

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

GREG WALDEN, OREGON
RANKING MEMBER

ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

October 20, 2020

The Honorable Frank Pallone, Jr.
Chairman
Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Chairman Pallone:

We write to request the Committee hold a hearing on social media censorship and its deleterious effects and that you issue invitations to the CEOs of Twitter, Facebook and Google to testify. We have shared a common interest with you and your members over the last few years to address the many questions we all have about the content moderation decisions of tech giants. As you know, we have serious concerns regarding the recent actions taken by these companies to censor speech on their platforms, especially so close to a major presidential election. Democrats have been equally concerned with content decisions in regard to videos of Speaker Pelosi in the past few months, and of course we both share concern over their inability to properly protect our children from online harms. In the event these companies refuse an invitation to testify we request the Committee expeditiously hold a business meeting to authorize subpoenas to the CEOs of Twitter, Facebook and Google to compel their testimony before the Energy and Commerce Committee.

Every incident we encounter with these companies seems to evolve into a discussion or interpretation of their current policies or lead to changes in their existing policies to justify their decision, resulting in the unequal application of these policies as it relates to content moderation practices. These actions appear ad hoc¹ and, given the lack of transparency and gravity of their implications, they demand Congressional scrutiny.

We are sure you recall the hearing with Twitter CEO Jack Dorsey from last Congress and the concerns our side expressed over the company's issues it had with taking down child

¹ See, <https://thehill.com/policy/technology/499993-twitter-adds-fact-checking-labels-to-hundreds-of-tweets-despite-trump>

pornography on its Periscope property. It appears that despite the overwhelming outcry from both our sides and the series of hearings we have done in a bipartisan manner have yet to yield effective takedowns of these harms, as NBC recently reported how platforms like Facebook, Twitter and Google are still challenged to put an end to serving as forums for such criminal activity.² Given our shared disdain for these companies not being able to completely block and take down such illicit content, you should not just summarily dismiss our concerns as political given the recent blocking of a major news source. It is inexcusable that it is a bigger priority to block a story by the *New York Post* for an article documenting alleged correspondence between Hunter Biden, son of Democrat Presidential nominee and former Vice President Joe Biden, with representatives from the Ukrainian company Burisma.

The story was clearly newsworthy, as it now dominates the news cycles. The emails referenced in the story contradict previous statements made by Presidential-candidate Biden about his engagement and awareness of his son's foreign business endeavors. Facebook made the decision to slow the spread of the article and simultaneously requested the article be fact-checked by third-party reviewers, though it is unclear who those reviewers are or how they will determine the validity of the emails.³ Moreover, Facebook made their decision to limit the reach of this article before the third-party reviewers rendered a report or recommendation. This prompted similar questions and concerns from the Director of the International Fact Checking Network which has established principles for professional fact checkers by which Facebook requires of its fact-checking partners to abide.⁴

Shortly thereafter, Twitter made the decision to block this article on its platform, claiming it violated its "Hacked Materials Policy".⁵ Though there was no clear evidence that the information cited in this article was a result of a hack,⁶ Twitter chose to block access to the article while allowing stories from other outlets on its platform that have been confirmed to contain leaked, hacked, or classified information.⁷ And yet again, in an attempt to shift the conversation away from its internal bias toward its ad hoc policies, Twitter changed its "Hacked Materials Policy" as it saw fit with no oversight or accountability.⁸

As was stated at a joint subcommittee Energy and Commerce committee hearing on online disinformation, these companies need to come before the committee to answer our questions on these actions. Our sister committee in the other chamber, the Senate Commerce Committee, has bipartisan support to bring these CEOs in front of their committee on October 28th.

² See, <https://www.nbcnews.com/tech/tech-news/child-sexual-abuse-images-online-exploitation-surge-during-pandemic-n1190506>

³ See, <https://twitter.com/andymstone/status/1316395902479872000?s=20>

⁴ See, https://www.poynter.org/fact-checking/2020/without-methodology-or-transparency-facebook-and-twitter-become-the-arbiters-of-the-truth/?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axioslogin&stream=top

⁵ See, https://www.huffpost.com/entry/twitter-blocks-new-york-post-article_n_5f874b83c5b6e9e76fb9c04d

⁶ See, <https://twitter.com/jack/status/1317081843443912706?s=20>

⁷ See, <https://twitter.com/nytimes/status/1310336685574680578?s=20>

⁸ See, <https://twitter.com/vijaya/status/1316923555616116741>

This recent censorship controversy is just one more in a litany of instances in which these companies have shown utter disregard for being democratic public squares and seek to suppress speech that does not advance their particular agenda. Notably, these powerful platforms provide no transparency into what methodology their employees use to apply content moderation policies, how their employees identify what needs to be tempered in distribution, or what sources their employees rely on to decide that something may be false—all information necessary for the American people to understand when these actions are appropriate, or when they may be intended to interfere with the upcoming Presidential election in favor of their preferred-candidate.

These actions taken by Twitter, Facebook, and Google suggest that these companies do not enforce their policies consistently. Under section 230 of the Communications Decency Act,⁹ the courts have broadly interpreted the liability protection afforded to interactive computers services to apply to all content moderation actions taken by social media platforms.¹⁰ Section 230 was enacted nearly 25 years ago, before the Internet was the economic driver it has become today, and more importantly, before these social media companies existed, let alone before they became integral in disseminating information to the public in a selective manner without oversight or accountability. These companies must be accountable for their actions and that begins with oversight by Congress, on behalf of the American people.

The Energy and Commerce Committee has built a strong record for the need to hear directly from the chief executives of Twitter, Google, and Facebook by holding hearings specifically focused on Section 230 of the Communications Decency Act¹¹ and on online disinformation.¹² This record highlights the potential catastrophic effect we may see if these companies are allowed to take on a more active role in evaluating the factual basis of third-party content and fail to apply such policies in a consistent manner, particularly when it is driven by a political agenda. As you stated with respect to manipulated media at a recent hearing before the Subcommittee on Consumer Protection and Commerce, "... trust is the key to influencing and taking advantage of people. Whether for social, monetary, or political gain, if bad actors can make people believe a lie, they can manipulate us into taking actions we wouldn't otherwise take."¹³ The same is unequivocally true for platforms, particularly when they enforce their policies as a means to interfere with our election.

Mr. Chairman, the Energy and Commerce Committee has sole oversight over any changes to section 230 of the Communications Decency Act, and our silence on these issues is deafening. We asked you in June to hold a hearing with Jack Dorsey, Mark Zuckerberg, and Sundar Pichai, and we cannot wait any longer.¹⁴ The Presidential election will be held in 14 days, and millions of Americans have already voted. Between the unregulated power of these companies and the concern of misinformation this close to a Presidential election, we cannot let

⁹ See, <https://www.law.cornell.edu/uscode/text/47/230>

¹⁰ See, <https://casetext.com/case/malwarebytes-inc-v-enigma-software-grp-usa>

¹¹ See, <https://republicans-energycommerce.house.gov/hearings/fostering-a-healthier-internet-to-protect-consumers/>

¹² See, <https://republicans-energycommerce.house.gov/hearings/a-country-in-crisis-how-disinformation-online-is-dividing-the-nation-virtual-hearing/>

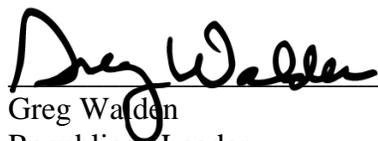
¹³ See, <https://energycommerce.house.gov/newsroom/press-releases/pallone-remarks-at-hearing-on-online-manipulation-deception>

¹⁴ See, <https://www.youtube.com/watch?v=tXaGP8LQDMc&feature=youtu.be&t=5964>

these companies be unchecked arbiters of truth when their actions suggest their decisions are based on political motives. We urge you to invite these companies to come before our Committee and if they do not comply to issue a subpoena for their attendance so the American people can get answers to their questions.

If you have any questions, please contact Kate O'Connor and Tim Kurth at (202) 225-3641. Thank you for your prompt attention to this request.

Sincerely,



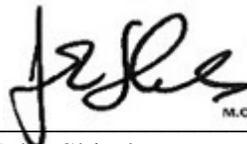
Greg Walden
Republican Leader
Committee on Energy and Commerce



Robert E. Latta
Republican Leader
Subcommittee on Communications
and Technology



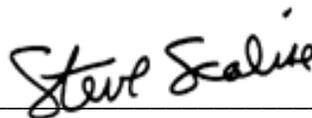
Cathy McMorris Rodgers
Republican Leader
Subcommittee on Consumer Protection
and Commerce



John Shimkus
Republican Leader
Subcommittee on Environment and
Climate Change



Michael C. Burgess, M.D.
Republican Leader
Subcommittee on Health



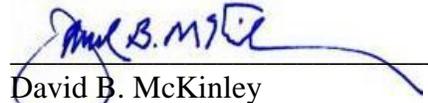
Steve Scalise
Member of Congress



Brett Guthrie
Republican Leader
Subcommittee on Oversight and
Investigations



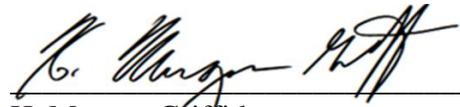
Pete Olson
Member of Congress



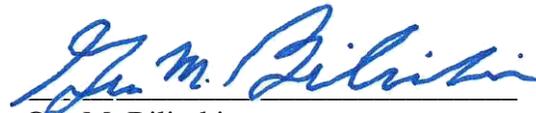
David B. McKinley
Member of Congress



Adam Kinzinger
Member of Congress



H. Morgan Griffith
Member of Congress



Gus M. Bilirakis
Member of Congress



Bill Johnson
Member of Congress



Billy Long
Member of Congress



Larry Bucshon, M.D.
Member of Congress



Bill Flores
Member of Congress



Susan W. Brooks
Member of Congress



Markwayne Mullin
Member of Congress



Tim Walberg
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Jeff Duncan
Member of Congress



Greg Gianforte
Member of Congress