TESTIMONY OF
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U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITEE ON COMMUNICATIONS AND TECHNOLOGY

HEARING ON "HOLDING BIG TECH ACCOUNTABLE: TARGETED REFORMS TO TECH'S LEGAL
IMMUNITY"

DECEMBER 1, 2021

Chair Pallone, Chair Doyle, Ranking Member McMorris Rodgers, Ranking Member Latta —
thank you for having me here today. I am Rashad Robinson, President of Color Of Change, an
organization that was born online and remains the largest online racial justice organization in
the country. I also Co-Chaired the Aspen Commission on Information Disorder, which just
released our comprehensive set of recommendations for effectively tackling misinformation
and disinformation in our country.

I want to thank this Committee for holding this hearing, especially the leadership of the
Committee and Subcommittee chairs. All of us who see the dire need to bring sense, order and
safety to an out-of-control tech industry must applaud you for your work introducing the
Justice Against Malicious Algorithms Act, the SAFE TECH Act, and the Civil Rights Modernization
Act. Each one is essential for reducing the tech industry's adverse effects on our lives and
country.

Regardless of the industry, there's one thing we know about the behavior of corporations: self-
regulation means no regulation, and no regulation means making our problems worse, not
better. Today's tech industry is no exception. Yet, the more power the Big Tech corporations

gain, the *less* they are regulated, the *less* they are liable for the harm they cause, and the *less* they are held accountable for the decisions they make.

The question before the Committee is a very clear one: What kind of action is needed from Congress to make Americans safe — whether we are spending time online, or dealing with the consequences of what happens there? How do we create consequences for putting people in harm's way, instead of making it profitable to do so? Every day, Big Tech corporations increase the number of people in our country who believe racial and ethnic violence is a solution, not a problem, and every day, they increase the number of businesses in our country who practice discrimination and systematically exploit consumers.

Congress is rightly called to major action when an industry's business model is at odds with the public interest — when it generates the greatest profits only by causing the greatest harm. Especially when that harm is not distributed evenly: when the people getting hurt the most are Black people, women and girls, Latino, Asian, Indigenous, Muslim and LGBTQIA people. That is exactly what we see today: Big Tech is doing big harm because that's what happens when corporations have too much power. They are forcing Black people, and other people who have been exploited by one industry after the next, to pay for Big Tech's profits with their lives.

Today, corporations like Facebook, Amazon, Apple and Google maintain near-total control over all three areas of online life: online commerce, online content, and online environments for social connection. To keep control, they lie about the effects of their products. No matter who gets hurt. Just like Big Oil & Coal lies about how they poison people, and Big Tobacco lies about the deaths their products cause. They lie to the public. They lie to regulators, and to you. Mark Zuckerberg has lied to me personally, more than once. It's time to make the truth louder and more influential than their lies. But to skip the part where we wait 40 years to do it.

I have personally negotiated with leaders and executives at Big Tech corporations like Facebook, Google, Twitter and Airbnb, including Mark Zuckerberg, over a number of years. I sat across the table from him, looking into his eyes, experiencing firsthand the lies, evasions, ignorance and complete lack of accountability to any standard of safety for Black people and other people of color. As just one example: During the height of the racial justice uprisings in 2020, he told me that the harms I claimed Black people were experiencing on Facebook weren't reflected in their own internal data. We now know from the documents shared by Frances Haugen and others that his internal researchers were, in fact, sounding alarms at the exact

same time.[1] This is how the industry operates when there are no consequences for lying, let alone for impact on people.

What does Big Tech's control over online commerce lead to? Massive discrimination. They have created backdoors and runarounds for employers, landlords, banks and so many others to make a mockery of long-fought, hard-fought anti-discrimination laws: to deny jobs to women, to deny loans and housing to Black people — to put discrimination back into the business model of industries far beyond tech itself.

As just one example: Facebook has enabled employers to advertise only to men with recruitment ads for hiring, engaging in gender discrimination for positions that federal law clearly states must be open to all people.[2][3] Facebook has also enabled landlords to make sure that Black people would not see their apartment ads, restricting them to non-Black people only and providing a runaround to long-fought, hard-fought laws meant to end racial discrimination in the housing market.[4][5] All of a sudden, our brave new 21st Century future looks a lot like 1950.

I must emphasize, however, that Facebook is not merely a tool of discrimination in the hands of business interests. Facebook's own algorithms are a major driver of discrimination, even when outside business interests are not using their tools to discriminate intentionally. When it comes to ad targeting, Facebook's ad-targeting algorithms practice racial discrimination by their very nature — it's coded into their programming, as demonstrated by Harvard University researchers and others.[6][7][8]

Facebook tries to fool us. They shift blame and responsibility to bad faith businesses, reduce the discrimination services they offer them[9] — but only after a long fight they resist in every way possible, and without taking responsibility for the damage they have already done. And then they act as if we are simply going to ignore how Facebook's own algorithms, used in ad targeting every single day, are responsible for continuing systemic discrimination. They try to

[1]https://apnews.com/article/the-facebook-papers-trump-george-floyd-hate-speech-violence-b0f6f26f3fdf889c090703cc2fa8dce0
[2] https://ant.isi.edu/datasets/addelivery/
[3] https://www.wsj.com/articles/facebook-shows-men-and-women-different-job-ads-study-finds-11617969600
[4] https://www.npr.org/2019/03/28/707614254/hud-slaps-facebook-with-housing-discrimination-charge
[5] https://www.justice.gov/crt/case-document/file/1089231/download
[6] https://techscience.org/a/2021101901/
[7] https://sapiezynski.com/papers/sapiezynski2019algorithms.pdf
[8] https://arxiv.org/abs/1904.02095
[9]https://www.facebook.com/business/news/removing-certain-ad-targeting-options-and-expanding-our-ad-controls

convince us that it's the responsibility of the victims of this discrimination to do something about it, rather than the platforms that enable it. Again, this takes us backwards as a society.

But their control over online commerce isn't just discrimination, it's exploitation, too. We hear a lot about seemingly unlimited, unscientific COVID misinformation, whether boosted by Facebook, YouTube or the other environments managed by Big Tech.[10] It doesn't just impact people's decisions about getting the vaccine, it's priming consumers for unregulated health-related products in the form of miracle cures and other scams that prey on the insecurities, fears and allegiances this misinformation causes. The largest scam networks may eventually be removed from the Big Tech platforms, but only after they have amassed a major following, latched on to a vulnerable consumer base and extracted millions of dollars from them.[11]

The same is true for the effects of social media on young girls and women: entire industries profit from making women and girls, especially women and girls of color, feel insecure, feel like there's something wrong with them that only a snake oil product can correct. This is all now a core part of our marketing ecosystem, and it must be stopped.

Technology is increasing discrimination and exploitation in the realm of commerce, giving new sales tools to bad actors, dismantling consumer protections, and creating backdoors that make a mockery of civil rights laws.

What does Big Tech's control over online content and social connections lead to? The very same thing. Discrimination. Exploitation. Moving society backwards.

Big Tech amplifies calls to violence against government officials, public figures and groups of people who are just trying to improve their lives — particularly anyone who is a person of color or associated with people of color. Facebook, YouTube and others fully maintain a content ecosystem that is essential for extremists' recruitment and the organizing of violent groups and actions.

They don't just amplify white nationalist users and content; however, they undermine Black users and content. That's the other form of discrimination: Facebook's own internal research demonstrates that Black users on Instagram are more likely to have their accounts disabled by algorithmic moderation systems, often for just talking about the racism they face. We keep hearing that less than 5% of hate speech posted on Facebook is deleted, but we now know that the so-called "worst of the worst" of that content is actually _less_ penalized than the milder

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[10] https://www.techtransparencyproject.org/articles/covid-kill-shot-youtube-fails-stop-vaccine-conspiracies
[11] https://theintercept.com/2021/09/28/covid-telehealth-hydroxychloroquine-ivermectin-hacked/

forms of insult that might involve white people — that is, content attacking Black people, LGBTQIA people, and Jewish, Muslim and Arab people is the most extreme content there is, and yet it's also the content that is least likely to be taken down, which enables it to circulate and grow more influential every day. The Big Tech platforms also allow the worst misinformation purveyors to specifically target Black people more often, in order to attack their health, their freedom to vote, their freedom of expression. This is the world their decisions create, every day.

This is also another case of how a supposedly "race blind" policy is actually deeply protective of white people who violate rules, and yet deeply punishing of people of color who follow them — the exact opposite of what it claims to be.[12]

Big Tech's control over environments of social connection is also dangerous: when some people are able to freely enjoy the opportunity for social connection in an online environment, but other people are driven out of it, that's discrimination. Especially when the difference in people's experience is correlated with the difference in their race or gender. It comes in the form of targeted, vile and threatening harassment of a Black person's profile page, or attacks on a Black organization's profile page. It also takes place in all the VR environments Mark Zuckerberg recently touted when renaming his parent company Meta. They simply have no answer to the unchecked racial and gender discrimination on their VR platform, or other environments that will become increasingly important for people to participate in, both personally and professionally.[13]

With their near-total control over online commerce, online content and online connections, Big Tech is creating endless backdoors and runarounds against laws created to protect us from discrimination, predatory marketing, health-related misinformation, violence and harassment, and even organized plots to attack anyone they perceive as a threat. As long as it's profitable, they accelerate it.

So what kind of action is needed from Congress to make Americans safe?

The most important first step is something we have more control over than we think: drawing a bright, clear line between fake solutions and real solutions — developing both the knowledge and the resolve it takes to reject fake solutions and accept only real, outcomes-driven solutions to these problems.

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[12] https://www.washingtonpost.com/technology/2021/11/21/facebook-algorithm-biased-race/
[13] https://www.theinformation.com/articles/in-facebooks-vr-headset-racism-and-other-abuses-showed-up-like-clockwork

Big Tech would love Congress to pass laws that mimic their own corporate policies — fake solutions that are ineffective, designed to protect nothing more than their profits and power. We can't let that happen. The last thing we can afford to do right now is pass laws that only serve to increase Big Tech's power and decrease public scrutiny and regulation over their operations.

We'll know it's a fake solution:

- **If we're letting them blame the victims** by shifting the burden of solving these problems to consumers. Because consumers' literacy or use of technology is not the problem — the problem is corporations' *design* of technology, and that's what we need to regulate. These are deliberate choices made by tech executives that systematically produce harm and exploit people's vulnerabilities,

- **If we're pretending that "color blind" policies are an effective response** to problems that have everything to do with race. Because algorithms, advertisers, moderators and bad actors are targeting Black people, and we don't get closer to a solution by backing away from that problem. We must take racism head on, to finally eliminate the racially ignorant, exploitative and harmful components of Big Tech's core business model.

- **If we're putting trust in anything the Big Tech corporations say,** and letting their lies influence our thinking. Because it's a lie that self-regulation (including self-reporting) is anything other than complete non-regulation. And it's a lie that this is about free speech, when the real issue is regulating deceptive and manipulative content, consumer exploitation, calls to violence, and discriminatory products. Section 230 isn't there to nullify sixty years of civil rights and consumer safety law.

There are three ways to know we're headed toward real solutions:

1. Laws and regulations must be crystal clear: Big Tech corporations are responsible and liable for the damages and violations of people's rights that they not only enable but outright encourage. That requires well-vetted and targeted amendments to Section 230, making clear that online platforms like Facebook, YouTube and Twitter, which make money from the content published by their users and advertisers, are clearly responsible, liable and accountable for minimizing the adverse impact of the content from which they so greatly profit.

Enough is enough with this charade they have orchestrated. You are responsible for what you sell. A drug corporation is responsible for the drugs it sells on the market, including the harms

those drugs cause people. If those drugs are especially addictive, regulation is all the more important. Big Tech corporations sell content. That's their main product. They are no different from anyone else, and we cannot keep making exceptions for them. Congress faces restrictions when it comes to regulating speech, but you are well within your authority to protect people against Big Tech design features that amplify or exploit content that is clearly harmful to the public.

Congress must allow judges and juries, regulators, and government enforcers to do their jobs — to determine what's hurting people, stop it, and hold the responsible parties liable. This is exactly why we need the Justice Against Malicious Algorithms, SAFETECH, and Civil Rights Modernization Acts — they will codify Big Tech responsibility and liability into law, in a way that will prevent the equivocation and evasion we currently face.

This should not be a controversial idea: Given that we're not talking about some kind of sealed package of content passing by as mere unmarked traffic, but that Big Tech specifically profits from this content by virtue of its specific substance — specifically because of what that content is and how these corporations use it. Given that Big Tech executives, often despite the warnings of their own employees, are making deliberate, knowing choices about which content to amplify in order to drive engagement and therefore profit. Given that users and advertisers can pay to promote content and target certain users with it. And given that there are policies, technologies and systems that exist to effectively identify and remove both content and users that violate people's rights when it comes to harassment, discrimination or consumer scamming, and that violate gravely important protections against incitement to violence.

We must also remember, however: responsibility without accountability isn't responsibility at all. Congress must enable proper enforcement, and we'll know enforcement is serious when there is a serious budget and staffing plan attached to it — from the FTC to HUD, the EEOC and the Justice Department. I applaud this Committee for ensuring that Build Back Better legislation includes funding to create the Privacy Bureau at the Federal Trade Commission and to resource the FTC's antitrust fights. The next step is for this Committee to make sure the FTC is equipped and incentivized to hire staff with deep civil rights expertise, which is essential for any effective investigation and action.

2. Laws and regulations must be crystal clear: Big Tech's products must be subject to regulatory scrutiny and approval *before* they are released onto the public and hurt people. These platforms are products. Just like we must be able to set and enforce emissions standards for cars, and just like a drug formula should be approved by the FDA, tech products need to pass inspection — an independent auditing process that exposes what they want to hide.

That auditing process must ensure that a full range of factors are considered when anticipating the consequences of Big Tech products. Otherwise, it's like incentivizing a drug corporation to test drugs only on a small group, for example, only white men, but to ignore or dispose of any evidence of adverse events the drug is causing for Black women. As Big Tech corporations increasingly make moves into the health and medical industry, this is less of an analogy than an actual real-world example of the consequences of failing to regulate Big Tech.

Only independent auditors can ensure Big Tech corporations do what they refuse to do on their own: evaluate algorithms and other products for bias, discrimination and harmful impact. That means creating a new set of consumer privacy and anti-surveillance laws, including new rules about data collection and use. Such legislation will force a shift in the discriminatory and surveillance-based business model of corporations like Facebook, Google and Amazon, specifically preventing them from collecting data and using it to train discriminatory algorithms.

Yet, we must be extremely careful here about the line between fake and real solutions. Regulators cannot fall for the scam of shifting the burden and blame to consumers — creating a backdoor exit for Big Tech responsibility and liability by relying on consumer notices, opt-ins, or other mechanisms that perpetuate the outright lie that an average consumer can understand, manage and exercise their will to reject the detrimental use of their data. Consumers cannot do that, any more than they can decide to not be influenced by subliminal advertising, or decide not to be tricked by an investment manager, or decide not be coerced, abused, or taken advantage of in any of hundreds of everyday contexts for which we have decided, as a society, to eliminate the most exploitative business practices rather than leaving consumers stranded to defend themselves.

Certain practices must simply be illegal — you cannot give consent to being hurt in these ways, including practices that inevitably and mainly lead to illegal practices like discrimination. The lie that we simply need to "put more control in the hands of users" is like stacking our supermarket shelves with poisons and expired foods and then saying we're simply giving consumers more choice.

3. Congress must take antitrust action seriously with Big Tech: ending their massive concentration of power (including their systematic suppression of competition in the industry) is a necessary condition for ending the major damage they cause.

The right approach to taking on these challenges is not a complicated one. If you make the internet safe for those who are being hurt the most — those put in the greatest danger — then

you automatically make the system safer for everyone. That is a simple but profound truth of societal progress. And that is why I am here: because Big Tech corporations put Black people and people of color in danger more than anyone else.

Racial equity is the best place to start for making positive change, and the best metric for ultimately evaluating if we've succeeded in making the internet safe for everyone. Passing and enforcing laws that guarantee freedom and safety for Black people in online commerce, content and social connection will create the safest internet for the largest number of people.

Through your actions on this Committee, you can rightly and fairly create more public oversight and regulation for an industry that has an outsized impact on an ever-increasing number of realities that shape our lives. You can make technology the vehicle for progress that it should be, and no longer the threat to freedom, fairness and safety it has become.

Do not allow the very technology that was supposed to take us into the future to drag us backward and into the past. Thank you for inviting me to testify.

Addendum

- [Aspen Commission on Information Disorder Final Report](#)