

**Attachment—Additional Questions for the Record**

**Subcommittee on Communications and Technology  
Hearing on  
“Holding Big Tech Accountable: Targeted Reforms to Tech’s Legal Immunity”  
December 1, 2021**

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**The Honorable Anna G. Eshoo (D-CA)**

1. In your written testimony, you urge Congress to (1) “[u]se the First Amendment as the standard from which all Section 230 reforms flow” and (2) reform Section 230 by “[s]trip[ping] immunity if tech companies censor based on political views.” Countless Supreme Court cases have found that political speech is among the most protected categories of speech. While I have not seen any credible evidence that major platforms systematically moderate content in a way that resembles political bias, I understand the concern and would personally oppose such a practice if it were to occur among large tech platforms. However, I have questions about the ability of Congress to take actions you’ve recommended and the impact of such action, were it enacted.
  - a. Do you believe the First Amendment permits Congress to enact a law that restricts a company from expressing a political viewpoint in its content moderation practices?

**RESPONSE:** Big Tech companies contend that their content moderation practices are not expressions of political viewpoints, but instead intended to prevent “abuse,” promote “safety,” remove objectionable content from their platforms, etc. in a uniform and consistent manner. Section 230—not the First Amendment—protects these practices, which have expanded beyond “otherwise objectionable” to overt political censorship.

The First Amendment standard I referenced during the hearing is necessary now that tech companies are working directly with the government to police speech. I believe the First Amendment should preclude tech companies from working with the government to *restrict* political viewpoints under the guise of content moderation.

- b. If Congress did enact your recommendation and platforms faced liability if they moderate based on political view, what kind(s) of lawsuits do you believe would lead to remedies that would reduce political censorship?

**RESPONSE:** Measures enforceable by a private right of action and/or potential suits based on breach of contract (given tech companies have moved far afield

from their original promise to treat users impartially and democratize information) could help redress the imbalance between companies and users as well as reduce political censorship.

2. You recommend Congress add a sunset clause to Section 230 such that the law expires every seven years.

a. Why seven years and not two, five, ten, or any other number of years?

**RESPONSE:** Technology almost always outpaces attempts to govern it. This recommendation is based on general R&D cycles and the feasibility of enacting effective reforms to Section 230 as new technologies and applications are developed. A shorter timeline, such as five years, may be necessary and should be considered.

b. What policy outcome(s) do you believe this would achieve?

**RESPONSE:** This would allow legislators to address new technology developments that render tech governance/legislation outdated (such as decades of overly broad interpretations of Section 230 immunity or the expansion of its “otherwise objectionable” clause to include political viewpoint censorship). Generally, adding a sunset clause would give legislators and elected representatives of the U.S. citizenry consistent input in determining the rules of the road for privately developed technologies that stand to impact the daily lives of Americans.