



Officers

Chair

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Derrick Johnson
NAACP

Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund

Secretary

Fatima Goss Graves
National Women's Law Center

Treasurer

Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors

Kimberly Churches

AAUW

Ray Curry

International Union, UAW

Jonathan Greenblatt

Anti-Defamation League

Mary Kay Henry

Service Employees International Union

Damon Hewitt

Lawyers' Committee for

Civil Rights Under Law

Sherrilyn Ifill

NAACP Legal Defense and

Educational Fund, Inc.

David H. Inoue

Japanese American Citizens League

Benjamin Jealous

People for the American Way

Derrick Johnson

NAACP

Virginia Kase Solomón

League of Women Voters of the

United States

Samer E. Khalaf

American-Arab

Anti-Discrimination Committee

Joni Madison

Human Rights Campaign

Marc Morial

National Urban League

Janet Murguía

UnidosUS

Debra L. Ness

National Partnership for

Women & Families

Christian F. Nunes

National Organization for Women

Rabbi Jonah Pesner

Religious Action Center

Of Reform Judaism

Rebecca Pringle

National Education Association

Lisa Rice

National Fair Housing Alliance

Anthony Romero

American Civil Liberties Union

Fawn Sharp

National Congress of American Indians

Liz Shuler

AFL-CIO

Maria Town

American Association of

People with Disabilities

Randi Weingarten

American Federation of Teachers

John C. Yang

Asian Americans Advancing Justice |

AAJC

Interim President & CEO

Wade Henderson

November 30, 2021

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Michael Doyle
Chairman
Committee on Energy and Commerce
Subcommittee on Communications and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Robert Latta
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications and Technology
U.S. House of Representatives
Washington, DC 20515

**Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chairman Doyle, and
Ranking Member Latta,**

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the rights of all persons in the United States, we thank you for the opportunity to submit our views regarding the need for major tech companies to address threats to civil rights created or facilitated by their platforms and improve civil rights infrastructure. We ask that this statement be entered into the record of the subcommittee hearing entitled "Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity" on December 1, 2021.

The internet has created immense positive value by connecting people, facilitating civil rights advocacy, and adding new voices to our culture and public debate. However, it can also enable discriminatory conduct, exacerbate existing disparities, and give new tools to those who want to threaten, harass, intimidate, defame, or violently attack people different from themselves. While The Leadership Conference welcomes scrutiny of the role of social media companies in our democracy, we urge caution regarding potential changes to Section 230 to ensure any proposed changes will not do more harm than good. We encourage the committee to focus on the most important opportunities to ensure these platforms serve all people, which we discuss in more detail below.

Technological progress should promote equity and justice as it enhances safety, economic opportunity, and convenience for everyone. On October 21, 2020, The Leadership Conference joined dozens of leading civil rights and technology advocacy organizations in releasing updated Civil Rights Principles for the Era of Big Data,¹ in response to the current risks to civil rights — including COVID-19, a surge in hate-based violence, private sector and government surveillance, and disinformation on social media platforms designed to manipulate or suppress voter participation — and with an eye toward how technology can meet its promise and affirmatively promote justice and equity. These principles provide important guidelines to aid this committee in ensuring that new technologies — including algorithmic decision making, artificial intelligence, and machine learning — protect civil rights, prevent unlawful discrimination, and advance equal opportunity.

Congress should use this opportunity to examine actions that social media platforms are taking or plan to take to reduce online activities that harm communities of color, religious minorities, and other marginalized communities. For years, we have urged major tech platforms to take responsibility for ensuring that their products and business processes protect civil and human rights and do not result in harm or bias against historically marginalized groups, but they have failed to take sufficient action. And despite years of advocacy urging the companies to rectify the problems, misinformation regarding time, place, manner, and qualifications to vote and content intended to suppress or deter people from voting continue to proliferate. The failure of tech platforms to address these activities harms people of color and members of other marginalized communities. Moreover, despite new policies that ostensibly forbid white supremacy, white supremacists continue to use platforms to incite racist violence on multiple platforms against Asian Americans, African Americans, Jews, Muslims, people with disabilities, and members of the LGBTQ community. Platforms have the tools and the ability to respond effectively to these concerns if they only had the will. Congress should press tech companies on the actions they are taking to improve and enforce their own policies and stop the weaponization of their platforms to suppress the vote, spread hate, and undermine our democracy.

Congress should not be distracted by baseless claims of “anti-conservative” bias and should instead focus on platforms’ efforts to respond to online voter suppression and other threats to our democracy. The January 6, 2021, deadly attack on the U.S. Capitol by far-right extremists attempting to overturn the free, fair, and secure 2020 presidential election was a catastrophic reminder of the fragility of our democracy. This violent insurrection did not happen in a vacuum. It was paired with numerous hurdles that voters faced during the 2020 election cycle amid a pandemic and exacerbated by relentless

¹ <https://www.civilrightstable.org/principles/>

efforts by former President Trump and his allies to spread disinformation on social media platforms to threaten civil rights, escalate hate speech, undermine election integrity, impose barriers to the ballot box, and discount the votes of communities of color.

A commitment to civil and human rights is not a right or left issue — it is about right versus wrong. Baseless allegations of so-called anti-conservative bias should not distract tech companies. Research shows that anti-conservative bias is a phantom problem; a number of studies, articles, and reports² show that the voices of marginalized communities are more likely to be regarded as “toxic” by content moderators and content moderation artificial intelligence. Moreover, the spreaders of online voter suppression and election disinformation often particularly target communities of color, aiming to suppress turnout³ among Black and Latino voters by providing incorrect election information, fueling cynicism, and intimidating voters among other tactics. Online voter suppression efforts also use viral memes and social media influencers — often relying heavily on misinformation — to convince Black voters that voting was not worth it, thereby depressing turnout.⁴

Data also show that misinformation about voting and the election is more pervasive from far-right voices on social media platforms. The Election Integrity Partnership report⁵ on misinformation in the 2020 election found that there are far more influential Twitter accounts aligned with the right-wing. The report stated that these accounts, led by repeat spreaders such as Trump and his allies, were responsible for the most widespread incidents of false and misleading information about the election. Twitter itself recently acknowledged⁶ that its algorithms amplify more content from the right-wing as compared to the left-wing but stated they are still reviewing why this occurs.

We have made a series of recommendations to obviate false, misleading, and harmful content on the companies’ platforms that could lead to voter suppression and the spread of hate speech. Social media platforms have policies in place to address content about election integrity. Many of the policies have specific rules that state that false information about voting and elections cannot be posted or shared on

² See Casey Newton, *Leaving content moderation to volunteers is empowering racists*, The Verge (June 9, 2020) <https://www.theverge.com/interface/2020/6/9/21283442/content-moderation-racism-facebook-reddit-nextdoor-karen>; Bertram Lee, *Moderating Race on Platforms*, Public Knowledge (January 29, 2020) <https://www.publicknowledge.org/blog/moderating-race-on-platforms/>; Thomas Davidson et al., *Racial Bias in Hate Speech and Abusive Language Detection Datasets*, Cornell University arXiv:1905.12516v1 (May 29, 2019) <https://arxiv.org/abs/1905.12516v1>; Maarten Sap et al., *The Risk of Racial Bias in Hate Speech Detection*, Proceedings of the 57th Annual Meeting of the Association for Computational Linguistics 1668–1678 (2019) <https://homes.cs.washington.edu/~msap/pdfs/sap2019risk.pdf>; Shirin Ghaffary, *The algorithms that detect hate speech online are biased against black people*, Vox: Recode (August 15, 2019) <https://www.vox.com/recode/2019/8/15/20806384/social-media-hate-speech-bias-black-african-american-facebook-twitter>.

³ <https://decode.org/news/online-deception-is-blocking-black-americans-full-participation-in-our-democracy/>

⁴ <https://www.nbcnews.com/tech/social-media/days-left-black-voters-face-orchestrated-efforts-discourage-voting-n1243780>

⁵ <https://fsi.stanford.edu/news/election-integrity-partnership-releases-final-report-mis-and-disinformation-2020-us-election>

⁶ https://blog.twitter.com/en_us/topics/company/2021/rml-politicalcontent

their platforms. However, the enforcement of these policies has been largely nonexistent, especially toward users with large followings.

A recent report⁷ stated that had Facebook (now Meta) not waited until October to crack down on 100 of the most prominent misinformation pages on the platform, it could have prevented around 10.1 billion views on these pages. To compound the problem, Meta⁸ allegedly exempted millions of politicians, celebrities, and other elite populations and utilized algorithms that increased the spread of hateful content. A Meta whistleblower recently testified⁹ before Congress that Meta is only catching 10-20 percent of harmful content and that the company is more concerned about growth than making needed changes to its platforms.

It is imperative that platforms take significant steps to address voting and election disinformation as soon as possible and in advance of the midterm elections in 2022. In addition, the Biden administration, relevant federal agencies, and Congress must prioritize a broad government response to the online spread of voting/election disinformation, with the goal of catalyzing improvements well in advance of the 2022 midterms. Congress should also focus on fighting hate and harassment online.

Section 230 must be considered carefully and in context. Instead of looking at simply changing Section 230 as a means of platform regulation, Congress should clearly define the problem and carefully consider whether Section 230 has a role in causing or exacerbating the problem before turning to making changes to Section 230 as part of the solution. Moreover, Congress should not consider any changes to Section 230 that would hinder civil rights accountability work or further the disparate impact of content moderation on marginalized communities online.

Congress should press tech companies to conduct independent civil rights audits as well as improve their civil rights infrastructure. Structural changes within the platforms will also help better protect civil rights by ensuring platforms can hold themselves accountable to their commitment to civil rights, diversity, and inclusion. Congress must press tech companies to conduct credible independent civil rights audits, which are independent analyses conducted by firms with civil rights expertise that assess an organization's business policies, practices, and products to determine whether those components have a discriminatory effect on people who have been historically subject to discrimination.¹⁰ However, without institutional commitment and outside pressure, the impact of an audit will be limited and short-lived.

That is why, in addition to pushing for civil rights audits, Congress must also urge tech companies to adopt structural reforms that comply with federal civil rights law and demonstrate that the companies understand that civil rights are not a partisan issue, but instead are fundamental to protecting the constitutional rights of all people and thus should be part of the organic structure and operations of these companies. This means that tech companies must hire staff with civil rights expertise in senior leadership. The civil rights infrastructure within the companies must be well-resourced and empowered within the

⁷ https://secure.avaaz.org/campaign/en/facebook_election_insurrection/

⁸ <https://www.wsj.com/articles/the-facebook-files-11631713039>

⁹ <https://www.c-span.org/video/?515042-1/whistleblower-frances-haugen-calls-congress-regulate-facebook>

¹⁰ <https://civilrights.org/blog/civil-rights-audit-report/>

company and consulted on the companies' major decisions. New and clarified policies should be subject to vetting and review by internal teams with real civil rights expertise and experience, prior to their implementation. Finally, tech companies should provide a process and format through which civil rights advocates and the public can engage with the companies and monitor their progress.

Congress must also press tech companies to do more to address meaningful diversity and inclusion at their workplaces and the lack of people of color in senior executive, engineering, and technical positions. People of color who are working at these companies often face discrimination and unequal pay, as well as a culture where they are devalued. Tech companies must ensure that this does not happen in their workplaces and must address the inequities that may have already occurred. They also must develop strategies to attract and retain talent in diverse communities to expand access to jobs and opportunities.

Prevention of harm, not damage and after-the-fact repair, must be the goal. This goal cannot be fully accomplished if those with civil rights expertise are not part of decision-making processes. Congress must continue to review and scrutinize tech companies to make sure that they are taking the necessary steps to accomplish this goal.

Congress should consider other meaningful ways to protect civil and human rights. For example, invasive data collection and use practices can lead to civil rights violations. Congress should pass comprehensive federal consumer privacy legislation that protects consumers by requiring companies to minimize the data they collect; define permissible and impermissible purposes for collecting, sharing, and using personal data; prohibit discriminatory uses of personal data; and provide for algorithmic transparency and fairness in automated decisions. Congress should ensure federal agencies are focusing on identifying and ending data processing and algorithmic practices that discriminate on the basis of protected characteristics with respect to access to credit, housing, education, public accommodations, and elsewhere.

Thank you for the consideration of our views. If you have any questions about the issues raised in this letter, please contact David Toomey, voting rights and technology fellow, at toomey@civilrights.org.

Sincerely,



Wade Henderson
Interim President and CEO



Jesselyn McCurdy
Executive Vice President of Government Affairs