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INDIGENOUS PEOPLES OF THE UNITED STATES

July 25, 2019

**Member Day Testimony of Congressman Ed Case before the House Committee on
Energy and Commerce**

Chairman Pallone, Ranking Member Walden and members of the Energy and Commerce Committee:

Thank you for allowing me to share my thoughts with the Committee on issues of importance to my constituents and the state and county governments in Hawai'i. Today I would like to focus on needed changes to the Communications Decency Act that are unintentionally preventing my state and its counties as well as many others throughout our country from enforcing our planning and zoning laws and implementing overall public policy in affordable housing, community safety and other critical areas.

The Internet has brought the world much progress and section 230 of the CDA, which provides internet platforms with broad immunity from liability for third-party content posted on their sites, has been a part of that. When the statute was passed in 1996 it had an important role to play in fostering the internet's growth. But today's massive internet platforms that offer services cannot be allowed to knowingly facilitate law breaking in our states and localities by hiding behind CDA 230 immunity.

Congress first saw and addressed the modern misuse of CDA 230 last year when it passed the Allow States and Victims to Fight Online Sex Trafficking Act ("FOSTA") legislation and imposed accountability for internet platforms that were profiting from human trafficking. In a parallel situation, this issue is also especially acute with respect to platforms that advertise and sell illegal short-term vacation rentals, like Airbnb, TripAdvisor, Homeaway, VRBO or Flipkey. In this area the online host platforms claim that CDA 230 prohibits states and counties from prohibiting and regulating such rentals and from penalizing platforms that knowingly sell them illegally.

By one account my State of Hawai'i alone hosted approximately 23,000 short-term vacation rental units in 2017, meaning one out of every 24 of our housing units was a short-term rental. This number is widely considered to have been low then, and has only grown since, driven largely by the ease of advertising and reserving these units online.

The vast majority of these rental units are illegal since legal, permitted short-term vacation rentals are known and number in the low thousands. The negative consequences of this unregulated disruption of our housing market impact all segments of our society.

First, commonly known and practiced widespread derogation of any law has its own broader consequences. Second, these units operate as the functional equivalent of hotels and yet do not pay hotel-required taxes and fees and do not comply with labor, workplace safety or consumer laws. Third, these units turn residential neighborhoods into the functional equivalent of hotel zones with loss of neighborhoods and communities.

Fourth, they completely distort our already sky-high housing market. Because residential dwellings are effectively converted to hotel rooms, the available owner and renter markets are compressed, leading to substantially higher rents and home prices that crowd out still more local residents in what is already one of the highest rent, lowest home ownership areas of our country.

There should be a way to compel short-term rental platforms to remove these illegal units from their inventory, and yet CDA 230 serves as a roadblock in that effort. The platforms have frequently asserted that CDA 230 does not allow full implementation and enforcement of these initiatives. They have sued the cities of San Francisco, Boston, Santa Monica, New York, and Miami Beach – and possibly others – claiming CDA 230 preempts local regulatory efforts to take down illegal listings. Notably, the U.S. Court of Appeals for the Ninth Circuit upheld a lower court ruling in the Santa Monica case that found the short-term rental companies didn't have a valid claim under Section 230 or the First Amendment.

This pattern has repeated itself throughout our country, and states and counties have continued to pursue a number of initiatives to prevent illegal rentals while attempting to withstand legal challenges from the online platforms. The State of Hawaii, for example, passed legislation in 2016 which would require operators posting on rental platforms to list their legal tax identification number and platforms not to host advertising which does not contain such numbers. The City and County of Honolulu just passed an ordinance for stricter enforcement of our local laws that limit short-term rental units on the island of O'ahu. Included in the new ordinance was a prohibition on platforms facilitating short term rentals for units that are not properly registered, permitted or otherwise allowed.

I strongly disagree that CDA 230 - either in language or in intent – can be used as a legal shield against these types of common-sense regulations. I cannot accept in any event that federal law does not allow states and cities to adopt and implement reasonable planning and zoning laws and instead to accept the broad negative social consequences of non-enforcement, especially given that the platforms know full well that their business model relies largely on knowing breaches of the law by their operators and advertisers.

I respectfully ask that the Committee formally examine this and other abuses of CDA 230. We have a valuable template in the FOSTA legislation that passed the House by a vote of 388-25 and was signed into law last year, which could be replicated to cover other illegal online sales. I hope to work closely with you on moving such legislation forward and supporting our communities.

Last, I would like to call to the Committee's attention the fact that a version of CDA 230 appears in the digital goods chapter (Article 19) of the draft United States-Mexico-Canada Agreement currently under consideration. While I understand that trade is not in this Committee's jurisdiction, to the extent you agree that CDA 230 needs Congressional review, we should carefully consider whether embedding a version of the statute in our international trade agreements is wise.

Thank you very much for your consideration.