

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

Mr. Robinson, President, Color of Change

Honorable Tony Cárdenas (D-CA)

1. Mr. Robinson, in addition to disinformation we now know that hate speech and extremism have escalated dramatically on social media platforms. This has been mainly due to the purposeful amplification of harmful content to promote engagement and profits over public safety. Could you please share with us how platforms are amplifying online hate, and how that hate can lead to real world consequences?

RESPONSE:

Platforms amplify online hate using optimization algorithms. While the 2020 presidential election votes were being counted, Facebook decided to prevent the spread of election misinformation by changing the algorithm.¹ In doing this, Facebook demonstrated that they can make decisions to promote public safety. Instead of making this a permanent change, they returned to the previous algorithm. By refusing to address election misinformation, Facebook’s choice created the conditions for a coup to be planned on its platform.

Facebook had another opportunity to reduce the spread of hate and misinformation by regulating Facebook groups. Their internal studies found that hate groups were growing because of Facebook algorithms.² Researchers found “64% of all extremist group joins are due to our recommendation tools” such as the “Groups You Should Join” and “Discover” algorithms. Advocates warned Facebook about the dangers of private groups, but Facebook refused to listen.³

¹ Kevin Roose, Mike Isaac and Sheera Frenkel, “Facebook Struggles to Balance Civility and Growth,” *The New York Times*, November 24, 2020, <https://www.nytimes.com/2020/11/24/technology/facebook-election-misinformation.html>.

² Jeff Horwitz and Deepa Seetharaman, “Facebook Executives Shut Down Effort to Make the Site Less Divisive,” *Wall Street Journal*, May 26, 2020, <https://next.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499>.

³ Dell Cameron, “Facebook Was Warned for 5 Years About Violent Event Pages but Didn’t Act, Civil Rights Group Says,” *Gizmodo*, September 16, 2020, <https://gizmodo.com/facebook-was-warned-for-5-years-about-violent-event-pag-1845080416>.

Facebook groups and events are organizing tools for white nationalist organizations. The “Stop the Steal” Facebook group spread misinformation to energize its base before the attempt to overturn the election of President Joe Biden.⁴ Facebook amplified false stories about alleged misconduct in the Georgia ballot canvass process and then was a vehicle for right wing harassment of two Black women elections officials who were targeted in the false posts. This harassment did not remain online. It included threatening visits and calls to their family members.⁵

Facebook’s refusal to address election misinformation is an undeniable factor in the January 6 attack on the U.S. Capitol.⁶ Facebook failed to take down a white nationalist militia’s event that encouraged armed civilians to “defend the streets of Kenosha, WI.”⁷ Kyle Rittenhouse was one of those armed citizens and killed two people at demonstrations in support of Jacob Blake. The group that attempted to kidnap Michigan Governor Gretchen Whitmer organized on Facebook.⁸ Facebook served as a recruitment space allowing the group to grow before relocating to encrypted chats.⁹

2. Mr. Robinson, as you are aware, we are going into an election year. We have seen that voter disenfranchisement has been used in recent elections to dissuade or prohibit voter access. Could you please elaborate on some instances of voter disenfranchisement online?

RESPONSE:

We have witnessed Facebook’s advertising algorithm being used to suppress the Black vote turnout since the 2016 election.¹⁰ Bad actors dissuaded voters from participating in the election by sharing misleading statements¹¹ Bad actors have used Facebook’s infrastructure to spread disinformation in attempts to reduce the Black vote by creating

⁴ Craig Silverman, Jane Lytvynenko, and Pranav Dixit, “How ‘The Women for America First’ Bus Tour Led to the Capitol Coup Attempt,” BuzzFeed News, January 25, 2021, <https://www.buzzfeednews.com/article/craigsilverman/maga-bus-tour-coup>.

⁵ Katie Wermus, “Election Workers Say Ballot Fraud Claims Led to Their Harassment, Threatening Messages,” *Newsweek*, December 2, 2021, <https://www.newsweek.com/election-workers-say-ballot-fraud-claims-led-their-harassment-threatening-messages-1655558>

⁶ Craig Silverman, Craig Timberg, Jeff Kao, and Jeremy B. Merrill, “Facebook groups topped 10,000 daily attacks on election before Jan. 6, analysis shows,” *The Washington Post*, January 4, 2022, <https://www.washingtonpost.com/technology/2022/01/04/facebook-election-misinformation-capitol-riot/>.

⁷ Ryan Mac and Craig Silverman, “How Facebook Failed Kenosha,” BuzzFeed News, September 3, 2020, <https://www.buzzfeednews.com/article/ryanmac/facebook-failed-kenosha>; Ryan Mac, “A Kenosha Militia Facebook Event Asking Attendees To Bring Weapons Was Reported 455 Times. Moderators Said It Didn’t Violate Any Rules.” BuzzFeed News, August 28, 2020, <https://www.buzzfeednews.com/article/ryanmac/kenosha-militia-facebook-reported-455-times-moderators>.

⁸ Jack Morse, “Militia used Facebook to plan kidnapping of Michigan governor, FBI claims,” Mashable, October 8, 2020, <https://mashable.com/article/militia-facebook-plot-kidnap-michigan-governor-gretchen-whitmer>.

⁹ Kurt Wagner and Christian Berthelsen, “Facebook Approached FBI About Michigan Militia Six Months Ago,” Yahoo! Finance, October 8, 2020, <https://finance.yahoo.com/news/facebook-approached-fbi-michigan-militia-012402294.html>.

¹⁰ Anthony Nadler, Matthew Crain, and Joan Donovan, “Weaponizing the Digital Influence Machine: The Political Perils of Online Ad Technology,” Data & Society, October 17, 2018, https://datasociety.net/wp-content/uploads/2018/10/DS_Digital_Influence_Machine.pdf.

¹¹ Scott Shane and Sheera Frenkel, “Russian 2016 Influence Operation Targeted African-Americans on Social Media,” *The New York Times*, December 17, 2018, <https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html>; “Revealed: Trump Campaign Strategy to Deter Millions of Black Americans from Voting in 2016,” Channel 4 News, September 28, 2020, <https://www.channel4.com/news/revealed-trump-campaign-strategy-to-deter-millions-of-black-americans-from-voting-in-2016>.

voter depression.¹² The Trump campaign categorized 3.5M Black voters as “deterrence” indicating they were targets of an intentional campaign to discourage them from voting.¹³ Facebook’s attempts to limit the spread of disinformation through political ads are falling short, allowing malicious actors to manipulate policies.¹⁴

Donald Trump Jr.’s Facebook post calling for an army to watch the polls during the 2020 election raised concerns about attempts to threaten voters.¹⁵ Facebook failed to have a policy prohibiting voter intimidation until that post.¹⁶ Online platforms do not have the expertise to protect Black communities from voter disenfranchisement. We need Congress to empower regulators like the Federal Election Commission and Department of Justice to protect our voting rights online.

Bad actors also target local elections in attempts to undermine support for Black politicians. Facebook and Instagram were used to amplify a blog spreading misinformation about former Stockton, California Mayor Michael Tubbs.¹⁷ The blog received 100,000 views a month but also had 100,000 Facebook and 119,000 Instagram followers.¹⁸ The blog mischaracterized and misled Stockton voters about the policies and decisions Mayor Tubbs made. This misinformation contributed to Mayor Tubbs losing his re-election race.¹⁹ Mayor Tubbs went from winning his first election with over 70 percent of the vote to losing his re-election campaign by ten points.

3. Additionally, I am hoping to get your thoughts on Rep. Yvette Clarke’s bill, H.R. 3184, *the Civil Rights Modernization Act of 2021*, which would target ads that violate civil rights laws or prohibit voter access?

¹² Scott Shane and Sheera Frenkel, “Russian 2016 Influence Operation Targeted African-Americans on Social Media,” *The New York Times*, December 17, 2018, <https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html>; Kevin Roose, “We Asked for Examples of Election Misinformation. You Delivered.” *The New York Times*, November 4, 2018, <https://www.nytimes.com/2018/11/04/us/politics/election-misinformation-facebook.html>; Megan Graham, Steven Overly, “Survey: Most social media users in three key states have seen ads questioning the election,” *Politico*, October 30, 2020, <https://www.politico.com/news/2020/10/30/survey-social-media-election-validity-433646>.

¹³ “Revealed: Trump Campaign Strategy to Deter Millions of Black Americans from Voting in 2016,” Channel 4 News, September 28, 2020, <https://www.channel4.com/news/revealed-trump-campaign-strategy-to-deter-millions-of-black-americans-from-voting-in-2016>.

¹⁴ Issie Lapowsky, “How political advertisers skirted Facebook’s rules in 2020 — and got away with it,” Protocol, December 9, 2021, <https://www.protocol.com/policy/facebook-political-ad-study>; “5.3bn political ads were shown on Facebook in the week before the US election,” Global Witness, November 30, 2020, <https://www.globalwitness.org/en/press-releases/53bn-political-ads-were-shown-facebook-week-us-election/>.

¹⁵ Taylor Hatmaker, “Facebook: Trump can’t recruit ‘army’ of poll watchers under new voter intimidation rules,” TechCrunch, October 7, 2020, <https://techcrunch.com/2020/10/07/facebook-poll-watching-trump-election-political-ads/>.

¹⁶ Katie Paul, “Facebook bans militarized calls for poll watching but won’t pull ‘Army for Trump’ video,” Reuters, October 7, 2020, <https://www.reuters.com/article/us-usa-election-facebook/facebook-bans-militarized-calls-for-poll-watching-but-wont-pull-army-for-trump-video-idUSKBN26S315>.

¹⁷ “The Fall of Michael Tubbs,” *Politico*, December 23, 2020, <https://www.politico.com/news/magazine/2020/12/23/the-fall-of-michael-tubbs-449619>.

¹⁸ “Rising Star Mayor Who Championed Guaranteed Income Loses Hometown Race,” Bloomberg CityLab, November 19, 2020, <https://www.bloomberg.com/news/articles/2020-11-19/rising-star-michael-tubbs-loses-mayoral-reelection>.

¹⁹ Akintunde Ahmad, “Michael Tubbs on Disinformation, Racism, and News Deserts,” *Columbia Journalism Review*, February 26, 2021, https://www.cjr.org/special_report/michael-tubbs-disinformation-racism-news-deserts-stockton-california-209-times.php.

RESPONSE:

Color Of Change supports Rep. Yvette Clarke’s Civil Rights Modernization Act of 2021. We have seen ads on platforms like Facebook violate civil rights laws. Hard fought and won civil rights laws should not be ignored because an advertisement for an apartment or job is online. The bill takes away the liability shield in claims of discrimination in targeted online advertising. When Facebook was sued for violating the Fair Housing Act, they argued Section 230 shielded them from any liability.²⁰ Congress must make it clear that Section 230 does not excuse social media companies when they violate our civil rights.

4. Without liability protections, online platforms would be encouraged to either over-moderate everything to shield themselves from liability over harmful content — or to moderate nothing, washing their hands of whatever content is posted to their platforms. In your role as co-chair of the Aspen Institute’s Commission on Misinformation, you recently published a report that proposes two changes to Section 230: 1) You propose that paid advertising or “sponsored posts” no longer be protected under section 230, and 2) the exclusion of product design features that make choices about what to amplify or what content to “promote” from its liability shield — how would these two corrective measures help prevent some of the harms we are experiencing online and what in your opinion would be the impact on already marginalized speech online?

RESPONSE:

The current misinformation crisis is an outgrowth of digital monopoly power and perverse incentives. Creating liability will incentivize promoting safety over profit.²¹ It will force the platforms to compete to create the most hospitable environment for users. These issues require more than Section 230 reform and will demand structural changes to an economy seeking to capture more of our data and hold more of our attention. To protect Black people, misinformation must be combated on multiple fronts. Our communities need strong privacy protections, algorithmic accountability, and antitrust enforcement.

Sponsored content has accelerated the spread of misinformation. Platforms must be incentivized to prevent this manipulation. Removing the liability shield will encourage platforms to moderate misinformation and hate speech and create policies to prevent the

²⁰ Statement Of Interest Of The United States Of America, National Fair Housing Alliance, et. al. v. Facebook, 18 Civ. 2689 (JGK), August 17, 2018, <https://www.justice.gov/crt/case-document/file/1089231/download>.

²¹ Commission on Information Disorder, Final Report, Aspen Institute, November 2021, https://www.aspeninstitute.org/wp-content/uploads/2021/11/Aspen-Institute_Commission-on-Information-Disorder_Final-Report.pdf.

issues we are seeing now. This amendment is intended to hold social media companies as liable as other modes of communication for the advertisement they allow.

Section 230 protection should not cover decisions of the platform to promote or amplify content. Holding platforms accountable for product design is both a matter of consumer protection and public safety. Facebook algorithms drove users towards groups that spread misinformation.²² Some of those groups spread election misinformation and organized violent attacks.²³ Facebook should be held liable for how their intentional product design led to violence and harm.

By removing the liability shield, members of marginalized communities will be able to bring lawsuits to secure justice. With the current legal regime, attempts to get equal treatment on the platform will face the hurdle of removing Section 230 protection. Black communities, communities of color, the LGBTQ+ community, religious minorities, and immigrant communities have the most to lose when platforms are not held accountable for their behavior. They should have the opportunity to raise concerns and have their day in court. It is vital for Congress to pass tailored amendments to Section 230 to avoid concerns raised by advocates following SESTA-FOSTA.²⁴

²² Jeff Horwitz and Deepa Seetharaman, "Facebook Executives Shut Down Effort to Make the Site Less Divisive," Wall Street Journal, May 26, 2020, <https://next.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-mixed-solutions-11590507499>.

²³ Craig Silverman, Jane Lytvynenko, and Pranav Dixit, "How 'The Women for America First' Bus Tour Led to the Capitol Coup Attempt," BuzzFeed News, January 25, 2021, <https://www.buzzfeednews.com/article/craigsilverman/maga-bus-tour-coup>.

²⁴ Makena Kelly, "Democrats want data on how sex workers were hurt by online crackdown," The Verge, December 17, 2019, <https://www.theverge.com/2019/12/17/21026787/sesta-fosta-congress-study-hhs-sex-work-ro-khanna-elizabeth-warren-ron-wyden>.