Kyl, and resulted in an interim report.¹¹⁹ Senator Kyl identified a number of concerns that third-parties had about Facebook, which made several changes as a result.¹²⁰ Nevertheless, former Senator Kyl wrote last summer:

[T]hese are complicated issues, some of which involve conflicting opinions even among conservatives. For that reason, restoring trust fully may remain an elusive goal. *Conservatives no doubt will, and should, continue to press Facebook to address the concerns that arose in our survey.*¹²¹

It is unclear whether or when Facebook plans to release a final report or additional information. Meanwhile, Facebook's influence, as well as some of its recent actions, provide Americans and Congress with good reason to continue their scrutiny.

For example, Facebook recently censored some of President Trump's comments and political advertisements. After the President made comments related to perils of voting by mail, Facebook said it would

remove any videos supporting the president's suggestion, as well as any videos without captions or context. Those who share the video criticizing the suggestion or noting that voting twice is illegal will be left on the platform¹²²

However, contrary to Facebook's editorial decision, the President was taking part in the ongoing national dialogue about the integrity of the mail-in voting system and the ramifications of public policies related to voting. Facebook's censorship arguably hindered full evaluation and critique

¹¹⁶ See, e.g., Farhad Manjoo, *Facebook's Bias Is Built-In, and Bears Watching*, N.Y. TIMES (Mar. 11, 2016), <https://www.nytimes.com/2016/05/12/technology/facebooks-bias-is-built-in-and-bears-watching.html>; Issie Lapowsky, *Of Course Facebook Is Biased. That's How Tech Works Today*, WIRED (May 11, 2016), <https://www.wired.com/2016/05/course-facebook-biased-thats-tech-works-today/>.

¹¹⁷ See, e.g., Letter from Senators Josh Hawley, Ted Cruz, Mike Braun, and Kevin Cramer to Mr. Mark Zuckerberg, CEO of Facebook (Sept. 11, 2019) (noting “[y]et again, Facebook’s pattern of censorship has reared its ugly head,” and “[y]our company, like Twitter, Google, Pinterest, and so many other major Silicon Valley social media firms, has been repeatedly confronted with evidence of bias against those with conservative viewpoints, especially on the issue of abortion”), https://www.hawley.senate.gov/sites/default/files/2019-09/2019-09-11_Hawley-Cruz-Cramer-Braun-Letter-Facebook-Live-Action.pdf.

¹¹⁸ Sam Shead, *Facebook Oversight Board confirms it plans to launch ahead of U.S. election*, CNBC (Sept. 24, 2020), <https://www.cnbc.com/2020/09/24/facebook-oversight-board-plans-to-launch-ahead-of-us-election-.html>.

¹¹⁹ Jon Kyl, *Why Conservatives Don't Trust Facebook*, WALL ST. J. (Aug. 20, 2019) (opinion), <https://www.wsj.com/articles/why-conservatives-dont-trust-facebook-11566309603>.

¹²⁰ *Id.*

¹²¹ *Id.* (emphasis added).

¹²² Mike Snider, *Facebook, Twitter react to President Trump's urging of voting twice*, USA TODAY (Sept. 3, 2020) <https://www.usatoday.com/story/tech/2020/09/03/facebook-pull-trump-videos-voting-twice-twitter-labels-tweets/5708508002/>.

of the broader topic about which many Republicans have concerns. And now, even when Facebook keeps posts available, Facebook may still undermine a speaker's statements or editorialize about the statements with labels or related tools.¹²³

More generally, Facebook's approach to posts with voting information led it to flag and label a recent Republican staff report from the House Committee on the Judiciary and Committee on Oversight and Reform. Titled *How Democrats Are Attempting to Sow Uncertainty, Inaccuracy, and Delay in the 2020 Election*,¹²⁴ the report explains, among other things, that:

some Democrat-run states have belatedly changed election administration procedures and moved to all-mail balloting—meaning that as many as 44 million total ballots will be mass-mailed to registered voters with no assurance the ballots reach the right person. This expansive and late shift to all-mail voting will create conditions ripe for election crime, errors, inaccuracy, and delay.

This report is official work product from the Republican staff of two Congressional Committees. Facebook flagged the Judiciary Committee Republicans' post about the report, and linked to a website that Facebook describes as containing "official election resources."¹²⁵ But some of what Facebook says on that page reflects a biased perspective.¹²⁶ That reasonable minds may differ about mail-in ballots, and the prudence of wholesale changes to state voting systems in the weeks before a national election, is not the point. Rather, the concern is that the content Facebook presents as "official" is not always neutral. Instead it amplifies certain points of view and undermines others.

Facebook also recently censored political advertisements associated with President Trump. An advertisement that condemned dangerous mobs and sought support for the President's opposition to Antifa displayed a symbol that Antifa sometimes uses.¹²⁷ Although the advertisement conveyed the President's *opposition* to Antifa, Facebook still removed it as

¹²³ See Associated Press, *Following Twitter, Facebook will label politicians' posts that break its rules — including Trump's*, L.A. TIMES (June 26, 2020), <https://www.latimes.com/business/technology/story/2020-06-26/facebook-following-twitter-will-label-posts-that-violate-its-rules-including-trumps>.

¹²⁴ See Republican Staff Report, *How Democrats Are Attempting to Sow Uncertainty, Inaccuracy, and Delay in the 2020 Election*, H. Comm. on the Judiciary & H. Comm. on Oversight & Reform 1 (Sept. 23, 2020), <https://republicans-judiciary.house.gov/wp-content/uploads/2020/09/2020-09-23-How-Democrats-Are-Attempting-to-Sow-Uncertainty-Inaccuracy-and-Delay-in-the-2020-Election.pdf>.

¹²⁵ House Judiciary Committee GOP (@JudiciaryGOP) (Sept. 23, 2020), <https://www.facebook.com/JudiciaryGOP>.

¹²⁶ Compare Facebook Voting Information Center, FACEBOOK, <https://www.facebook.com/votinginformationcenter/> (last visited Sept. 30, 2020) (claiming "voting by mail [has] a long history of trustworthiness in the US"), with Republican Staff Report, *How Democrats Are Attempting to Sow Uncertainty, Inaccuracy, and Delay in the 2020 Election*, H. Comm. on the Judiciary & H. Comm. on Oversight & Reform 1 (Sept. 23, 2020) ("As Democrats seek an increased reliance on mail-in ballots in 2020, the risks for weaponizing and abusing mail-in voting will only increase. Simply put, all-mail voting around the country in 2020 will only exacerbate confusion, distrust, inaccuracy, and delay with the election results.").

¹²⁷ See Emily Glazer, *Facebook Removes Trump Campaign Ads for Violating Policy on Use of Hate Symbol*, WALL ST. J. (June 19, 2020), <https://www.wsj.com/articles/facebook-removes-trump-campaign-posts-ads-for-violating-policy-11592504003>.

violating Facebook’s policy on organized hate.¹²⁸ How Facebook interacts with political advertisements can have significant consequences, especially given how much political spending occurs on Facebook’s platform. The Trump campaign spent \$18 million on Facebook advertisements between January and mid-June of this year alone.¹²⁹

The President is not the only conservative or Republican voice that Facebook has censored.¹³⁰ Facebook’s Instagram has censored certain Republicans such as Donald Trump Jr.¹³¹ And when the White House press secretary posted a picture of a political candidate’s bar registration card, Instagram temporarily removed it.¹³² Facebook has also allegedly censored content concerning traditionally-conservative views—including pro-life views.¹³³ More broadly, Facebook’s general approach to content moderation has led some to question the system overall. A prominent fitness company temporarily left Facebook after Facebook temporarily shut down one of its user groups—with over 1.6 million users—without explanation.¹³⁴

Like other Big Tech companies, Facebook’s approach to content moderation seems to be of a piece with Facebook’s internal culture. Anecdotal evidence indicates that Facebook

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See, e.g., Tim Mak, *Facebook Admits ‘Enforcement Error’ In How It Handled Content From Pro-Trump Duo*, NPR (Apr. 15, 2018), <https://www.npr.org/2018/04/15/602494594/facebook-admits-enforcement-error-in-how-it-handled-content-from-pro-trump-duo>; Max Kutner, *Diamond and Silk Hit Back at Mark Zuckerberg, Facebook ‘Censorship’: ‘We Are Not Terrorists’*, NEWSWEEK (Apr. 11, 2018), <https://www.newsweek.com/diamond-and-silk-facebook-zuckerberg-882332>; Allum Bokhari, *Facebook Threatens to Censor Conservative Hodgetwins on Same Day NYT Laments Their Success*, BREITBART NEWS (Aug. 28, 2020), <https://www.breitbart.com/tech/2020/08/28/facebook-threatens-to-censor-conservative-hodgetwins-on-same-day-nyt-laments-their-success/>; Keith Hodge & Kevin Hodge, @hodgetwins, TWITTER, <https://twitter.com/hodgetwins/status/1299409824803893248> (Aug. 28, 2020); *Mike Huckabee Calls For National ‘Chick-Fil-A Appreciation Day’*, HUFFINGTON POST (July 24, 2012) (describing incident where Facebook temporarily removed promotion of Chick-fil-A event), <https://www.huffpost.com/entry/mike-huckabee-chick-fil-a-appreciation-dayn1696648>.

¹³¹ See, e.g., Donald Trump Jr., *If Big Tech Can Censor Me, Think What It Can Do to You*, REAL CLEAR POLITICS (Feb. 22, 2019) (opinion), https://www.realclearpolitics.com/articles/2019/02/22/if_big_tech_can_censor_me_think_what_it_can_do_to_you_139555.html.

¹³² Nicole Darrah, *Kayleigh McEnany says Instagram removed her Elizabeth Warren post for ‘harassment or bullying’*, FOX NEWS (Feb. 6, 2019), <https://www.foxnews.com/tech/kayleigh-mcenany-says-instagram-took-down-her-elizabeth-warren-post-for-harassment-or-bullying>; Lucas Nolan, *Instagram Purges Photo of Elizabeth Warren Claiming ‘American Indian’ Race on Professional Document*, BREITBART NEWS (Feb. 6, 2019), <https://www.breitbart.com/tech/2019/02/06/instagram-purges-photo-of-elizabeth-warren-claiming-american-indian-race-on-professional-document/>.

¹³³ See, e.g., James Freeman, *The ‘Mistake’ Facebook Keeps Making*, WALL ST. J. (Nov. 2, 2018) (opinion) (“Facebook says it accidentally silenced a pro-life organization’s advertising on the social network. But the pro-life group says this alleged accident has been happening over and over again. *** Also happening again is the spectacle of a Silicon Valley social media giant, which is happy to tell advertisers how efficiently and precisely it can deliver marketing messages, explaining that somehow it still can’t figure out how to allow the transmission of a political ad from a longtime participant in the national debate.”), <https://www.wsj.com/articles/the-mistake-facebook-keeps-making-1541181468>.

¹³⁴ James Freeman, *CrossFit Leaves Facebook*, WALL ST. J. (May 28, 2019) (opinion), <https://www.wsj.com/articles/crossfit-leaves-facebook-11559085441>; see also Press Release, CrossFit, *CrossFit, Inc. Suspends Use of Facebook and Associated Properties* (May 23, 2019).

employees, like others in Big Tech, tend to have little tolerance for certain views and aspects of the Republican party.¹³⁵ According to a recent article about a former Facebook employee, for example:

[The employee], it turns out, was put on leave, then fired, according to people familiar with the matter. More recently, he has told people the reason was his support for Donald Trump and the furor that his political beliefs sparked within Facebook and Silicon Valley, some of those people say. Internal Facebook emails suggest the matter was discussed at the highest levels of the company. In the fall of 2016, as unhappiness over the donation simmered, Facebook executives including Mr. Zuckerberg pressured Mr. Luckey to publicly voice support for libertarian candidate Gary Johnson, despite Mr. Luckey's years-long support of Mr. Trump, according to people familiar with the conversations and internal emails viewed by *The Wall Street Journal*.¹³⁶

Over the years, these narratives combined with examples of censorship add up. As Senator Ted Cruz has rightly noted, “While such stories abound, it is virtually unheard of to see any ads or pages from liberal groups like Planned Parenthood, Moveon.org, or Democratic candidates being targeted for removal.”¹³⁷ Facebook's censorship and editorial decisions—past and present—deserve further scrutiny, and Congress should act.

D. Amazon

Although Amazon's business model differs in many ways from that of Twitter, Google or YouTube, and Facebook, it too has exhibited the mistreatment of conservatives in some of its corporate activities and policies.

One example of how Amazon has revealed its bias is its approach to AmazonSmile. The AmazonSmile program enables Amazon customers to donate 0.5% of the price of certain purchases to eligible non-profit organizations.¹³⁸ Amazon relies in part on the Southern Poverty Law Center (SPLC) to determine which non-profits are eligible to participate in AmazonSmile.¹³⁹ For years, however, the SPLC has received criticism for its business practices,

¹³⁵ Kirsten Grind and Keach Hagey, *Why Did Facebook Fire a Top Executive? Hint: It Had Something to Do With Trump*, WALL ST. J. (Nov. 11, 2018), <https://www.wsj.com/articles/why-did-facebook-fire-a-top-executive-hint-it-had-something-to-do-with-trump-1541965245>.

¹³⁶ *Id.*

¹³⁷ Sen. Ted Cruz, *Facebook has been censoring or suppressing conservative speech for years*, FOX NEWS (Apr. 11, 2018) (opinion), <https://www.foxnews.com/opinion/sen-ted-cruz-facebook-has-been-censoring-or-suppressing-conservative-speech-for-years>.

¹³⁸ *AmazonSmile Program Details*, AMAZON, https://smile.amazon.com/gp/chpf/pd/ref=smi_se_saas_lpd_spd (last visited Oct. 2, 2020).

¹³⁹ *Id.* Amazon also relies on information from the U.S. Office of Foreign Assets Control, *id.*, which “administers and enforces economic and trade sanctions” against entities such as “foreign countries and regimes” and “terrorists.” *See About: Office of Foreign Assets Control*, U.S. DEP'T OF THE TREASURY, <https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx> (last visited Oct. 2, 2020).

internal culture, and approach to identifying and publicizing certain “hate groups.”¹⁴⁰ One author called the SPLC’s “hate map”—which designates various groups the SPLC considers to be extremist—“an outright fraud” and “a willful deception designed to scare older liberals into writing checks to the SPLC.”¹⁴¹ In particular, the SPLC has baselessly labeled some conservative charitable organizations “hate groups,” alongside actual extremist organizations such as neo-Nazis and the Ku Klux Klan.¹⁴²

Amazon’s reliance on the SPLC means that Amazon takes a biased approach to determining whether certain non-profits can participate in AmazonSmile.¹⁴³ For example, Amazon offers its customers the opportunity to donate to pro-abortion Planned Parenthood,¹⁴⁴ but not to certain conservative groups like the Alliance Defending Freedom or Family Research Council.¹⁴⁵ Amazon actively prevents such conservative groups from participating because of how the SPLC has labeled these organizations as “hate groups.”¹⁴⁶ The exclusion of these conservative groups from Amazon’s heavily-trafficked digital platform leads to less exposure for these groups and fewer opportunities for donations. Amazon’s reliance on the SPLC as a barometer to determine the eligibility of charitable organizations on AmazonSmile serves to

¹⁴⁰ See, e.g., Audra D. S. Burch et al., *Roiled by Staff Uproar, Civil Rights Group Looks at Intolerance Within*, N.Y. TIMES (Mar. 25, 2019), <https://www.nytimes.com/2019/03/25/us/morris-dees-leaves-splc.html>; Bob Moser, *The Reckoning of Morris Dees and the Southern Poverty Law Center*, THE NEW YORKER (Mar. 21, 2019), <https://www.newyorker.com/news/news-desk/the-reckoning-of-morris-dees-and-the-southern-poverty-law-center>; Kyle Smith, *‘Essentially a Fraud’*, NATIONAL REVIEW MAGAZINE (Aug. 23, 2018) (“The SPLC can no longer be fairly termed a nonpartisan watchdog group. It has become a hate group itself.”), <https://www.nationalreview.com/magazine/2018/09/10/southern-poverty-law-center-essentially-a-fraud/>; Adam Shaw, *GOP lawmaker wants answers on FBI’s alleged Southern Poverty Law Center ties*, FOX NEWS (July 28, 2018) (citing July 23, 2018 letter from Representative Matt Gaetz to Ms. Jill C. Tyson, Acting Assistant Director of Congressional Affairs, Federal Bureau of Investigation), <https://www.foxnews.com/politics/gop-lawmaker-wants-answers-on-fbis-alleged-southern-poverty-law-center-ties>; Alexander Cockburn, *King of the Hate Business: With haters on the wane, what will the hate-seekers do?*, THE NATION (Apr. 29, 2009), <https://www.thenation.com/article/archive/king-hate-business/>.

¹⁴¹ Nathan J. Robinson, *The Southern Poverty Law Center Is Everything That’s Wrong With Liberalism: The SPLC’s deceptive and hypocritical approach to anti-racism*, CURRENT AFFAIRS (Mar. 26, 2019), <https://www.currentaffairs.org/2019/03/the-southern-poverty-law-center-is-everything-thats-wrong-with-liberalism>.

¹⁴² See, e.g., Kay James, *Amazon doubles down on excluding some conservative nonprofits from customer donations*, THE WASH. TIMES (June 15, 2020), <https://www.washingtontimes.com/news/2020/jun/15/amazon-doubles-down-on-excluding-some-conservative/>.

¹⁴³ See, e.g., Kyle Ziemnick, *A selective smile at Amazon*, WORLD (Aug. 27, 2020), https://world.wng.org/content/a_selective_smile_at_amazon.

¹⁴⁴ See generally *Amazon Smile: Change Your Charity*, AMAZON, https://smile.amazon.com/gp/chpf/change/ref=smi_se_rspo_change_cycsc (last visited Oct. 2, 2020).

¹⁴⁵ *Id.*

¹⁴⁶ See, e.g., Bradford Richardson, *Alliance Defending Freedom removed from AmazonSmile after ‘hate group’ designation*, THE WASH. TIMES (May 4, 2018), <https://www.washingtontimes.com/news/2018/may/4/alliance-defending-freedom-removed-amazon-smile-aft/>; Jordan Davidson, *Jeff Bezos Pressed On Why Amazon Allows Hate Group To Determine Eligible Charitable Donations*, THE FEDERALIST (Aug. 3, 2020), <https://thefederalist.com/2020/08/03/jeff-bezos-pressed-on-why-amazon-allows-hate-group-to-determine-eligible-charitable-donations/>.

discriminate against conservative views,¹⁴⁷ and Members of this Committee are continuing to investigate Amazon’s relationship to the SPLC.¹⁴⁸

Some of Amazon’s decisions relating to advertising have shown similar bias and censorship. For example, Abigail Shrier, the author of *Irreversible Damage: The Transgender Craze Seducing Our Daughters*, and Regnery Publishing claimed that Amazon kept Regnery from running an advertisement to support the book.¹⁴⁹ Amazon’s treatment of Shrier reflects viewpoint discrimination in Big Tech when certain perspectives run counter to what is politically correct.¹⁵⁰ In other instances, it is harder to determine exactly why Amazon has made certain decisions—even though such decisions still suggest bias. In 2020, Amazon allegedly removed a pro-life video from Amazon Prime.¹⁵¹ According to the director, Amazon said the film was removed because “this title does not meet our customer content quality expectations” and because Amazon received “customer feedback.”¹⁵² However, the producer claimed that the film received broad support and a number of high ratings.¹⁵³

Some of Amazon’s publishing decisions related to COVID-19 also raise concern because they suggest Amazon may be inclined to suppress views that could inform public policy related to the coronavirus.¹⁵⁴ Kindle Direct Publishing refused to publish a book called “Unreported Truths About Covid-19 and Lockdowns,” which “argues that estimates about the deadliness of the disease have been overstated and that lockdowns have been counterproductive.”¹⁵⁵ Amazon later said that the book was rejected “in error.”¹⁵⁶ But Amazon appears to have made a similar

¹⁴⁷ See generally Kay James, *Amazon doubles down on excluding some conservative nonprofits from customer donations*, THE WASH. TIMES (June 15, 2020).

¹⁴⁸ Letter from Representatives Jim Jordan, F. James Sensenbrenner, Ken Buck, Mike Johnson, Matt Gaetz, Louie Gohmert, Doug Collins, Andy Biggs, Tom McClintock, Debbie Lesko, Guy Reschenthaler, Ben Cline, Kelly Armstrong, Gregory Steube, Thomas Tiffany, H. Comm. on the Judiciary, to Mr. Jeff Bezos, CEO, Amazon (Aug. 24, 2020).

¹⁴⁹ Abigail Shrier, *Amazon Enforces ‘Trans’ Orthodoxy: The company won’t allow a publisher’s ads for my skeptical book*, WALL ST. J. (June 22, 2020) (opinion), <https://www.wsj.com/articles/amazon-enforces-trans-orthodoxy-11592865818>; Regnery Publishing (@Regnery), TWITTER, (June 21, 2020) (“Our full statement: The cancel culture has made it clear that it despises diversity of opinion, and it will not tolerate science, data, facts, or anything that contradicts the approved narrative. If you’re not on board, you’ll have your head handed to you. If you go on Amazon right now and search ‘transgender books,’ you will find paid advertisements from major publishing houses promoting books on the side of this issue Amazon apparently agrees with. But if you’re a college fball coach who wears a conservative tshirt, an editor at the @nytimes who runs an opinion piece by a Rep senator, or a respected journalist who writes for @WSJ investigating a serious social issue affecting young women in America, you will be silenced”), <https://twitter.com/Regnery/status/1274557435231866881>.

¹⁵⁰ *Id.*

¹⁵¹ Jordan Davidson, *Producer: Pro-Life Documentary Removed From Amazon Prime Without Warning*, THE FEDERALIST (Aug. 5, 2020), <https://thefederalist.com/2020/08/05/producer-pro-life-documentary-removed-from-amazon-prime-without-warning/>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Jeffrey A. Trachtenberg, *Covid-19 Skepticism Puts Author Alex Berenson at Center of Amazon Controversy*, WALL ST. J. (June 5, 2020), <https://www.wsj.com/articles/covid-19-skepticism-puts-alex-berenson-at-center-of-amazon-controversy-11591391956>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

mistake with another e-book addressing COVID-19.¹⁵⁷ The author claimed that Amazon told him it was “referring customers to ‘official sources’ for health information about the virus.”¹⁵⁸ The author claimed that Amazon relented after Congressional staff made inquiries.¹⁵⁹ Like actions taken by Google’s YouTube, detailed above, these steps reflect willingness to censor views that run counter to certain liberal orthodoxies today.

Though Amazon has limited social media offerings, it does provide a video-streaming service. Amazon recently censored President Trump’s account on this service.¹⁶⁰ Amazon announced President Trump’s account would be banned due to remarks he made at political rallies.¹⁶¹ The “alleged hateful actions in question involved Trump’s anecdote about a ‘tough hombre’ breaking into a woman’s house, and no law enforcement coming to help.”¹⁶² The President offered this anecdote during discussion of Democrats’ calls to defund or eliminate police departments.¹⁶³ Amazon also attempted to justify its censorship based on the President’s years-old comments “about drugs and rapists coming over the border.”¹⁶⁴ This ban was temporary,¹⁶⁵ but still reflects the systemic bias, censorship, and cancel culture that animates Big Tech companies.

III. Conclusion: Congress Must Hold Big Tech Accountable.

Taken together, the actions of Twitter, Google and YouTube, Facebook, and Amazon suggest a consistent level of bias and patterns of capricious censorship in Silicon Valley. And these companies are not the only offenders. For example, the social media company Snap stopped promoting President Trump’s account, citing statements he had made.¹⁶⁶ There is other evidence, too,¹⁶⁷ and additional examples of censorship beyond those this report describes:

Tens of thousands of Americans have reported, among other troubling behaviors, online platforms “flagging” content as inappropriate, even though it does not

¹⁵⁷ See also Greg Giles, *Venice author claims Amazon censored COVID-19 book*, VENICE GONDOLIER (June 25, 2020), https://www.yoursun.com/venice/news/venice-author-claims-amazon-censored-covid-19-book/article_4a10b654-aa5e-11ea-872f-c33bdd599dfe.html.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See Jonah Gottschalk, *Jeff Bezos’ Streaming Service Twitch Bans Trump*, THE FEDERALIST (June 30, 2020), <https://thefederalist.com/2020/06/30/jeff-bezos-streaming-service-twitch-bans-trump/>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Adam Smith, *Trump Has Twitch Account Restored After Two Week Suspension for ‘Hateful Conduct’*, THE INDEPENDENT (July 14, 2020), <https://www.independent.co.uk/life-style/gadgets-and-tech/news/trump-twitch-account-ban-return-a9617371.html>.

¹⁶⁶ See, e.g., Cecilia Kang and Kate Conger, *Snap Says It Will No Longer Promote Trump’s Account*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/2020/06/03/technology/snapchat-trump.html>; Cristiano Lima & Steven Overly, *Snapchat stokes GOP ire for refusing to promote Trump’s account*, POLITICO (June 3, 2020), <https://www.politico.com/news/2020/06/03/snapchat-to-stop-promoting-trump-account-298724>.

¹⁶⁷ See, e.g., #FreeSpeechAmerica, <https://censortrack.org/> (last visited Oct. 2, 2020); Brian Flood, *Conservative group launches website to battle big tech companies over online censorship*, FOX NEWS (Sept. 17, 2020), <https://www.foxnews.com/media/online-censorship-conservative-big-tech>.

violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse¹⁶⁸

This should trouble all Americans. At the end of the day, the same values that undergird the First Amendment are pivotal to American citizens’ continued freedoms and healthy civic discourse. Content moderation is a significant challenge for Big Tech and warrants the continued scrutiny of policymakers and the American people.

As a threshold matter, rigorous enforcement is in order against any antitrust violation by Big Tech companies. It is no secret that Big Tech companies are currently subject to extensive investigation at the federal and state levels. In fact, some antitrust investigations by the Trump Administration and states appear to be nearing their final stages, and a case against Google appears to be imminent.¹⁶⁹ The darlings of Silicon Valley deserve no quarter when they violate our time-honored laws designed to protect the competitive process, spur innovation, and benefit consumers.

Congress must take more direct and powerful measures to address censorship in Big Tech. One important option is reconfiguring liability protections that currently shield Big Tech from accountability for content-moderation decisions. While Section 230 of the Communications Decency Act¹⁷⁰ has been an important factor in the development and progress of the internet and related technologies, nearly 25 years of experience and evidence indicates the time is ripe for lawmakers to rethink this statute. Congress is currently considering a number of proposals that would amend Section 230.¹⁷¹ These proposals merit serious consideration because they would directly shape the incentives for and ramifications of some of the most important decisions that Big Tech companies make about how to approach content.

¹⁶⁸ Executive Order 13925, 85 Fed. Reg. 34079, 34079 (May 28, 2020) (“Preventing Online Censorship”); *see also* Ryan Tracy, *Big Tech Is a Likely Target at White House Social-Media Summit*, WALL ST. J. (July 10, 2019), https://www.wsj.com/articles/big-tech-is-a-likely-target-at-white-house-social-media-summit-11562751015?mod=article_inline.

¹⁶⁹ *See, e.g.*, Leah Nysten, *Google antitrust suit is coming, but not next week*, POLITICO (Sept. 25, 2020), <https://www.politico.com/news/2020/09/25/google-antitrust-suit-is-coming-but-not-next-week-422022>; David McCabe, *Mark Zuckerberg Questioned Under Oath in F.T.C. Antitrust Inquiry*, N.Y. TIMES (Aug. 20, 2020), <https://www.nytimes.com/2020/08/20/technology/facebook-zuckerberg-ftc-questioned.html>.

¹⁷⁰ *See* 47 U.S.C. § 230.

¹⁷¹ *See, e.g.*, H.R. 8517 (“Protect Speech Act”), 116th Cong. (2020); Press Release, Representative Paul Gosar, *Gosar Introduces Stop the Censorship Act of 2020* (July 29, 2020), *available at* <https://gosar.house.gov/news/documentsingle.aspx?DocumentID=3968>, U.S. Senate Committee on Commerce, Science, and Transportation, *Wicker, Graham, Blackburn Introduce Bill to Modify Section 230 and Empower Consumers Online* (Sept. 8, 2020), *available at* <https://www.commerce.senate.gov/2020/9/wicker-graham-blackburn-introduce-bill-to-modify-section-230-and-empower-consumers-online>; Press Release, Senator Hawley, *Senator Hawley Introduces Legislation to Amend Section 230 Immunity for Big Tech Companies* (June 19, 2019), *available at* <https://www.hawley.senate.gov/senator-hawley-introduces-legislation-amend-section-230-immunity-big-tech-companies>.

During this investigation, Democrats have rejected opportunities to explore concerns about bias, censorship, and cancel culture. But ignoring or scoffing at evidence does not erase it. Congress should take immediate steps to preserve robust freedoms of speech and expression. Whether it occurs at Twitter, Google, YouTube, Facebook, Amazon, or elsewhere in Silicon Valley, lopsided censorship threatens civic discourse and undermines American values and freedoms. It must be addressed.