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HATCH CENTER REPORT

**A REVIEW OF
PROPOSALS TO REFORM
SECTION 230**



POLICY REPORT

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It's rare for a statute to become sufficiently well known that it enters the public lexicon. Title VII of the Civil Rights Act of 1964,¹ commonly known as Title VII, which prohibits employment discrimination on the basis of race, religion, and other protected grounds, is one example. The Americans with Disabilities Act,² sometimes abbreviated as the ADA, which prohibits discrimination on the basis of disability, is another example. Other examples include the Hatch-Waxman Act, also titled the Drug Price Competition and Patent Term Restoration Act;³ the Sarbanes-Oxley Act, also known as the Public Company Accounting Reform and Investor Protection Act;⁴ the Dodd-Frank Wall Street Reform and Consumer Protection Act;⁵ and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, which is known to most Americans as the USA PATRIOT Act.⁶

Judging by recent events, it's time to add another statute to this rarefied list: Section 230 of the Communications Act.⁷ Enacted as part of the Communications Decency Act of 1996,⁸ Section 230 provides internet platforms that host content created by third-party users with immunity from liability for claims related to such content. Although this immunity is not absolute—for example, it does not extend to federal criminal liability or infringement of intellectual property⁹—it provides platforms broad protection against defamation and other claims that might otherwise arise from the third-party content they host.

Initially passed with broad support,¹⁰ Section 230 has come under increasing fire in recent years as both sides of the political spectrum have expressed dissatisfaction with the activities of the nation's large tech companies. Conservatives believe that Section 230 has allowed social media platforms and other “Big Tech” companies to discriminate against conservative voices with impunity.¹¹ Liberals, in turn, assert that Section 230 has allowed internet platforms to turn a blind eye to disinformation, hate speech, and foreign efforts to interfere with our elections.¹² The result has been a bevy of proposals to reform Section 230 from policymakers across the spectrum, from Josh Hawley and Lindsey Graham to Elizabeth Warren and Mark Warner. Some of these proposals are modest in scope; others would completely overhaul Section 230 or rescind it in its entirety.

This paper provides an overview of Section 230, the debates surrounding the provision, and the various proposals that have been put forward to amend or repeal the hotly contested law. It is not intended to provide a comprehensive review of the subject. Rather, its goal is to

provide information to readers who would like to learn more about Section 230 and the current controversy.

What Is Section 230?

As noted, Section 230 provides broad immunity to internet platforms that host content created by users or other third parties against liability for defamation and other claims based on such content. It contains two key provisions.

The first provision, Section 230(c)(1), states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹³ An “interactive computer service” is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.”¹⁴ Facebook, Craigslist, and Twitter are all examples.¹⁵ An “information content provider,” in turn, is “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.”¹⁶ A user who creates and posts content on Facebook, Craigslist, or Twitter, or who comments on an article on a news site, would be an “information content provider.” Thus, Section 230(c)(1) provides that a platform like Facebook or Twitter that hosts content created by third parties, or a website that allows readers to post comments, shall not be “treated as the publisher” of any information in the content or comments.

The second key provision, Section 230(c)(2), states that “[n]o provider or user of an interactive computer service shall be held liable” for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”¹⁷ This is sometimes known as the “Good Samaritan” provision.¹⁸

These two provisions were enacted in response to a 1995 court decision, *Stratton Oakmont, Inc. v. Prodigy Services Co.*,¹⁹ that ruled that an internet service provider that moderated content on message boards the provider hosted should be treated as a “publisher” of the content—similar to a newspaper—and thus subject to liability for any defamatory statements posted on the boards.²⁰ *Stratton Oakmont* distinguished an earlier case, *Cubby, Inc.*

v. CompuServe, Inc.,²¹ which had ruled that an internet service provider was *not* the publisher of material on its message boards, on the ground that the provider in *Cubby* did not moderate content on its boards or review content before it was posted.²² This made the provider in *Cubby* a “distributor”—similar to a bookstore or library—and under traditional defamation law, a distributor is subject to liability for a defamatory statement only if the provider knew or had reason to know of the statement’s defamatory character.²³

In combination, *Stratton Oakmont* and *Cubby* created a “moderator’s dilemma” for internet platforms: police third-party content posted on the platform to remove obscene or unlawful postings and become subject to liability for all content posted on the site; alternatively, do nothing and allow obscene or unlawful content to multiply without restraint. Neither outcome was acceptable.

Congress’s solution was Section 230, which made two important changes. First, Section 230(c)(1) overruled *Stratton Oakmont* and set down a clear rule that an internet platform that hosts content created by third parties is not to be treated as the “publisher” of “any information” provided by a third party.²⁴ This means platforms can moderate content without exposing themselves to defamation suits. For good measure, Congress added that any state or local laws to the contrary are preempted.²⁵ Second, Section 230(c)(2) created a liability shield for actions taken by internet platforms “in good faith” to restrict access to material the platforms deem “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.”²⁶ This means platforms can take down content they deem objectionable without subjecting themselves to liability, provided they do so in good faith. Taken together, these provisions provide internet platforms broad protection from liability both for hosting content and for decisions to take down content.



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Why Has Section 230 Become Controversial?

Section 230 has famously been described as the “26 words that created the internet.”²⁷ According to proponents, the law has enabled sites like YouTube, Yelp, and other internet platforms that host user-created content to provide wide access to information generated by millions of users across the globe.²⁸ The breathing room Section 230 creates for such platforms by shielding them from defamation and other claims, advocates say, has “give[n] Internet users an unprecedented ability to express themselves to a global audience” and “created many private benefits, including new jobs and wealth.”²⁹

In recent years, however, policymakers and commentators on both sides of the political divide have begun to question the scope of Section 230 and the broad, automatic immunity it provides to online platforms that host third-party content. Conservative critics allege that Section 230 has allowed social media platforms and other websites to discriminate against conservative viewpoints and censor content that doesn’t conform to the tech industry’s generally liberal views.³⁰ In May 2020, for example, Twitter began adding warning labels to posts by President Trump that contained disputed claims about voting and elections, leading Trump’s campaign to put out a statement accusing Twitter of “pull[ing] out all the stops to obstruct and interfere with President Trump getting his message through to voters.”³¹ In October 2020, in the lead-up to the November election, Twitter and Facebook both temporarily restricted access to a *New York Post* article that raised questions about Joe Biden’s potential involvement in suspicious activities with his son Hunter.³² In early January 2021, following the events at the U.S. Capitol, Twitter and Facebook suspended President Trump’s social media accounts,³³ and Amazon deplatformed Parler, a social networking site seen as a conservative alternative to Twitter.³⁴ Google and Apple also deleted Parler from their app stores.³⁵ Two months later, Amazon removed a book on transgender issues by prominent conservative author Ryan Anderson from its online store.³⁶ These and other actions have led numerous Republican officials to argue that Section 230’s broad protections allow tech companies to censor conservative content through opaque, inconsistently applied content moderation policies.³⁷

Democrats, in turn, have also called for changes to Section 230, albeit on different grounds. According to

Democratic critics, Section 230's protections for online platforms have allowed social media sites to ignore the proliferation of dangerous misinformation and hate speech among users.³⁸ House Speaker Nancy Pelosi, for example, has called Section 230 a "gift" to tech companies³⁹ that allows them to "profit" from disinformation,⁴⁰ and has warned that online platforms need a "bigger sense of responsibility" with regard to how they police content.⁴¹ In a press release accompanying introduction of a bill to limit Section 230's protections for certain types of harmful behavior, Senator Mark Warner (D-Va.) asserted that Section 230 "has provided a 'Get Out of Jail Free' card" to online platforms "even as their sites are used by scam artists, harassers and violent extremists to cause damage and injury."⁴² And President Biden told the *New York Times* last year that Section 230 "immediately should be revoked" because, in his view, companies like Facebook are "propagating falsehoods they know to be false."⁴³

In sum, albeit for different reasons, leading figures in both parties believe that Section 230's protections should be pared back or even eliminated. The remainder of this paper reviews some of the key proposals that have been put forward.

Republican Proposals

Perhaps unsurprisingly, given the vocal concerns among conservatives about censorship and unfair treatment of conservative viewpoints by social media platforms, Republican legislators have been more active in proposing reforms to Section 230 than Democrats. Republican proposals have tended to fall into one of four categories. First are proposals to outright repeal Section 230. Second are proposals to limit or carve out protection from Section 230 for companies that moderate, promote, or restrict content in a politically biased, non-neutral manner. Third are proposals to narrow the scope of Section 230's Good Samaritan provision, which immunizes platforms from liability for actions taken to restrict access to certain types of content. Fourth are privacy-oriented proposals that would tie eligibility for Section 230 protection to restrictions on a company's ability to collect and employ user data to target advertising and other content. To date, none of the proposals has been reported out of committee.

Category 1: Outright Repeal

Three bills have been introduced to outright repeal Section 230.⁴⁴ First is Representative Louie Gohmert's (R-Tex.) Abandoning Online Censorship Act, which garnered seven co-sponsors (all Republicans).⁴⁵ The second and third bills were introduced by Senators

Lindsey Graham (R-S.C.) and Mitch McConnell (R-Ky.) during negotiations over the December 2020 COVID relief package.⁴⁶ The bills were generally understood to be bargaining vehicles related to demands to increase the size of the relief package.⁴⁷ None of the bills advanced.

Category 2: Restricting Protections for Platforms that Engage in Biased Content Moderation

A variety of bills have been introduced by Republicans in both the House and Senate to limit Section 230 protections for internet platforms that engage in biased or discriminatory content moderation. First out of the gate was Senator Josh Hawley (R-Mo.), who has been one of the most active legislators on Section 230. (As of the time of writing, Hawley has introduced three bills that would substantially alter Section 230.) In June 2019, Hawley introduced the Ending Support for Internet Censorship Act,⁴⁸ which would remove automatic Section 230 protection for large internet platforms—defined as platforms with over 30 million active monthly users in the United States, over 300 million active monthly users worldwide, or over \$500 million in global annual revenue.⁴⁹ Under the bill, in order to obtain Section 230 protection, such companies would have to "prove[]" to the Federal Trade Commission (FTC) by "clear and convincing evidence" that they do not moderate user content in a "politically biased manner."⁵⁰ The bill defines politically biased moderation to include moderation that is "designed to negatively affect" a political party, candidate, or viewpoint, or that "disproportionately restricts or promotes access to" information from a political party, candidate, or viewpoint.⁵¹

Approximately a year later, in June 2020, Hawley introduced a second bill, the Limiting Section 230 Immunity to Good Samaritans Act,⁵² to narrow the ability of internet platforms to restrict access to content in a biased manner. Under the bill, in order to obtain Section 230 protection, large internet platforms—that is, platforms with the usage numbers outlined above, or more than \$1.5 billion in global annual revenue—would be required to include in their terms of service a description of any content access restriction policies and a "promise" that the platform will design and operate its service in "good faith."⁵³ This duty of good faith would prohibit platforms from enforcing their terms of service in an "intentionally selective" manner or through an algorithm that "selectively enforces" the terms of service.⁵⁴ Put differently, it would require large platforms to enforce their terms of service, including any terms related to content access restrictions, in a fair and neutral manner. A platform that violated this duty of good faith would be subject to a damages award of not less than \$5,000, plus attorney's fees.

Most recently, Senator Bill Hagerty (R-Tenn.) introduced a bill that would impose a variety of neutrality requirements on internet platforms with over 100 million worldwide monthly users, which the bill defines as “common carrier technology companies.”⁵⁵ Under the bill, which is titled the 21st Century Foundation for the Right to Express and Engage in Speech (21st Century FREE Speech) Act, such platforms would be prohibited from “unjustly or unreasonably discriminat[ing]” in the provision of services; giving “any undue or unreasonable preference or advantage” to any person, class of persons, or political group; or subjecting any person, class of persons, or political group to “any undue or unreasonable prejudice or disadvantage.”⁵⁶ Such platforms would also be required to disclose, “through a publicly available, easily accessible website,” their content moderation and account termination and suspension policies.⁵⁷ A “common carrier technology company” that violated these requirements would be subject to suit by any person “aggrieved” by the violation, as well as an enforcement action by state officials.⁵⁸

Notably, the bill would also repeal Section 230 in its entirety and reenact it with a variety of changes. The reenacted version would retain the publisher liability shield, but narrow the shield so that it does not apply to “any affirmative act” by an online service provider “with respect to material posted” on the service, including promoting or downgrading content or restricting access to content posted by a third party.⁵⁹ The bill would also narrow the current Good Samaritan provision in a manner similar to Representative Jim Jordan’s (R-Ohio) Protect Speech Act described below⁶⁰—although unlike the Protect Speech Act, the bill would retain the current “good faith” standard in the Good Samaritan provision and also provide definitions for each of the categories of content covered by the Good Samaritan provision.⁶¹

Two House bills would similarly penalize platforms that moderate (or promote) content in a biased or discriminatory manner. The first is another bill from Representative Gohmert, the Biased Algorithm Deterrence Act.⁶² This bill concerns content *promotion*—that is, decisions regarding which content gets placed at the top of users’ newsfeeds—rather than content moderation, per se, but is of a similar vein with the Hawley and Hagerty bills because it seeks to prevent platforms from favoring certain content over other content for political or ideological reasons. The bill, which is very short, would revoke Section 230 protection for internet platforms that display user-generated content in anything other than chronological order. According to Gohmert, this would prohibit platforms from engaging in “algorithmic bias” that favors liberal viewpoints in newsfeeds.⁶³



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The second House bill is Representative Gregory Steube’s (R-Fla.) Curbing Abuse and Saving Expression in Technology (CASE-IT) Act.⁶⁴ This bill would create two carve-outs from Section 230, one related to the safety and protection of minors and one related to discriminatory content moderation. First, the bill would withdraw Section 230 protection for a period of one year from any platform that (1) “creates, develops, posts, materially contributes to, or induces” illegal content; (2) “knowingly permits or facilitates” contact between an adult and minor that involves sexually explicit content or communication; or (3) permits or facilitates access by minors to indecent, obscene, or otherwise harmful content through the platform’s failure to implement a system to “effectively screen” users who are minors from accessing such content.⁶⁵ Second, the bill would withdraw Section 230 protection from any platform that is “dominant” in its market and that fails to follow content moderation policies that are “reasonably consistent” with the First Amendment requirements that apply to state actors.⁶⁶ In effect, this second provision would require large internet platforms like Twitter and Facebook to abide by the First Amendment restrictions on content and viewpoint discrimination that apply to government actors in order to retain Section 230 protection. Former Senator Orrin Hatch (R-Utah) recently proposed a similar approach in an op-ed published in *Newsweek*.⁶⁷ Under Steube’s bill, a user or advertiser whose content is banned, blocked, down-ranked, or otherwise adversely affected by a dominant platform’s failure to moderate content consistent with the First Amendment (as applied to state actors) can seek a damages award of \$500,000, along with potential punitive and treble damages.⁶⁸

Category 3: Narrowing the Good Samaritan Provision

Another group of Republican proposals seeks to narrow Section 230’s Good Samaritan provision. Under this provision, service providers are immunized from

liability for actions taken in good faith to restrict access to content that the provider “considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.”⁶⁹ Many Republicans believe this provision, and in particular its protections for actions taken to remove content the provider deems “otherwise objectionable,” allows providers far too much discretion in deciding which content to keep up and which content to take down, thereby facilitating censorship and other discriminatory conduct.

One effort to address this perceived problem is Representative Scott DesJarlais’s (R-Tenn.) Protecting Constitutional Rights from Online Platform Censorship Act.⁷⁰ This bill would strike the Good Samaritan provision altogether and replace it with a prohibition on restricting access to material that is “protected under the Constitution or otherwise protected under Federal, State, or local law.”⁷¹ The bill does not define what it means for material to be “protected” under the Constitution or under other law, but presumably includes material protected under the First Amendment. The bill would additionally create a right of action for users who have had “protected” material restricted by an internet platform to sue the platform for up to \$50,000 in damages.⁷²

Another bill is Representative Paul Gosar’s (R-Ariz.) Stop the Censorship Act,⁷³ which would limit protection under Section 230’s Good Samaritan provision to actions taken to restrict access to “unlawful material.”⁷⁴ As explained, under the current Good Samaritan provision, platforms are immunized from actions taken in good faith to restrict access to a variety of harmful or “otherwise objectionable” content.⁷⁵ Gosar’s bill would narrow this immunity so that it applies only when the content is actually unlawful (e.g., if the content contains child pornography or incites imminent criminal behavior), thereby exposing platforms to potential liability when they remove content they deem objectionable but that is not actually unlawful.⁷⁶

Representative Jim Jordan’s Protect Speech Act⁷⁷ takes a similar, albeit narrower, approach. Like Representative Gosar’s bill, Representative Jordan’s bill (which garnered 18 co-sponsors, all Republicans) would amend Section 230’s Good Samaritan provision to remove liability protection for actions taken in good faith to restrict access to content the platform deems “otherwise objectionable.”⁷⁸ Unlike Representative Gosar’s bill, however, it would leave in place the other content categories currently covered under the Good Samaritan provision (i.e., content that is obscene, lewd, lascivious, filthy, excessively violent, or harassing), and in fact would add *new* protection for actions taken to restrict a few additional content categories—namely,

content that promotes terrorism or violent extremism, content that promotes self-harm, and unlawful content.⁷⁹ The bill also requires that the platform have an “objectively reasonable belief” (rather than merely a “good faith” belief) that the restricted content falls into one of the enumerated categories, that the platform publicize (and abide by) its content moderation policies, and that the platform not restrict content on “deceptive” or inconsistent grounds.⁸⁰

Two Senate bills have taken a nearly identical approach to Representative Jordan’s bill.⁸¹

First is Senator Roger Wicker’s (R-Miss.) Online Freedom and Viewpoint Diversity Act.⁸² Like Representative Jordan’s bill, Senator Wicker’s bill would remove liability protection under Section 230’s Good Samaritan provision for actions taken to restrict access to content a platform deems “otherwise objectionable”; add protection for actions taken to restrict access to content that promotes terrorism, promotes self-harm, or is unlawful; and add a requirement that a platform have an “objectively reasonable belief” that the restricted content falls into one of the enumerated categories in order to receive liability protection.⁸³

The other Senate bill is Senator Lindsey Graham’s Online Content Policy Modernization Act.⁸⁴ Interestingly, the bulk of the bill concerns the creation of a Copyright Claims Board within the U.S. Copyright Office to adjudicate copyright infringement claims for small monetary amounts,⁸⁵ a proposal that had been around for many years and that was ultimately enacted as part of the 2021 Consolidated Appropriations Act.⁸⁶ The latter part of the bill then reproduces the text of Senator Wicker’s Online Freedom and Viewpoint Diversity Act, which Senator Graham co-sponsored.⁸⁷

Category 4: Privacy-Related Proposals

The final category of Republican bills to amend Section 230 involves efforts to limit the ability of internet platforms to collect and employ user data to target advertising and other content. These bills seek to accomplish this goal by revoking Section 230 protection for companies that engage in such activity.⁸⁸

First is a bill introduced by Senator John Kennedy (R-La.), the Don’t Push My Buttons Act.⁸⁹ This bill would eliminate Section 230 protection for platforms that collect data on users’ “habits, preferences, or beliefs” and then use an “automated function” (i.e., algorithm) to deliver content to users that correspond to those habits, preferences, or beliefs.⁹⁰ The prohibition would not apply if a user “knowingly and intentionally” elected to receive such tailored content.⁹¹

Second is yet another bill from Senator Hawley, the Behavioral Advertising Decisions Are Downgrading Services (BAD ADS) Act.⁹² This bill would revoke Section 230 protection for large internet platforms that engage in “behavioral advertising,” which the bill defines as advertising that is targeted to a user based on the user’s personal traits, personal information, previous location, or previous online behavior.⁹³ The bill additionally revokes Section 230 protection for large internet platforms that provide personal, location, or behavioral information to another platform knowing that the other platform “will use that data to create or display behavioral advertising.”⁹⁴

Democratic Proposals

As noted, Democrats have been somewhat less active in the Section 230 reform space than Republicans, at least when it comes to introducing bills. There have been a handful of Democratic bills in the House, as well as one Democratic bill in the Senate.⁹⁵ Several of last year’s Democratic presidential contenders also floated reform proposals.

In contrast to the Republican proposals described above, which largely focus on concerns about political bias, the Democratic proposals tend to focus on concerns related to false or inflammatory online content, public safety, and Section 230’s ability to impede antidiscrimination and other civil rights claims. The Democratic proposals are like the Republican proposals, however, in that they seek to accomplish their objectives by revoking Section 230 immunity for certain disfavored activities or by tying Section 230 eligibility to a platform’s willingness to take certain affirmative steps. That is, they seek to use Section 230 protection as a carrot to get platforms to change their behavior (or, alternatively, they treat the removal of Section 230 protection as a stick to induce such changes).



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The first bill in the House is Representative Tom Malinowski’s (D-N.J.) Protecting Americans from Dangerous Algorithms Act.⁹⁶ This bill would revoke Section 230 protection in civil cases involving international terrorism or interference with civil rights where an online platform’s algorithm promoted, recommended, or amplified information “directly relevant” to the unlawful activity.⁹⁷ That is, the bill would withdraw protection for a platform whose algorithm promotes or amplifies content that leads to terrorism or civil rights violations. The bill would not apply if the platform ranks or promotes information in an “obvious, understandable, and transparent” manner, such as alphabetical or chronological order, or if the platform has fewer than 10 million unique monthly visitors.⁹⁸

A second, narrowly drawn bill in the House is Representative Yvette Clark’s (D-N.Y.) Civil Rights Modernization Act.⁹⁹ This bill would withdraw Section 230 protection in any civil rights investigation, action, or criminal prosecution involving the targeting of advertisements by an online platform based on users’ race, religion, national origin, sex, or other protected characteristic.¹⁰⁰ According to Representative Clarke, the purpose of the bill is to prevent websites that allow advertisers to direct advertisements to users of a particular race, sex, or other protected characteristic (and thus direct such advertisements *away* from users not of that race, sex, or characteristic) from hiding behind Section 230 when such practices are challenged on civil rights grounds.¹⁰¹

The final House bill is Representative Jan Schakowsky’s (D-Ill.) Online Consumer Protection Act.¹⁰² The focus of this bill is a requirement that social media platforms and online marketplaces create a “consumer protection program” to ensure compliance with applicable federal, state, and local consumer protection laws; develop and implement readily understandable terms of service; and mitigate risks to user safety and well-being on the platform.¹⁰³ Sites with more than 10,000 active monthly users or more than \$250,000 in annual revenue would be required to file an annual report with the FTC detailing the site’s consumer protection practices.¹⁰⁴ Violations of the Act would subject a site to a potential enforcement action by the FTC or a state attorney general.¹⁰⁵ As relevant here, the bill also provides that Section 230 shall not be construed to “impair” any FTC enforcement action.¹⁰⁶ This would appear to include enforcement actions brought under the Act, as well as under any other law the FTC administers.

The Senate bill is Senator Mark Warner’s (D-Va.) Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms (SAFE TECH) Act.¹⁰⁷ This bill would make three significant changes to Section 230. First, it would withdraw protection for ads and other paid content. Second, it would render Section 230 inapplicable where an individual seeks a court order requiring the removal of material that is “likely to cause irreparable harm.”¹⁰⁸ And third, it would expand the categories of claims that are exempt from Section 230¹⁰⁹ to include antidiscrimination claims, antitrust claims, cyberstalking and harassment claims, claims alleging international law violations, and wrongful death actions.¹¹⁰

Several 2020 Democratic presidential candidates also proposed significant changes to Section 230. Former Representative Beto O’Rourke (D-Tex.) was the first candidate to offer such a proposal. Under O’Rourke’s approach, in order to obtain Section 230 immunity, large internet platforms would be required to adopt terms of service that prohibit “hateful activities,” defined as activities that “incite or engage in violence, intimidation, harassment, threats, or defamation targeting an individual or group” based on “race, color, religion, national origin, ethnicity, immigration status, gender, gender identity, sexual orientation or disability.”¹¹¹ Platforms would also be required to put in place systems to “identify and act on” content that violates their terms of service.¹¹² Then-former Vice President Biden, as noted, went even further, calling for Section 230 to be revoked “immediately.”¹¹³

Senator Elizabeth Warren (D-Mass.) outlined a plan to combat what she termed “digital disinformation,” with a focus on preventing election-related interference by foreign powers.¹¹⁴ Although Warren’s plan did not mention Section 230 by name, it proposed to hold tech companies “responsible for the spread of disinformation” and outlined a series of steps companies should take to stop disinformation—steps that, to be implemented, likely would need to be tied to conditions on Section 230 eligibility. These steps include working together with other tech companies to fight disinformation campaigns, “clearly” labeling content created by state-controlled enterprises, “alerting” users who have interacted with fraudulent accounts, preventing the sharing of content created by fraudulent accounts, banning accounts that knowingly distribute false election-related information, providing greater transparency about how companies’ algorithms operate, and allowing users to opt out of algorithmic amplification.¹¹⁵

Bipartisan Proposals

There have also been four bipartisan Section 230 reform proposals introduced so far in Congress. Perhaps unsurprisingly, none of the proposals focuses on politically biased content moderation (an issue Democrats are likely to be less interested in) or efforts to stop misinformation or election interference (issues that Republicans may view as overt or implied attacks on President Trump). Rather, they deal primarily with safety, protecting minors, and increasing transparency. The fact that these are the three issue areas that have, at least thus far, found bipartisan agreement may suggest that they are the three areas most ripe for successful reform legislation. Or they may simply be the easiest issues to agree on. (No one likes child predators.) That there has not yet been bipartisan legislation addressing each party’s core Section 230 complaint—for Republicans, political bias; for Democrats, hate speech and misinformation—may suggest that finding common ground on those core complaints could be difficult. Or it may indicate that addressing those core complaints will require some sort of legislative bargain where both sides get some (but not all) of what they most want.

The first bipartisan Section 230 reform proposal is Senator Lindsey Graham’s Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN IT) Act,¹¹⁶ which is also the only Section 230 reform proposal to have been voted out of committee so far. Senator Graham’s bill, which was introduced with nine bipartisan co-sponsors (and ultimately garnered seven additional co-sponsors), would create a 19-member national commission to formulate “best practices” for identifying, reporting, and preventing online child sexual exploitation.¹¹⁷ In its original form, the EARN IT Act would have withdrawn Section 230 immunity for claims relating to the distribution or receipt of child pornography and allowed online platforms to “earn” immunity back by adopting the best practices recommended by the commission.¹¹⁸ It would also have created a fast-track mechanism to enact the commission’s recommendations into law.¹¹⁹ The bill was amended in committee to remove both the fast-track mechanism and the ability of companies to “earn” back immunity.¹²⁰ It was also amended to specify that the use of end-to-end encryption, or a platform’s inability to decrypt communications, would not subject the platform to liability under the bill.¹²¹ The bill was reported out of the Senate Judiciary Committee unanimously, but did not receive a floor vote.

The second bipartisan proposal is Senator Brian Schatz’s (D-Haw.) Platform Accountability and Consumer Transparency (PACT) Act,¹²² which Schatz introduced with Senator John Thune (R-S.D.). This bill, which is the most

comprehensive reform proposal introduced so far, contains four key elements. First, it would require online platforms to publish an “acceptable use policy” that explains what types of content are allowed on the platform and how the platform enforces the policy.¹²³ Second, it would require platforms to create a “complaint system” through which users can notify the platform of “potentially policy-violating content, illegal content, or illegal activity” on the site.¹²⁴ The complaint system must include live representatives available via telephone during regular business hours to assist users with making complaints.¹²⁵ If a platform receives notice of “illegal content or illegal activity” in the form of a court order declaring the content or activity unlawful—which may be provided to the platform through the user complaint process—the platform must take down the content (or stop the activity) within four days.¹²⁶ If the platform fails to do so, it loses Section 230 immunity with regard to the content or activity.¹²⁷ If a platform receives a complaint regarding “potentially policy-violating content,” it must review the content, determine whether the content violates the platform’s acceptable use policy, and “initiate appropriate steps” based on that determination within 14 days.¹²⁸ If the platform removes the content, it must notify the person who provided the content and give them an opportunity to appeal.¹²⁹ Failure by the platform to follow these requirements related to “policy-violating content” does not nullify Section 230 immunity in the same way that failing to take down “illegal” content does, but it does constitute an “unfair or deceptive” trade practice subject to enforcement action by the FTC.¹³⁰

The PACT Act’s third key element is a requirement that platforms issue biannual “transparency” reports that detail, among other things, how many complaints the platform received in the past six months, the number of times the platform “took action” with regard to complaints in the past six months (and what those actions were), the number of times the platform decided not to take action within the past six months, and the number of times in the past six months that a content provider appealed a take-down decision.¹³¹ Finally, the bill eliminates Section 230 immunity for civil claims brought by federal or state officials under federal law.¹³² This provision would allow federal regulators and state attorneys general to pursue civil enforcement actions against online platforms under federal law without any Section 230 impediment.

The third bipartisan Section 230 proposal is Senator Joe Manchin’s (D-W.V.) See Something, Say Something Online Act,¹³³ which Manchin introduced with Senator John Cornyn (R-Tex.). This bill would require online platforms to report to the Department of Justice any

“suspicious transmission”—defined as any public or private post, message, or user-generated content that facilitates, promotes, or assists a crime of violence, act of terrorism, or serious drug offense—that a platform detects.¹³⁴ Within 30 days of reporting a suspicious transmission, the platform would also be required to “take action” against the website or account that generated the suspicious transmission.¹³⁵ If a platform fails to report a suspicious transmission that the platform knew or reasonably should have known about, the platform loses Section 230 immunity for the transmission.¹³⁶

The fourth (and narrowest) bipartisan proposal is Representative Ed Case’s (D-Haw.) Protecting Local Authority and Neighborhoods (PLAN) Act,¹³⁷ which Case introduced with Representative Peter King (R-N.Y.).¹³⁸ This bill would remove liability protection under Section 230 for claims involving the illegal or unauthorized lease or rental of real property.¹³⁹ The purpose of the bill, according to Case, is to enable state and local governments to enforce laws prohibiting (or limiting) short-term rentals by platforms such as Airbnb and Vrbo.¹⁴⁰ Although the bill text does not explicitly mention safety concerns, Case says the bill would help prevent owners of short-term rental properties from avoiding state and local “consumer safety” requirements.¹⁴¹ In order to lose liability protection, a platform that facilitates an unlawful lease or rental would first need to have received written notice that the lease or rental “would violate a law or contractual agreement.”¹⁴²

Executive Branch Proposals

The Section 230 reform proposals reviewed thus far have all been legislative proposals. One final category of proposals deserves mention—Executive Branch proposals. The Biden administration has not yet issued any major proposals related to Section 230 reform. The Trump administration, however, was quite active on the subject and proposed a number of far-reaching changes. It remains to be seen how many (if any) of those changes the Biden administration will endorse, although it is possible that some of the Trump administration’s suggested revisions related to reducing barriers to certain civil enforcement claims may find favor with the new administration.

The Trump administration’s most significant Section 230 reform proposals can be found in three documents. First is an executive order President Trump issued in May 2020, “Preventing Online Censorship.”¹⁴³ The order outlined a variety of concerns with how social media platforms are moderating content and accused platforms of “selective censorship” and “disfavoring certain viewpoints.”¹⁴⁴ It then offered views on how Section 230 should be interpreted.

Section 230 immunity, the order said, should not extend to sites that “purport to provide users a forum for free and open speech, but in reality . . . stiff[e] free and open debate by censoring certain viewpoints.”¹⁴⁵ Nor should Section 230’s Good Samaritan provision be interpreted to allow platforms to “engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree.”¹⁴⁶ According to the order, if a platform removes content that does not fall within the categories outlined in the Good Samaritan provision (obscene, lewd, lascivious, etc.), the platform “is engaged in editorial conduct” and should be “be exposed to liability like any traditional editor and publisher that is not an online provider.”¹⁴⁷ The order directed the National Telecommunications and Information Administration (NTIA), an agency within the U.S. Department of Commerce, to submit a petition for rulemaking to the Federal Communications Commission (FCC) to clarify the meaning and application of Section 230.¹⁴⁸ The order also directed the Attorney General to develop a legislative proposal to advance the objectives outlined in the order.¹⁴⁹

In accordance with the executive order, NTIA filed a petition for rulemaking with the FCC on July 27, 2020.¹⁵⁰ The petition asked the FCC to issue regulations clarifying the relationship between the Good Samaritan provision and Section 230(c)(1)’s prohibition on publisher liability and to define the meaning of “good faith” and other terms in the Good Samaritan provision.¹⁵¹ In particular, the petition asked the FCC to clarify that Section 230(c)(1) does not apply to content take-down decisions, that immunity for decisions to remove content is “provided solely” by the Good Samaritan provision, that a platform is not covered under Section 230(c)(1) when it “actually publishes” content, and that a platform “actually publishes” content when it “affirmatively solicits or selects to display information” without having been asked to do so by a user or when a platform “recommends[] or promotes” content “on the basis of the content’s substance.”¹⁵² The petition also asked the FCC to define “good faith” in the Good Samaritan provision to exclude restricting access to content “on deceptive or pretextual grounds” or applying terms of service to restrict access to content that is “similarly situated” to other content the platform intentionally does *not* restrict.¹⁵³ As of the date of writing, the FCC has not acted on the petition.

On September 23, 2020, the Department of Justice (DOJ) released a separate proposal with suggested legislative language.¹⁵⁴ The DOJ proposal contained elements of a number of the suggested reforms outlined above. For example, like the NTIA petition, it would add language to clarify that Section 230(c)(1)’s publisher liability shield

does not apply to actions taken to remove content and that immunity for such actions is instead “provided solely” by the Good Samaritan provision.¹⁵⁵ It would also define “good faith” to exclude the same categories of conduct as the NTIA petition.¹⁵⁶ Like the Jordan and Wicker bills, the DOJ proposal would also remove liability protection under the Good Samaritan provision for actions taken to restrict access to content a platform deems “otherwise objectionable”; add protection for actions taken to restrict access to content that promotes terrorism, promotes self-harm, or is unlawful; and add a requirement that a platform have an “objectively reasonable belief” that the restricted content falls into one of the enumerated categories in order to receive liability protection.¹⁵⁷ Like the PACT Act, it would eliminate Section 230 immunity in federal civil enforcement actions.¹⁵⁸ And like the Malinowski bill, SAFE TECH Act, and EARN IT Act, it would expand the categories of claims that are exempt from Section 230 to include certain terrorism claims (like the Malinowski bill), cyberstalking and antitrust claims (like the SAFE TECH Act), and child sex abuse claims (like the EARN IT Act).¹⁵⁹ The DOJ proposal also contained a provision similar to the PACT Act that would revoke Section 230 immunity if a platform receives notice of a court order declaring certain content unlawful and the platform fails to remove the content “within a reasonable time.”¹⁶⁰ Thus, most of the DOJ proposal’s features appear, in one form or another, in other proposals, including some bipartisan proposals. It is possible that the Biden administration may endorse some of the features that have been incorporated into bipartisan proposals, although the exact approach the Biden administration will take remains to be seen.

Conclusion

This paper has sought to provide an overview of Section 230, the debates surrounding this highly important (and controversial) law, and the various proposals that have been offered to reform the law’s scope and application. Many of the proposals exemplify the differences in the two parties’ dissatisfaction with the current law. Republican proposals tend to focus on concerns regarding censorship and political bias. Democratic proposals, by contrast, tend to focus on concerns with hate speech and disinformation. Where the two parties have found common ground, it has been on issues like safety, transparency, and protecting minors—issues that all sides agree are universally important. Whether Section 230 reform succeeds—and what form it ultimately takes—may depend on the two parties’ willingness to consider changes outside (or in addition to) their core concerns with the current state of the law.

ABOUT THE AUTHOR

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Endnotes

- 1 Pub. L. No. 88-352.
- 2 Pub. L. No. 101-336.
- 3 Pub. L. No. 98-417.
- 4 Pub. L. No. 107-204.
- 5 Pub. L. No. 111-203.
- 6 Pub. L. No. 107-56.
- 7 47 U.S.C. § 230.
- 8 The Communications Decency Act, in turn, was enacted as part of a larger bill, the Telecommunications Act of 1996, Pub. L. No. 104-104.
- 9 See 47 U.S.C. § 230(e)(1)-(2). Intellectual property claims related to third-party content posted on internet platforms are governed by a separate statute, the Digital Millennium Copyright Act, Pub. L. No. 105-304.
- 10 The final vote on the Telecommunications Act of 1996, which included Section 230, was 414-16 in the House of Representatives and 91-5 in the Senate. See U.S. House of Representatives, Final Vote Results for Roll Call Vote 25 (Feb. 1, 1996), <https://clerk.house.gov/evs/1996/roll025.xml>; U.S. Senate, Roll Call Vote 8 (Feb. 1, 1996), https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=104&session=2&vote=00008.
- 11 See, e.g., Angela Chen, *What Is Section 230 and Why Does Donald Trump Want to Change It?*, MIT Technology Review (Aug. 13, 2019), <https://www.technologyreview.com/2019/08/13/610/section-230-law-moderation-social-media-content-bias> (“Some Republicans believe that companies are using Section 230 as a cover to let them moderate content however they want, and are exercising anti-conservative bias in what they choose to take down.”).
- 12 See *id.* (“Democratic critics like House Speaker Nancy Pelosi think that tech companies are using Section 230 to avoid taking responsibility for misinformation, hate speech, or other dangerous content.”).
- 13 47 U.S.C. § 230(c)(1).
- 14 *Id.* § 230(f)(2).
- 15 See, e.g., *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (Facebook); *Chi. Lawyers’ Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008) (Craigslist); *Fields v. Twitter*, 217 F. Supp. 3d 1116, 1121 (N.D. Cal. 2016) (Twitter).
- 16 47 U.S.C. § 230(f)(3).
- 17 *Id.* § 230(c)(2). Section 230(c)(2) further provides that a “provider or user of an interactive computer service shall [not] be held liable” for “any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in [the section].” *Id.*
- 18 Jeffrey Neuburger, *Video Sharing Site Protected by CDA Immunity for Removal of Poster’s “Objectionable Material”*, JD Supra (Feb. 11, 2020), <https://www.jdsupra.com/legalnews/video-sharing-site-protected-by-cda-83962>.
- 19 No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 26, 1995).
- 20 *Id.* at *4-5.
- 21 776 F. Supp. 135 (S.D.N.Y. 1991).
- 22 See *Stratton Oakmont*, 1995 WL 323710, at *2-3; see also *Cubby*, 776 F. Supp. at 140-41.
- 23 See Rodney A. Smolla, *Law of Defamation* § 4:92 (2d ed. 1999); see also *Stratton Oakmont*, 1995 WL 323710, at *3.
- 24 See 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).
- 25 See *id.* § 230(e)(3) (“No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”). As noted in the introduction, Congress also specified that Section 230’s protections do not extend to federal criminal liability or infringement of intellectual property. See *id.* § 230(e)(1)-(2). In 2018, Congress amended Section 230 to specify that it does not apply to state sex trafficking prosecutions or civil enforcement actions targeting child sex trafficking. See Pub. L. No. 115-164.
- 26 47 U.S.C. § 230(c)(2)(A).
- 27 See Jeff Kosseff, *The Twenty-Six Words that Created the Internet* (2019).
- 28 See, e.g., Eric Goldman, *How Section 230 Enhances the First Amendment*, ACLU Issue Brief (July 2020), https://www.acslaw.org/wp-content/uploads/2020/07/How-Section-230-Enhances-the-First-Amendment_July-2020.pdf.
- 29 *Id.* at 1.
- 30 See, e.g., Todd Shields & Ben Brody, *Washington’s Knives Are Out for Big Tech’s Social Media Shield*, Bloomberg Businessweek (Aug. 11, 2020), <https://www.bloomberg.com/news/articles/2020-08-11/section-230-is-hated-by-both-democrats-and-republicans-for-different-reasons> (noting claims by Republicans that “their ideas and candidates are censored”).
- 31 Mike Murphy, *Twitter Adds Fact-Check Warning Label to Trump’s Tweets for First Time*, MarketWatch (May 26, 2020), <https://www.marketwatch.com/story/twitter-adds-fact-check-warning-label-to-trumps-tweets-for-first-time-2020-05-26> (capitalization standardized). President Trump later attacked Section 230 and the protections it provides online platforms as “very dangerous & unfair.” Melissa Quinn, *Trump Threatens to Veto Defense Bill Unless Social Media Shield Is Repealed*, CBS News (Dec. 2, 2020), <https://www.cbsnews.com/news/trump-threatens-veto-defense-bill-section-230-repeal>, and vetoed the annual National Defense Authorization Act because it did not include a repeal of Section 230, Lauren C. Williams, *Trump Vetoes 2021 Defense Bill*, FCW (Dec. 23, 2020), <https://fcw.com/articles/2020/12/23/trump-vetoes-ndaa.aspx>. Congress overrode the veto. Lauren C. Williams & Adam Mazmanian, *Senate Overrides Trump’s Veto; NDAA Becomes Law*, FCW (Jan. 1, 2021), <https://fcw.com/articles/2021/01/01/ndaa-veto-overturned-senate.aspx>.
- 32 Kari Paul, *Facebook and Twitter Restrict Controversial New York Post Story on Joe Biden*, The Guardian (Oct. 14, 2020), <https://www.theguardian.com/technology/2020/oct/14/facebook-twitter-new-york-post-hunter-biden>.
- 33 *Permanent Suspension of @realDonaldTrump*, Twitter (Jan. 8, 2021), https://blog.twitter.com/en_us/topics/company/2020/suspension.html; Alex Hern & Kari Paul, *Donald Trump Suspended from Facebook Indefinitely, Says Mark Zuckerberg*, The Guardian (Jan. 7, 2021), <https://www.theguardian.com/us-news/2021/jan/07/donald-trump-twitter-ban-comes-to-end-amid-calls-for-tougher-action>. In May 2021, Facebook’s Oversight Board upheld the platform’s decision to suspend President Trump’s account, but said the decision must be reviewed within six months and that an “indefinite suspension” was not a proper penalty. *Case Decision 2021-001-FB-FBR*, Facebook Oversight Board (May 5, 2021), <https://oversightboard.com/decision/FB-691QAMHJ>.
- 34 Robert Hart, *Parler Sues Amazon Again in Wake of Deplatforming*, Forbes (Mar. 3, 2021), <https://www.forbes.com/sites/roberthart/2021/03/03/parler-sues-amazon-again-in-wake-of-deplatforming/?sh=5462f4b27251>.
- 35 *Id.*
- 36 Samuel Dorman, *Amazon Says It “Won’t Sell Books that Frame LGBTQ+ Identity as a Mental Illness”*, FOX Business (Mar. 11, 2021), <https://www.foxbusiness.com/politics/amazon-books-lgbtq-mental-illness-anderson>.
- 37 E.g., Press Release, S. Comm. on Commerce, Sci. & Transp., *Wicker, Graham, Blackburn Introduce Bill to Modify Section 230 and Empower Consumers Online* (Sept. 8, 2020), <https://www.commerce.senate.gov/2020/9/wicker-graham-blackburn-introduce-bill-to-modify-section-230-and-empower-consumers-online> (statement by Sen. Wicker (R-Miss.)) (“For too long, social media platforms have hidden behind Section 230 protections to censor content that deviates from their beliefs.”); see also *id.* (statement by Sen. Graham (R-S.C.)) (“Social media companies are routinely censoring content that to many, should be considered valid political speech.”); *id.* (statement by Sen. Blackburn (R-Tenn.)) (“Big Tech companies have stretched their liability shield past its limits, and the national discourse now suffers because of it. . . . There exists no meaningful alternative to these powerful platforms, which means there will be no accountability for the devastating effects of this ingrained ideological bias until Congress steps in and brings liability protections into the modern

- era.”); Press Release, Sen. Mike Lee, *Sen. Lee Announces Support for Section 230 Reform* (Dec. 10, 2020), <https://www.lee.senate.gov/public/index.cfm/2020/12/sen-lee-announces-support-for-section-230-reform> (“Facebook and Twitter have claimed political neutrality while practicing political partisanship for far too long.”); Press Release, Sen. Josh Hawley, *Senator Hawley Introduces Legislation to Amend Section 230 Immunity for Big Tech Companies* (June 19, 2019), <https://www.hawley.senate.gov/senator-hawley-introduces-legislation-amend-section-230-immunity-big-tech-companies> (“There’s a growing list of evidence that shows big tech companies making editorial decisions to censor viewpoints they disagree with. Even worse, the entire process is shrouded in secrecy because these companies refuse to make their protocols public.”).
- 38 Marguerite Reardon, *Democrats and Republicans Agree that Section 230 Is Flawed*, CNET (June 21, 2020), <https://www.cnet.com/news/democrats-and-republicans-agree-that-section-230-is-flawed> (noting that Democratic concerns “focus[] more on companies using the legal immunity [provided by Section 230] to skirt their duty to remove false and misleading content on their platforms”).
- 39 Taylor Hatmaker, *Nancy Pelosi Warns Tech Companies that Section 230 Is “In Jeopardy”*, TechCrunch (Apr. 12, 2019), <https://techcrunch.com/2019/04/12/nancy-pelosi-section-230>.
- 40 Reardon, *supra* note 38.
- 41 Hatmaker, *supra* note 39.
- 42 Rebecca Klar, *Democratic Senators Introduce Bill to Limit Section 230 Protections*, The Hill, (Feb. 5, 2021), <https://thehill.com/policy/technology/537524-democratic-senators-introduce-bill-to-limit-power-of-section-230>.
- 43 Bryan Pietsch, *Trump and Biden Both Want to Revoke Section 230, but for Different Reasons*, Bus. Insider (May 30, 2020), <https://www.businessinsider.com/trump-biden-want-to-revoke-section-230-for-different-reasons-2020-5>.
- 44 Senator Bill Hagerty’s (R-Tenn.) 21st Century FREE Speech Act, S. 1384, 117th Cong. (2021), which is described in the next section, *see infra* at 5, would repeal Section 230 in its entirety, but would reenact its core provisions (with certain changes) at 47 U.S.C. § 232, *see* S. 1384, § 2(a). Thus, the bill is not included in the “outright repeal” category.
- 45 H.R. 8896, 116th Cong. (2020). Representative Gohmert reintroduced the bill in the current Congress as H.R. 874, 117th Cong. (2021).
- 46 S. 5020, 116th Cong. (2020) (Graham bill); S. 5085, 116th Cong. (2020) (McConnell bill).
- 47 *See, e.g.*, Makena Kelly, *McConnell Ties Full Repeal of Section 230 to Push for \$2,000 Stimulus Checks*, The Verge (Dec. 29, 2020), <https://www.theverge.com/2020/12/29/22204976/section-230-senate-deal-stimulus-talks-checks>.
- 48 S. 1914, 116th Cong. (2019).
- 49 *Id.* § 2(a)(2).
- 50 *Id.* § 2(a)(1).
- 51 *Id.*
- 52 S. 3983, 116th Cong. (2020). Representative Ted Budd (R-N.C.) introduced a companion bill in the House with six co-sponsors (all Republicans), H.R. 8596, 116th Cong. (2020). Budd reintroduced the bill in the current Congress as H.R. 277, 117th Cong. (2021).
- 53 S. 3983, § 2.
- 54 *Id.*
- 55 S. 1384, 117th Cong. § 2(a) (2021).
- 56 *Id.*
- 57 *Id.*
- 58 *Id.*
- 59 *Id.*
- 60 H.R. 8517, 116th Cong. (2020); *see infra* at 6.
- 61 S. 1384, § 2(a).
- 62 H.R. 492, 116th Cong. (2019).
- 63 Glenn Evans, *Gohmert Bill Targets Filtering of Conservative Messages by Social Media Platforms*, Longview News-Journal (Jan. 4, 2019), https://www.news-journal.com/news/local/gohmert-bill-targets-filtering-of-conservative-messages-by-social-media-platforms/article_a896b556-103c-11e9-b8fa-7bbef4c4151d.html.
- 64 H.R. 8719, 116th Cong. (2020). Representative Steube reintroduced the bill in the current Congress with three Republican co-sponsors as H.R. 285, 117th Cong. (2021).
- 65 H.R. 285, § 2(a).
- 66 *Id.*; *see also id.* § 2(b).
- 67 *See* Orrin G. Hatch, *Reining in the Techno-Oligarchy*, Newsweek (Feb. 10, 2021), <https://www.newsweek.com/reining-techno-oligarchy-opinion-1567990>.
- 68 H.R. 285, § 2(a).
- 69 47 U.S.C. § 230(c)(2)(A).
- 70 H.R. 83, 117th Cong. (2021).
- 71 *Id.* § 2(a).
- 72 *Id.*
- 73 H.R. 4027, 116th Cong. (2019). The bill ultimately garnered seven co-sponsors (all Republicans).
- 74 *Id.* § 2.
- 75 47 U.S.C. § 230(c)(2)(A).
- 76 Gosar later reintroduced the bill with 11 co-sponsors (all Republicans) in a revised form that would remove protection for actions taken to restrict access to content a platform deems “otherwise objectionable,” but that would retain protection for the other enumerated categories and add new protection for actions taken to restrict access to unlawful content or content that “promotes violence or terrorism.” H.R. 7808, 116th Cong. § 2 (2020).
- 77 H.R. 8517, 116th Cong. (2020).
- 78 *Id.* § 2.
- 79 *Id.*
- 80 *Id.*
- 81 As noted above, *see supra* at 5, Senator Bill Hagerty’s 21st Century FREE Speech Act would also narrow the Good Samaritan provision in a manner similar to Representative Jordan’s bill, but would retain the current “good faith” standard. *See* S. 1384, 117th Cong. § 2(a) (2021). The Hagerty bill would also add definitions for each of the content categories covered under the Good Samaritan provision. *See id.*
- 82 S. 4534, 116th Cong. (2020).
- 83 *Id.* § 2.
- 84 S. 4632, 116th Cong. (2020).
- 85 *Id.* tit. I.
- 86 *See* Pub. L. 116-260, div. Q, tit. II, § 212.
- 87 *See* S. 4632, tit. II.
- 88 One additional Republican bill that does not fit neatly into any of the four categories is Representative Jim Banks’s (R-Ind.) Stop Shielding Culpable Platforms Act, H.R. 2000, 117th Cong. (2021). This bill, which has 12 co-sponsors (all Republicans), would amend Section 230 to specify that it does not prevent an online platform from being treated as a “distributor” of information provided by a third party. *Id.* § 3. According to Banks, this would make clear that liability protection under Section 230 does not apply when an online platform “*knowingly* share[s] illegal and harmful content.” Press Release, Republican Study Comm., *RSC Introduces Bill to Reform Section 230* (Mar. 22, 2021), <https://rsc-banks.house.gov/news/press-releases/rsc-introduces-bill-reform-section-230#:~:text=The%20Stop%20Shielding%20Culpable%20Platforms%20Act%20ensures%20that%20when%20social,they%20can%20be%20held%20liable.%E2%80%9D> (emphasis added).

- 89 S. 4756, 116th Cong. (2020). Representative Paul Gosar introduced a companion bill in the House, H.R. 8515, 116th Cong. (2020). Notably, Representative Gosar’s House companion had a Democratic co-sponsor, Representative Tulsi Gabbard (D-Haw.).
- 90 S. 4756, § 2.
- 91 *Id.*
- 92 S. 4337, 116th Cong. (2020).
- 93 *Id.* § 2(a).
- 94 *Id.*
- 95 This tally does not include Democrat-led bipartisan bills, which are described below under “Bipartisan Proposals.”
- 96 H.R. 8636, 116th Cong. (2020). Representative Malinowski reintroduced the bill in the current Congress with 9 co-sponsors (all Democrats) as H.R. 2154, 117th Cong. (2021).
- 97 H.R. 2154, § 2.
- 98 *Id.*
- 99 H.R. 3184, 117th Cong. (2021).
- 100 *Id.* § 2.
- 101 See Press Release, Rep. Yvette Clark, *Clarke Introduces H.R. 3284, The Civil Rights Modernization Act of 2021* (May 17, 2021), <https://clarke.house.gov/clarke-introduces-h-r-3284-the-civil-rights-modernization-act-of-2021> (“There is a history of discriminatory targeting of advertisements that has harmed society by allowing consumers to be excluded from seeing certain ads. These harms are not theoretical and occur in real-time—with particularly troubling implications for communities of color. Personal data such as gender, race, hobbies and interests, and zip code are used to limit the online visibility of many opportunities, thus perpetuating inequities in housing opportunities, credit and employment.”).
- 102 H.R. 3067, 117th Cong. (2021). The bill has one Democratic co-sponsor.
- 103 *Id.* § 3(a)-(b).
- 104 *Id.* § 3(c).
- 105 *Id.* § 4.
- 106 *Id.* § 6(a).
- 107 S. 299, 117th Cong. (2021). The bill has three co-sponsors (all Democrats). Representative Donald McEachin (D-Va.) introduced a companion bill in the House with two co-sponsors (both Democrats), H.R. 3421, 117th Cong. (2021).
- 108 S. 299, § 2.
- 109 As noted above, *see supra* at 2 & n. 25, the categories of claims currently exempt from Section 230 immunity include federal criminal claims, intellectual property claims, and certain state and civil sex trafficking claims.
- 110 S. 299, § 2.
- 111 *Combating Hate and Violence in America*, Beto for America (Aug. 16, 2019), <https://web.archive.org/web/20190819173258/https://betoorourke.com/gun-violence>; *see also* Makena Kelly, *Beto O’Rourke Seeks New Limits on Section 230 as Part of Gun Violence Proposal*, *The Verge* (Aug. 16, 2019), <https://www.theverge.com/2019/8/16/20808839/beto-orourke-section-230-communications-decency-act-2020-president-democrat-background-checks>.
- 112 *Id.*
- 113 Pietsch, *supra* note 43.
- 114 *Fighting Digital Disinformation*, Warren Democrats, <https://elizabethwarren.com/plans/fighting-digital-disinformation?source=soc-WB-ew-tw-rollout-20200129> (last visited May 8, 2021).
- 115 *Id.*
- 116 S. 3398, 116th Cong. (2020). Representative Sylvia Garcia (D-Tex.) introduced a companion bill in the House with one Republican co-sponsor, H.R. 8454, 116th Cong. (2020). Unlike the Senate bill, the House companion did not receive committee action.
- 117 S. 3398, § 4.
- 118 *Id.* § 6 (as introduced, Mar. 5, 2020).
- 119 *Id.* § 4(c).
- 120 *See id.* §§ 4-5 (as reported by S. Comm. on the Jud., July 2, 2020).
- 121 *Id.* § 5.
- 122 S. 4066, 116th Cong. (2020). Senator Schatz reintroduced the bill in the current Congress as S. 797, 117th Cong. (2021). The summary in this paragraph is taken from the reintroduced bill, which altered some of the timing and reporting requirements in the bill.
- 123 S. 797, § 5(a).
- 124 *Id.* § 5(b).
- 125 *Id.* § 5(a)(2)(C)(i).
- 126 *Id.* § 5(c)(1)(A)(i). The bill increases the removal deadline to ten days if the court order is a default judgment or stipulated agreement, to give the platform time to challenge the default judgment or stipulated agreement. *Id.* § 5(c)(1)(A)(ii); *see also id.* § 6(a).
- 127 *Id.* § 6(a).
- 128 *Id.* § 5(c)(1)(B).
- 129 *Id.* § 5(c)(2)(A)(i). The bill provides certain exceptions to the notification requirement, such as where the platform is unable to contact the content provider or reasonably believes notifying the content provider would risk imminent harm to a person or impede law enforcement activities. *See id.* § 5(c)(2)(A)(ii). If the content provider appeals the removal, the platform has 14 days to decide the appeal. *See id.* § 5(c)(2)(B). There is no appeal process for removal of illegal content or activity based on a court order, although the platform must notify the content provider prior to removing the content or stopping the activity, subject to certain exceptions. *See id.* § 6(a).
- 130 *Id.* § 5(g). Certain of the requirements related to processing and responding to complaints are loosened or eliminated for platforms below a certain usage or revenue threshold. *See id.* § 5(e); *see also id.* § 2(6), (10).
- 131 *Id.* § 5(d). This requirement does not apply to platforms below a certain usage or revenue threshold. *See id.* § 5(e); *see also id.* § 2(6), (10).
- 132 *Id.* § 7.
- 133 S. 4758, 116th Cong. (2020). Senator Manchin reintroduced the bill in the current Congress as S. 27, 117th Cong. (2021).
- 134 S. 27, §§ 3(6), 4(a).
- 135 *Id.* § 4(d)(1)(C).
- 136 *Id.* §§ 4(f), 5.
- 137 H.R. 4232, 116th Cong. (2019). Representative Case reintroduced the bill in the current Congress as H.R. 1107, 117th Cong. (2021).
- 138 The bill ultimately garnered an additional 11 bipartisan co-sponsors in the 116th Congress. The reintroduced bill has four bipartisan co-sponsors.
- 139 H.R. 1107, § 2(a).
- 140 See Press Release, Rep. Ed Case, *Case Introduces Measure to Allow Full Enforcement of State and Local Laws Targeting Illegal Short-Term Rentals* (Sept. 9, 2019), <https://case.house.gov/news/documentsingle.aspx?DocumentID=92>.
- 141 *Id.*
- 142 H.R. 1107, § 2(a).
- 143 Exec. Order No. 13,925, 85 Fed. Reg. 34,079 (June 2, 2020). The date the order was issued was May 28, 2020.
- 144 *Id.* at 34,079.
- 145 *Id.* at 34,080.
- 146 *Id.*
- 147 *Id.*
- 148 *Id.* at 34.081.

- 149 *Id.* at 34,082. President Biden revoked the order on May 14, 2021. See The White House, *Executive Order on the Revocation of Certain Presidential Actions and Technical Amendment* § 1 (May 14, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/14/executive-order-on-the-revocation-of-certain-presidential-actions-and-technical-amendment>.
- 150 Fed. Commc'ns Comm'n, *Petition for Rulemaking of the National Telecommunications and Information Administration* (July 27, 2020), https://www.ntia.gov/files/ntia/publications/ntia_petition_for_rulemaking_7.27.20.pdf.
- 151 *Id.* at 53-55.
- 152 *Id.* at 53.
- 153 *Id.* at 55.
- 154 See U.S. Dep't of Justice, *Department of Justice's Review of Section 230 of the Communications Decency Act of 1996* (Sept. 23, 2020), <https://www.justice.gov/archives/ag/departament-justice-s-review-section-230-communications-decency-act-1996>. The proposed legislative text is available at <https://www.justice.gov/file/1319331/download> [hereinafter DOJ Proposal].
- 155 DOJ Proposal at 1.
- 156 See *id.* at 5.
- 157 *Id.* at 1.
- 158 *Id.* at 3.
- 159 *Id.* at 4.
- 160 *Id.* at 2.



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