



Stop Shielding Culpable Platforms Act **Rep. Jim Banks (IN-03)**

The *Stop Shielding Culpable Platforms Act* would clarify that Section 230 of the Communications Decency Act (CDA) does not shield online platforms when they knowingly share illicit content.

Section 230 of the CDA is mostly criticized among conservatives for its role in facilitating Big Tech bias against conservatives. It has also come under attack from conservatives for shielding platforms that share illicit—often illegal—content. For instance, it has recently been alleged that Twitter left up a child pornography video despite being notified by the victim up until federal officials demanded its removal. Although Pornhub recently took steps to scrub its platform of illegal content, including child pornography, rape, and other illegal activity, it was previously reported that its executive believed Section 230 would shield them.

As noted by Justice Clarence Thomas, recent court decisions have interpreted—incorrectly— that Section 230 may act as a shield even when an online platform knowingly shares illegal content:

Extending §230 immunity beyond the natural reading of the text can have serious consequences. Before giving companies immunity from civil claims for “knowingly host[ing] illegal child pornography,” Bates, 2006 WL 3813758, *3, or for race discrimination, *Sikhs for Justice*, 697 Fed. Appx., at 526, we should be certain that is what the law demands.¹

However, it is completely absurd that online platforms simultaneously spend vast amounts of time censoring the viewpoints of conservatives—including banning President Trump—in the name of protecting the public while they knowingly share illegal and harmful content. All the while they are relying on Section 230 to protect them.

The *Stop Shielding Culpable Platforms Act* would correct this inequity by clarifying that Section 230 does not shield online platforms when they knowingly share such content. It does so by ensuring that Section 230 is not inappropriately interpreted to prevent platforms from being treated as a *distributor* of content.

According to Justice Thomas, Section 230, which declares that online platforms should not be treated as a *publisher* of information posted by others, does not prevent online platforms from being treated as *distributors* of such information, a designation that accurately describes the conduct of largely passive, modern online platforms. Publishers and distributors, as Thomas points out, are subject to different liability standards because they have historically exhibited different levels of control over the content they disseminate. Publishers exercise editorial control, while distributors have historically “acted as a mere conduit without exercising editorial control, and they often transmitted far more content than they could be expected to review.”² Consequently, distributors must know of the illicit nature of the information in order to be subject to liability, while publishers are subject to more the exacting negligence standard.

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¹ *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 592 U.S. 12 (2020) (Thomas, C, concurring in denial of certiorari)

² *Id.*