

# United States Senate

WASHINGTON, DC 20510

June 14, 2022

The Hon. Amy Klobuchar  
United States Senate  
425 Dirksen Senate Building  
Washington, DC 20510

Dear Senator Klobuchar,

We are writing to request you address a significant issue with the *American Innovation and Choice Online Act* (S.2992) that several of us have raised with you and that has also been raised by a diverse group of prominent legal experts and think tanks.<sup>1</sup> Limiting the largest technology companies' ability to leverage their gatekeeper status in anticompetitive ways is a worthy goal, and one that we support. However, it appears that the bill would also hinder content moderation practices, such as the application of community guidelines and policies, which are used to remove hate speech and fight misinformation online. We are concerned that, unless it is clarified, the bill would supercharge harmful content online and make it more difficult to combat. Fortunately, you can fix this issue with a simple addition to the bill.

Paragraph 3(a)(3) would make it unlawful for companies to “discriminate in the application or enforcement of the terms of service...in a manner that would materially harm competition.” This provision would imperil current content moderation practices by putting competition policy in direct conflict with the ability of companies to take down hate speech, disinformation and misinformation, and other objectionable content under existing law.<sup>2</sup> Although important, competition policy goals should not override the ability of platforms to moderate content in good faith. Congress should continue to encourage, not impede, moderation of harmful content online.

Our understanding is that you do not intend for the bill to limit content moderation in this way, and we want to work with you to fix this issue. We certainly acknowledge that reasonable minds may disagree about the meaning of this provision, and that is precisely why adding the suggested clarification below to the bill makes sense. We believe that adding the following text to the of

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<sup>1</sup> See Jane Bambauer and Anupam Chander, “Bills meant to check Big Tech’s power could lead to more disinformation,” *Washington Post*, June 6, 2022, <https://www.washingtonpost.com/outlook/2022/06/06/antitrust-bills-big-tech-hate-speech-disinformation/>; George Slover et al., Center for Democracy & Technology, March 9, 2022; Mark MacCarthy, “Two ways to improve Senator Klobuchar’s needed antitrust legislation,” The Brookings Institution, February 8, 2022, <https://www.brookings.edu/blog/techtank/2022/02/08/two-ways-to-improve-senator-klobuchars-needed-antitrust-legislation/>; Free Press, “Provision in Senate Antitrust Bill Would Undermine the Fight Against Online Hate and Disinformation,” press release, January 20, 2022, <https://www.freepress.net/news/press-releases/provision-senate-antitrust-bill-would-undermine-fight-against-online-hate-and-disinformation>.

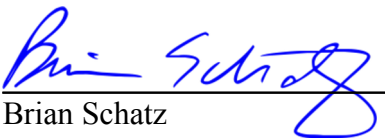
<sup>2</sup> George Slover, Samir Jain, Emma Llanso, and Eric Null “CDT Letter Recommending Further Changes to Address Privacy, Security & Content Moderation Concerns As Senate Antitrust Bill Moves Forward,” Center for Democracy & Technology, March 9, 2022, <https://cdt.org/insights/cdt-letter-urging-further-changes-to-address-privacy-security-content-moderation-concerns-in-senate-antitrust-bill/> (explaining the current provision could “inhibit responsible efforts by a covered platform to curtail hate speech, disinformation campaigns, or other abusive content”).

*Rule of Construction* (Section 5) will resolve the issue by simply spelling out what we understand is our shared intent:

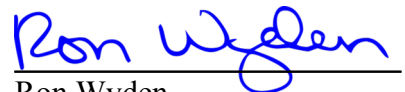
Protection for Content Moderation Practices.—Nothing in section 3(a)(3) may be construed to impose liability on a covered platform operator for moderating content on the platform or otherwise inhibit the authority of a covered platform operator to moderate content on the platform, including such authority under the First Amendment to the Constitution of the United States, section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)), or any other provision of law.

Thank you for considering the inclusion of this change as you look to us and our colleagues to support the bill.

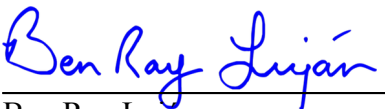
Sincerely,



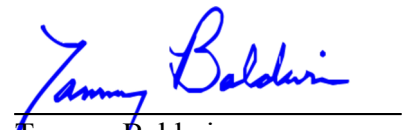
Brian Schatz  
United States Senator



Ron Wyden  
United States Senator



Ben Ray Lujan  
United States Senator



Tammy Baldwin  
United States Senator