



July 10, 2019

The Honorable Mitch McConnell, Majority Leader  
The Honorable Roger Wicker, Chairman  
U.S. Senate  
Washington, D.C. 20510

Dear Majority Leader McConnell and Chairman Wicker:

On behalf of National Taxpayers Union, I write to encourage you to reject S. 1914, the Ending Support for Internet Censorship Act, and push back on further efforts to increase the federal government's interference with a free and open internet.

According to a 2016 Organisation for Economic Co-operation and Development (OECD) report, internet openness supports innovation, entrepreneurship, productivity, growth, international trade, and social well-being.<sup>1</sup> In 2000, just over half of U.S. adults reported using the internet; that number is up to 90 percent in 2019.<sup>2</sup> Taxpayers benefit greatly from these growth trends as well - within government agencies, online tools have vastly increased efficiency, and governments are also able to deliver numerous services at far lower costs.

Unfortunately, Americans' access to innovative products and services through the internet could be at risk. A series of proposals from across the political spectrum would stunt growth and competition in the digital economy. Some lawmakers are calling for the breakup of major tech companies.<sup>3</sup> The Supreme Court's 2018 *South Dakota v. Wayfair* decision gave states new tax collection powers across their borders, threatening the flow of interstate commerce around the nation.<sup>4</sup>

We believe that S. 1914 would be similarly dangerous to the growth and innovation of the internet. This legislation would give the federal government new and unprecedented authority to regulate internet services, and would remove liability protections that have been key to America's premier role in the development of an online global economy.

Section 230 of the Communications Decency Act is crucial for internet services in two ways: 1) it states that the service provider shall not be "treated as the publisher or speaker of any information provided by another information content provider," and 2) it shields service providers from liability for "good faith" actions that

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<sup>1</sup> Box, Sarah, and West, Jeremy. "Economic and Social Benefits of Internet Openness." OECD Digital Economy Papers, 2016. Retrieved from:

<https://www.oecd-ilibrary.org/docserver/5jlwqf2r97g5-en.pdf?expires=1561141491&id=id&accname=guest&checksum=44F392CFEAF6C3B21C7FEB9A9B305699> (Accessed June 21, 2019)

<sup>2</sup> "Internet/Broadband Fact Sheet." Pew Research Center, June 12, 2019. Retrieved from:  
<https://www.pewinternet.org/fact-sheet/internet-broadband/> (Accessed June 21, 2019)

<sup>3</sup> Neidig, Harper. "Co-founder's call to break up Facebook energizes its critics." The Hill, May 11, 2019. Retrieved from:  
<https://thehill.com/policy/technology/443217-co-founders-call-to-break-up-facebook-energizes-its-critics> (Accessed June 21, 2019)

<sup>4</sup> Moylan, Andrew, and Wilford, Andrew. "Congressional Responses to Wayfair." National Taxpayers Union Foundation, September 26, 2018. Retrieved from: <https://www.ntu.org/foundation/detail/congressional-responses-to-wayfair> (Accessed June 21, 2019)

restrict access or availability to content deemed “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.”<sup>5</sup> Multiple free-market groups and thinkers have rightly credited Section 230 with helping make America the global leader in digital economic growth.<sup>6</sup>

S. 1914, the Ending Support for Internet Censorship Act, would hold the Section 230 liability protections for internet services hostage to a cumbersome and vague regulatory process. The problems with this legislation are numerous. First and foremost, the ambiguity of the language in S. 1914 would only serve to hand over more unchecked power to federal regulators. S. 1914 would require internet services to certify to the Federal Trade Commission (FTC) that they do not moderate information content in a politically biased manner. The legislation defines political bias as 1) negatively affecting, 2) disproportionately restricting or promoting access to, or 3) making a decision with intent to negatively affect, a political party, political candidate, or political viewpoint. S. 1914 does not bother to define what a “political viewpoint” entails, giving the FTC the ability to raise objections to a wide variety of content.

Even the less vague language in S. 1914 is troublesome. The legislation defines what it means to “moderate” content, since indeed the FTC would be determining whether a service practices “politically biased moderation” before granting Section 230 protections. S. 1914 says moderating content means “to influence if, when, where, or how information or other content provided by a third-party user appears on a covered company’s interactive computer service,” and includes in this definition algorithms “or other automated process[es].” This is an incredibly expansive approach to defining moderation, and would again give the FTC the ability to object to a diverse set of practices and processes by private companies.

S. 1914 allows internet services two exceptions to the new provisions regarding politically biased moderation. One is for “business necessity,” and the other is for “actions by employees,” presumably those occurring not at the express order of the employer. The latter exception raises a number of concerns. In order for the internet service to receive a certification *despite* biased “actions by employees,” the company needs to publicly disclose a given employee’s actions and “[terminate] or otherwise [discipline] the employee.” What this legislation does, in effect, is demand that a private company punish or fire an employee in order to receive a particular exception to the new rules about political bias. This kind of prescriptive language is antithetical to free market values.

Last but not least, S. 1914 makes it difficult for an internet service to even receive a certification that they are not “politically biased.” The legislation requires four out of five FTC commissioners to approve certifications, which the sponsoring Senator notes is “a supermajority vote.”<sup>7</sup> Even if a company earns the 80-percent vote needed to achieve a certification, they need to return to the Commission every two years for recertification. This legislation gives five individuals an extraordinary amount of power over protections that internet services already enjoy under current law.

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<sup>5</sup> 47 U.S.C. § 230(c) (1996).

<sup>6</sup> See: Pethokoukis, James. “Josh Hawley's new tech bill would blow up the internet.” The Week, June 20, 2019, Retrieved from: <https://theweek.com/articles/848015/josh-hawleys-new-tech-bill-blow-internet> (Accessed June 21, 2019); “Sen. Hawley's Section 230 Legislation is Highly Regulatory and Should be Rejected.” Competitive Enterprise Institute, June 20, 2019, Retrieved from: <https://cei.org/content/sen-hawleys-section-230-legislation-highly-regulatory-and-should-be-rejected> (Accessed June 21, 2019)

<sup>7</sup> Senator Josh Hawley. (2019) “Senator Hawley Introduces Legislation to Amend Section 230 Immunity for Big Tech Companies.” Retrieved from: <https://www.hawley.senate.gov/senator-hawley-introduces-legislation-amend-section-230-immunity-big-tech-companies> (Accessed June 21, 2019)

NTU has often warned lawmakers that the FTC already enjoys far too much deference and latitude to issue harsh and all too often arbitrary edicts over private businesses. In a lengthy 2015 Policy Paper outlining concerns over FTC’s practices and recommendations for reform, we noted:

Taxpayers have a major stake in how the FTC approaches competition and consumer issues in the high-tech sector, well beyond questions of how it spends its annual funding. The FTC’s influence over our daily lives, whether it respects checks and balances, and most importantly the impact of its policies on the economy, are more vital matters now than ever before. Unless policymakers act to clarify and restrain the FTC’s role, Americans may find themselves unwitting (and ultimately unwilling) wards of an obsessive “nanny” that will dictate not only their everyday choices as consumers, but also the direction of technological innovation.<sup>8</sup>

Whether the proximate issue involves competition regulation, consumer privacy, or in this case internet content, free market and taxpayer advocates should be working to clarify and limit, rather than obfuscate and aggrandize, FTC’s powers.

Fortunately, the better path forward for lawmakers and regulators is simple: avoid new taxes and burdensome regulations, and both the internet and the U.S. digital economy will thrive as it has for decades. Not only is this the right thing to do for American innovation and economic growth, but it is also popular with Americans. According to a poll we conducted last year, 78 percent of American voters agree that “the internet should remain as free from government regulation and taxation as possible.”<sup>9</sup> This support cuts equally across political lines: 79 percent of Republicans, 78 percent of independents, and 78 percent of Democrats agreed with the statement. We strongly urge Congress to keep the internet free from excessive government regulation and taxation, and this includes rejecting legislation like S. 1914.

Thank you for your consideration, and should you have any questions, I am at your service.

Sincerely,

Andrew Lautz  
Policy and Government Affairs Associate

CC: The Honorable Maria Cantwell  
The Honorable John Thune  
The Honorable Roy Blunt  
The Honorable Ted Cruz  
The Honorable Deb Fischer  
The Honorable Jerry Moran  
The Honorable Dan Sullivan  
The Honorable Cory Gardner  
The Honorable Marsha Blackburn  
The Honorable Shelley Moore Capito

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<sup>8</sup> Sepp, Pete. “FTC: A Three-Letter Way to Spell ‘Nanny’?” National Taxpayers Union Policy Paper #135, June 3, 2015. Retrieved from: <https://www.ntu.org/library/doclib/NTU-PP-135-FTC.pdf> (Accessed June 21, 2019)

<sup>9</sup> “Poll: Strong Opposition to Internet Sales Tax Schemes Across Partisan, Ideological Lines.” National Taxpayers Union, March 14, 2018. Retrieved from: <https://www.ntu.org/library/doclib/Poll-Strong-Opposition-to-internet-Sales-Tax-Schemes-Across-Partisan-Ideological-Lines.pdf> (Accessed June 21, 2019)

The Honorable Mike Lee  
The Honorable Ron Johnson  
The Honorable Todd Young  
The Honorable Rick Scott  
The Honorable Amy Klobuchar  
The Honorable Richard Blumenthal  
The Honorable Brian Schatz  
The Honorable Ed Markey  
The Honorable Tom Udall  
The Honorable Gary Peters  
The Honorable Tammy Baldwin  
The Honorable Tammy Duckworth  
The Honorable Jon Tester  
The Honorable Kyrsten Sinema  
The Honorable Jacky Rosen  
The Honorable Josh Hawley