No. 14-19-00845-CV

Fourteenth Court of Appeals
in Houston, Texas

***In re* Facebook, Inc. and Facebook, Inc. d/b/a Instagram**

Original Proceeding from No. 2018-69816, 334th District Court of Harris County, Texas, Hon. Steven Kirkland, presiding

Response to Petition for Writ of Mandamus Real Party in Interest Jane Doe

Annie McAdams, PC
Annie McAdams
annie@mcadamspc.com
Texas Bar No. 24051014
1150 Bissonnet
Houston, Texas 77005
(713) 785-6262
(866) 713-6141 (fax)

The Gallagher Law Firm
Michael T. Gallagher
mike@gld-law.com
Texas Bar No. 07586000
2905 Sackett Street
Houston, Texas 77098
(713) 222-8080
(713) 222-0066 (fax)

Ware, Jackson, Lee, O'Neill, Smith & Barrow, LLP
Timothy F. Lee
timlee@warejackson.com
Texas Bar No. 12139500
Margaret E. Bryant
margaretbryant@warejackson.com
Texas Bar No. 24073972
Michelle R. Meriam
michellemeriam@warejackson.com
Texas Bar No. 24063871
2929 Allen Parkway, 39th Floor
Houston, Texas 77019
(713) 659-6400
(713) 659-6262 (fax)

Sico Hoelscher Harris LLP
David E. Harris
dharris@shhlaw.com
Texas Bar No. 24049273
802 N. Carancahua
Suite 900
Corpus Christi, TX 78401
(361) 653-3300
(361) 653-3333 (fax)

Counsel for Real Party in Interest, Jane Doe

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Statement of the Case

Jane Doe has sued Facebook and several other defendants for their roles in facilitating her victimization by sex traffickers. The Respondent is the Honorable Steven Kirkland, 334th District Court, Harris County, Texas. Judge Kirkland denied Facebook's Rule 91a motion to dismiss Jane Doe's lawsuit.

Issue Presented

Jane Doe accuses Facebook of violating state statutory and common law by facilitating her victimization by sex traffickers. Nothing in the language, context, or history of Section 230 of the federal Communications Decency Act indicates a congressional intent to preempt her claims. Congress even amended Section 230 in 2018 to clarify that the statute was never intended to impair the assertion of sex trafficking claims. Did the trial court abuse its discretion in denying Facebook's 91a motion to dismiss?

Introduction

The real issue in this mandamus is whether Congress intended Section 230 of the Communications Decency Act (CDA) to preempt state laws that provide civil remedies against internet companies that facilitate the online sex trafficking of minors. Despite having "the difficult burden of overcoming the presumption against preemption," Facebook says very little on the subject. It does not analyze the statutory text or the context of its enactment. Instead, Facebook relies on a line of federal cases that stretch the statutory language well beyond its reasonable bounds and were all issued (mostly in the defamation context) before Congress amended the CDA in 2018 to specifically address the scourge of online human trafficking.

Facebook ignores the context in which Section 230 was adopted as part of the CDA and later amended as part of the Fight Online Sex Trafficking Act (FOSTA). Congress passed the CDA in 1996 as comprehensive legislation to protect children from the perceived dangers of obscenity, pornography, violence, and other objectionable material they might encounter on the telephone, television, and the new communications medium of the internet. It even criminalized

using the internet to recruit minors into the sex trade—which is exactly the conduct Facebook is alleged to have facilitated here.

Section 230, like the rest of the CDA, was intended to protect children. It was *not* intended to provide blanket tort immunity to internet companies, as Facebook would have the Court hold. In fact, Section 230 was specifically added to make sure internet companies would not be liable for defamation simply because they exercised some editorial control over the content on their sites. Congress provided very specific protections because it wanted to incentivize internet companies to develop screening and blocking software to help control the material children could access online.

Nevertheless, many courts attributed Congress with a paradoxical intent of providing seemingly unlimited immunity to internet companies, even when they knowingly facilitated the endangerment and exploitation of children. Congress unequivocally corrected that misunderstanding in 2018 through FOSTA, the express purpose of which was "to clarify that section 230 . . . does not prohibit the enforcement against [internet companies] of [laws] relating to the sexual exploitation of children or sex trafficking."

The Court should reject Facebook's invitation to interpret Section 230 as providing it and other internet companies immunity for facilitating online sex trafficking. Such a finding would be antithetical to the express language of the statute and express purposes of Congress.

Statement of Facts

A trial court's disposition of a motion to dismiss under Rule 91a must be based solely on the pleadings, taking them as true. Tex. R. Civ. P. 91a.1; *Estate of Savana*, 529 S.W.3d 587, 592 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Thus, this statement of facts is drawn from Jane Doe's allegations in her Third Amended Petition. *See* MR0001-70.

I. Facebook and Human Trafficking

A. Facebook Connects People—Including Minors and Sex Traffickers

Facebook views "its company mission to connect people in order to create profit." MR019, ¶ 179. The profit component of the mission is important. Facebook collects and sells user data to enable marketers to reach targeted groups of potential customers. MR020-21, ¶¶ 187-89. In 2019, Facebook reported: "If we are unable to maintain or increase

our user base and user engagement, our revenue and financial results may be adversely affected." MR025, ¶ 212.

Facebook provides sex traffickers with unfiltered access to minor users. MR018, ¶ 169. Those traffickers use the platform to "stalk, exploit, recruit, groom, and extort children into the sex trade." MR018, ¶ 172. It is frequently the first point of contact between sex traffickers and their victims. MR018, ¶ 173.

Facebook uses the data it harvests and buys to direct users to persons they might want to meet. MR021, ¶ 190. This facilitates human trafficking by identifying potential targets to traffickers and providing traffickers with a means of contacting the target. MR021, ¶ 191. Traffickers "friend" a victim's acquaintances—classmates, for instance—and use them as a bridge to victims "through 'shared' friends." MR018, ¶ 176. The trafficker can then recruit or groom a target by gaining her trust. MR022, ¶ 201. This grooming process involves repeated messages that are inappropriate for an adult to send a minor, such as:

- "I love you,"
- "I think you're beautiful,"
- "I'll encourage you to show your body,"
- "I'll make your life better,"

- "I'll encourage you to take risks, you're an adult,"
- "I'll protect you," or
- "I'll make you successful."

MR022-MR023, ¶ 201. These are "red flags" that "indicate human trafficking." MR023, ¶ 203.

A trafficker can monitor a potential victim's activity and learn, for instance, she is upset with her parents or "Away from Family." MR018, ¶ 174; MR020-21, ¶ 187. From there, it is a reasonably easy process for the trafficker to separate the minor from her family. MR018, ¶ 174.

B. Facebook Knows Human Traffickers Use Its Platform to Find Victims Like Jane Doe

Facebook knows human traffickers use its platform "to identify, cultivate, and then exploit human trafficking victims." MR022, ¶ 196. The characteristic internet interactions between predators and their victims and the increasing use of social media as a channel for sex trafficking has been well-known in law enforcement, academic, and social services communities for some time. *See, e.g.*, MR018, ¶ 174 (NYPD Vice Enforcement Unit); MR018, ¶ 176 (Indiana State Police Internet Crimes Against Children Task Force); MR022, ¶ 197 (University of Toledo Human Trafficking and Social Justice Institute).

Facebook has noted in its Content Standards Forum that "[m]any experts believe that we have a responsibility to educate the public about the nature of human trafficking." MR020, ¶ 184. Mark Zuckerberg testified to Congress that "[t]he broadest mistake made was not taking a broad enough view of Facebook's responsibility to the community and content." MR019, ¶ 182. He testified that Facebook needs to make sure people are not using the platform to harm other people. MR020, ¶ 183. Facebook has the tools and resources to warn its users about the dangers of human trafficking. MR020, ¶ 186; MR021, ¶ 191.

II. Backpage.com and Human Trafficking

Victims recruited through Facebook are usually trafficked on other sites. Until recently, the leading online marketplace for human trafficking and sexual exploitation of minors was Backpage.com. MR031, ¶ 249. Through various manual and digital techniques, it concealed the illegal nature of countless advertisements for sexual trafficking and prostitution to avoid detection by law enforcement. MR034, ¶ 263; MR038, ¶ 275. According to the National Center for Missing and Exploited Children, Backpage.com was involved in 73% of

all child trafficking reports before being seized and shut down by the FBI. MR031, ¶ 249.

III. Jane Doe Is Entrapped by a Sex Trafficker Using Facebook

Jane Doe was 15 years old when she became a sex trafficking victim through her use of Facebook. MR002, ¶ 7; MR028, ¶ 224. Her eventual trafficker was another Facebook user "well over the age of 18" who friended her through the platform and called himself "King," although that was not his real name. MR028, ¶¶ 225-26; MR029, ¶ 241.

King's Facebook page featured pictures of provocatively clad young women in sexual positions with money stuffed in their mouths, photos of piles of cash, and other deeply troubling content. MR029, ¶ 241. Unfortunately, Jane Doe did not recognize these images as hallmarks of human trafficking. *Id.* She did not know any of the warning signs or the dangers posed by sex traffickers on Facebook. MR029, ¶¶ 236-37.

King privately communicated with Jane Doe through Facebook Messenger to gain her trust. He told her she was "pretty enough to be a model" and that a modeling career would bring her financial success and a better life. MR028, ¶ 227. As Facebook knew, studies have

identified these kinds of messages as red flags of human trafficking. MR028, ¶ 228.

After Jane Doe had an argument with her mother, King told her she could make enough money as a model to rent an apartment of her own. MR028, ¶¶ 229 & 232. He convinced her to let him pick her up. MR028, ¶ 232. Within hours, Jane Doe was raped, beaten, photographed for Backpage.com, and forced into sex trafficking. MR029, ¶ 235. King had her meet clients at a Houston hotel where she was repeatedly sexually exploited. RM050, ¶¶ 305-06 & 308.

IV. Jane Doe's Causes of Action Against Facebook

Facebook's system allowed Jane Doe's trafficker to target her. MR021, ¶ 193. Jane Doe alleges Facebook had a duty to warn her of the known dangers posed by sex traffickers using its platform. MR050-51, ¶¶ 310 & 313. "Facebook had extensive information about Jane Doe and knew she was a likely target for trafficking." MR021-022, ¶ 193. It collects data on every action taken by users and obtains detailed dossiers on users from commercial data brokers. MR020, ¶ 186.

Facebook says it can target users by "age, gender, locations, interest, and behaviors." MR20, ¶ 187. But that's not all: it can micro-target groups "such as 40-year-old female motorcyclists in Nashville,

Tennessee," a group of 1,300 out of 1.4 billion users world-wide. MR019, ¶ 178; MR021, ¶ 188. 'Yet Facebook did not target warnings to Jane Doe about how its system helps traffickers find targets like her or about how traffickers lure victims through its platforms." MR021-022, ¶ 193. Had Facebook warned her, she never would have been raped, abused, or trafficked. MR029, ¶¶ 236-40.

In addition to providing basic warnings, Facebook could have conducted awareness campaigns to ensure users were aware sex traffickers used the website. It also could have implemented safeguards to prevent adults from connecting with minors they did not know, or verified the identity and age of users and prevented unauthorized adults from contacting minors. It could have reported suspicious messages between minors and adults, required that minor accounts be linked to those of an adult, or prevented known sex traffickers from having an account on Facebook. MR051, ¶ 313.

Based on these allegations, Jane Doe has asserted causes of action against Facebook for:

- Knowingly facilitating human trafficking in violation of Texas Civil Practice and Remedies Code Chapter 98, MR052, ¶¶ 325-27;
- Negligent and grossly negligent failure to warn, MR050-51, ¶¶ 310-23;

- Negligent undertaking, MR053, ¶¶ 329-34; and
- Strict products liability based on marketing defects, i.e., failures to warn. MR054.

Facebook did not challenge the products liability claim in its 91a motion, so it was not ruled upon by the trial court and is not before this Court. MR071-88; *see also* Tex. R. Civ. P. 91a (motion to dismiss must identify "each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law. . . .").

Statutory Overview

I. The CDA

A. Congress Sought to Limit Children's Access to Pornography via the CDA

Facebook begins its argument by espousing a few of the policy concerns of the Telecommunications Act of 1996, Petition at 7-8, which was a 100-page bill that had little to do with the internet and of which the CDA was a very small part. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. The CDA itself reflected a narrower and more focused congressional purpose. *Id.* at 133-42. It was primarily concerned with preventing minors from accessing pornography and other materials deemed "obscene, lewd, lascivious, filthy, or indecent," whether over the phone, on television, or through the embryonic internet. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 133-42. It criminalized virtually all conduct that could provide children with access to pornography and protected telecommunications companies that blocked or restricted access to pornography. *Id.*

When the CDA passed the Senate, it did not include any protections for internet companies. *See* S. 652, 104th Cong., tit. IV (June 15, 1995). The House amendment that ultimately became

Section 230 was titled "Protection for Private Blocking and Screening of Offensive Material." 141 Cong. Rec. H8460, H8468-69 (daily ed. Aug. 4, 1995).

Representative Cox, one of Section 230's sponsors, asked: How can Congress ensure that children have access to the "education and political discourse" available on the internet but not to pornography? *Id.* at H8469. He argued the federal government was ill-equipped for the task: "No matter how big the army of bureaucrats, it is not going to protect my kids because I do not think the Federal Government will get there in time." *Id.* Representative Wyden, the amendment's cosponsor, echoed that sentiment:

> The fact of the matter is that the Internet operates worldwide, and not even a Federal Internet censorship army would give our Government the power to keep offensive material out of the hands of children. . . .

Id. at H8470.

Instead, they "believe[d] that parents and families are better suited to guard the portals of cyberspace and protect our children than our Government bureaucrats." *Id.* at H8470. The answer, they believed, lay in technological screening devices parents could use to block pornography. *Id.*

B. Section 230 Was Intended to Incentivize the Development of Screening Technologies

Facebook repeatedly emphasizes that Section 230 confers broad immunity on it for facilitating sex trafficking. While there are decisions (all of which predate the 2018 amendment) that might support that notion, they are based in a profound misunderstanding of what Congress intended when it passed the CDA in 1996.

The problem that Section 230 was designed to address was that "the existing legal system provide[d] a massive disincentive for the people who might best help us control the Internet." *Id.* at H8469. Shortly before the CDA passed the Senate, a New York court held Prodigy, an internet service provider, liable for defamation based on remarks posted on its online bulletin board by an unknown user. *Stratton Oakmont, Inc. v. Prodigy Services Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995). Prodigy did not know about, control, or edit the defamatory posts. The court held it liable as a "publisher" that exercised "editorial functions" because it had implemented content guidelines, used screening and blocking software, and deleted offensive material of which it was aware. *Id.* at *3-4.

That result, according to the Congressmen, was "backward"—they wanted companies like Prodigy to help control what children see on the internet. 141 Cong. Rec. at H8470. Congress felt the *Prodigy* opinion sent a message "to stop policing" their sites. *Id.* at H8471. Section 230 would set things straight.

Representative Goodlatte described Section 230 as "remov[ing] the liability of providers such as Prodigy who currently make a good faith effort to edit the smut from their systems" and encouraging the development of "new technology, such as blocking software, to empower parents to monitor and control the information their kids can access." *Id.* at H8471-72.

As adopted, Section 230(c)—the provision on which Facebook relies to claim total immunity—reads:

> (1) Treatment of publisher or speaker
>
> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information by another information content provider.
>
> (2) Civil Liability
>
> (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. § 230(c).

A House conference report observed that the section was specifically intended to overrule *Prodigy* and similar decisions that punished companies for "restrict[ing] access to objectionable material." H.R. Rep. 104-458, at 194 (1996).

II. *Zeran* Expansively Interpreted Section 230(c)(1) to Protect "the New and Burgeoning Internet"

Ironically, the Good Samaritan provisions were almost immediately interpreted by the courts as providing blanket protection to internet companies that had knowledge of offensive material on their sites and did not try to screen, block, or remove it.

The Fourth Circuit set the stage in *Zeran v. America Online, Inc.* 129 F.3d 327 (4th Cir. 1997)—the primary case upon which Facebook now relies. Based on Section 230, it refused to hold AOL liable for unreasonable delay in removing defamatory posts the plaintiff had reported, refusing to post retractions, and failing to screen for similar postings thereafter. *Id.* at 328. The court did not explain how these claims treated AOL as the publisher or speaker of the defamatory material. It simply asserted that "[b]y its plain language, § 230 creates

a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Id.* at 330.

The court based its decision almost entirely on Section 230's stated policies of minimizing government regulation of the internet. *Id.* Without reviewing any of the statute's legislative history, the court concluded that "Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium." *Id.* It claimed Congress was concerned that the specter of tort liability "would have an obvious chilling effect" and that internet companies "might choose to severely restrict the number and type of messages posted." *Id.* at 331. And it claimed, "Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect." *Id.*

But, as just discussed, Congress wanted to restrict what was on the internet; it just wanted to do so through means other than traditional federal regulation. It showed little to no concern about chilling speech; two other provisions of the CDA were struck down on free speech grounds. *See Reno v. ACLU*, 521 U.S. 844 (1997). Congress was also not concerned about tort liability generally. It was concerned

about defamation liability specifically, and even then, only to the extent such liability would prevent self-regulation.

On the other hand, providing broad immunity from tort claims *dis*-incentivizes self-regulation.

III. The Pre-Amendment Section 230 Jurisprudence Fragmented

A. Some Courts Expanded Section 230(c)(1) Further Still

Courts and internet companies like Facebook have since relied on *Zeran* and its explanation of Congress's intent to justify further expanding the application of Section 230(c)(1) to protect internet companies that facilitate arms dealers, posters of revenge porn, rapists, and sex traffickers.

Most of these courts, including the Beaumont Court of Appeals, hold immunity attaches whenever third-party content is a but-for cause of the plaintiff's injury, no matter how attenuated. *See, e.g., Davis v. Motiva Enters., L.L.C.*, No. 09-14-00434-CV, 2015 WL 1535694, at *4 (Tex. App.—Beaumont Apr. 2, 2015, pet. denied) (claims against technology company whose employee with history of inappropriate internet behavior posted fake sexual advertisements about plaintiff depended on postings); *GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 758 (Tex. App.—Beaumont 2014, pet. denied) (claims

based on company's knowledge that its services were used for revenge porn and illegal activities "stem" from publication); *Backpage.com*, 817 F.3d at 19-20 (finding "there would be no harm [from human trafficking] but for the content of the postings"); *Doe v. MySpace, Inc.*, 528 F.3d 413, 419-20 (5th Cir. 2008) (finding no liability for failure to implement safety features because plaintiff would not have been raped but for communications through social media platform); *Daniel v. Armslist*, LLC, 926 N.W.2d 710, 725-26 (Wis. 2019) (claim for intentionally facilitating illegal firearms sales depended on publishing third-party advertisements).

Courts have also broadly defined the term "publisher" to protect design and construction decisions and software features. *See, e.g., Backpage.com*, 817 F.3d at 21 (rejecting argument that Backpage.com was a content provider because its features facilitated illegal conduct); *Herrick v. Grindr LLC*, 765 Fed. App'x 586, 591 (2d Cir. 2019), *cert. denied* 140 S. Ct. 221 (allegations related to matching and geolocation features were barred).

Federal courts also explicitly and tacitly have applied the

heightened plausibility pleading standard under *Twombly* and *Iqbal*[1] to reject allegations they viewed as attempts to plead around the CDA. *Compare J.S. v. Village Voice Media Holdings, L.L.C.*, 359 P.3d 714, 717 (Wash. 2015) (under state pleading standard, CDA did not apply to allegations that Backpage.com intentionally developed its website to facilitate sex trafficking) *with Backpage.com*, 817 F.3d at 21 (allegations that Backpage.com intentionally developed its website to facilitate sex trafficking did not support a plausible statutory human trafficking claim); *see also Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1099-1100 (9th Cir. 2019) (Section 230(c)(1) applied because collusion theory was not plausible).

B. Other Courts Have Rejected *Zeran* and Read Section 230 More Narrowly

A growing number of appellate courts have recognized the disconnect between *Zeran*'s analysis and the statutory language and history of Section 230.

The Seventh Circuit has noted that subsection (c)(1) "limits who may be called the publisher of information that appears online," which "might matter to liability for defamation, obscenity, or copyright

[1] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

infringement"—instances where publishing or speaking are elements of the claim. *City of Chicago, Ill. v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010); *see also Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 669-71 (7th Cir. 2008) (applying Section 230 to statute that made publishing discriminatory advertisements illegal). It does not, therefore, follow the "broad immunity" or "but-for" rationales upon which Facebook relies.

After initially following *Zeran*, the Ninth Circuit acknowledged its early opinions overstated the reach of Section 230(c)(1). *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164-65, 1170-71 (9th Cir. 2008); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1105 n.11 (9th Cir. 2009). It has determined that "courts must ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.' If it does, Section 230(c)(1) precludes liability." *Barnes*, 570 F.3d at 1102. In *Doe v. Internet Brands, Inc.*, 824 F.3d 846 (9th Cir. 2016), it held that Section 230 did not apply to the plaintiff's failure to warn claim because the claim had "nothing to do with Internet Brands' efforts, or lack thereof, to edit, monitor, or remove user generated

content." *Id.* at 852; *see also HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019) (*Internet Brands* rejected "but-for" test).

That narrower approach seems to be reflected in one of the Beaumont opinions. While it found a defamation claim barred, the Beaumont Court of Appeals recognized that a claim for intentional infliction of emotional distress claim was "arguably not within the reach" of Section 230. *Milo v. Martin*, 311 S.W.3d 210, 215-17 (Tex. App.—Beaumont 2010, no pet.). And one judge argued in concurrence that Section 230 should not apply to intentional torts "grounded on a defendant's alleged malicious conduct." *Id.* at 220-22.

IV. Congress Amended Section 230 to Protect Sex Trafficking Claims from Overly Broad Judicial Interpretations

There is no doubt the pre-amendment cases upon which Facebook relies can no longer be defended, if they ever could. When the CDA was passed in 1996, "human trafficking" did not exist as a legal concept. As the breadth of Section 230 grew in many federal circuits, awareness of sex trafficking was dawning on Congress. In 2000, it passed a statute criminalizing many types of human trafficking, including sex trafficking of minors. Trafficking Victims Protection Act

of 2000, Pub. L. No. 106-386, 114 Stat. 1464; 18 U.S.C. § 1591. In 2003, Congress authorized a private cause of action for sex-trafficking victims. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, sec. 4(a)(4), § 1595, 117 Stat. 2875, 2878; 18 U.S.C. § 1595.

Also in 2003, Washington became the first state to pass a human trafficking statute, followed in short order by Texas. Erin N. Kauffman, *The Uniform Act on Prevention of & Remedies for Human Trafficking: State Law & the National Response to Labor Trafficking*, 41 J. of Legislation, 291, 299 (2015). As of 2014, all 50 states criminalized human trafficking and 36 had enacted statutes granting civil remedies. Polaris Project, *2014 State Ratings*, https://www.polarisproject.org/sites/default/files/2014-State-Ratings.pdf.

Like other marketplaces, sex trafficking moved to the internet. With one notable exception,[2] when litigants attempted to enforce their new private rights of action and other claims against online companies

[2] In *J.S. v. Village Voice Media Holdings, L.L.C.*, 359 P.3d 714, 716-18 (Wash. 2015), the Washington Supreme Court held that Section 230 did not bar sex trafficking victims' claims against Backpage.com. It applied a more permissive pleading standard and did not employ the but-for test.

that facilitated sex trafficking, courts held that Section 230 nearly always protected the defendant. Eventually, Congress decided to step in and amended Section 230 with FOSTA.

A. Section 230 Was Interpreted to Protect Backpage.com's Sex Trafficking and Prostitution Business

The most notorious example of the federal courts extending protection under the CDA to defendants alleged of facilitating sex trafficking is *Doe v. Backpage.com, LLC*, 817 F.3d 12 (1st Cir. 2016). It involved claims under state and federal sex trafficking statutes and allegations that Backpage.com deliberately structured its site to facilitate sex trafficking by tailoring posts and creating processes that allowed traffickers to conceal their identities. *Id.* 16-17, 20, 24. The court held Backpage.com was protected by Section 230 because, "but for the content of the [trafficker's] postings," there would have been no harm. *Id.* at 19-20.

So, at this point, the federal courts had extended Section 230's protection to a defendant that was actively involved in sex trafficking of minors, which raises the question: Could this possibly have been Congress's intent?

B. The Senate Discovered Section 230 Protected Bad Actors by Investigating Backpage.com

Because Section 230 allowed dismissal on the pleadings, Backpage.com was able to avoid discovery and conceal its illegal activity. It took a Senate investigation to reveal the truth. Backpage.com was fighting a subpoena from the Senate's Permanent Subcommittee on Investigations when the First Circuit decided *Doe v. Backpage*. *See S. Perm. Subcomm. on Investigations v. Ferrer*, 856 F.3d 1080, 1084 (D.C. Cir. 2017). Eventually, Backpage.com was compelled to produce documents, and the Subcommittee issued a scathing report. *Backpage.com's Knowing Facilitation of Online Sex Trafficking: S. Staff Report* (Jan. 10, 2017).

The subcommittee concluded Backpage.com had "long claimed that it was a mere host of content created by others and therefore immune from liability under Communications Decency Act (CDA)." *Id.* at 59. But, "[t]he internal company documents obtained by the Subcommittee conclusively show that Backpage.com's public defense is a fiction." *Id.* The extent of Backpage.com's involvement had not previously been revealed because courts had "construed Section 230 to provide near complete criminal and civil immunity." *Id.* at 67.

Meanwhile, the bill that became FOSTA was introduced in the House in 2017. One of its objectives was to amend Section 230 to clarify that Congress never intended to protect websites that facilitate sex trafficking. The report on the Senate bill discussed the opinion in *Doe v. Backpage* and stated Section 230 "has been held by courts to shield from civil liability and State criminal prosecution nefarious actors, such as the website Backpage.com, that are accused of knowingly facilitating sex trafficking." S. Rep. No. 115-199, at 2 (2018). As enacted in 2018, FOSTA also created a new criminal statute specifically targeting websites that facilitate prostitution and enable online sex trafficking. Allow States and Victims to Fight Online Sex Trafficking Act of 2017 ("FOSTA"), Pub. L. No. 115-164, sec. 3, 132 Stat. 1253, 1253-54 (2018); 18 U.S.C. § 2421A.

Argument

I. Standard of Review

To obtain mandamus relief, Facebook must show the trial court clearly abused its discretion and that Facebook has no adequate remedy on appeal. *In re Union Pac. R.R. Co.*, 582 S.W.3d 548, 550 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding).

Rule 91a permits a party to "move to dismiss a cause of action on the grounds that it has no basis in law or fact." Tex. R. Civ. P. 91a.1.

Facebook's motion only argued that, based on Section 230 of the CDA, Jane Doe's claims have no basis in law; it did not challenge the factual basis of Jane Doe's claims.

A trial court's ruling on a Rule 91a motion to dismiss must be based solely on the plaintiff's pleadings. Tex. R. Civ. P. 91a.6. Dismissal on the grounds that a cause of action has no basis in law is only appropriate "if the allegations, taken as true, together with inferences reasonably drawn from them do not entitle the claimant to the relief sought." Tex. R. Civ. P. 91a.1. This Court "review[s] a ruling on a Rule 91a motion de novo because the availability of a remedy under the facts alleged is a question of law." *In re Union Pac.*, 582 S.W.3d at 550.

"To determine whether dismissal under Rule 91a is required in this case, [the Court must] consider whether the pleadings, liberally construed according to the pleader's intent, allege facts that trigger federal preemption" under Section 230 of the CDA. *Id.* at 550-51. Facebook, however, misconstrues Jane Doe's pleadings and does not discuss any aspect of the federal preemption doctrine, analyze the statutory text in context, take account of mandatory presumptions against preemption, or acknowledge the importance of the 2018 amendments. Accordingly, Facebook has not met its burden of

establishing federal preemption. *See Great Dane Trailers, Inc. v. Estate of Wells*, 52 S.W.3d 737 (Tex. 2001) (party urging preemption has burden to establish its applicability).

II. The Standards for Finding Federal Preemption Are Narrow and Demanding

The basic question posed by this mandamus proceeding is whether Section 230 preempts Texas statutory and common-law claims against internet companies for facilitating sex trafficking. The doctrine of federal preemption is rooted in the Supremacy Clause, which invalidates state laws that are "contrary" to federal law. U.S. Const. art. VI; *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981); *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 247 (Tex. 1994).

A. Congressional Intent, as Determined by Statutory Language and Context, Controls the Analysis

Congressional intent must be the "ultimate touchstone" in any preemption analysis. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); *Moore*, 889 S.W.2d at 247. That intent is primarily discerned from the statutory language and its surrounding framework. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996). But courts must also consider the context of the statute's enactment, including its history,

structure, and purpose. *Id.*; *Great Dane*, 52 S.W.3d 737; *Hyundai Motor Co. v. Alvarado*, 974 S.W.2d 1, 5 (Tex. 1998).

B. There Is a Strong Presumption Against Preemption in Areas of Traditional State Regulation

"[B]ecause the States are independent sovereigns in our federal system, [the U.S. Supreme Court has] long presumed that Congress does not cavalierly pre-empt state-law causes of action." *Medtronic*, 518 U.S. at 485. Any preemption analysis must therefore "start with the assumption that the historic police powers of the States are not to be superseded by [federal law] unless that is the clear and manifest purpose of Congress." *Id.*; *Cipollone*, 505 U.S. at 516 (quoting *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947)); *see also Reid v. People of State of Colorado*, 187 U.S. 137, 148 (1902) ("It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested.").

The presumption against preemption "applies not only to *whether* Congress preempted state law at all, but also to the *scope* of preemption." *Graber v. Fuqua*, 279 S.W.3d 608, 611 (Tex. 2009)

(citing *Medtronic,* 518 U.S. at 485) (emphasis in original). While the inclusion of an express preemption provision means Congress intended to preempt some state law, courts "must nonetheless identify the domain expressly pre-empted by that language." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996). In particular, "there is a strong presumption against finding express preemption when the subject matter, *such as the provision of tort remedies to compensate for personal injuries*, is one that has traditionally been regarded as properly within the scope of the states' rights." *Ramsey v. Lucky Stores, Inc.*, 853 S.W.2d 623, 637 n.20 (Tex. App.—Houston [1st Dist.] 1993, writ denied) (citing *Rice,* 331 U.S. at 230) (emphasis added).

This Court has recently recognized that, "[g]iven the presumption that federal law does not supersede the States' historic police powers unless it is Congress's manifest purpose to do so, [] courts ordinarily accept a plausible reading of an express preemption provision that disfavors preemption" over a plausibly broader reading of the provision. *In re Union Pac. R.R. Co.*, 582 S.W.3d 548, 551 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding). In other words: "If the extent of Congress's preemptive intent is unclear, the presumption

favors a finding of limited preemption." *Barnes ex rel. Estate of Barnes v. Koppers, Inc.*, 534 F.3d 357, 363 (5th Cir. 2008).

III. Section 230 As Amended Does Not Preempt State Civil Claims for Human Trafficking

A. The Relevant Statutory Language

Three provisions of the CDA are critical to the preemption analysis. Facebook relies entirely on the first, mentions the second in passing without analysis, and all but ignores the third.

1. 230(c)(1)—The "Publisher or Speaker" Provision

Subsection (c)(1) states:

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

47 U.S.C. § 230(c)(1). Facebook contends this provision grants "immunity" to interactive computer services from any claim that depends—however remotely—on third-party content. Petition at 8-16.

Such a construction effectively immunizes internet companies like Facebook and Backpage from *any liability* for crimes or torts committed on their websites, regardless of the company's level of knowledge or involvement. But as will be shown in Part IV of the argument, the plain statutory language, construed in light of its history and context, does not support such an all-encompassing construction.

2. 230(e)(3)—The Savings and Preemption Clauses

Subsection (e)(3) contains the preemption clause quoted by Facebook. Petition at 9, 21. But Facebook ignores a savings clause that precedes it. The provision states in full:

> *Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section.* No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

47 U.S.C. § 230(e)(3) (emphasis added). This is an unusual preemption provision in that it reiterates the principle that a federal statute preempts inconsistent state law. Indeed, that is the only meaning Facebook assigns to it, claiming its purpose is "[t]o ensure [subsection (c)(1)] is not frustrated by state or local laws." Petition at 9.[3]

But the preemption provision must be interpreted, if possible, as having some genuine meaning so it is not rendered superfluous. *See Williams v. Taylor*, 529 U.S. 362, 404 (2000) (every clause must be

[3] A more typical express preemption provision would provide that a federal law preempts all state laws relating to a specific topic addressed by the federal law, *e.g., Boggs v. Boggs*, 520 U.S. 833, 841 (1997), or prohibit states from adopting or enforcing regulations that are not "identical" to federal regulations in a defined subject area, *e.g., Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 248 (Tex. 1994).

given effect if possible). According to a recent article in the Harvard Journal on Legislation: "The most natural [interpretation] is that Congress sought to emphasize that there are indeed consistent state laws which will and should remain in effect despite § 230. Such emphasis favors a narrower reading of § 230 instead of an expansive one." Benjamin Edelman & Abbey Stemler, *From the Digital to the Physical: Federal Limitations on Regulating Online Marketplaces*, 56 Harv. J. on Legis. 141, 176-77 (2019). This is an especially logical conclusion given the savings clause in the first sentence of (e)(3), which would have no meaning if there were not consistent state laws.

Thus, the Court's task is to determine the scope of the provision's preemptive effect.

3. 230(e)(5)—FOSTA's "No Effect on Sex Trafficking Law" Clarification

Congress amended Section 230 through FOSTA by adding subsection (e)(5), which is entitled "No effect on sex trafficking law." It states that nothing in Section 230 "shall be construed to impair or limit":

> (A) Civil claims under the federal statute, 18 U.S.C. § 1595, for facilitating sex trafficking;
>
> (B) Criminal prosecutions under state law for conduct that violates the federal sex trafficking statute, 18 U.S.C § 1591; and

(C) Criminal prosecutions under state law for conduct that violates a new statute created by FOSTA, 18 U.S.C. § 2421A, that criminalizes the online facilitation of prostitution.

Facebook accepts that these types of actions are "exempted" from Section 230. Petition at 20. That means they are not preempted regardless of whether they treat an internet company as the publisher or speaker of third-party content and do not trigger Section 230(c)(1).

Facebook contends the amendments have no bearing on Jane Doe's claims, however, because they do not expressly exempt civil claims for sex trafficking under state law. But Facebook:

- Fails to construe the amendments in conjunction with the preemption provision, which ensures the viability of consistent state-law claims,
- Ignores the purpose, context, and history of the amendments, and
- Does not account for the presumption against preemption in the realm of health and safety, which are within the historic police powers of the state.

Even if the Court assumes Jane Doe's claims treat Facebook as a publisher of third-party content, which Jane Doe denies, they are consistent with Section 230 as amended.

B. Jane Doe's Claims Are Consistent with the Federal Sex Trafficking Statute

Any analysis of Section 230's preemptive scope must consider the effect of the 2018 amendments in Section 230(e)(5). *See Cipollone*

v. Liggett Group, Inc., 505 U.S. 504, 520 (1992) (finding statute had different preemptive scope before and after amendment). This is a task no appellate court has previously undertaken. Given the presumption against preemption, the relevant questions are (1) whether the statute clearly states Congress's intent to preempt civil claims for human trafficking under state law and (2) whether such claims are consistent with the exemptions identified in subsection (e)(5).

Under Facebook's construction, such claims would be preempted solely because they are not expressly identified in the amendments. That construction ignores the preemption provision, which confirms that "any State law that is consistent" with Section 230 is not preempted. 47 U.S.C. § 230(e)(3). Because the amendment made by FOSTA is now part of Section 230, state laws that are consistent with the amendment are not preempted. And the U.S. Supreme Court has "recognized the phrase 'state law' to include common law as well as statutes and regulations." *Cipollone*, 505 U.S. at 522.

Facebook describes the first carve-out in the 2018 amendments, which involves 18 U.S.C. Sections 1591 and 1595, as "a federal civil action for facilitating sex trafficking." Petition at 20. Meanwhile, Jane Doe's statutory and common-law claims seek to hold Facebook civilly

liable for "facilitating" sex trafficking. MR008, 14, 18, 21-22, 52-53. Jane Doe's claims are thus clearly consistent with Section 230(e)(5)(A) and not preempted.

More specifically, Section 1595 imposes civil liability upon "[w]hoever knowingly . . . benefits . . . from participation in a venture which has engaged in [sex trafficking]." 18 U.S.C. §§ 1591 & 1595. Texas's human trafficking statute upon which Jane Doe relies similarly imposes civil liability upon "[a] defendant who intentionally or knowingly benefits from participating in a venture that traffics another person." Tex. Civ. Prac. & Rem. Code § 98.002(a). And her common-law tort claims allege Facebook breached a duty to warn her of "known dangers" posed by sex traffickers on its platform because it profited from her ignorance. MR025, ¶ 231; MR050-53. Because these state law claims are the same sort of claims Congress took pains to protect against preemption, they too are not preempted.

C. FOSTA's Language Reinforces the Lack of Preemption

Despite the unequivocal mandate that any preemption analysis begin and end with congressional intent, *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246, 247 (Tex. 1994), Facebook's petition

is silent as to Congress's intent in enacting FOSTA and amending the CDA. FOSTA's express language repeatedly confirms that Congress intended to remove *all* obstacles in the CDA to fighting human trafficking, including those that prevented victims from asserting civil claims under state law.

Congress clearly stated its purpose for amending Section 230 in FOSTA's enacting clause:

> To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and *State* criminal and *civil* law relating to sexual exploitation of children or sex trafficking, and for other purposes.

Pub. L. No. 115-164, 132 Stat. 1253 (2018) (emphasis added). Notably, this statement of purpose includes state civil laws. And a statutory preamble or statement of purpose is a valid means of supporting a narrow scope of preemption.[4] *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 474, 481 (1996); *Cipollone*, 505 U.S. at 518.

[4] In the trial court, Facebook argued this statement of purpose should not be part of the analysis because it "cannot 'change the plain meaning of the operative clause' of the statute." MR149-50 (quoting *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1978 (2016)). While Plaintiffs agree with this legal proposition, Congress's statements of purpose in FOSTA do *not* conflict the text of Section 230.

Section 2 of FOSTA further states the "sense of Congress" that Section 230 "was never intended to provide legal protection to . . . websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims" and that "clarification of such section is warranted to ensure that such section does not provide such protection to such websites." S Pub. L. No. 115-164, sec. 2, 132 Stat. at 1253. Again, Congress did not distinguish between protection from state or federal claims. Construing the amended Section 230 to protect such websites from state civil claims, however, would clearly frustrate Congress's express intent.

Next, Section 4 of FOSTA contains the amendments to Section 230, and it is titled:

> SEC. 4. ENSURING ABILITY TO ENFORCE FEDERAL AND STATE CRIMINAL AND CIVIL LAW RELATING TO SEX TRAFFICKING.

Id. at sec. 4, 132 Stat. at 1254. Again, state civil law is expressly included and tied directly to the amendments.

And FOSTA contains its own savings clause in Section 7, which states:

> **SEC. 7. SAVINGS CLAUSE.**
>
> Nothing in this Act or the amendments made by this Act shall be construed to limit or preempt any civil action or criminal prosecution under Federal law or State law (including State statutory law and State common law) filed before or after the day before the date of enactment of this Act that was not limited or preempted by section 230 of the Communications Act of 1934 (47 U.S.C. 230), as such section was in effect on the day before the date of enactment of this Act.

Id. at sec. 7, 132 Stat. at 1255. Thus, Congress confirmed that both before and after the amendment, there are civil actions under state common law and statutory law that are not preempted.

Finally, Facebook's reading of the amendments as the sole, exclusive categories of claims that are not preempted would mean that a new cause of action Congress created through FOSTA could never be used. As mentioned, FOSTA created a new statute that criminalizes the online facilitation of prostitution, Section 2421A. *Id.* at sec. 3, 132 Stat. at 1253-54.[5] But Congress also created a civil remedy through FOSTA for victims of online prostitution that is *not* expressly exempted from the CDA by Section 230(e)(5). *Id.* at sec. 3, § 2421A(c), 132 Stat. at 1254. Congress could not have intended the amendment to provide an exclusive list that would nullify a new civil claim against interactive

[5] Federal criminal statutes were already exempted under subsection (e)(1) from the preemptive effects of the CDA, and the amendments in (e)(5) expressly list state criminal prosecutions under the new Section 2421A as also being exempted. 47 U.S.C. §§ 230(e)(1) & (e)(5)(C).

computer services that it just created in the same act. Such civil claims, like Jane Doe's, do not need to be expressly identified because they are consistent with the claims that are identified.

D. FOSTA's Legislative History Reinforces the Lack of Preemption

When assessing preemption, courts must interpret the statutory text, when possible, "against the backdrop of regulatory activity undertaken by state legislatures and [the] federal [government]." *Cipollone*, 505 U.S. at 519. When Congress passed Section 230 in 1996, the internet was in its fledgling stage and human trafficking was an unknown legal concept. Congress therefore could not have contemplated how courts might use the publisher/speaker language in subsection (c)(1) to protect online sex traffickers.

But by the time FOSTA was introduced in early 2017, criminal laws prohibiting human trafficking had been enacted at the federal level and in every state, and statutes providing civil remedies to victims of human trafficking had been enacted at the federal level and in nearly three-quarters of the states. Congress also knew that websites had "become one of the primary channels of sex trafficking . . . in part due to technological advances on the Internet that make information easily accessible and provide a forum for anonymity." FOSTA Committee

Report, H.R. Rep. No. 115-572, at 2 (2018). And it knew "bad-actor websites" had been shielded from liability by the CDA "despite engaging in actions that go far beyond publisher functions." *Id.* at 4.

The only legislative history for FOSTA that Facebook acknowledges in its petition is the fact that the bill was changed after its original introduction. It argues that the original bill "would have exempted certain private civil actions," but "that proposal was not adopted because Congress wanted to ensure a uniform national standard in this area rather than a patchwork of state laws." Petition at 20.

It is technically true that the original bill for FOSTA would have included in Section 230(e)(5) "any other Federal or State law that provides causes of action, restitution, or other civil remedies to victims of . . . sex trafficking," and that this provision was removed during the year the bill spent in committee. H.R. 1865, 115th Cong., p. 4 (1st Sess. Apr. 3, 2017). But that is only part of the story, and Facebook's explanation for the removal cannot be supported because Congress simply started anew.

The Committee on the Judiciary spent nearly a year wholly revising the original FOSTA bill. The *only* provision that survived this revision in original form was the enacting clause:

> FEBRUARY 20, 2018
> Reported from the Committee on the Judiciary with an amendment
> [Strike out all after the enacting clause and insert the part printed in italic]

H.R. 1865, 115th Cong., p. 3 (2d Sess. Feb. 20, 2018). The enacting clause states Congress's intent to clarify that Section 230 does not prohibit (among other things) state civil laws relating to sex trafficking. *Id.* at p. 4. The committee's amendments to the original bill do not, therefore, support an inference that Congress consciously rejected any protections of civil remedies for sex trafficking under state law.

Additionally, the Committee Report's section-by-section analysis notes that state laws were always fully enforceable against websites so long as they were consistent with Section 230. H.R. Rep. No. 115-572, at 9. It then explained the purpose of amending Section 230 to include the carve-outs:

> While the newly created law [Section 2421A], and the federal sex trafficking law [Section 1591], *should both be considered consistent with § 230*, as applied to certain bad-actor websites, in order to allow immediate and unfettered use of this provision, included is an explicit carve out to permit state criminal prosecutions.

Id. (emphasis added). In other words, Congress was not creating some new exception to immunity, as Facebook argues. It was merely clarifying—in light of the numerous cases that shielded websites from liability "despite engaging in actions that go far beyond publisher functions," *id.* at 4—that Section 230 was never intended to protect websites that facilitate sex trafficking.

The Committee's version of the bill also only carved out criminal prosecutions under state law; civil remedies under federal law (Section 1595) were later added to the final version. *Compare* H.R. 1865, 115th Cong., p. 8 (2d Sess. Feb. 20, 2018) *with* H.R. 1865, 115th Cong., p. 5 (2d Sess. Feb. 27, 2018) (enacted). The Committee explained that "[t]he language used in the carve out is designed to ensure that interactive computer services are subject to one set of criminal laws, rather than a patchwork of various state laws." H.R. Rep. No. 115-572, at 9-10. Thus, Congress was concerned with uniformity of criminal laws, not civil remedies as Facebook contends.

E. The Presumption Against Preemption Requires that Facebook's Construction Be Rejected

Even if Facebook's construction was plausibly supported by the statutory text, the presumption against preemption imposes upon courts "a duty to accept the reading disfavoring pre-emption." *Bates v.*

Dow Agrosciences LLC, 544 U.S. 431, 432 (2005); *see also Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 518 (1992) (noting the "presumption reinforces the appropriateness of a narrow reading" of an express preemption provision).

During the hearing on its Rule 91a motion, Facebook argued that the presumption against preemption never arises when there is an express preemption provision. MR573. But the sole case upon which Facebook relied, *Puerto Rico v. Franklin California Tax-Free Tr.*, 136 S. Ct. 1938 (2016), did not overrule (or even mention) the century's worth of Supreme Court precedent firmly establishing a presumption against preemption in *all* cases, including those involving express preemption provisions.[6] Lower courts are not free to find Supreme Court precedent overruled by implication. *Agostini v. Felton*, 521 U.S. 203, 237 (1997).

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[6] *E.g.*, *Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005) (noting presumption requires courts to accept a reading of an express preemption provision that disfavors preemption); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (applying presumption to determine scope of express preemption provision); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 222-23, 230-37 (1947) (applying presumption to express clause but still finding preemption of some, but not all, claims due to language and context of enactment); *Reid v. People of State of Colorado*, 187 U.S. 137, 148 (1902) (presumption prevents finding Congress intended to occupy entire field of cattle transportation).

Puerto Rico is also distinguishable. It concerned an unambiguous preemption provision in the Bankruptcy Code that had been consistently interpreted for 70 years and was not susceptible to any other interpretation. 136 S. Ct. at 1946-47. The presumption was therefore at its weakest in that area of traditional federal regulation, and it could not operate against clear statutory language. The Court merely stated that, given the express preemption clause, it did not need to invoke the presumption and would instead "focus on the plain wording of the clause." *Id.* at 1946. In Facebook's interpretation, on the other hand, Section 230 infringes on the historic police powers of the state—where the presumption is at its strongest—and is not explicit in its preemptive scope.

Additionally, courts across the country, including this Court, have continued to apply the presumption against preemption since *Puerto Rico* in cases involving express preemption provisions and areas of traditional state regulation. *See In re Union Pac. R.R. Co.*, 582 S.W.3d 548, 551 (Tex. App.—Houston [14th Dist.] 2018, orig. proceeding); *Sunset Transp., Inc. v. Texas Dep't of Transp.*, 557 S.W.3d 50, 65 (Tex. App.—Austin 2017, no pet.); *Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127, 132 n.5 (3d Cir. 2018); *Marentette*

v. Abbott Labs, Inc., 886 F.3d 112, 117 (2nd Cir. 2018); *Lazar v. Kroncke*, 862 F.3d 1186, 1195 (9th Cir. 2017).

IV. Jane Doe's Sex Trafficking Claims Do Not Treat Facebook as a Publisher or Speaker

Claims, such as Jane Doe's, that are consistent with the carve outs in the 2018 amendment are not preempted regardless of whether they treat an internet company as the publisher of third-party content. But even if the carve outs were exclusive, Jane Doe's sex trafficking claims would still not be preempted because they do not, in fact, treat Facebook as the publisher of third-party content under a proper construction of subsection (c)(1) that gives effect to its text, context, purpose, and history.

A. Section 230's Language Is Narrow

Again, Facebook relies on the following provision to argue internet companies enjoy a broad immunity from any suit that arises, in any way, from content generated by third parties.

> No provider or user of an interactive computer service shall be *treated as the publisher or speaker* of any information provided by another information content provider.

47 U.S.C. § 230(c)(1) (emphasis added).

If Congress intended such seemingly limitless protection, "it chose a singularly obscure means of doing so." *Hyundai Motor Co. v.*

Alvarado, 974 S.W.2d 1, 12 (Tex. 1998) (holding common-law claims not preempted by clause prohibiting state safety "standards" that are not identical to federal standards); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 478 (1996) (holding Congress's choice to prohibit any additional "requirement" under state law, rather than "remedy," shows intent to permit common-law claims). If it had intended the preemptive scope Facebook urges, Congress could have simply adopted a provision that states:

> Providers and users of interactive computer services shall be *immune from any legal action that relates to* content provided by a third party.

Instead, it chose to define the area of protection with the words "publisher" and "speaker"—words that have unique legal meanings.

B. The Terms "Publisher" and "Speaker" Relate to Defamation

The CDA does not define the terms "publisher" or "speaker," so the words must be construed according to their ordinary meaning by examining the context in which they are used, the statute's legislative history, dictionary definitions, and judicial constructions of the words in other contexts. *Yates v. United States*, 135 S. Ct. 1074, 1082-85 (2015); *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563 (Tex.

2014). Properly construed, it is clear this is the language of defamation law.

The context in which the words are used concerns potential liability for information provided online by third parties. And the statute's legislative history clearly shows the kind of liability Congress had in mind. As we discussed in Part I.B of the Statutory Overview, Section 230(c)(1) was proposed and adopted for the express purpose of overruling *Stratton Oakmont, Inc. v. Prodigy Services Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

In *Stratton Oakmont*, the court held Prodigy liable for defamation based on its finding that Prodigy was a publisher—as opposed to a distributor—of defamatory statements posted by an unknown user on its online bulletin board. *Id.* at *3-4. The distinction between publisher and distributor was critical.

Under the applicable law, a publisher is liable regardless of whether it knows about the defamatory content. *Id.* at *3. But a distributor is considered a passive conduit and is only liable if it has actual or constructive knowledge of the defamation. *Id.* The court held Prodigy had exercised editorial control akin to a publisher by promulgating content guidelines and using screening software, which

subjected it to defamation liability despite its lack of knowledge. *Id.* at *3-4.

In other words, Prodigy was held to a higher standard and punished *because* it took steps to make the internet a less offensive place. Congress responded with Section 230. Representative Cox explained that the amendment would do that by shielding "them from taking on liability such as occurred in the *Prodigy* case in New York that they should not face for helping us and for helping us solve this problem." 141 Cong. Rec. H8460, 8470 (Aug. 4, 1994).

The conference report issued days before the statute's enactment reiterates this explanation:

> One of the specific purposes of this section is to overrule *Stratton-Oakmont v. Prodigy* and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own *because they have restricted access to objectionable material*. The conferees believe that such decisions create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services.

H.R. Rep. 104-458, at 194 (1996) (emphasis added). Section 230 also emphasizes this concern by stating policies "to encourage the development of technologies which maximize user control over what information is received," and "to remove disincentives for the

development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material." 47 U.S.C. § 230(b)(3)-(4).

Given this context, to treat an internet company as a "publisher or speaker" is to impose liability upon it (1) for defamatory content provided by a third party (2) of which it had no knowledge, (3) because it acted as a "Good Samaritan" by trying to screen content generally and restrict access to objectionable material. Jane Doe asserts no claim for defamation. She alleges Facebook *knew* its platform was being used by sex traffickers. And she alleges Facebook was not acting like a "Good Samaritan."

But even if the protections afforded by subsection (c)(1) are broader than Congress intended, nothing indicates an intent to give the word "publisher" a broader meaning than it has in defamation law. And the only definition of "publish" that makes sense in context is "[t]o communicate (defamatory words) to someone other than the person defamed." *Black's Law Dictionary* 1489 (11th ed.).

Section 230 does not convey a "clear and manifest purpose" by Congress to preempt anything other than defamation and similar claims for which publication is an essential element. *See Medtronic,*

Inc. v. Lohr, 518 U.S. 470, 485 (1996) (discussing the presumption against preemption); *City of Chicago, Ill. v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010) (opining that obscenity and copyright infringement might also be covered); *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 669-71 (7th Cir. 2008) (concerning statutory claim based on publication of discriminatory advertisements). Jane Doe does not seek to hold Facebook liable for defamation or any other claim for which publication is an element. Her claims are therefore not preempted regardless of FOSTA's effect on the statute's preemptive scope.

C. The CDA Was Not Intended to Protect Those Who Facilitate the Sexual Victimization of Minors

Just as subsection (c)(1) must be construed within the context of Section 230 as a whole, Section 230 must also be construed within the context of the CDA as a whole. *See Harris County, Texas v. MERSCORP Inc.*, 791 F.3d 545, 554 (5th Cir. 2015) (quoting *Lamar Homes, Inc. v. Mid–Continent Cas. Co.,* 242 S.W.3d 1, 19 (Tex. 2007) ("In determining [a statute's] meaning, we must also consider the statute as a whole and construe it in a manner which harmonizes all of its various provisions.").

Congress's primary concern when it enacted the CDA was protecting children. It tried to protect them from "obscene or indecent" messages sent or displayed online.[7] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. at 133, sec. 502, § 223(a)(1), (d). It tried to protect them from pornography and other obscenity ordered online and transported through interstate commerce. *Id.* at sec. 507, § 1462. It tried to protect them from obscene and violent programming on television, and it protected cable providers that refused to air programs containing "obscenity, indecency, or nudity." *Id.* at sec. 503-06, §§ 639-41, sec. 551. And in part of Section 230, it protected internet companies from liability to content providers for restricting access to pornography and "otherwise objectionable" material. *Id.* at sec. 509, § 230(c)(2).

The Seventh Circuit has asked: "Why should a law designed to eliminate [an internet company's] liability to the creators of offensive material end up defeating claims by the victims of tortious or criminal conduct?" *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003). This rhetorical question is even more astute when one considers the fact

[7] The Supreme Court deemed these provisions unconstitutional almost immediately after the CDA was enacted. *Reno v. ACLU*, 521 U.S. 844 (1997).

that the CDA, as originally enacted, criminalized smut peddling to minors in virtually every form. But more importantly, it also criminalized the use of any telecommunications facility to "knowingly persuade[], induce[], entice[], or coerce[] any [minor] to engage in prostitution or any sexual act for which any person may be criminally prosecuted." 110 Stat. at 137, sec. 508, § 2422. It is simply absurd to conclude that the same Congress would have intended blanket liability for internet companies that facilitated the new crime it created.

D. The Mere Existence of Third-Party Content Does Not Grant Immunity

Section 230 does not "grant *immunity* from suits that *arise from* content generated by third parties," as Facebook contends. Petition at 7; *see also id.* at 12 ("[A]ll of Plaintiffs' claims against Facebook arise from messages. . . ."). Immunity is much too broad a concept to describe what Section 230(c)(1) achieves, and barring any suit that arises from third-party content disregards Congress's decision to focus on treatment as a publisher.

First, as many courts have observed, the word "immunity" appears nowhere in the statute. *See Jones v. Dirty World Entertainment Recordings LLC*, 755 F.3d 398, 406 (6th Cir. 2014); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009); *J.S. v.*

Village Voice Media Holdings, L.L.C., 359 P.3d 714, 718 (Wash. 2015) (Wiggins, J., concurring). The word "immunity" has an extraordinarily broad connotation as an exemption from all liability, "such as an exemption granted to a public official or governmental unit." *Black's Law Dictionary* 898 (11th ed.). That word, however, originates not with Congress, but with the Fourth Circuit's decision, *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (1997). *See* Statutory Overview, Part II, *supra*.

Unfortunately, many courts parroted *Zeran*'s language, expanding what should have been a narrow protection for internet companies into a broad immunity. Some courts, however, have declined to read so much into Congress's words. The Seventh Circuit, for example, has held that "subsection (c)(1) does not create an 'immunity' of any kind," but rather "limits who may be called the publisher of information that appears online." *City of Chicago, Ill. v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010).

Second, nothing in the text or history of Section 230 supports an interpretation that protects internet companies from claims that "arise from," i.e., to merely involve—no matter how remotely—third-party content. Again, such a construction would lead to immunity beyond

anything contemplated by Congress. As the Ninth Circuit has recognized, "[p]ublishing activity is a but-for cause of just about everything [an internet platform] is involved in. . . . Without publishing user content, it would not exist." *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016).

Congress chose to protect internet companies only from *treatment* as a publisher, not from any and all claims related to third-party content. And when it amended Section 230, Congress expressly rejected the but-for theory that had led to courts finding immunity for facilitating sex trafficking. The Committee Report for FOSTA complained:

> In civil litigation, bad-actor websites have been able to successfully invoke this immunity provision *despite engaging in actions that go far beyond publisher functions*.

H.R. Rep. No. 115-572, at 4 (2018). The opinion it used as an example of this over-expansive interpretation was *Jane Doe 1 v. Backpage.com, LLC*, 817 F.3d 12 (1st Cir. 2016). In that case, the court held Backpage.com immune from liability, stating: "Since the appellants were trafficked by means of these advertisements, there would be no harm to them *but for the content* of the postings." *Id.* at 19-20 (emphasis added).

The Ninth Circuit has articulated a more reasonable statement of the issue under subsection (c)(1): whether "the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.'" *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). Jane Doe alleges Facebook violated a duty to warn her and other minor users of the threat posed by sex traffickers Facebook knows are using its platform to find and recruit victims. That duty derives from Facebook's knowledge about how its platform is misused, not with Facebook's role in publishing content generated by the sex traffickers.

E. Facebook Mischaracterizes Jane Doe's Claims

All of Facebook's arguments flow from a faulty premise it never establishes—that Jane Doe's claims seek to hold Facebook liable for third-party content. Even if that were the applicable standard, Jane Doe's claims are not about content. They are about conduct—Facebook's conduct in failing to warn her and other minor victims about known predators on its platform and Facebook's conduct in failing to implement any protections to prevent such predators from contacting vulnerable young girls.

V. The Trial Court's Order

A. Facebook Misconstrues the Court's Reasoning

Facebook's attack on the trial court's order is strong on rhetoric but little else. Facebook initially invokes "the clear import of the statutory test and the overwhelming weight of the authority" that it contends support its position. Petition at 17. Jane Doe has discussed that language and those cases in this response.

Facebook complains that the trial court held "that Facebook's cases did not address" Plaintiffs' failure-to-warn claims, the Texas statutory sex trafficking statute, or FOSTA. *Id.* The trial court was completely correct with two of those observations—none of the cases Facebook cites discuss Texas's human trafficking statute, Chapter 98 of the Civil Practice and Remedies Code. Neither do any of them deal with FOSTA.

And Facebook simply misses the point with respect to the failure to warn argument. When comparing *Doe v. Internet Brands, Inc.*, 824 F.3d 846 (9th Cir. 2016) with *Doe v. MySpace, Inc.*, 528 F.3d 413 (5th Cir. 2008), the court noted that both dealt with similar injuries to Jane Doe's, but "the failure to warn cause of action presented in this case mirrors that presented in the 9th Circuit Case." MR205 The trial court understood that Jane Doe was 'not seeking to impose liability for the

publication of the third party communications, but rather [she seeks] to impose liability for Facebook's independent actions or failure to act, specifically failure to warn," etc. *Id.* Thus, it not unreasonably felt that *Internet Brands* was more persuasive.

Facebook then moves to its analysis of *Huon v. Denton*, 841 F.3d 733 (7th Cir. 2016) and *Internet Brands*. Petition at 18. But the point of those cases, as the trial court recognized, is that the Seventh and Ninth Circuits apply a much narrower test than the *Zeran* line of cases to determine whether a claim treats an internet company as a publisher or speaker. MR205.

In short, Facebook's complaints about the trial court's order are not well-taken.

B. In Any Event, It's the Result, Not the Reasoning, that Matters

In *Luxenberg v. Marshall*, 835 S.W.2d 136 (Tex. App.—Dallas 1992, orig. proceeding), the Dallas Court of Appeals was confronted with an order striking the pleadings of a party for making a false verification. The court held that the order could not be upheld on the basis of Texas Rule of Civil Procedure 13. *Id.* at 141.

But the court concluded that the order *could* be upheld as a discovery sanction, commenting that "[w]hen a trial court gives an

incorrect legal reason for its decision, we will nevertheless uphold the order on any other grounds supported by the record." *Id.* at 141-42 (citations omitted). Focusing on the result reached rather than the trial court's reasons is particularly compelling where, as here, the issue is an abuse of discretion: "A trial court cannot abuse its discretion if it reaches the right result, even for the wrong reasons." *Id.* at 142.

This Court has followed that authority. *See In re ExxonMobil Corp.*, 97 S.W.3d 353 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) (appellate court must uphold trial court's order on any ground supported by the record); *Hsin-Chi-Su v. Vantage Drilling Co.*, 474 S.W.3d 284, 298 (Tex. App.—Houston [14th Dist. 2015, pet. denied) (same in injunction context). So have many other courts of appeals. *See In re Tyndell*, No. 06-15-00086-CV, 2016 WL 269168, at *3 (Tex. App.—Texarkana 2016, orig. proceeding) (collecting cases).

In short, because the trial court reached the right result, it does not matter what the order states.

Prayer

The Court should deny Facebook's petition.

In the alternative, if the Court grants the petition to any extent, Jane Doe requests that the case be remanded to the trial court for

further proceedings, including an opportunity for Jane Doe to amend her pleadings in light of the Court's disposition.

Finally, because Facebook did not move to dismiss Jane Doe's products liability cause of action, that cause of action should be remanded to the trial court for further proceedings.

Respectfully submitted,

/s/ Annie McAdams

THE GALLAGHER LAW FIRM
Michael T. Gallagher
mike@gld-law.com
Texas Bar No. 07586000
Pamela McLemore
pamm@gld-law.com
Texas Bar No. 24099711
Boyd Smith
Texas Bar No. 18638400
2905 Sackett Street
Houston, Texas 77098
(713) 222-8080
(713) 222-0066 (fax)

SICO HOELSCHER HARRIS LLP
David E. Harris
dharris@shhlaw.com
Texas Bar No. 24049273
Louie J. Cook
lcook@shhlaw.com
Texas Bar No. 24101191
802 N. Carancahua, Suite 900
Corpus Christi, Texas 78401
(361) 653-3300
(361) 653-3333 (fax)

ANNIE MCADAMS, P.C.
annie@mcadamspc.com
Texas Bar No. 24051014
Matthew S. Parmet
matt@mcadamspc.com
Texas Bar No. 24069719
1150 Bissonnet
Houston, Texas 77005
(713) 785-6262
(866) 713-6141 (fax)

WARE, JACKSON, LEE, O'NEILL,
SMITH & BARROW, LLP
Timothy F. Lee
timlee@warejackson.com
Texas Bar No. 12139500
Margaret E. Bryant
margaretbryant@warejackson.com
Texas Bar No. 24073972
Michelle R. Meriam
michellemeriam@warejackson.com
Texas Bar No. 24063871
2929 Allen Parkway, 39th Floor
Houston, Texas 77019
(713) 659-6400
(713) 659-6262 (fax)

Counsel for Real Party in Interest, Jane Doe

Certification of Facts

I certify that I have reviewed this Response to Relator's Petition for Mandamus and the attached appendix, and have concluded that every factual statement in the response is supported by competent evidence included in the appendix or record.

/s/ Timothy F. Lee

Certificate of Compliance

I certify that the Rule 9.4(i)(1) portions of this response contain 11,380 words.

/s/ Timothy F. Lee

Certificate of Service

On November 26, 2019, true and correct copies of this response were served via ProDoc eFiling service on the following counsel of record:

HUNTON ANDREWS KURTH LLP
Kelly Sandill
ksandill@huntonak.com
Katy Boatman
Kboatman@huntonak.com
Ashley Kahn
akahn@huntonak.com
600 Travis, Suite 4200
Houston, Texas 77002

Scott A. Brister
sbrister@huntonak.com
500 W. 5th Street, Suite 1350
Austin, Texas 78701

YETTER COLEMAN LLP
Reagan Simpson
rsimpson@yettercoleman.com
April L. Farris
afarris@yettercoleman.com
Collin J. Cox
ccox@yettercoleman.com
Tracy N. LeRoy
tleroy@yettercoleman.com
Jeffrey A. Andrews
jandrews@yettercoleman.com
811 Main Street, Suite 4100
Houston, Texas 77002

GIBSON, DUNN & CRUTCHER, LLP
Russell H. Falconer
rfalconer@gibsondunn.com
2100 McKinney Ave., Suite 1100
Dallas, Texas 75201

Kristin A. Linsley
klinsley@gibsondunn.com
555 Mission Street
San Francisco, California 94105

Attorneys for Relator, Facebook, Inc.

Judge Steven Kirkland
334th Civil Court
Harris County Civil Courthouse
201 Caroline, 14th Floor
Houston, TX 77002

Respondent

/s/ Timothy F. Lee

Appendix A:
47 U.S.C. § 230

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part I. Common Carrier Regulation

47 U.S.C.A. § 230

§ 230. Protection for private blocking and screening of offensive material

Effective: April 11, 2018
Currentness

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1). [1]

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit--

(A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of Title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 230, as added Pub.L. 104-104, Title V, § 509, Feb. 8, 1996, 110 Stat. 137; amended Pub.L. 105-277, Div. C, Title XIV, § 1404(a), Oct. 21, 1998, 112 Stat. 2681-739; Pub.L. 115-164, § 4(a), Apr. 11, 2018, 132 Stat. 1254.)

Footnotes

1 So in original. Probably should be "subparagraph (A)".

47 U.S.C.A. § 230, 47 USCA § 230
Current through P.L. 116-5. Title 26 current through 116-9.

Appendix B:
CDA

PUBLIC LAW 104–104—FEB. 8, 1996

TELECOMMUNICATIONS ACT OF 1996

Public Law 104–104
104th Congress

An Act

Feb. 8, 1996
[S. 652]

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Telecommunications Act of 1996.
Intergovernmental relations.
47 USC 609 note.

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Telecommunications Act of 1996".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE V—OBSCENITY AND VIOLENCE

Communications Decency Act of 1996.
Law enforcement and crime.
Penalties.

Subtitle A—Obscene, Harassing, and Wrongful Utilization of Telecommunications Facilities

SEC. 501. SHORT TITLE.

47 USC 609 note.

This title may be cited as the "Communications Decency Act of 1996".

SEC. 502. OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT OF 1934.

Section 223 (47 U.S.C. 223) is amended—

(1) by striking subsection (a) and inserting in lieu thereof:

"(a) Whoever—

"(1) in interstate or foreign communications—

"(A) by means of a telecommunications device knowingly—

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;

"(B) by means of a telecommunications device knowingly—

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

"(C) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications;

"(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

"(E) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

"(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18, United States Code, or imprisoned not more than two years, or both."; and

(2) by adding at the end the following new subsections:

"(d) Whoever—

"(1) in interstate or foreign communications knowingly—

"(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

"(B) uses any interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication; or

"(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18, United States Code, or imprisoned not more than two years, or both.

"(e) In addition to any other defenses available by law:

"(1) No person shall be held to have violated subsection (a) or (d) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

"(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

"(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

"(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

"(5) It is a defense to a prosecution under subsection (a)(1)(B) or (d), or under subsection (a)(2) with respect to the use of a facility for an activity under subsection (a)(1)(B) that a person—

"(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

"(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

"(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d). Nothing in

this section authorizes the Commission to enforce, or is intended to provide the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission shall have no enforcement authority over the failure to utilize such measures. The Commission shall not endorse specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of paragraph (5) in any action arising under subsection (d). Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.

"(f)(1) No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

"(2) No State or local government may impose any liability for commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) that is inconsistent with the treatment of those activities or actions under this section: *Provided, however*, That nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

"(g) Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under subsection (a) or (d) shall be construed to affect or limit the application or enforcement of any other Federal law.

"(h) For purposes of this section—

"(1) The use of the term 'telecommunications device' in this section—

"(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this Act; and

"(B) does not include an interactive computer service.

"(2) The term 'interactive computer service' has the meaning provided in section 230(e)(2).

"(3) The term 'access software' means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

"(A) filter, screen, allow, or disallow content;

"(B) pick, choose, analyze, or digest content; or

"(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

"(4) The term 'institution of higher education' has the meaning provided in section 1201 of the Higher Education Act of 1965 (20 U.S.C. 1141).

"(5) The term 'library' means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).".

SEC. 503. OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 U.S.C. 559) is amended by striking "not more than $10,000" and inserting "under title 18, United States Code,".

SEC. 504. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

Part IV of title VI (47 U.S.C. 551 et seq.) is amended by adding at the end the following:

47 USC 560.

"SEC. 640. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

"(a) SUBSCRIBER REQUEST.—Upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.

"(b) DEFINITION.—As used in this section, the term 'scramble' means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.".

SEC. 505. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

(a) REQUIREMENT.—Part IV of title VI (47 U.S.C. 551 et seq.), as amended by this Act, is further amended by adding at the end the following:

47 USC 561.

"SEC. 641. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

"(a) REQUIREMENT.—In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

Children and youth.

"(b) IMPLEMENTATION.—Until a multichannel video programming distributor complies with the requirement set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.

"(c) DEFINITION.—As used in this section, the term 'scramble' means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.".

47 USC 561 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act.

SEC. 506. CABLE OPERATOR REFUSAL TO CARRY CERTAIN PROGRAMS.

(a) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHANNELS.—Section 611(e) (47 U.S.C. 531(e)) is amended by inserting before the period the following: ", except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity".

(b) CABLE CHANNELS FOR COMMERCIAL USE.—Section 612(c)(2) (47 U.S.C. 532(c)(2)) is amended by striking "an operator" and inserting "a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and".

SEC. 507. CLARIFICATION OF CURRENT LAWS REGARDING COMMUNICATION OF OBSCENE MATERIALS THROUGH THE USE OF COMPUTERS.

(a) IMPORTATION OR TRANSPORTATION.—Section 1462 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph, by inserting "or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)" after "carrier"; and

(2) in the second undesignated paragraph—

(A) by inserting "or receives," after "takes";

(B) by inserting "or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)" after "common carrier"; and

(C) by inserting "or importation" after "carriage".

(b) TRANSPORTATION FOR PURPOSES OF SALE OR DISTRIBUTION.—The first undesignated paragraph of section 1465 of title 18, United States Code, is amended—

(1) by striking "transports in" and inserting "transports or travels in, or uses a facility or means of,";

(2) by inserting "or an interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) in or affecting such commerce" after "foreign commerce" the first place it appears;

(3) by striking ", or knowingly travels in" and all that follows through "obscene material in interstate or foreign commerce," and inserting "of".

(c) INTERPRETATION.—The amendments made by this section are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in United States v. Alpers, 338 U.S. 680 (1950). 18 USC 1462 note.

SEC. 508. COERCION AND ENTICEMENT OF MINORS.

Section 2422 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever knowingly"; and

(2) by adding at the end the following:

"(b) Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.".

SEC. 509. ONLINE FAMILY EMPOWERMENT.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL. 47 USC 230.

"(a) FINDINGS.—The Congress finds the following:

"(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

"(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

"(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

"(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

"(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

"(b) POLICY.—It is the policy of the United States—

"(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

"(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

"(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

"(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

"(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

"(c) PROTECTION FOR 'GOOD SAMARITAN' BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.—

"(1) TREATMENT OF PUBLISHER OR SPEAKER.—No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

"(2) CIVIL LIABILITY.—No provider or user of an interactive computer service shall be held liable on account of—

"(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

"(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

"(d) EFFECT ON OTHER LAWS.—

"(1) NO EFFECT ON CRIMINAL LAW.—Nothing in this section shall be construed to impair the enforcement of section 223 of this Act, chapter 71 (relating to obscenity) or 110 (relating

to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

"(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

"(3) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

"(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.—Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

"(e) DEFINITIONS.—As used in this section:

"(1) INTERNET.—The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

"(2) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"(3) INFORMATION CONTENT PROVIDER.—The term 'information content provider' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"(4) ACCESS SOFTWARE PROVIDER.—The term 'access software provider' means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

"(A) filter, screen, allow, or disallow content;

"(B) pick, choose, analyze, or digest content; or

"(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.".

Subtitle B—Violence

SEC. 551. PARENTAL CHOICE IN TELEVISION PROGRAMMING.

47 USC 303 note.

(a) FINDINGS.—The Congress makes the following findings:

(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

(2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming has established a uniquely pervasive presence in the lives of American children.

(3) The average American child is exposed to 25 hours of television each week and some children are exposed to as much as 11 hours of television a day.

(4) Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.

(5) Children in the United States are, on average, exposed to an estimated 8,000 murders and 100,000 acts of violence on television by the time the child completes elementary school.

(6) Studies indicate that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children.

(7) Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

(8) There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

(9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

(b) ESTABLISHMENT OF TELEVISION RATING CODE.—

(1) AMENDMENT.—Section 303 (47 U.S.C. 303) is amended by adding at the end the following:

"(w) Prescribe—

"(1) on the basis of recommendations from an advisory committee established by the Commission in accordance with section 551(b)(2) of the Telecommunications Act of 1996, guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children: *Provided*, That nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content; and

"(2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children.".

47 USC 303 note.

(2) ADVISORY COMMITTEE REQUIREMENTS.—In establishing an advisory committee for purposes of the amendment made by paragraph (1) of this subsection, the Commission shall—

(A) ensure that such committee is composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other interested individuals from the private sector and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee;

(B) provide to the committee such staff and resources as may be necessary to permit it to perform its functions efficiently and promptly; and

(C) require the committee to submit a final report of its recommendations within one year after the date of the appointment of the initial members. Reports.

(c) REQUIREMENT FOR MANUFACTURE OF TELEVISIONS THAT BLOCK PROGRAMS.—Section 303 (47 U.S.C. 303), as amended by subsection (a), is further amended by adding at the end the following:

"(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).".

(d) SHIPPING OF TELEVISIONS THAT BLOCK PROGRAMS.—

(1) REGULATIONS.—Section 330 (47 U.S.C. 330) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by adding after subsection (b) the following new subsection (c):

"(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(x) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

"(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading in it.

"(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

"(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

"(A) enables parents to block programming based on identifying programs without ratings,

"(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

"(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings,

the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such

section or the alternative blocking technology described in this paragraph.".

(2) CONFORMING AMENDMENT.—Section 330(d), as redesignated by subsection (d)(1)(A), is amended by striking "section 303(s), and section 303(u)" and inserting in lieu thereof "and sections 303(s), 303(u), and 303(x)".

47 USC 330.

47 USC 303 note.

(e) APPLICABILITY AND EFFECTIVE DATES.—

(1) APPLICABILITY OF RATING PROVISION.—The amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date—

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

(2) EFFECTIVE DATE OF MANUFACTURING PROVISION.—In prescribing regulations to implement the amendment made by subsection (c), the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall not be less than two years after the date of enactment of this Act.

47 USC 303 note.

SEC. 552. TECHNOLOGY FUND.

It is the policy of the United States to encourage broadcast television, cable, satellite, syndication, other video programming distributors, and relevant related industries (in consultation with appropriate public interest groups and interested individuals from the private sector) to—

(1) establish a technology fund to encourage television and electronics equipment manufacturers to facilitate the development of technology which would empower parents to block programming they deem inappropriate for their children and to encourage the availability thereof to low income parents;

(2) report to the viewing public on the status of the development of affordable, easy to use blocking technology; and

(3) establish and promote effective procedures, standards, systems, advisories, or other mechanisms for ensuring that users have easy and complete access to the information necessary to effectively utilize blocking technology and to encourage the availability thereof to low income parents.

Subtitle C—Judicial Review

47 USC 223 note.

SEC. 561. EXPEDITED REVIEW.

(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district

for the performance of activities described in section 9(a) of the Communications Act of 1934.

(c) FUNDING AVAILABILITY.—Section 309(j)(8)(B) (47 U.S.C. 309(j)(8)(B)) is amended by adding at the end the following new sentence: "Such offsetting collections are authorized to remain available until expended.".

Approved February 8, 1996.

LEGISLATIVE HISTORY—S. 652 (H.R. 1555):

HOUSE REPORTS: No. 104–204, Pt. 1 accompanying H.R. 1555 (Comm. on Commerce).

SENATE REPORTS: Nos. 104–23 (Comm. on Commerce, Science, and Transportation) and 104–230 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 141 (1995): June 7, 8, 12–15, considered and passed Senate.
Aug. 2, 4, H.R. 1555 considered and passed House.
Oct. 12, S. 652 considered and passed House, amended, in lieu of H.R. 1555.

Vol. 142 (1996): Feb. 1, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Feb. 8, Presidential remarks and statement.

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Appendix C:
FOSTA

Public Law 115–164
115th Congress

An Act

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

Apr. 11, 2018
[H.R. 1865]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

Allow States and Victims to Fight Online Sex Trafficking Act of 2017.
18 USC 1 note.

This Act may be cited as the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017".

SEC. 2. SENSE OF CONGRESS.

47 USC 230 note.

It is the sense of Congress that—

(1) section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the "Communications Decency Act of 1996") was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims;

(2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and

(3) clarification of such section is warranted to ensure that such section does not provide such protection to such websites.

SEC. 3. PROMOTION OF PROSTITUTION AND RECKLESS DISREGARD OF SEX TRAFFICKING.

(a) PROMOTION OF PROSTITUTION.—Chapter 117 of title 18, United States Code, is amended by inserting after section 2421 the following:

"§ 2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking

18 USC 2421A.

"(a) IN GENERAL.—Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service (as such term is defined in defined in section 230(f) the Communications Act of 1934 (47 U.S.C. 230(f))), or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

"(b) AGGRAVATED VIOLATION.—Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate

or foreign commerce, owns, manages, or operates an interactive computer service (as such term is defined in defined in section 230(f) the Communications Act of 1934 (47 U.S.C. 230(f))), or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person and—

"(1) promotes or facilitates the prostitution of 5 or more persons; or

"(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of 1591(a),

shall be fined under this title, imprisoned for not more than 25 years, or both.

"(c) CIVIL RECOVERY.—Any person injured by reason of a violation of section 2421A(b) may recover damages and reasonable attorneys' fees in an action before any appropriate United States district court.

"(d) MANDATORY RESTITUTION.—Notwithstanding sections 3663 or 3663A and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any violation of subsection (b)(2). The scope and nature of such restitution shall be consistent with section 2327(b).

"(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a), or subsection (b)(1) where the defendant proves, by a preponderance of the evidence, that the promotion or facilitation of prostitution is legal in the jurisdiction where the promotion or facilitation was targeted.".

18 USC prec. 2421.

(b) TABLE OF CONTENTS.—The table of contents for such chapter is amended by inserting after the item relating to section 2421 the following:

"2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking.".

SEC. 4. ENSURING ABILITY TO ENFORCE FEDERAL AND STATE CRIMINAL AND CIVIL LAW RELATING TO SEX TRAFFICKING.

(a) IN GENERAL.—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

"(5) NO EFFECT ON SEX TRAFFICKING LAW.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

"(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

"(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18, United States Code; or

"(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.".

Applicability. 47 USC 230 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and the amendment made by subsection (a) shall apply regardless of

whether the conduct alleged occurred, or is alleged to have occurred, before, on, or after such date of enactment.

SEC. 5. ENSURING FEDERAL LIABILITY FOR PUBLISHING INFORMATION DESIGNED TO FACILITATE SEX TRAFFICKING OR OTHERWISE FACILITATING SEX TRAFFICKING.

Section 1591(e) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(2) by inserting after paragraph (3) the following:

"(4) The term 'participation in a venture' means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).". Definition.

SEC. 6. ACTIONS BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—Section 1595 of title 18, United States Code, is amended by adding at the end the following:

"(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as parens patriae, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1595 of title 18, United States Code, is amended—

(1) in subsection (b)(1), by striking "this section" and inserting "subsection (a)"; and

(2) in subsection (c), in the matter preceding paragraph (1), by striking "this section" and inserting "subsection (a)".

SEC. 7. SAVINGS CLAUSE. 47 USC 230 note.

Nothing in this Act or the amendments made by this Act shall be construed to limit or preempt any civil action or criminal prosecution under Federal law or State law (including State statutory law and State common law) filed before or after the day before the date of enactment of this Act that was not limited or preempted by section 230 of the Communications Act of 1934 (47 U.S.C. 230), as such section was in effect on the day before the date of enactment of this Act.

SEC. 8. GAO STUDY. Time period. Reports.

On the date that is 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, a report which includes the following:

(1) Information on each civil action brought pursuant to section 2421A(c) of title 18, United States Code, that resulted in an award of damages, including the amount claimed, the nature or description of the losses claimed to support the amount claimed, the losses proven, and the nature or description of the losses proven to support the amount awarded.

(2) Information on each civil action brought pursuant to section 2421A(c) of title 18, United States Code, that did not result in an award of damages, including—

(A) the amount claimed and the nature or description of the losses claimed to support the amount claimed; and

(B) whether the case was dismissed, and if the case was dismissed, information describing the reason for the dismissal.

(3) Information on each order of restitution entered pursuant to section 2421A(d) of title 18, United States Code, including—

(A) whether the defendant was a corporation or an individual;

(B) the amount requested by the Government and the justification for, and calculation of, the amount requested, if restitution was requested; and

(C) the amount ordered by the court and the justification for, and calculation of, the amount ordered.

(4) For each defendant convicted of violating section 2421A(b) of title 18, United States Code, that was not ordered to pay restitution—

(A) whether the defendant was a corporation or an individual;

(B) the amount requested by the Government, if restitution was requested; and

(C) information describing the reason that the court did not order restitution.

Approved April 11, 2018.

LEGISLATIVE HISTORY—H.R. 1865:

HOUSE REPORTS: No. 115–572, Pt. 1 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 164 (2018):
Feb. 27, considered and passed House.
Mar. 21, considered and passed Senate.
DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2018):
Apr. 11, Presidential remarks.

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Appendix D:
141 Cong. Rec. H8460

Watts (OK)	Wyden	Zeliff
Wolf	Yates	Zimmer

NOT VOTING—29

Andrews	Maloney	Spratt
Bateman	McDade	Thurman
Collins (MI)	McIntosh	Towns
Condit	Moakley	Tucker
Cooley	Ortiz	Waxman
de la Garza	Owens	Williams
Filner	Rangel	Wilson
Hayes	Reynolds	Young (AK)
Herger	Rose	Young (FL)
Kaptur	Scarborough	

☐ 0910

The Clerk announced the following pair:

On this vote:

Mr. Scarborough for, with Mr. Filner against.

Mr. GILMAN, Mr. STOKES, and Ms. FURSE changed their vote from ''aye'' to ''no.''

Messrs. JONES, KIM, MFUME, BARCIA, HEFNER, and JEFFERSON, Ms. WOOLSEY, Mrs. KELLY, and Ms. MCKINNEY changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. MALONEY. Mr. Speaker, I inadvertently missed rollcall vote 627. Had I been present, I would have voted ''yes.''

The CHAIRMAN. It is now in order to consider amendment No. 2–1 printed in part 2 of House Report 104–223.

AMENDMENT NO. 2–1 OFFERED BY MR. STUPAK

Mr. STUPAK. Mr. Chairman, I offer an amendment, numbered 2–1.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2–1 offered by Mr. STUPAK: Page 14, beginning on line 8, strike section 243 through page 16, line 9, and insert the following (and conform the table of contents accordingly):

SEC. 243. REMOVAL OF BARRIERS TO ENTRY.

(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services.

(b) STATE AND LOCAL AUTHORITY.—Nothing in this section shall affect the ability of a State or local government to impose, on a competitively neutral basis and consistent with section 247 (relating to universal service), requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) LOCAL GOVERNMENT AUTHORITY.—Nothing in this Act affects the authority of a local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of the rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this section.

The CHAIRMAN. Pursuant to the rule, the gentleman from Michigan [Mr. STUPAK] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Does the gentleman from Virginia rise to claim the time?

Mr. BLILEY. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Virginia [Mr. BLILEY] will be recognized for 5 minutes.

The Chair recognizes the gentleman from Michigan [Mr. STUPAK].

Mr. STUPAK. Mr. Chairman, I am offering this amendment with the gentleman from Texas [Mr. BARTON] to protect the authority of local governments to control public rights-of-way and to be fairly compensated for the use of public property. I have a chart here which shows the investment that our cities have made in our rights-of-way.

☐ 0915

Mr. Chairman, as this chart shows, the city spent about $100 billion a year on rights-of-way, and get back only about 3 percent, or $3 billion, from the users of the right-of-way, the gas companies, the electric company, the private water companies, the telephone companies, and the cable companies.

You heard that the manage's amendment takes care of local government and local control. Well, it does not. Local governments must be able to distinguish between different telecommunication providers. The way the manager's amendment is right now, they cannot make that distinction.

For example, if a company plans to run 100 miles of trenching in our streets and wires to all parts of the cities, it imposes a different burden on the right-of-way than a company that just wants to string a wire across two streets to a couple of buildings.

The manager's amendment states that local governments would have to charge the same fee to every company, regardless of how much or how little they use the right-of-way or rip up our streets. Because the contracts have been in place for many years, some as long as 100 years, if our amendment is not adopted, if the Stupak-Barton amendment is not adopted, you will have companies in many areas securing free access to public property. Taxpayers paid for this property, taxpayers paid to maintain this property, and it simply is not fair to ask the taxpayers to continue to subsidize telecommunication companies.

In our free market society, the companies should have to pay a fair and reasonable rate to use public property. It is ironic that one of the first bills we passed in this House was to end unfunded Federal mandates. But this bill, with the management's amendment, mandates that local units of government make public property available to whoever wants it without a fair and reasonable compensation.

The manager's amendment is a $100 billion mandate, an unfunded Federal mandate. Our amendment is supported by the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the National Conference of State Legislatures and the National Governors Association. The Senator from Texas on the Senate side has placed our language exactly as written in the Senate bill.

Say no to unfunded mandates, say no to the idea that Washington knows best. Support the Stupak-Barton amendment.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas [Mr. BARTON], the coauthor of this amendment.

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Chairman, first I want to thank the gentleman from Virginia [Mr. BLILEY], the gentleman from Texas [Mr. FIELDS], and the gentleman from Colorado [Mr. SCHAEFER], for trying to work out an agreement on this amendment. We have been in negotiations right up until this morning, and were very close to an agreement, but we have not quite been able to get there.

I thank the gentleman from Michigan [Mr. STUPAK] for his leadership on this. This is something that the cities want desperately. As Republicans, we should be with our local city mayors, our local city councils, because we are for decentralizing, we are for true Federalism, we are for returning power as close to the people as possible, and that is what the Stupak-Barton amendment does.

It explicitly guarantees that cities and local governments have the right to not only control access within their city limits, but also to set the compensation level for the use of that right-of-way.

It does not let the city governments prohibit entry of telecommunications service providers for pass through or for providing service to their community. This has been strongly endorsed by the League of Cities, the Council of Mayors, the National Association of Counties. In the Senate it has been put into the bill by the junior Republican Senator from Texas [KAY BAILEY HUTCHISON].

The Chairman's amendment has tried to address this problem. It goes part of the way, but not the entire way. The Federal Government has absolutely no business telling State and local government how to price access to their local right-of-way. We should vote for localism and vote against any kind of Federal price controls. We should vote for the Stupak-Barton amendment.

Mr. BLILEY. Mr. Chairman, I yield 1½ minutes to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Chairman, I rise in strong opposition to this Stupak amendment because it is going to allow the local governments to slow down and even derail the movement to real competition in the local telephone

market. The Stupak amendment strikes a critical section of the legislation that was offered to prevent local governments from continuing their longstanding practice of discriminating against new competitors in favor of telephone monopolies.

The bill philosophy on this issue is simple: Cities may charge as much or as little as they wanted in franchise fees. As long as they charge all competitors equal, the amendment eliminates that yet critical requirement.

If the consumers are going to certainly be looked at under this, they are going to suffer, because the cities are going to say to the competitors that come in, we will charge you anything that we wish to.

The manager's amendment already takes care of the legitimate needs of the cities and manages the rights-of-way and the control of these. Therefore, the Stupak amendment is at best redundant. In fact, however, it goes far beyond the legitimate needs of the cities.

Last night, just last night, we had talked about this in the author's amendment and we thought we worked out a deal, and we tried to work out a deal. All of a sudden I find that the gentleman, the author of the amendment, reneged on that particular deal, and now all of a sudden is saying well, we want 8 percent of the gross, the gross, of the people who are coming in. This is a ridiculous amendment. It should not be allowed, and we should vote against it.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS], the chairman of the subcommittee.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Chairman, thanks to an amendment offered last year by the gentleman from Colorado [Mr. SCHAEFER], and adopted by the committee, the bill today requires local governments that choose to impose franchise fees to do so in a fair and equal way to tell all communication providers. We did this in response to mayors and other local officials.

The so-called Schaefer amendment, which the Stupak amendment seeks to change, does not affect the authority of local governments to manage public rights-of-way or collect fees for such usage. The Schaefer amendment is necessary to overcome historically based discrimination against new providers.

In many cities, the incumbent telephone company pays nothing, only because they hold a century-old charter, one which may even predate the incorporation of the city itself. In many cases, cities have made no effort to correct this unfairness.

If local governments continue to discriminate in the imposition of franchise fees, they threaten to Balkanize the development of our national telecommunication infrastructure.

For example, in one city, new competitors are assessed up to 11 percent of gross revenues as a condition for doing business there. When a percentage of revenue fee is imposed by a city on a telecommunication provider for use of rights-of-way, that fee becomes a cost of doing business for that provider, and, if you will, the cost of a ticket to enter the market. That is anticompetitive.

The cities argue that control of their rights-of-way are at stake, but what does control of right-of-way have to do with assessing a fee of 11 percent of gross revenue? Absolutely nothing.

Such large gross revenue assessments bear no relation to the cost of using a right-of-way and clearly are arbitrary. It seems clear that the cities are really looking for new sources of revenue, and not merely compensation for right-of-way.

We should follow the example of States like Texas that have already moved ahead and now require cities like Dallas to treat all local telecommunications equally. We must defeat the Barton-Stupak amendment.

Mr. STUPAK. Mr. Chairman, I yield such time as she may consume to the gentlewoman from California [Ms. PELOSI].

(Ms. PELOSI asked and was given permission to revise and extend her remarks.)

Ms. PELOSI. Mr. Chairman, I rise in strong support of the Stupak-Barton amendment, which is a vote for local control over zoning in our communities.

Mr. STUPAK. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Chairman, I rise in support of Stupak-Barton, that would ensure cities and counties obtain appropriate authority to manage local right-of-way.

Mr. STUPAK. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. CONYERS].

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I congratulate my colleague from Michigan [Mr. STUPAK] on this very important amendment.

Mr. STUPAK. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we have heard a lot from the other side about gross revenues. You are right. The other side is trying to tell us what is best for our local units of government. Let local units of government decide this issue. Washington does not know everything. You have always said Washington should keep their nose out of it. You have been for control. This is a local control amendment, supported by mayors, State legislatures, counties, Governors. Vote yes on the Stupak-Barton amendment.

Mr. BLILEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, first of all, let me say that I was a former mayor and a city councilman. I served as president of the Virginia Municipal League, and I served on the board of directors of the National League of Cities. I know you have all heard from your mayors, you have heard from your councils, and they want this. But I want you to know what you are doing.

If you vote for this, you are voting for a tax increase on your cable users, because that is exactly what it is. I commend the gentleman from Texas [Mr. BARTON], I commend the gentleman from Michigan [Mr. STUPAK] who worked tirelessly to try to negotiate an agreement.

The cities came back and said 10 percent gross receipts tax. Finally they made a big concession, 8 percent gross receipts tax. What we say is charge what you will, but do not discriminate. If you charge the cable company 8 percent, charge the phone company 8 percent, but do not discriminate. That is what they do here, and that is wrong.

I would hope that Members would defeat the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time on this amendment has expired.

The question is on the amendment offered by the gentleman from Michigan [Mr. STUPAK].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. BLILEY. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the rule, further proceedings on the amendment offered by the gentleman from Michigan [Mr. STUPAK] will be postponed until after the vote on amendment 2–4 to be offered by the gentleman from Massachusetts [Mr. MARKEY].

It is now in order to consider amendment No. 2–2 offered by the gentleman from Michigan [Mr. CONYERS].

PARLIAMENTARY INQUIRY

Mr. NADLER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. NADLER. Mr. Chairman, can the Chair simply state if it plans to roll other votes? Some of us were waiting around for this vote.

The CHAIRMAN. It is the intention of the Chair to roll the next two votes on the next two amendments, 2–2 and 2–3, until after a vote on 2–4. We will debate the first Markey amendment.

Mr. NADLER. Could the Chair use names, please?

The CHAIRMAN. We will roll the next two amendments, the Conyers and Cox-Wyden amendments, until after the vote on the first Markey amendment.

AMENDMENT 2–2 AS MODIFIED OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer a modified amendment.

The Clerk read as follows:

Amendment as modified offered by Mr. CONYERS: Page 26, strike line 6 and insert the following:

''(c) COMMISSION AND ATTORNEY GENERAL REVIEW.—

Page 26, lines 8 and 10, page 27, lines 6 and 9, strike ''Commission'' and insert ''Commission and Attorney General''.

Page 27, lines 4 and 12, insert ''COMMISSION'' before ''DECISION''.

Page 27, after line 21, insert the following new paragraph:

''(5) ATTORNEY GENERAL DECISION.—

''(A) PUBLICATION.—Not later than 10 days after receiving a verification under this section, the Attorney General shall publish the verification in the Federal Register.

''(B) AVAILABILITY OF INFORMATION.—The Attorney General shall make available to the public all information (excluding trade secrets and privileged or confidential commercial or financial information) submitted by the Bell operating company in connection with the verification.

''(C) COMMENT PERIOD.—Not later than 45 days after a verification is published under subparagraph (A), interested persons may submit written comments to the Attorney General, regarding the verification. Submitted comments shall be available to the public.

''(D) DETERMINATION.—After the time for comment under subparagraph (C) has expired, but not later than 90 days after receiving a verification under this subsection, the Attorney General shall issue a written determination, with respect to approving the verification with respect to the authorization for which the Bell operating company has applied. If the Attorney General fails to issue such determination in the 90-day period beginning on the date the Attorney General receives such verification, the Attorney General shall be deemed to have issued a determination approving such verification on the last day of such period.

''(E) STANDARD FOR DECISION.—The Attorney General shall approve such verification unless the Attorney General finds there is a dangerous probability that such company or its affiliates would successfully use market power to substantially impede competition in the market such company seeks to enter.

''(F) PUBLICATION.—Not later than 10 days after issuing a determination under subparagraph (E), the Attorney General shall publish a brief description of the determination in the Federal Register.

''(G) FINALITY.—A determination made under subparagraph (E) shall be final unless a petition with respect to such determination is timely filed under subparagraph (H).

''(H) JUDICIAL REVIEW.—

''(i) FILING OF PETITION.—Not later than 30 days after a determination by the Attorney General is published under subparagraph (F), the Bell operating company that submitted the verification, or any person who would be injured in its business or property as a result of the determination regarding such company's engaging in provision of interLATA services, may file a petition for judicial review of the determination in the United States Court of Appeals for the District of Columbia Circuit. The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review determinations made under this paragraph.

''(ii) CERTIFICATION OF RECORD.—As part of the answer to the petition, the Attorney General shall file in such court a certified copy of the record upon which the determination is based.

''(iii) CONSOLIDATION OF PETITIONS.—The court shall consolidate for judicial review all petitions filed under this subparagraph with respect to the verification.

''(iv) JUDGMENT.—The court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United States Code. The determination required by subparagraph (E) shall be affirmed by the court only if the court finds that the record certified pursuant to clause (ii) provides substantial evidence for that determination.''

Page 29, line 8, insert ''and the Attorney General's'' after ''the Commission's''.

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

□ 0930

The CHAIRMAN. Under the rule, the gentleman from Michigan [Mr. CONYERS] will be recognized for 15 minutes, and a Member in opposition to the amendment is recognized for 15 minutes.

Mr. BLILEY. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Virginia [Mr. BLILEY] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I yield myself 3 minutes.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I began this discussion on an amendment to reinstate the Department of Justice's traditional review role when considering Bell entry into new lines of business by congratulating the chairman of the full committee, the gentleman from Illinois [Mr. HYDE]. In the committee bill that the Committee on the Judiciary reported, we were able to come together and bring forward an amendment exactly like the one that is now being brought forward.

I appreciate the chairman's role in this matter.

The amendment is identical to the test approved by the Committee on the Judiciary, as I have said earlier this year, on a bipartisan basis. Everyone on the committee, with the exception of one vote, supported our amendment. It was named the Hyde-Conyers amendment. It received wide support, and I hope we continue to do that.

It provides simply that the Justice Department disapprove any Bell request to enter long-distance business as long as there is a dangerous probability that such entry will substantially impede competition.

Point No. 1: This amendment on the Department of Justice role is more modest than the same provision for a Department of Justice role in the Brooks-Dingell bill that passed the House on suspension by 430 to 5 last year. So, my colleagues, we are not starting new ground. This is not anything different. It has received wide scrutiny and wide support. It is a matter that should not be in contention and should never have been omitted from either bill and certainly not the manager's amendment.

The Justice Department is the principal Government agency responsible for antitrust enforcement. Please understand that the 1984 consent decree has given the Department of Justice decades of expertise in telecommunications issues. By contrast, the FCC has no antitrust background whatsoever.

Remember, we are taking the court completely out of the picture. So what we have is no more court reviews or waivers. We have a total deregulation of the business. Unless we put this amendment in, we will not have a modest antitrust responsibility in this huge, complex circumstance.

Given this state of facts, it makes unquestionable sense to allow the antitrust division to continue to safeguard competition and preserve jobs. For the last 10 years the Justice Department has done an excellent job in keeping local prices, which have gone up, and long-distance rates, which have gone down.

The amendment I'm offering will reinstate the Department of Justice's traditional review role when considering Bell entry into new lines of business. The amendment is identical to the test approved by the Judiciary Committee earlier this year on a bipartisan 29 to 1 basis. It provides that the Justice Department must disapprove a Bell request to enter the long-distance business so long as there is a dangerous probability that such entry will substantially impede competition.

This should not even be a point of contention. The Justice Department is the principal Government agency responsible for antitrust enforcement. Its role in the 1984 AT&T consent decree has given it decades of expertise in telecommunications issues. The FCC by contrast has no antitrust background whatsoever. Many in this body have slated the FCC for extinction or significant downsizing.

Given this state of facts it makes unquestionable sense to allow the Antitrust Division to continue to safeguard competition and preserve jobs. For the last 10 years the Justice Department has been given an independent role in reviewing Bell entry into new lines of business, and the result has been a 70-percent reduction in long-distance prices and an explosion in innovation.

At a time when the Bells continue to control 99 percent of the local exchange market, I, for one, think we should have the Antitrust Division continue in this role. Don't be fooled by the FCC checklist—the Bells could meet every single item on that list and still maintain monopoly control of the local exchange market.

Last Congress this body approved—by an overwhelming 430 to 5 vote—a bill which provided the Justice Department with a far stronger review than my amendment does. It's no secret that I would have preferred to see this same review role given to the Justice Department this Congress. However, in the spirit of bipartisan compromise I agreed to a more lenient review role with Chairman HYDE when the Judiciary Committee considered telecommunications legislation. I was shocked when this very reasonable compromise test

was completely ignored when the two committees sought to reconcile their legislation.

Finally, I would note that the amendment has been revised to clarify that any determinations made by the Attorney General are fully subject to judicial review. It was never my intent to deny the Bells or any other party the right to appeal any adverse determination, so to accomplish this purpose I have borrowed the precise language from the Judiciary bill.

I urge the Members to vote for this amendment which gives a real role to the Justice Department and goes a long way toward safeguarding a truly competitive telecommunications marketplace. In an industry that represents 15 percent of our economy, we owe it to our constituents to do everything possible to make sure we do not return to the days of monopoly abuses.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself 1 minute.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Chairman, I rise in strong opposition to the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The core principle behind H.R. 1555 is that Congress and not the Federal court judge should set telecommunications policy. This is one of the few issues that seems to have universal agreement, that Congress should reassert its proper role in setting national communications policy.

My colleagues, last November the citizens of this country said, loud and clear, we want less Government, less regulation. Getting a decision out of two Federal agencies is certainly a lot harder than getting it out of one. For that reason alone, this amendment ought to be defeated.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT], a member of the committee.

(Mr. BRYANT of Texas asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Chairman, the gentleman from Michigan [Mr. CONYERS] made a very important point a moment ago when he pointed out that last year when we passed the bill by an enormous margin, we had a stronger Justice Department provision in the bill than we do, than even the Conyers amendment today would be.

The House has adopted the manager's amendment over our strong objections, but for goodness sakes consider the fact that, while the gentleman from Virginia [Mr. BLILEY] makes the point that we have decided that Congress shall make the decision with regard to communications law rather than the courts, Congress cannot make the decisions with regard to every single case out there.

As is the case throughout antitrust law, all we are saying with the Conyers amendment is that the Justice Department ought to be able to render a judgment on whether or not entry into this line of business by one of the Bell companies is going to impede competition rather than advance it.

Now, what motive would the Justice Department have to do anything other than their best in this matter? They have done a fine job in this area now for many, many years. The Conyers amendment would just come along and say, we are going to continue to have them exercise some judgment.

What we had in the bill before was that when there is no dangerous probability that a company who is trying to enter one of these lines of business or its affiliates would successfully use its market power and the Bell companies have enormous market power, to substantially impede competition, and the Attorney General finds that to be the case, there will be no problem with going forward.

When they find otherwise, there will be a problem with going forward, and we want there to be a problem with going forward. For goodness sakes, we know that the developments with regard to competition in the last 12 years are a result of a court, a sanction agreement, supervised by a judge. I do not know that that is the best process, but the fact of the matter is we allowed competition where it did not exist before.

Why would we now come along and take steps that would move us in the direction of impeding competition or essentially impeding competition? Give the Justice Department the right to look at it as they look at so many other antitrust matters. The President has asked for it. I think clearly we asked for it a year ago.

Let us keep with that principle.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, there are three things wrong with this amendment. The first is the agency which will be administering it, the Justice Department. The Justice Department is in good part responsible for the unfair situation which this country confronts in telecommunications. The Justice Department and a gaggle of AT&T lawyers have been administering pricing and all other matters relative to telecommunications by both the Baby Bells and by AT&T. So if there are things that are wrong now, it is Justice which has presided.

The second reason is that if we add the Justice Department to a sound and sensible regulatory system, it will create a set of circumstances under which it will become totally impossible to have expeditious and speedy decisions of matters of importance and concern to the American people.

The decisions that need to be made to move our telecommunications policy forward can simply not be made where you have a two-headed hydra trying to address the telecommunications problems of this country.

Now, the third reason: I want Members to take a careful look at the graph I have before me. It has been said that a B–52 is a group of airplane parts flying in very close formation. The amendment now before us would set up a B–52 of regulation. If Members look, they will find that those in the most limited income bracket will face a rate structure which is accurately represented here. It shows how long-distance prices have moved for people who are not able to qualify for some of the special goody-goody plans, not the people in the more upper income brackets who qualify for receiving special treatment.

This shows how AT&T, Sprint and MCI rates have flown together. They have flown as closely together as do the parts of a B–52. Note when AT&T goes down, Sprint and MCI go down. When MCI or AT&T go up, the other companies all go up. They fly so closely together that you cannot discern any difference.

This will tell anyone who studies rates and competition that there is no competition in the long distance market. What is causing the vast objection from AT&T, MCI and Sprint is the fact that they want to continue this cozy undertaking without any competition from the Baby Bells or from anybody else.

If Members want competition, the way to get it is to vote against the Conyers amendment. If you do not want it and you want this kind of outrage continuing, then I urge you to vote for the amendment offered by the gentleman from Michigan [Mr. CONYERS] who is my good friend.

Mr. CONYERS. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, I say to my very dear colleague and the dean of the Michigan delegation, that ain't what he said when the Brooks-Dingell bill came up only last year, and he had a tougher provision with the Department of Justice handling this important matter.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BERMAN], a very able member of the Committee on the Judiciary.

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Everything that my friend from Michigan [Mr. DINGELL] said about the question of competition can be assumed to be true, and none of it would cause Members to vote against the Conyers amendment. Because I do not think we should put artificial restrictions on the ability of the Bell companies to go into long distance, I supported the manager's amendment because it got rid of a test that made it virtually impossible for them to ever enter that competition.

Now the only question is whether the Justice Department, that had the foresight starting under Gerald Ford, finishing under Ronald Reagan, to break

up the Bell monopolies, should be allowed to have a meaningful role, a role defined by a test which is so restrictive that it says, unless, unless the burden supports, the assumption is with the Bell companies. It says unless the Attorney General finds that there is a dangerous probability that such company or its affiliates would successfully use market power to substantially impede competition in the market such company seeks to enter, it is an extremely rigorous test that must be met to stop them from entering the market. But it gives the division that has been historically empowered to decide whether there is anticompetitive practices a role in deciding whether or not that entry will impede competition.

This place voted last year by an overwhelming vote for a test that was far more rigorous, a test that said that they could not enter unless we found there was no substantial possibility that they could use monopoly power to impede competition. Do not overreach, the proponents of Bell entry into long distance, do not over reach. Do not shut the Justice Department out from an historic role that they have had, that they should have, to look at whether or not there is a high probability that they will cause, they will exercise monopoly power.

Support the Conyers amendment.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. HYDE], the chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I want to congratulate the gentleman from Michigan for reviving the judiciary bill which did pass our committee 29 to 1, because it does go a long way toward establishing or reestablishing a principle that I believe in; namely, that antitrust laws should be reviewed and administered by that department of government specifically designed to do that, and that is the Department of Justice.

□ 0945

When a Baby Bell enters into manufacturing or into long distance, antitrust questions are brought into play. The Department of Justice, it seems to me, is the appropriate agency to oversee that transition and analyze the competitive implications.

Once the bills are in these new lines of business and operating, it becomes a regulatory proposition and then oversight by the Federal Communications Commission is appropriate.

Mr. Chairman, what the gentleman from Michigan [Mr. CONYERS] has done is to propose a more meaningful role for the Department of Justice, which is what the Judiciary Committee wanted to do. But the problem is, that DOJ comes in at the tail end of the regulatory process. It becomes a double hurdle for a Baby Bell trying to get into manufacturing or long distance. It is not the same quick, clean expedited process that we had in our legislation (H.R. 1528).

So, it adds additional hurdles for a company, a Bell company seeking to get into manufacturing or long distance. It will add considerably to the amount of time that is consumed. A Bell company can make all of the right moves and do everything it wants, and then at the end of the process be shot down by the Department of Justice.

Mr. Chairman, I had proposed and preferred a dual-track, dual-agency situation where options could be chosen by the Bells to get into these new businesses, but that is not to be.

Having said what I have just said, I do approve and appreciate the fact that a more expansive role is proposed to the Department of Justice in dealing with these important antitrust issues. After all, it is an antitrust decree that we are modifying, the modified final judgment.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from Colorado [Mrs. SCHROEDER], ranking minority member of the Committee on the Judiciary.

Mrs. SCHROEDER. Mr. Chairman, I rise in strong support of the amendment of the gentleman from Michigan [Mr. CONYERS]. What we are doing here is we are getting ready to unleash these huge, huge economic forces. They are huge.

The Justice Department, I wish it were much stronger, to be perfectly honest. Last year, the bill that people voted for had this type of language in it. It is an independent agency. It is not the FCC.

Mr. Chairman, it seems to me that if we are getting ready to unleash these huge forces on the American consumer, we ought to want some watchdog, some watchdog out there someplace.

Granted, we want competition, but what we may end up with is one guy owning everything. If my colleagues want the Justice Department for heaven's sakes, vote ''yes.''

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS].

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Chairman, the most difficult issue in this bill has been how the local loop is opened to competition. No question, that is where the focus of the controversy has been. It is a delicate question.

Mr. Chairman, what we have attempted to do is to open this in a sensible and fair way to all competitors. Consequently, we created a checklist on how that loop is opened. We have the involvement of the State public utility commissions in every State in that particular question. We have reviews by the Federal Communications Commission that the loop is open. Consequently, there is no need to give the Department of Justice a role in the opening of that loop.

We have worked with our good friends on the Committee on the Judiciary coming up with a consultative role for the Justice Department. It was never envisioned by Judge Greene in the modified final judgment that Justice would have a permanent role and this is the time we made the break. This is the time we move this telecommunications industry into the 21st century.

Mr. Chairman, a sixth of our economy is involved in this particular industry. Central to opening up telecommunications to competition is to open the loop correctly and as quickly as possible, because in opening the loop and creating competition, we have more services, we have newer technologies, and we have these at lower costs to the consumer. That is a desired result and that is something that we have worked for this particular bill.

Mr. Chairman, that is why we have spent so much time on how this loop is opened and there is no need for Justice to have an expanded role.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from New Mexico [Mr. SCHIFF], a member of the Committee on the Judiciary from the other side of the aisle.

Mr. SCHIFF. Mr. Chairman, I want to make it clear, first, that I agree completely with the direction of the bill. I voted in favor of the manager's amendment of the gentleman from Virginia [Mr. BLILEY], because I think we want to go from the courts, the Congress, and ultimately get Congress out of this and let companies compete.

Mr. Chairman, I think the future is one of companies that compete in different areas simultaneously. Each company will offer telephone services, entertainment services, and so forth. But we must remember that this whole matter has arised from an antitrust situation. Even though we want all companies, including the regional Bells, to participate in all aspects of business enterprise, the fact of the matter is that there is still basically a control of the local telephone market.

For that reason, Mr. Chairman, for a period of time, the Department of Justice should have a specific identifiable role in this bill. That is why I urge my fellow Members of the House to support the Conyers amendment.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. HASTINGS].

Mr. HASTINGS of Florida. Mr. Chairman, I am not a member of the Committee on the Judiciary, but I am interested in its findings.

Mr. Chairman, H.R. 1555 assigns to the FCC the regulatory functions to ensure that the Bell companies have complied with all of the conditions that we have imposed on their entry into long distance. This bill requires the Bell companies to interconnect with their competitors and to provide them the features, functions and capabilities of the Bell companies' networks that the new entrants need to compete.

The bill also contains other checks and balances to ensure that competition occurs in local and long distance growth. The Justice Department still has the role that was granted to it under the Sherman and Clayton Acts, and other antitrust laws. Their role is to enforce the antitrust laws and ensure that all companies comply with the requirements of the bill.

The Department of Justice enforces the antitrust laws of this country. It is a role that they have performed well. The Department of Justice is not, and should not be, a regulating agency. It is an enforcement agency.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BECERRA], a very able member of the Committee on the Judiciary.

(Mr. BECERRA asked and was given permission to revise and extend his remarks.)

Mr. BECERRA. Mr. Chairman, let us not forget that the Ma Bell operating company, AT&T was broken up because the company used its control of local telephone companies to frustrate long-distance competition. It was the Justice Department that pursued the case against AT&T, through Republican and Democratic administrations, to stop those abuses.

Mr. Chairman, the standard that is in the Conyers amendment, which is the standard adopted and passed by the Committee on the Judiciary, Republican and Democrats, except for 1 member voting for it, is the standard that we are trying to get included now. It is a standard that is softer than the standard that was passed by 430 to 5 last year by this same House.

It is a standard that is softened for the regional operating companies to be able to pursue and it is a very rigorous standard that the Justice Department must meet in order to be able to stop a local company from coming in.

Mr. Chairman, let us not forget that the Republican Congress is trying to eliminate the FCC, and now they are asking the FCC to be the watchdog for consumers in this area. We should have a safety net for consumers and ratepayers.

Vote for the Conyers amendment.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Roanoke, VA [Mr. GOODLATTE], a member of the Committee on the Judiciary.

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Mr. Chairman, I rise in strong opposition to the Conyers amendment.

Mr. Chairman, when Congress acts to end the current judicial consent decree management of the telecommunications industry, the Department of Justice should not simply take over. H.R. 1555 preserves all of the Department of Justice's antitrust powers. I agree with the chairman of my committee that when there are antitrust violations, the Department of Justice should step in.

Mr. Chairman, the Conyers amendment would dramatically increase the Department's statutory authority to regulate the telecommunications industry, a role for which the Department of Justice was never intended.

Currently, the Federal Communications Commission and the public service commissions in all 50 States and the District of Columbia regulate the telecommunications industry to protect consumers.

This combination of Federal and State regulatory oversight is effective and will continue unabated under both the House and the Senate legislation. There is no reason why two Federal entities, the Federal Communications Commission and the Department of Justice, should have independent authority in this area once Congress has set a clear policy.

The Department of Justice seeks to assume for itself the role currently performed by Judge Greene. The Department, in effect, wants to keep on doing things the way they are, but they are going to replace Judge Greene with themselves.

Mr. Chairman, I voted for the separate standard for the Department of Justice in the Committee on the Judiciary, but that was presuming, as the chairman of the committee informed us, it would be the sole separate standard. Now, they are seeking to impose that standard on top of the authority provided to the Federal Communications Commission in the bill.

All of the tests, one after the other, that the FCC will require, will have to be met and then a dual review will be imposed where the Department of Justice will step in at the end.

Mr. Chairman, I urge opposition to the amendment and support for the bill.

Mr. Chairman, I include the following for the RECORD.

STATEMENT OF REPRESENTATIVE GOODLATTE ON H.R. 1555, AUGUST 2, 1995

Mr. Chairman, I rise in support of H.R. 1555.

Mr. Chairman, I want to thank Chairmen HYDE, BLILEY and FIELDS for their able leadership in bringing this important legislation to the House floor. The American people will benefit from the increased availability of communications services, increased number of jobs, and a strengthened global competitiveness from this bill.

Throughout the debate on this legislation, I have aimed at bringing these benefits to Americans as soon as possible. I continue to believe that this goal can best be achieved by lifting all government-imposed entry restrictions in all telecommunications markets at the same time. Whether they are State laws that pervent cable companies or long distance companies from competing in the local exchange or the AT&T consent decree that prevents the Bell companies from competing in the long distance market, these artificial government-imposed restraints all inhibit the development of real competition.

Under this legislation, State laws that today prevent local competition will be lifted. Upon enactment, the local telephone exchange will be legally opened for any competitor to enter.

But the bill does not stop here and merely trust to fate. It goes further. It requires the Bell companies and other local exchange carriers such as GTE and Sprint-United to unbundle their networks and to resell to competitors the unbundled elements, features, functions, and capabilities that those new entrants need to compete in the local market. It also requires State commissions and the FCC to verify that the local carriers meet these obligations.

It gives new entrants the incentive to build their own local facilities-based networks, rather than simply repackaging and reselling the local services of the local telephone company. This is important if the information superhighway is to be truly competitive.

The bill also contains cross checks to ensure either that facilities-based competition is present in the local exchange or that the Bell companies have done all that the bill requires of them before they will be permitted to offer interLATA services and to manufacture. This is a strong incentive for them to comply with the requirements of this legislation.

It will take time for the Bell companies to satisfy all of the conditions in the bill. This built-in delay will provide the long distance and cable companies a head start into the local exchange.

The bill recognizes that there are several significant problems with such a government-mandated head start. And, it deals with those issues. While the bill does not create the simultaneity of entry that the Bell companies have requested, it also does not impose the artificial delay sought by the long distance companies.

This bill achieves a sound public policy. First, it gets the conditions right. Second, it requires verification that the conditions have been met. Third, it assures that they have begun to work. Then, fourth, it lets full competition flourish by lifting the remaining restrictions on the Bell companies.

You don't have to take my word on the soundness of this approach. None other than the Department of Justice advocated it 8 years ago.

As a member of the Judiciary Committee, I have been following this particular matter for several years. In 1987 the Department filed its first and only Triennial Review with the Decree Court. It recommended that if a Bell company shows that an area in its region is free of regulatory barriers to competition, then the interLATA restrictions should be lifted, even if—the Department noted—a residual core of local exchange services remains a natural monopoly at that time. That is, when there are no restrictions on either facilities-based intraLATA competition or on resale of Bell company services, interLATA relief should be granted.

The Department acknowledged that, with the removal of entry barriers and the requirement for resale of local exchange services, a majority of customers would likely stay with local exchange carriers and some areas of local exchange might remain natural monopolies. Nevertheless, it believed that the potential for discrimination would be significantly reduced because of (1) increased alternatives, especially for higher volume customers, and (2) increased need for Bell companies to interconnect with private networks.

Bell companies, according to the Department, immediately would be subject to substantial competitive pressures. The threat or possibility of competition would be sufficient that the residual risk posed by the Bell companies could be contained effectively through regulatory controls, according to the DOJ.

Noting that competition will reduce intraLATA toll and private line rates, the Department correctly concluded that only basic local exchange service and residential

exchange access would remain as services capable of being inflated to cover misallocated costs of competitive activities. Indeed, intraLATA toll competition has been and is allowed in virtually every state and has already significantly eroded the Bell companies' market share of these services. Moreover, competition in the exchange access market also has grown significantly as the successes of companies like Teleport and MFS attest.

And, some very powerful and well-financed companies have targeted the local telephone market for competition. Companies like MCI are investing in local networks. So are cable companies that already have strong local presences. Significantly, AT&T has spent billions to move back into local telephony through its acquisition of McCraw Cellular and its success in bidding on PCS licenses.

As the Department prognosticated, this leaves only local services as a potential source of subsidy. However, as it also correctly recognized, basic local exchange and residential services are a very unlikely source of subsidy.

Those rates have been and are currently subsidized by other rates (i.e., residential rates are below costs and therefore cannot subsidize other services). And, they are beyond the unilateral power of the Bell companies to raise.

State regulators have clearly demonstrated over the years that they are unwilling to let basic residential charge rise. It is important to note that this bill preserves the State's ability to prevent the Bell companies from raising local exchange rates.

The bill also prevents interconnection rates from being the source of subsidy as it requires those rates to be just and reasonable before the Bell companies get intraLATA relief. It eliminates the Bell companies' ability to use their local exchange networks in a discriminatory fashion to impede their competitors.

This legislation achieves the conditions that DOJ set forth eight years ago, and in my view goes even further by requiring regulatory verifications before the Bell companies are actually relieved of the intraLATA restriction. First, upon enactment, it lifts all state and local laws that have previously barred cable and long distance companies from competing in the local exchange services market. In other words, it will ensure that there are no legal barriers to facilities-based competition.

Second, it not only requires the Bell companies to resell their local services, but it also identifies the elements, features, functions and capabilities that the Bell companies and other local exchange carriers will have to unbundle for their competitors. Although AT&T was required to resell its long distance services to its competitors in order to spur long distance competition, it was not required to make new services for its competitors through unbundling. Moreover, the bill's requirements on unbundling and resale are far more detailed and precise and therefore more enforceable by the commission, courts and competitors than the Department's general resale condition.

In the final analysis, Mr. Chairman, I support this bill because it strikes a balance that will bring competition in cable and telephony to the American people. It may not come as soon as some want or, indeed, as soon as I want, but it won't be delayed as long as others desire.

I am comforted as well that I do not have to take all of this on blind faith. I believe that the FCC and the State commissions will make sure the competition rolls out quickly and fairly and that local rate payers will not foot the bill. I am also sure that the Department of Justice is fully capable under this legislation of not only monitoring these developments but of playing an active role in the continued enforcement of the antitrust laws to shape the most robustly competitive telecommunications market in the world.

The American people deserve nothing less. We should not disappoint them. We should delay no further.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from California [Ms. LOFGREN], a member of the Committee on the Judiciary.

Ms. LOFGREN. Mr. Chairman, like many of my colleagues, I have heard from Baby Bells, long-distance carriers, until I am really tired of hearing from them. What I have done is call Silicon Valley, who basically does not care about the Bells or the long-distance carriers. They do care about competition.

Mr. Chairman, the advice I have gotten is that there should be a little role for the Department of Justice. I realize that there are some on the Democratic side of the aisle, including the White House, who feel that this measure is way too weak; that we should have a much bigger role. Honestly I disagree with them.

Mr. Chairman, I think the gentleman from Illinois [Mr. HYDE] and the gentleman from Michigan [Mr. CONYERS] got it exactly right. A very high threshold, a 180-day turnaround, and a break in case things do not turn out the way we hope.

Mr. Chairman, I urge support of the amendment.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. TAUZIN], a member of the Committee on Commerce.

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Chairman, I have with me a small chart that shows the result of judge-made law when it comes to telecommunications. What we just debated on the manager's amendment was to end the system of the LATA lines, the lines on the map drawn by the judge regulating communications policy in America.

Mr. Chairman, this is one of those LATA lines, a line of restriction of competition. This line runs through Louisiana, through one of my parishes in Louisiana, separating the town of Hornbeck and Leesville.

Mr. Chairman, they are in the same parish. The school board in that parish, in order to communicate from one office to the other, has to buy a line that runs from Shreveport to Lafayette back to Leesville at a cost per year of $43,000 more than they would have to pay if they could simply call 16 miles across these two communities.

Mr. Chairman, the court-ordered line has cost that school board $43,000. This is the kind of court-made law we avoid in this bill. Let us not give it back to the Justice Department. Let us write communications law in this Chamber.

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Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Chairman, I would really like to thank the gentleman from Illinois [Mr. HYDE] and the gentleman from Michigan [Mr. CONYERS] for their leadership and for their bipartisan approach to this amendment. I think that we should not be looking at the long-distance providers on one side and the regional Bells on the other side.

Really, what the input of the Committee on the Judiciary in this amendment is, is to simply go right down the middle in dealing with competition, by enhancing the opportunity for competition. In fact, unlike my colleagues who have opposed it, this is not a override. This equates to the Department of Justice and the FCC working together and complementing each other.

Mr. Chairman, what it says is, there will not be a limitation, there will not be a prohibition of the Antitrust Division of the DOJ from reviewing for acts that impede competition. The FCC and DOJ will work together, and the dual responsibility will not hinder the other. The DOJ will not delay the regional Bell's entry into other markets, for there is a time frame in which they must respond; and the courts are not there to inhibit, but are there to give the opportunity for any judicial review that either party to access. This is a fair amendment.

I believe that we must get away from who said what in this debate, and focus on competition for the consumers. Let us make this a better bill and support this amendment, Mr. Chairman.

I must rise in support of a strong role of the Justice Department to help ensure that the telecommunications industry is truly competitive. The telecommunications industry is a critically important industry as we enter the 21st century. The Conyers amendment provides a reasonable role for the Justice Department to determine whether competition exists in the telecommunications markets. The Justice Department, through its Anti-trust Division, has considerable experience in carrying out this important function. The Justice Department needs and deserves more than a consultative role that is envisioned in the manager's amendment to H.R. 1555.

The standard of review proposed in this amendment is a medium standard that allows the Justice Department to prohibit local telephone companies from entering long-distance services or manufacturing equipment if ''there is a dangerous probability that the Bell company or its affiliates would successfully use market power to substantially impede competition'' in the market. The amendment also provides the right to judicial review. This standard was overwhelmingly approved in the

House Judiciary Committee by a vote of 29 to 1. Let us ensure competition by supporting this amendment. The Conyers amendment will help the regional Bells, the long-distance providers, and most of all, our consuming public.

Mr. BLILEY. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. WATERS], who has followed this matter with great interest.

Ms. WATERS. Mr. Chairman, I rise in support of the Conyers amendment. Just once this year, we should do something that protects consumers; this amendment would accomplish that purpose.

Mr. Chairman, we are entering a brave new world in telecommunications law. In theory, the deregulatory provisions contained in this legislation will unleash a new era of competition between local and long-distance carriers, as well as between the telecommunications and cable industries.

However, free market competition is predicated on nonmonopolistic power relationships between competing firms. The Conyers amendment would ensure that local telephone companies would not impede competition through monopoly behavior.

The Conyers compromise language would perfect language currently in the bill. It would preserve the Justice Department's traditional role as the primary enforcer of antitrust statutes. It would do so alongside, not in conflict with, the regulatory responsibilities of the FCC.

Mr. Chairman, this bill is an experiment. No one knows for sure what the outcome will be as we enter the 21st century telecommunications world. I ask for an ''aye'' vote.

Mr. CONYERS. Mr. Chairman, I yield 45 seconds to the gentleman from New York [Mr. FLAKE].

Mr. FLAKE. Mr. Chairman, I thank the gentleman and rise in support of the Conyers amendment.

This amendment will protect consumers of the long-distance market from potential anticompetitive conduct by Bell companies which currently monopolize local telephone service, but without the consuming bureaucratic requirements unfairly tying up the Bell companies. An active Department of Justice role will not delay a Bell entry into the market because the Justice Department would be required to reach its decision within 3 months.

Because the Conyers amendment is a balanced amendment designed to protect America's consumers from the dangers of anticompetitive conduct, Mr. Chairman, I urge my colleagues to vote ''yes'' on the Conyers amendment. It is in the best interest of the consumer.

Mr. CONYERS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Ohio [Ms. KAPTUR].

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Chairman, I rise in strong support of the Conyers amendment to referee the gigantic money interests who have their hands in the pockets of the American people.

There has been enough money spent on lobbying this bill to sink a battleship.

I wish to insert in the RECORD a partial list of what over $40 million in lobbying contributions has bought. I leave it to the American people to make their own judgments. This bill is living proof of what unlimited money can do to buy influence and the Congress of the United States.

POLITICAL CONTRIBUTIONS BY REGIONAL BELL OPERATING COMPANIES [RBOC] HARD MONEY PAC CONTRIBUTIONS TO MEMBERS OF CONGRESS YEAR TO DATE 1995 [1]

	Democrats	Republicans
Ameritech	38,950	113,588
Bell Atlantic	2,100	12,466
Pacific Telesis	10,500	27,949
Southwestern Bell	29,600	48,200
Partial total YTD	78,150	202,203

[1] Several of the RBOC's have chosen to report their contributions less frequently than once a month, as the law allows. Figures are not available for Bellsouth, NYNEX, or U.S. West.

POLITICAL CONTRIBUTIONS BY REGIONAL BELL OPERATING COMPANIES [RBOC] SOFT MONEY FIRST QUARTER 1995

Name	Democratic	Republican
Ameritech	250	0
Bell Atlantic	3,000	25,000
BellSouth	0	15,000
Nynex	20,000	25,000
Southwestern Bell	0	0
Pacific Telesis	250	22,000
US West	0	15,000
Total	23,500	122,000

[Excerpts from Common Cause newsletter, June 5, 1995]

''ROBBER BARONS OF THE '90s''

Telecommunications industries, which stand to gain billions of dollars from the congressional overhaul of telecommunications policy, have used $39,557,588 in political contributions during the past decade to aid their fight for less regulation and greater profits, according to a Common Cause study released today.

The four major telecommunications industries involved in this legislative battle—local telephone services, long distance service providers, broadcasters and cable interests—contributed $30.9 million in political action committee (PAC) funds to congressional candidates, and $8.6 million in soft money to Democratic and Republican national party committees, during the period January 1985 through December 1994, the Common Cause study found.

Top telecommunications industry PAC and soft money contributors, 1985–1994

AT&T	$6,523,445
BellSouth Corp	2,928,673
GTE Corp	2,899,056
Natl Cable Television Assn	2,211,214
Ameritech Corp	1,936,899
Pacific Telesis	1,742,512
US West	1,666,920
Natl Assn Of Broadcasters	1,629,988
Bell Atlantic	1,559,011
Sprint	1,531,596

''A strong case can be made that the war over telecommunications reform has done more to line the pockets of lobbyist and lawmakers than any other issue in the past decade.''—Kirk Victor, National Journal

Among the key findings of the Common Cause study:

Local telephone services made $17.3 million in political contributions during the past decade. Long distance providers gave $9.5 million in political contributions; cable television interests gave $8 million; and broadcasters gave $4.7 million.

The biggest single telecommunications industry donation came from Tele-Communications Inc, the country's biggest cable company. The company gave a $200,000 soft money contribution to the Republican National Committee five days before the last November's elections.

Telecommunication PACs were especially generous to members of two key committees that recently passed bills to rewrite telecommunication regulations. House Commerce Committee members received, on average, more than $65,000 each from telecommunications PACs; Senate Commerce Committee members received, on average, more than $107,000 each.

Two-thirds of House freshmen received PAC contributions from telecommunications interests immediately following their November election wins. Between November 9 and December 31, 1994, telecommunications PACs gave new Representatives-elect a total $115,500.

In January, top executives of telecommunications companies that gave a total $23.5 million in political contributions during the past decade were invited to closed-door meetings with Republican members of the House Commerce Committee. Consumer and rate-payer groups—who were not major political donors—were not invited to the special meetings.

Lobbyists for the telecommunications industry represent a wide array of Washington insiders. For example, former Reagan and Bush Administration officials represent long distance providers, while a former Clinton official represents local telephone interests. Lobbying on behalf of broadcast interests are former aids to both Republican and Democratic Members of Congress.

In addition to their political contributions during the past decade, telecommunications interests contributed $221,000 in soft money to the Republican National Committee during the first three months of 1995. (Democratic National Committee soft money information for the first six months of 1995 will be available in July.)

HOUSE COMMERCE COMMITTEE MEMBERS RECEIVE ON AVERAGE $65,000 EACH FROM TELECOM PACS—DOUBLE THE HOUSE AVERAGE

Telecommunications industry lobbyists ''have seldom met more receptive lawmakers,'' than the members of the House Commerce Committee.—The New York Times

Telecommunications industry Pacs gave a total $6,676,147 in contributions to current Senators during the past decade, an average $66,761 per Senator, according to the Common Cause study.

SENATE COMMERCE COMMITTEE MEMBERS RECEIVE ON AVERAGE $107,000 EACH FROM TELECOM PACS

The Common Cause study found that members of the Senate Commerce, Science and Transportation Committee received nearly twice as much PAC money on average from telecommunications interests during the past decade as other Senators—an average of $107,730 compared to $57,152 received by Senators not on the committee.

''ROBBER BARONS OF THE '90S''

''By and large, the public is not represented by the lawyers and the lobbyists in Washington. The few public advocates are overwhelmed financially. It's all very fine to say that you are in favor of competition. I am. The Administration is. Congress is. But competition won't give you everything the country needs from communications companies. We've got to be able to stand up to

business on certain occasions and say, 'It's not just about competition, it's about the public interest.'"—Reed Hundt, Federal Communications Commission Chair as quoted in The New Yorker

Mr. CONYERS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Michigan [Miss COLLINS].

(Miss COLLINS of Michigan asked and was given permission to revise and extend her remarks.)

Miss COLLINS of Michigan. Mr. Chairman, I rise in strong support of the Conyers amendment and urge my colleagues to adopt it.

Many have argued during this debate that we must deregulate the telecommunications industry, and by eliminating any role for the Department of Justice in determining Regional Bell operating company entry into long distance, we are working toward and goal. Well I think you are making a terrible mistake if you confuse forbidding the proper anti-trust role of the Department of Justice with deregulation.

The Republicans in this body should recall it was under the Reagan administration that the Department of Justice broke up the Bell system over a decade ago. That decision has been an undisputed success. Without the role played by the Department of Justice, consumers would still be renting large rotary black phones and paying too much for long distance services. The Department of Justice actions promoted competition, not regulation.

Without the Department of Justice role, we can expect those communication's attorneys to be in court, fighting endless anti-trust battles. The role we give the Department of Justice in this amendment will make it less likely that we will end up back in court, and the Department will ensure that anti-trust violations would be minimal, prior to the decision granting a Bell operating company the ability to offer long distance service.

Calling this amendment regulatory, is doing a disservice to the potential for true deregulation—which is full competition in all markets. The structure provided by the Department of Justice ensures that the markets will develop quickly, and with less litigation.

Mr. Chairman, I urge my colleagues to support this amendment. I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. HINCHEY].

(Mr. HINCHEY asked and was given permission to revise and extend his remarks.)

Mr. HINCHEY. Mr. Chairman, this bill has been described as a clash between the super rich and the super wealthy. That Is unquestionably true, but in the clash of these titans, the question is, who stands for the American public?

The answer to that question is, without the Conyers amendment, no one. The American people stand naked before the potential excesses of these giants unless we have some protection from them offered by the Justice Department.

There is an incredibly high standard in this bill, Mr. Chairman. There must be a dangerous probability of substantially impeding justice before the Justice Department comes in. Let us pass the Conyers amendment and protect the American people.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. Mr. Chairman, I thank the gentleman from Michigan [Mr. CONYERS] for yielding the time.

The FCC is essentially the agency that would be able to consult with the Department of Justice under the manager's mark that we passed this morning. But when we talk about going from a monopoly industry, which telecom was after 1934, to a competition-based industry, the competition agency, those who keep the rule, those who decide if there is a dangerous probability, if those gigantic billionaires players are being fair, is the Department of Justice.

Mr. Chairman, I simply say that the Conyers amendment makes sure that fairness is done, that the referee is in place. I urge my colleagues to support the Conyers amendment.

Mr. BLILEY. Mr. Chairman, I yield 2½ minutes to the gentleman from Ohio [Mr. OXLEY] for purposes of closing the debate on our side.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, I rise in opposition to the Conyers amendment. This bill in all of its forms does not repeal the Sherman Act. We have had the Sherman Act for over 100 years.

It does not repeal the Clayton Act passed in 1914. Anticompetitive behavior will be reviewed by the Justice Department, whether it is the telecommunications industry or whether it is the trucking industry or any other kind of industry that we are talking about. The Justice Department is not going away.

What we are trying to do, Mr. Chairman, or what the Conyers amendment seeks to do, is basically replace one court with another, except a different standard.

This amendment guts the underlying concept of this bill, which is pure competition, and the idea to get Congress back into the decisionmaking process. How long do we have to have telecommunications policy made by an unelected Federal judge who has no accountability to anyone; when are we going to get back to providing the kind of responsible decisionmaking that we are elected to do?

Mr. Chairman, I suggest to my colleagues that the underlying bill provides that kind of ability and accountability for the duly elected representatives of the people.

This amendment creates needless bureaucracy by having not one, but two Federal agencies review the issue of Bell Co. entry into long distance. The purpose of this legislation is to create conditions for a competitive market and get the heavy hand of Government regulation out of the way. This Conyers amendment is inconsistent with that purpose.

Mr. Chairman, this is a huge opportunity to provide competitive forces in the marketplace away from Government. If we believe that competition and not bureaucracy is the answer to modernizing our telecommunications policy, to providing more choice in the marketplace, to providing lower prices, to making America the most competitive telecommunications industry in the entire world, we will vote against the Conyers amendment and support the underlying bill.

Mr. Chairman, I ask my colleagues to join me in opposition to the Conyers amendment.

The CHAIRMAN. All time on this amendment has expired.

The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS], as modified.

The question was taken; and the chairman announced that the ayes appeared to have it.

Mr. BLILEY. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the rule, further proceedings on the amendment offered by the gentleman from Michigan [Mr. CONYERS], as modified, will be postponed until after the vote on amendment 2–4 to be offered by the gentleman from Massachusetts [Mr. MARKEY].

It is now in order to consider the amendment, No. 2–3, printed in part 2 of House Report 104–223.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment numbered 2–3.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment number 2–3 offered by Mr. COX of California:'

Page 78, before line 18, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 104. ONLINE FAMILY EMPOWERMENT.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL; FCC REGULATION OF COMPUTER SERVICES PROHIBITED.

''(a) FINDINGS.—The Congress finds the following:

''(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

''(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

''(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

''(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

''(5) Increasingly Americans are relying on interactive media for a variety of political,

educational, cultural, and entertainment services.

''(b) POLICY.—It is the policy of the United States to—

''(1) promote the continued development of the Internet and other interactive computer services and other interactive media;

''(2) preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by State or Federal regulation;

''(3) encourage the development of technologies which maximize user control over the information received by individuals, families, and schools who use the Internet and other interactive computer services;

''(4) remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

''(5) ensure vigorous enforcement of criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

''(c) PROTECTION FOR 'GOOD SAMARITAN' BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.—No provider or user of interactive computer services shall be treated as the publisher or speaker of any information provided by an information content provider. No provider or user of interactive computer services shall be held liable on account of—

''(1) any action voluntarily taken in good faith to restrict access to material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

''(2) any action taken to make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

''(d) FCC REGULATION OF THE INTERNET AND OTHER INTERACTIVE COMPUTER SERVICES PROHIBITED.—Nothing in this Act shall be construed to grant any jurisdiction or authority to the Commission with respect to content or any other regulation of the Internet or other interactive computer services.

''(e) EFFECT ON OTHER LAWS.—

''(1) NO EFFECT ON CRIMINAL LAW.—Nothing in this section shall be construed to impair the enforcement of section 223 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

''(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

''(3) IN GENERAL.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section.

''(f) DEFINITIONS.—As used in this section:

''(1) INTERNET.—The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

''(2) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' means any information service that provides computer access to multiple users via modem to a remote computer server, including specifically a service that provides access to the Internet.

''(3) INFORMATION CONTENT PROVIDER.—The term 'information content provider' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided by the Internet or any other interactive computer service, including any person or entity that creates or develops blocking or screening software or other techniques to permit user control over offensive material.

''(4) INFORMATION SERVICE.—The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.''.

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes. Who seeks time in opposition?

PARLIAMENTARY INQUIRY

Mr. COX of California. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COX of California. Mr. Chairman, given that no Member has risen in opposition, would the Chair entertain a unanimous-consent request?

The CHAIRMAN. If no Members seeks time in opposition, by unanimous consent another Member may be recognized for the other 10 minutes, or the gentleman may have the other 10 minutes.

Let me put the question again: Is there any Member in the Chamber who wishes to claim the time in opposition?

If not, is there a unanimous-consent request for the other 10 minutes?

Mr. WYDEN. There is, Mr. Chairman. Although I am not in opposition to this amendment, I would ask unanimous consent to have the extra time because of the many Members who would like to speak on it.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The CHAIRMAN. The gentleman from California [Mr. COX] will be recognized for 10 minutes, and the gentleman from Oregon [Mr. WYDEN] will be recognized for 10 minutes.

The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I wish to begin by thanking my colleague, the gentleman from Oregon [Mr. WYDEN], who has worked so hard and so diligently on this effort with all of our colleagues.

We are talking about the Internet now, not about telephones, not about television or radios, not about cable TV, not about broadcasting, but in technological terms and historical terms, an absolutely brand-new technology.

The Internet is a fascinating place and many of us have recently become acquainted with all that it holds for us in terms of education and political discourse.

We want to make sure that everyone in America has an open invitation and feels welcome to participate in the Internet. But as you know, there is some reason for people to be wary because, as a Time Magazine cover story recently highlighted, there is in this vast world of computer information, a literal computer library, some offensive material, some things in the bookstore, if you will, that our children ought not to see.

As the parent of two, I want to make sure that my children have access to this future and that I do not have to worry about what they might be running into on line. I would like to keep that out of my house and off of my computer. How should we do this?

Some have suggested, Mr. Chairman, that we take the Federal Communications Commission and turn it into the Federal Computer Commission, that we hire even more bureaucrats and more regulators who will attempt, either civilly or criminally, to punish people by catching them in the act of putting something into cyberspace.

Frankly, there is just too much going on on the Internet for that to be effective. No matter how big the army of bureaucrats, it is not going to protect my kids because I do not think the Federal Government will get there in time. Certainly, criminal enforcement of our obscenity laws as an adjunct is a useful way of punishing the truly guilty.

Mr. Chairman, what we want are results. We want to make sure we do something that actually works. Ironically, the existing legal system provides a massive disincentive for the people who might best help us control the Internet to do so.

I will give you two quick examples: A Federal court in New York, in a case involving CompuServe, one of our online service providers, held that CompuServe would not be liable in a defamation case because it was not the publisher or editor of the material. It just let everything come onto your computer without, in any way, trying to screen it or control it.

But another New York court, the New York Supreme Court, held that Prodigy, CompuServe's competitor, could be held liable in a $200 million defamation case because someone had posted on one of their bulletin boards, a financial bulletin board, some remarks that apparently were untrue about an investment bank, that the investment bank would go out of business and was run by crooks.

Prodigy said, ''No, no; just like CompuServe, we did not control or edit that information, nor could we, frankly. We have over 60,000 of these messages each day, we have over 2 million subscribers, and so you cannot proceed with this kind of a case against us.''

The court said, ''No, no, no, no, you are different; you are different than CompuServe because you are a family-friendly network. You advertise yourself as such. You employ screening and blocking software that keeps obscenity off of your network. You have people who are hired to exercise an emergency delete function to keep that kind of

material away from your subscribers. You don't permit nudity on your system. You have content guidelines. You, therefore, are going to face higher, stricker liability because you tried to exercise some control over offensive material.''

□ 1015

Mr. Chairman, that is backward. We want to encourage people like Prodigy, like CompuServe, like America Online, like the new Microsoft network, to do everything possible for us, the customer, to help us control, at the portals of our computer, at the front door of our house, what comes in and what our children see. This technology is very quickly becoming available, and in fact every one of us will be able to tailor what we see to our own tastes.

We can go much further, Mr. Chairman, than blocking obscenity or indecency, whatever that means in its loose interpretations. We can keep away from our children things not only prohibited by law, but prohibited by parents. That is where we should be headed, and that is what the gentleman from Oregon [Mr. WYDEN] and I are doing.

Mr. Chairman, our amendment will do two basic things: First, it will protect computer Good Samaritans, online service providers, anyone who provides a front end to the Internet, let us say, who takes steps to screen indecency and offensive material for their customers. It will protect them from taking on liability such as occurred in the Prodigy case in New York that they should not face for helping us and for helping us solve this problem. Second, it will establish as the policy of the United States that we do not wish to have content regulation by the Federal Government of what is on the Internet, that we do not wish to have a Federal Computer Commission with an army of bureaucrats regulating the Internet because frankly the Internet has grown up to be what it is without that kind of help from the Government. In this fashion we can encourage what is right now the most energetic technological revolution that any of us has ever witnessed. We can make it better. We can make sure that it operates more quickly to solve our problem of keeping pornography away from our kids, keeping offensive material away from our kids, and I am very excited about it.

There are other ways to address this problem, some of which run head-on into our approach. About those let me simply say that there is a well-known road paved with good intentions. We all know where it leads. The message today should be from this Congress we embrace this new technology, we welcome the opportunity for education and political discourse that it offers for all of us. We want to help it along this time by saying Government is going to get out of the way and let parents and individuals control it rather than Government doing that job for us.

Mr. Chairman, I reserve the balance of my time.

Mr. WYDEN. Mr. Chairman, I rise to speak on behalf of the Cox-Wyden amendment. In beginning, I want to thank the gentleman from California [Mr. COX] for the chance to work with him. I think we all come here because we are most interested in policy issues, and the opportunity I have had to work with the gentleman from California has really been a special pleasure, and I want to thank him for it. I also want to thank the gentleman from Michigan [Mr. DINGELL], our ranking minority member, for the many courtesies he has shown, along with the gentleman from Massachusetts [Mr. MARKEY], and, as always, the gentleman from Virginia [Mr. BLILEY] and the gentleman from Texas [Mr. FIELDS] have been very helpful and cooperative on this effort.

Mr. Chairman and colleagues, the Internet is the shining star of the information age, and Government censors must not be allowed to spoil its promise. We are all against smut and pornography, and, as the parents of two small computer-literate children, my wife and I have seen our kids find their way into these chat rooms that make their middle-aged parents cringe. So let us all stipulate right at the outset the importance of protecting our kids and going to the issue of the best way to do it.

The gentleman from California [Mr. COX] and I are here to say that we believe that parents and families are better suited to guard the portals of cyberspace and protect our children than our Government bureaucrats. Parents can get relief now from the smut on the Internet by making a quick trip to the neighborhood computer store where they can purchase reasonably priced software that blocks out the pornography on the Internet. I brought some of this technology to the floor, a couple of the products that are reasonably priced and available, simply to make clear to our colleagues that it is possible for our parents now to childproof the family computer with these products available in the private sector.

Now what the gentleman from California [Mr. COX] and I have proposed does stand in sharp contrast to the work of the other body. They seek there to try to put in place the Government rather than the private sector about this task of trying to define indecent communications and protecting our kids. In my view that approach, the approach of the other body, will essentially involve the Federal Government spending vast sums of money trying to define elusive terms that are going to lead to a flood of legal challenges while our kids are unprotected. The fact of the matter is that the Internet operates worldwide, and not even a Federal Internet censorship army would give our Government the power to keep offensive material out of the hands of children who use the new interactive media, and I would say to my colleagues that, if there is this kind of Federal Internet censorship army that somehow the other body seems to favor, it is going to make the Keystone Cops look like crackerjack crime-fighter.

Mr. Chairman, the new media is simply different. We have the opportunity to build a 21st century policy for the Internet employing the technologies and the creativity designed by the private sector.

I hope my colleagues will support the amendment offered by gentleman from California [Mr. COX] and myself, and I reserve the balance of my time.

Mr. COX of California. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BARTON].

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Chairman, Members of the House, this is a very good amendment. There is no question that we are having an explosion of information on the emerging superhighway. Unfortunately part of that information is of a nature that we do not think would be suitable for our children to see on our PC screens in our homes.

Mr. Chairman, the gentleman from Oregon [Mr. WYDEN] and the gentleman from California [Mr. COX] have worked hard to put together a reasonable way to provide those providers of the information to help them self-regulate themselves without penalty of law. I think it is a much better approach than the approach that has been taken in the Senate by the Exon amendment. I would hope that we would support this version in our bill in the House and then try to get the House-Senate conference to adopt the Cox-Wyden language.

So, Mr. Chairman, it is a good piece of legislation, a good amendment, and I hope we can pass it unanimously in the body.

Mr. WYDEN. Mr. Chairman, I yield 1 minute to the gentlewoman from Missouri [Ms. DANNER] who has also worked hard in this area.

Ms. DANNER. Mr. Chairman, I wish to engage the gentleman from Oregon [Mr. WYDEN] in a brief colloquy.

Mr. Chairman, I strongly support the gentleman's efforts, as well as those of the gentleman from California [Mr. COX], to address the problem of children having untraceable access through on-line computer services to inappropriate and obscene pornographic materials available on the Internet.

Telephone companies must inform us as to whom our long distance calls are made. I believe that if computer on-line services were to include itemized billing, it would be a practical solution which would inform parents as to what materials their children are accessing on the Internet.

It is my hope and understanding that we can work together in pursuing technology based solutions to the problems

we face in dealing with controlling the transfer of obscene materials in cyberspace.

Mr. WYDEN. Mr. Chairman, will the gentlewoman yield?

Ms. DANNER. I yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, I thank my colleague for her comments, and we will certainly take this up with some of the private-sector firms that are working in this area.

Mr. COX of California. Mr. Chairman, I yield 1 minute to the gentleman from Washington [Mr. WHITE].

Mr. WHITE. Mr. Chairman, I would like to point out to the House that, as my colleagues know, this is a very important issue for me, not only because of our district, but because I have got four small children at home. I got them from age 3 to 11, and I can tell my colleagues I get E-mails on a regular basis from my 11-year-old, and my 9-year-old spends a lot of time surfing the Internet on America Online. This is an important issue to me. I want to be sure we can protect them from the wrong influences on the Internet.

But I have got to tell my colleagues, Mr. Chairman, the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent.

That is why I was proud to cosponsor this bill, that is what this bill does, and I urge my colleagues to pass it.

Mr. WYDEN. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. Mr. Chairman, I will bet that there are not very many parts of the country where Senator EXON's amendment has been on the front page of the newspaper practically every day, but that is the case in Silicon Valley. I think that is because so many of us got on the Internet early and really understand the technology, and I surf the Net with my 10-year-old and 13-year-old, and I am also concerned about pornography. In fact, earlier this year I offered a life sentence for the creators of child pornography, but Senator EXON's approach is not the right way. Really it is like saying that the mailman is going to be liable when he delivers a plain brown envelope for what is inside it. It will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment, and I would urge its approval so that we preserve the first amendment and open systems on the Net.

Mr. WYDEN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. GOODLATTE].

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman from Oregon [Mr. WYDEN] for yielding this time to me, and I rise in strong support of the Cox-Wyden amendment. This will help to solve a very serious problem as we enter into the Internet age. We have the opportunity for every household in America, every family in America, soon to be able to have access to places like the Library of Congress, to have access to other major libraries of the world, universities, major publishers of information, news sources. There is no way that any of those entities, like Prodigy, can take the responsibility to edit out information that is going to be coming in to them from all manner of sources onto their bulletin board. We are talking about something that is far larger than our daily newspaper. We are talking about something that is going to be thousands of pages of information every day, and to have that imposition imposed on them is wrong. This will cure that problem, and I urge the Members to support the amendment.

□ 1030

Mr. WYDEN. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts [Mr. MARKEY], the ranking member of the subcommittee.

Mr. MARKEY. Mr. Chairman, I want to congratulate the gentleman from Oregon and the gentleman from California for their amendment. It is a significant improvement over the approach of the Senator from Nebraska, Senator EXON.

This deals with the reality that the Internet is international, it is computer-based, it has a completely different history and future than anything that we have known thus far, and I support the language. It deals with the content concerns which the gentlemen from Oregon and California have raised.

Mr. Chairman, the only reservation which I would have is that they add in not only content but also any other type of registration. I think in an era of convergence of technologies where telephone and cable may converge with the Internet at some point and some ways it is important for us to ensure that we will have an opportunity down the line to look at those issues, and my hope is that in the conference committee we will be able to sort those out.

Mr. WYDEN. Mr. Chairman, I yield 30 seconds to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Chairman, I just want to take the time to thank him and also the gentleman from California for this fine work. This is a very sensitive area, very complex area, but it is a very important area for the American public, and I just wanted to congratulate him and the gentleman from California on how they worked together in a bipartisan fashion.

Mr. WYDEN. Mr. Chairman, I yield myself such time as I may consume. I thank the gentleman for his kindness.

Mr. Chairman, in conclusion, let me say that the reason that this approach rather than the Senate approach is important is our plan allows us to help American families today.

Under our approach and the speed at which these technologies are advancing, the marketplace is going to give parents the tools they need while the Federal Communications Commission is out there cranking out rules about proposed rulemaking programs. Their approach is going to set back the effort to help our families. Our approach allows us to help American families today.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to respond briefly to the important point in this bill that prohibits the FCC from regulating the Internet. Price regulation is at one with usage of the Internet.

We want to make sure that the complicated way that the Internet sends a document to your computer, splitting it up into packets, sending it through myriad computers around the world before it reaches your desk is eventually grasped by technology so that we can price it, and we can price ration usage on the Internet so more and more people can use it without overcrowding it.

If we regulate the Internet at the FCC, that will freeze or at least slow down technology. It will threaten the future of the Internet. That is why it is so important that we not have a Federal computer commission do that.

Mr. GOODLATTE. Mr. Chairman, Congress has a responsibility to help encourage the private sector to protect our children from being exposed to obscene and indecent material on the Internet. Most parents aren't around all day to monitor what their kids are pulling up on the net, and in fact, parents have a hard time keeping up with their kids' abilities to surf cyberspace. Parents need some help and the Cox-Wyden amendment provides it.

The Cox-Wyden amendment is a thoughtful approach to keep smut off the net without government censorship.

We have been told it is technologically impossible for interactive service providers to guarantee that no subscriber posts indecent material on their bulletin board services. But that doesn't mean that providers should not be given incentives to police the use of their systems. And software and other measures are available to help screen out this material.

Currently, however, there is a tremendous disincentive for online service providers to create family friendly services by detecting and removing objectionable content. These providers face the risk of increased liability where they take reasonable steps to police their systems. A New York judge recently sent the online services the message to stop policing by ruling that Prodigy was subject to a $200 million libel suit simply because it did exercise some control over profanity and indecent material.

The Cox-Wyden amendment removes the liability of providers such as Prodigy who currently make a good faith effort to edit the smut

from their systems. It also encourages the online services industry to develop new technology, such as blocking software, to empower parents to monitor and control the information their kids can access. And, it is important to note that under this amendment existing laws prohibiting the transmission of child pornography and obscenity will continue to be enforced.

The Cox-Wyden amendment empowers parents without Federal regulation. It allows parents to make the important decisions with regard to what their children can access, not the government. It doesn't violate free speech or the right of adults to communicate with each other. That's the right approach and I urge my colleagues to support this amendment.

The Chairman. All time on this amendment has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the rule, further proceedings on the amendment offered by the gentleman from California [Mr. COX] will be postponed until after the vote on amendment 2–4 to be offered by the gentleman from Massachusetts [Mr. MARKEY].

It is now in order to consider amendment No. 2–4 printed in part 2 of House Report 104–223.

AMENDMENT NO. 2–4 OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment, numbered 2–4.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MARKEY of Massachusetts: page 126, after line 16, insert the following new subsection (and redesignate the succeeding subsections and accordingly):

(f) STANDARD FOR UNREASONABLE RATES FOR CABLE PROGRAMMING SERVICES.—Section 623(c)(2) of the Act (47 U.S.C. 543(c)) is amended to read as follows:

''(2) STANDARD FOR UNREASONABLE RATES.—The Commission may only consider a rate for cable programming services to be unreasonable if such rate has increased since June 1, 1995, determined on a per-channel basis, by a percentage that exceeds the percentage increase in the Consumer Price Index for All Urban Consumers (as determined by the Department of Labor) since such date.''.

Page 127, line 4, strike ''or 5 percent'' and all that follows through ''greater,'' on line 6.

Page 129, strike lines 16 through 21 and insert the following:

''(d) UNIFORM RATE STRUCTURE.—A cable operator shall have a uniform rate structure throughout its franchise area for the provision of cable services.''.

Page 130, line 16, insert ''and'' after the semicolon, and strike line 20 and all that follows through line 2 on page 131 and insert the following:

''directly to subscribers in the franchise area and such franchise area is also served by an unaffiliated cable system.''.

Page 131, strike line 6 and all that follows through line 21, and insert the following:

''(m) SMALL CABLE SYSTEMS.—

''(1) SMALL CABLE SYSTEM RELIEF.—A small cable system shall not be subject to subsections (a), (b), (c), or (d) in any franchise area with respect to the provision of cable programming services, or a basic service tier where such tier was the only tier offered in such area on December 31, 1994.

''(2) DEFINITION OF SMALL CABLE SYSTEM.—For purposes of this subsection, 'small cable system' means a cable system that—

''(A) directly or through an affiliate, serves in the aggregate fewer than 250,000 cable subscribers in the United States; and

''(B) directly serves fewer than 10,000 cable subscribers in its franchise area.''.

The CHAIRMAN. Pursuant to the rule, the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 15 minutes, and a Member opposed will be recognized for 15 minutes.

Does the gentleman from Virginia [Mr. BLILEY] seek the time in opposition?

Mr. BLILEY. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Virginia [Mr. BLILEY] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I yield myself at this point 3 minutes.

Mr. Chairman, the consumers of America should be placed upon red alert. We now reach an issue which I think every person in America can understand who has even held a remote control clicker in their hands.

The bill that we are now considering deregulates all cable rates over the next 15 months. But for rural America, rural America, the 30 percent of America that considers itself to the rural, their rates are deregulated upon enactment of this bill.

Now, the proponents are going to tell you, do not worry, there is going to be plenty of competition in cable. That will keep rates down. For those of you in rural America, ask yourself this question: In two months do you think there will be a second cable company in your town? Because if there is not a second cable company in your town, your rates are going up because your cable company, as a monopoly, will be able to go back to the same practices which they engaged in up to 1992 when finally we began to put controls on this rapid increase two and three and four times the rate of inflation of cable rates across this country.

The gentleman from Connecticut [Mr. SHAYS] and I have an amendment that is being considered right now on the floor of Congress which will give you your one shot at protecting our cable ratepayers against rate shock this year and next across this country, whether you be rural or urban or suburban.

We received a missive today from the Governor of New Jersey, Christine Whitman. She wants an aye vote on the Markey-Shays bill. Christine Whitman. She does not want her cable rates to go up because she knows, and she says it right here, there is no competition on the horizon for most of America.

So this amendment is the most important consumer protection vote which you will be taking in this bill and one of the two or three most important this year in the U.S. Congress.

Make no mistake about it. There will be no competition for most of America. There will be no control on rates going up, and you will have to explain why, as part of a telecommunications bill that was supposed to reduce rates, you allowed for monopolies, monopolies in 97 percent of the communities in America to once again go back to their old practices.

Mr. BLILEY. Mr. Chairman, I yield myself 1 minute.

The Markey amendment, Mr. Chairman, tracks the disastrous course of the 1992 cable law by requiring the cable companies to jump through regulatory hoops to escape the burdensome rules imposed on them after the law was enacted.

The Markey amendment fails to take into account the changing competitive video marketplace that has evolved in the last 2 years. Direct broadcast satellite has taken off, particularly in rural areas, and there will be nearly 5-million subscribers by the end of the year. With the equipment costs now being folded into the monthly charge for this service, this competitive technology will explode in the next few years.

The telephone industry will be permitted to offer cable on the date of enactment and will provide formidable competition immediately. There are numerous market and technical trials going on now to ramp up to that competition.

The Markey amendment turns back the clock. It seeks to continue the government regulation and micromanagement that has unfairly burdened the industry over the past several years.

Vote ''no'' on Markey and duplicate the Senate, they overwhelmingly voted it down over there.

Mr. MARKEY. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee [Mr. CLEMENT].

Mr. CLEMENT. Mr. Chairman, it's Christmas in August in Washington. On the surface, the Communications Act of 1995 looks like a Christmas gift to the people and the communications industries. You've heard the buzz words: competition, lower rates, and more choices. But a closer look reveals another story.

While the cable provisions in the bill will give a sweet gift to the cable industry, the American consumer, and especially those in rural America, will wake up on Christmas morning to nothing more than less competition, higher cable rates, and less choice.

The bill as it stands immediately deregulates rate controls on small cable systems—those which serve an average of almost 30 percent of cable subscribers in America and account for at least 70 percent of all cable systems. This bill discourages competition in these markets because it deregulates these cable companies regardless of

whether they face substantial competition in the marketplace.

In some cases, the bill immediately removes cable rate controls for systems serving over 50 percent of subscribers. In my home State of Tennessee, cable systems reaching more than 30 percent of subscribers, or 348,027 subscribers, would see immediate deregulation, and these subscribers would see nothing but higher rates and no choice.

That's the reason I am proud to support the Markey-Shays cable amendment to the Communications Act of 1995. This amendment would protect consumers from cable price-gouging by keeping rate regulations on small cable companies until effective cable competition in the marketplace offers consumers a choice.

I urge my colleagues to support this amendment. Otherwise, Congress will give their constituents a Christmas gift they will not forget.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BARTON].

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Chairman, I rise in strong opposition to this amendment. When we reregulated cable 3 years ago, I was absolutely opposed to that. I voted against it in subcommittee, I voted against it in full committee, and I voted against it on the floor, and I voted to sustain the President's veto when he tried to veto the legislation.

We do not need to be regulating cable rates. Cable is not a necessity. The Federal Government has absolutely no right to be setting prices for cable television. The amendment that is before us would do that.

We have wisely in the legislation deregulated 90 percent of the cable industry. We should keep the bill as it is, we should vote against the Markey amendment.

I would vote against it two times, three times, four times if I had the constitutional authority to do so, but I am going to vote against it once.

Mr. MARKEY. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. NEAL].

Mr. NEAL of Massachusetts. Mr. Chairman, I want to thank the gentleman from Massachusetts [Mr. MARKEY] for the good work that he has done on behalf of the consumers of America.

Mr. Chairman, I rise in support of the Markey-Shays amendment for the simple reason that I do not want to return to the days when the cable companies of this country were increasing their prices at three times the rate of inflation while dramatically reducing their services.

Since the passage of the 1992 Cable Act, the American consumer has finally seen relief in the form of significantly reduced cable rates. In my district alone, millions of dollars have been saved by cable subscribers. But the bill we are debating here this morning would severely threaten the consumer protection that was established by the 1992 act.

In its current form, H.R. 1555 would abolish FCC regulation of cable systems thereby allowing cable companies to once again raise rates arbitrarily. It would open a window of opportunity for cable owners to cash in one last time at the expense of the American consumer. We cannot allow this to happen.

The Markey-Shays amendment would continue FCC regulation of cable systems until effective competition is established. It is a proconsumer amendment that would protect millions of Americans from an unnecessary rate hike and I strongly urge its passage.

□ 1045

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. NORWOOD].

Mr. NORWOOD. Mr. Chairman, I thank the distinguished chairman for yielding me this time.

Mr. Chairman, the Markey cable amendment embodies all that is wrong with Government regulation. It sets prices for a private industry, cable television. It lowers the threshold for price controls to systems with 10,000 or fewer subscribers. It lowers the complaint threshold from 5 percent of subscribers to 10—yes 10, individual subsbribers—to which the FCC can respond with a rate review. Mr. Chairman, I have seen the amount of paperwork a cable operator can be asked to provide the FCC in response to a complaint. It is absolutely unbelievable. And this amendment would make it more likely that cable operators would have to fill out these massive forms for the FCC. H.R. 1555 promotes deregulation and competition in all telecommunications industries, including cable. Mr. Chairman, I strongly urge my colleagues to reject this effort at price control and regulation of the cable industry.

Mr. MARKEY. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, I rise in strong support of the Markey-Shays amendment to protect Americans from unaffordable cable rate increases.

Cable rates hit home with consumers in Connecticut and across the country. That is why the only bill Congress passed over President Bush's veto was the 1992 Cable Act to keep TV rates down. Now is not the time to backtrack on that progress.

We would all like to see competition pushing cable rates down, but the telecommunications bill before us will remove protections against price increases before there is any guarantee of competition. Under this bill, every time you hit the clicker, it might as well sound like a cash register recording the higher costs viewers will face. Consumer groups estimate that this bill will raise rates for popular channels such as CNN and ESPN by an average of $5 per month.

The Markey-Shays amendment will protect television viewers from unreasonable rate increases until there truly is competition in the cable TV market. The amendment will also retain important safeguard that protect the right of consumers to protest unreasonable rate hikes.

I urge my colleagues to support the Markey-Shays amendment so that hard-working Americans will not be priced out of the growing information age.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN], a member of the committee.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise in opposition to the Markey amendment. In 1992 we fought a royal battle on the floor of this House, a battle designed clearly to begin the process of creating competition in the cable programming marketplace. The problem in 1992 was not the lack of Government regulation, although that contributed to the problem in 1992. The problem was that because cable monopoly companies vertically integrated, controlled by the programming and the distribution of cable programming, cable companies could decide not to let competition happen. They could refuse to sell to direct broadcast satellite, they could refuse to sell to microwave systems, they could refuse to sell to alternative cable systems. The result was competition was stifled. The demand rose in this House for reregulation.

The good news is that in 1992, despite a veto by the President, this House and the other body overrode that veto, adopted the Tauzin program access provision to the cable bill, and created, for the first time in this marketplace, real competition.

Mr. Chairman, are you not excited by those direct broadcast television ads you see on television, where you see a direct satellite now beaming to a dish no bigger than this to homes 150 channels with incredible programming? Are you not excited in rural America that you have an alternative to the cable, or, where you do not have a cable, you now have program access? Are you not excited when microwave systems are announced in your community and when you hear the telephone company will soon be in the cable business?

That is competition. Competition regulates the marketplace much better than the schemes of mice and men here in Washington, DC.

Consumers choosing between competitive offerings, consumers choosing the same products offered by different suppliers, in different stores, in the same town. Keep prices down, keep service up. Competition, yes; reregulation, no.

Mr. MARKEY. Mr. Chairman, I yield 3 minutes to the gentleman from Connecticut [Mr. SHAYS], the cosponsor of the amendment.

Mr. SHAYS. Mr. Chairman, competition, yes. Competition, yes. But now we do not have competition. Ninety-seven percent of all systems do not have competition. And this bill, unamended, allows for those companies, most of them, nearly 50 percent of them, to be deregulated.

We say yes, we are going to allow the small companies to be deregulated, the small ones, under 600,000 subscribers. Six hundred thousand subscribers is small? That system is worth $1.2 billion.

We do not have competition now. Deregulate when you have competition. There are 97 percent of the systems that do not have competition. The whole point here is to make sure that companies that are not competing, that have a monopoly, are not allowed to set monopolistic prices.

One of the reasons why we overrode the President's veto, 70 of us on the Republican side, we recognized that consumers were paying monopolistic prices. Deregulate when you have competition. The bill in 1992 said when you had competition, there would not be regulation. The reason why we have regulation is these are monopolies.

I know Members have not had a lot of sleep, but I hope the staff that is listening will tell their Members that we are going to deregulate these companies and they are going to set monopolistic prices, and they are going to come to their Congressman and say, ''Why did you vote to deregulate a monopoly?''

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. MANTON], a member of the committee.

Mr. MANTON. Mr. Chairman, I rise in opposition to the Markey amendment.

I thank the gentleman for yielding me this time and would like to take this opportunity to commend him for his fine work on this legislation.

Mr. Chairman, the cable television industry is poised to compete with local telephone companies in offering consumers advanced communications services. Yet to make that happen, we must relax burdensome and unwarranted regulations that are choking the ability of the cable industry to invest in the new technology and services that will allow them to compete.

The proponents of the Markey amendment said in 1992 that rate regulation was a placeholder until competition arrived in the video marketplace.

Well, that competition is here. Today, cable television is being challenged by an aggressive and burgeoning direct broadcast satellite industry and other wireless video services. And with the enactment of H.R. 1555, the Nation's telephone companies, will be permitted to offer video services directly to the consumer.

Mr. Chairman, it is also important for my colleagues to understand what H.R. 1555 does not do. It does not repeal the 1992 Cable Act. Cities will retain the authority to regulate rates for basic cable services and to impose stringent customer service standards. H.R. 1555 does not alter the program access, must carry or retransmission consent provisions of the 1992 Cable Act.

Quite modestly, H.R. 1555 will end rate regulation of expanded basic cable entertainment programming 15 months after the enactment of the legislation, plenty of time for the telcos to get into the video business.

Mr. Chairman, cable programming is an enormously popular and valuable service in the world of video entertainment. But just because it's good and people like it, doesn't mean the Federal Government should regulate it.

I urge my colleagues to reject the Markey amendment.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. DEUTSCH], a member of the committee.

Mr. DEUTSCH. Mr. Chairman, I would like to thank the chairman of the committee for yielding me this time.

Mr. Chairman, the crux of this issue is, is there competition in this industry at this time on the issues of this amendment? I think the answer to that is that there is.

Let us be very specific about what the amendment does. The amendment would keep regulation on nonbasic services. Basic service would continue regulation beyond the 15-month period. For nonbasic service, for HBO, Cinemax, and things like that.

There is competition today in just about any place in this country, and I know for a fact in my community you can buy a minisatellite dish. You can go to Blockbuster Video and rent a video. Many people choose that. Cable passes 97 percent of the homes in this country, yet only 60 percent of those homes choose to purchase cable systems.

What this bill does is it gives an opportunity for this country to enter a new age, an age for competition throughout our telecommunications. The major opportunity is there for the phone systems for competition through the cable system.

Again, in my own area of south Florida, cable systems are actively marketing competition in commercial lines, today, against phone systems. That is something they want to do in the short term, tomorrow.

If this bill has any chance of creating this synergism, the new technologies, the things that will be available that are beyond our imagination, the opportunity of cable systems to be part of that competition is a necessary component.

If we can think back 15 years ago when none of us could have imagined the change in the technologies that have evolved, this is a case of hope versus fear.

Mr. Chairman, I urge the defeat of the Markey amendment.

Mr. MARKEY. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman very much for yielding me time.

Mr. Chairman, I rise with great excitement about the technology that is offered through this cable miracle. I only hope that the consumers can be excited as well. I stand here before you as a former chairperson of a local municipality's cable-TV committee, and I realize that basic rates have been regulated. But maybe the reason why so many do not opt in for cable TV is because of the rates on the other services.

So I think the Markey-Shays amendment is right on the mark. It acknowledges the technology, but it also comes squarely down for competition, and it responds to the needs of consumers in keeping the lid on what is a privilege held by the cable companies. It is a privilege to be in the cable TV business. It is big business. It is going to be more big business in the 21st century, and I encourage that. But at the same time, I think it is very important to have a system that provides for the regulation of rates so that we can have greater access to cable by our schools, for our public institutions, and, yes, for our citizens in urban and rural America. The rates are already too high!

Mr. Chairman, this amendment also allows the subscriber to more easily make complaints to the FCC. The real issue is to come down on the side of the consumer and to come down on the side of viable competition. Support the Markey-Shays amendment.

Mr. Chairman, I rise in support of the Markey-Shays amendment to H.R. 1555 because it provides reasonable and structured plan for deregulating cable rates for an existing cable system until a telephone company is providing competing services in the area.

This amendment is critically important because in many areas of the country, one cable company already has a monopoly on cable services. I am sure that many of my colleagues can attest to the complaints by constituents with respect to high rates and inadequate service when no competition exists in the local cable market.

This amendment is also necessary because it would eliminate rate regulation for many small cable systems with less than 10,000 subscribers in a franchise area and less than 250,000 subscribers nationwide.

Finally, this amendment provides an opportunity for consumers to petition the FCC to review rates if 10 subscribers complain as opposed to the bill's requirement that 5 percent of the subscribers must complain in order to trigger a review by the FCC.

I urge my colleagues to support true competition in the cable market by voting in favor of the Markey-Shays amendment.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from New Mexico [Mr. RICHARDSON].

(Mr. RICHARDSON asked and was given permission to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Chairman, while I applaud the leadership of the gentleman from Massachusetts [Mr. MARKEY], incredible leadership on telecommunications issues, I must oppose this amendment, because Federal regulation of cable which began in 1993 has not worked. Regulation has resulted in the decline of cable television programming and hurt the industry's ability to invest in technology that is going to improve information services to all Americans.

□ 1100

Because cable companies have information lines in home, cable has the potential to offer our constituents a choice in how to receive information. Cable systems pass over 96 percent of American homes with cables that carry up to 900 times as much information as the local phone company's wires.

Exensive regulations prevent the cable industry from raising the capital needed to make the billion dollar investments needed to upgrade their systems. Cable's high capacity systems can ultimately deliver virtually every type of communications service conceivable, allow consumers to choose between competing providers, voice, video, and data services.

I urge a ''no'' vote on this amendment.

Mr. MARKEY. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan [Mr. DINGELL], the ranking member of the Committee on Commerce.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment.

While many of us differ about parts of the bill, one thing is clear. H.R. 1555 deregulates cable before consumers have a competitive authorization alternative. The provisions of the bill very simply see to it, first of all, that so-called small systems are deregulated immediately and define a small system as one which has 600,000 subscribers. That is a market the size of the city of Las Vegas. So there is nothing small about those who will be deregulated immediately.

Beyond this, the provision will deregulate cable rates for more than 16 million households, nearly 30 percent of the total cable households in America, and it will do so at the end of the time it takes the President to sign this.

The bill will deregulate all cable rates in Alaska immediately, and more than 61 percent of rates in Georgia, and the rates of better than half of the subscribers in Arkansas, Maine, North Dakota, South Dakota, Minnesota, Nevada, and other States.

But there is more. This bill will deregulate by the calendar. What happens is that at the end of 15 months, whether there is competition in place or not, deregulation occurs. At that point, what protection will exist for the consumers of cable services in this country who do not have competition?

This amendment returns us to the rather sensible approach which we had when we passed the Cable Regulation Act some 2 years ago. It provides protection for the consumers. I urge my colleagues to support the amendment.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. OXLEY], a member of the committee.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, since the passage of the 1992 Cable Act, the PCC staff has increased some 30 percent, making it one of the largest growing Federal bureaucracies in Washington. Most of the growth is due to the creation of the Cable Services Bureau.

Listen to this: When established, the Cable Service Bureau has a staff of 59. Since the passage of the Cable Act of 1992, it has increased and has quadrupled in size. The 1995 cable services budget stands at $186 million, a 35-percent increase from the Cable Act.

We do not need more bureaucrats telling the American public what they can and cannot pay for MTV and other cable services. It seems to me that the potential is clearly there for more and more competition. If we get bureaucracy in the way of competition, the bureaucracy always wins. It is important to understand the negative effects of the Cable Act of 1992. This amendment would exacerbate the terrible things that have happened since 1992.

Mr. MARKEY. Mr. Chairman, I yield 1 minute to the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, we gave away cable franchises in the early 1970s and made millionaires out of cable franchise owners. In 1984, we deregulated and made billionaires out of these organizations.

The argument that since deregulation bad things have happened to cable is simply not true. Their revenues have grown from 17 billion in 1990 to 25 billion in 1995. Their subscribers have grown from 54 million to 61 million during that same time period. Cable companies are making money. They are presently without competition. We should deregulate when we have competition, not before. That is the crux of this argument.

Mr. BLILEY. Mr. Chairman, I yield 3½ minutes to the gentleman from Colorado [Mr. SCHAEFER].

(Mr. SCHAEFER asked and was given permission to revise and extend his remarks.)

Mr. SCHAEFER. Mr. Chairman, I rise in opposition to this amendment and in support of H.R. 1555.

In 1992, I voted against the cable act because it was unjustified and would slow the growth of a dynamic industry. In fact, the 1992 act stifled the cable industry's ability to upgrade its plants, deploy new technology and add new channels. It also put several program networks out of business and delayed the launch of many other networks in this country.

Without some changes to the cable act, Congress will delay the introduction of new technologies and services to the consumer and will jeopardize the growth of competition in the telecommunications industry.

The Markey-Shays amendment should be rejected for two reasons: First, it looks to the past; second, it is bad policy.

H.R. 1555 is looking to the future. It will establish new competition between multiple service providers offering consumers greater choices, better quality and fairer prices.

The Markey-Shays amendment is based on outdated market conditions from the 1980's, and it seeks to shackle an industry that promises to deliver every conceivable information age service as well as local phone service.

The proposed amendment represents a last ditch effort to keep in place a failed system of regulation that has no place in the marketplace today.

The gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Connecticut [Mr. SHAYS] have argued that without their amendment cable prices would jump significantly and without justification. This simply is not true.

First, for most cable systems, the vast majority of cable subscribers rate regulations will remain in place for 15 months after 1,555 is enacted. This will provide ample time for more competition to develop. Competition, not extensive Federal regulation, is the best way to constrain prices that we have today.

Second, the sponsors of the pending cable rate amendment have overstated the history of cable prices after deregulation. For example, Mr. MARKEY has repeatedly cited a GAO statistic which suggests that cable rates tripled between deregulation in the mid 1980s and reregulation in 1992. What he ignores is that the number of channels offered by the cable system has also tripled.

As this chart very well explains it, back in the deregulation era, here we had between 1986, 58 cents per channel. And as you go to 11/91, 58 cents per channel. No changes.

The chart demonstrates the average cost of cable television. It remained constant over the particular time. And I would just say, by tying future cable rates to CPI, as the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Connecticut [Mr. SHAYS] are proposing, Congress will choke off the explosion of services and programs to our consumers. The time for total deregulation is there; 13 hundred pages of FCC regulations and 220 bureaucrats are running this system,

the cable bureau in this country under FCC. It is harming consumers by delaying introduction of new technology and services. Such regulations will also impede the cable industry's ability to offer other consumer advantages in this market.

I would just say that if we really want cable to be a part of this whole information highway, defeat the Markey-Shays amendment.

Mr. MARKEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we are now 3 minutes from casting the one vote that every consumer in America is going to understand. They may appreciate that you are going to give them the ability to have one more long distance company out there, but they have already, in fact, enjoy dozens of long distance companies in America. But every cable consumer in America knows that in their hometown there is only one cable company, and the telephone company is not coming to town soon.

Under Shays-Markey, when the telephone company comes to town, no more regulation. What the bill says right now is, even if the telephone company does not come to town, the cable companies can tip you upside down and shake your money out of your pockets.

So you answer this question: When cable rates go from $25 a month to $35 a month, every month, are you going to be able to explain that there is competition arriving in 3 or 4 years?

Keep rate controls until the telephone company shows up in town, then complete deregulation. That is what this bill is all about, competition. When the telephone company begins to compete, if it ever does, no rate control. But until they get there, every community in America for all intents and purposes is a cable monopoly. They are going right back to the same practices once you pass this bill.

Support the Shays-Markey amendment. Protect cable consumers until competition arrives.

The CHAIRMAN. The gentleman from Virginia [Mr. BLILEY] has 1 half minute to close.

Mr. BLILEY. Mr. Chairman, I yield the balance of my time to the gentleman from Texas [Mr. FIELDS].

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Chairman, this is a reregulatory dinosaur. Basic cable rates continue to be regulated under this bill.

We deregulate expanded basic in 15 months, when telephone will be competing with cable. But very importantly, in terms of competition with telephone companies, the only competitor in the residential marketplace will be the cable company. If you place regulations on cable, they will not be able to roll out the services so they can truly compete with telephone, which is what we want. It is a desired consumer benefit.

Mr. Chairman, I rise in opposition to the Markey cable re-regulation amendment. Today, we will hear from my friend from Massachusetts that there is not enough competition in the cable services arena and, therefore cable should not be deregulated. So one might ask, why would we want to limit one industry and place regulations which will prohibit cable from competing with the others?

The checklist in title 1 envisions a facilities-based competitor which will provide the consumer with an alternative in local phone service. The cable companies are ready to be that competitor; however, they cannot fully participate in the deployment of an alternative system if they must operate under the burdensome regulations imposed by the 1992 cable act. The truth is that cable companies are facing true competition. With the deployment of direct broadcast satellite systems and telephone entry into cable, the competitors have come.

H.R. 1555 takes a moderate approach toward deregulating cable. The basic tier remains regulated because that has become a lifeline service. The upper tiers, which are purely entertainment, are reregulated because consumers have a choice in that area.

We should not be picking favorites by keeping some sectors of the industry under regulations. It is time to allow everyone to compete fairly and without Government interference. I strongly urge my colleagues to oppose this amendment.

STATEMENT ON MUST CARRY/ADVANCED SPECTRUM

Section 336(b)(3) of the Communications Act, added by section 301 of the bill, makes clear that ancillary and supplemental services offered on designated frequencies are not entitled to must carry. It is not the intent of this provision to confer must carry status on advanced television or other video services offered on designated frequencies. Under the 1992 Cable Act, that issue is to be the subject of a Commission proceeding under section 614(b)(4)(B).

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to the rule, the Chair announces that it will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings. This is a 15-minute vote.

The vote was taken by electronic device, and there were—ayes 148, noes 275, not voting 11, as follows:

[Roll No. 628]

AYES—148

Abercrombie
Baesler
Barcia
Barrett (WI)
Becerra
Beilenson
Bereuter
Bishop
Boehlert
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bunning
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Dingell
Doyle
Duncan
Durbin
Engel
Evans
Farr
Fattah
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Franks (NJ)
Furse
Gejdenson
Gilman
Gonzalez
Gordon
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Horn
Hyde
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Leach
Levin
Lewis (GA)
Lipinski
Lowey
Luther
Maloney
Markey
Mascara
McCarthy
McDermott
McHugh
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Minge
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Nussle
Oberstar
Obey
Olver
Owens
Pallone
Payne (NJ)
Pomeroy
Porter
Poshard
Rahall
Reed
Regula
Rivers
Roemer
Rogers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schumer
Scott
Serrano
Shays
Skelton
Slaughter
Stark
Stokes
Studds
Stupak
Tanner
Thompson
Torres
Torricelli
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Wise
Woolsey
Wyden
Wynn
Yates

NOES—275

Ackerman
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bentsen
Berman
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bonior
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dixon
Doggett
Dooley
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flake
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Hostettler
Houghton
Hoyer
Hunter
Inglis
Istook
Jefferson
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Lofgren
Longley
Lucas
Manton
Manzullo
Martinez
Martini
Matsui
McCollum
McCrery
McDade
McHale
McInnis
McIntosh

McKeon
Metcalf
Meyers
Mica
Miller (CA)
Miller (FL)
Mineta
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Orton
Oxley
Packard
Parker
Pastor
Paxon
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Rangel
Richardson
Riggs
Roberts
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Schaefer
Schiff
Schroeder
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Towns
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (FL)
Zeliff
Zimmer

NOT VOTING—11

Andrews
Bateman
Coburn
Hutchinson
Moakley
Ortiz
Reynolds
Scarborough
Thurman
Williams
Young (AK)

☐ 1133

Messrs. MONTGOMERY, MARTINEZ, PAYNE of New Jersey, and BEVILL changed their vote from ''aye'' to ''no.''

Mrs. MEEK of Florida and Mr. HASTINGS of Florida changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to the rule, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 2–1 offered by the gentleman from Michigan [Mr. STUPAK], Amendment No. 2–2 as modified, offered by the gentleman from Michigan [Mr. CONYERS], and Amendment No. 2–3 offered by the gentleman from California [Mr. COX].

AMENDMENT NO. 2–1 OFFERED BY MR. STUPAK

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan [Mr. STUPAK] on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 338, noes 86, not voting 10, as follows:

[Roll No. 629]

AYES—338

Abercrombie
Ackerman
Armey
Baesler
Baker (LA)
Baldacci
Barcia
Barr
Barrett (WI)
Bartlett
Barton
Bass
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilirakis
Bishop
Blute
Boehlert
Bonilla
Bonior
Borski
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Burton
Calvert
Camp
Canady
Cardin
Chambliss
Chapman
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Collins (GA)
Collins (IL)
Collins (MI)
Condit
Conyers
Cooley
Costello
Coyne
Cramer
Crane
Cubin
Cunningham
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Farr
Fattah
Fawell
Fazio
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Frank (MA)
Frelinghuysen
Frost
Funderburk
Furse
Gallegly
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefner
Heineman
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hoyer
Hunter
Hyde
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E.B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
Kingston
Kleczka
Klink
Klug
Knollenberg
LaFalce
LaHood
Lantos
LaTourette
Levin
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Lofgren
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McDade
McDermott
McHale
McHugh
McIntosh
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Nussle
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Rush
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shaw
Shays
Shuster
Sisisky
Skaggs
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stupak
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornton
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Waldholtz
Walsh
Wamp
Ward
Waters
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (FL)
Zeliff

NOES—86

Allard
Archer
Bachus
Baker (CA)
Ballenger
Barrett (NE)
Bilbray
Bliley
Boehner
Bono
Boucher
Bunn
Bunning
Burr
Buyer
Callahan
Castle
Chabot
Chenoweth
Christensen
Coleman
Combest
Cox
Crapo
Cremeans
Deal
DeLay
Deutsch
Dickey
Ewing
Fields (TX)
Fox
Franks (CT)
Franks (NJ)
Frisa
Ganske
Gillmor
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Hastert
Hefley
Herger
Hostettler
Houghton
Inglis
King
Kolbe
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Livingston
LoBiondo
Longley
McCrery
McInnis
Metcalf
Mica
Norwood
Oxley
Packard
Parker
Paxon
Rogers
Rohrabacher
Royce
Schaefer
Shadegg
Skeen
Souder
Stump
Talent
Tate
Thornberry
Vucanovich
Walker
Weller
White
Whitfield
Wicker
Zimmer

NOT VOTING—10

Andrews
Bateman
Hutchinson
Moakley
Ortiz
Reynolds
Scarborough
Thurman
Williams
Young (AK)

☐ 1142

Mr. FOX of Pennsylvania and Mr. SHADEGG changed their vote from ''aye'' to ''no.''

Messrs. ROBERTS, QUINN, and BILIRAKIS, and Mrs. SMITH of Washington changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 2–2, AS MODIFIED, OFFERED BY MR. CONYERS

The CHAIRMAN. The pending business is the demand for a recorded vote on amendment 2–2. as modified, offered by the gentleman from Michigan [Mr. CONYERS] on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 151, noes 271, not voting 12, as follows:

[Roll No. 630]

AYES—151

Abercrombie
Ackerman
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bono
Borski
Brown (CA)
Bryant (TX)
Bunn
Canady
Cardin
Chabot
Chapman
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Cooley
Costello
Coyne
Cremeans
Cunningham
Danner
DeFazio
DeLauro
Dellums
Dixon
Doggett
Durbin
Edwards
Evans
Farr
Fawell
Fazio
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gekas
Gephardt
Gibbons
Gonzalez
Goss
Green
Gutierrez
Hall (OH)
Heineman
Hinchey
Hobson
Holden
Hostettler
Hoyer
Hyde
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kasich
Kildee
Kleczka
Klink
Knollenberg
LaFalce
Lantos
LaTourette
Leach
Levin
Lewis (KY)
Lipinski
Lofgren
Luther
Martinez
Matsui
McCarthy
McCollum
McDermott
McHale
Meyers
Mfume
Miller (CA)
Mineta
Mink
Myers
Nadler
Neumann
Norwood
Oberstar
Obey
Olver
Orton
Owens
Pastor
Payne (NJ)
Pomeroy
Poshard
Quillen
Ramstad
Rangel
Reed
Richardson
Rivers
Rogers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Sensenbrenner
Serrano
Skelton
Slaughter
Smith (MI)
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Thomas
Thornton
Torres
Torricelli
Traficant
Tucker
Velazquez
Vento
Volkmer
Waters
Watt (NC)
Waxman
Whitfield
Woolsey
Wyden
Yates

NOES—271

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Boucher
Brewster
Browder
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Castle
Chambliss
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cox
Cramer
Crane
Crapo
Cubin
Davis
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Everett
Ewing
Fattah
Fields (LA)
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Herger
Hilleary
Hilliard
Hoekstra
Hoke
Horn
Houghton
Hunter
Inglis
Istook
Jefferson
Johnson (CT)
Johnson, Sam
Jones
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kim
King
Kingston
Klug
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Lewis (CA)
Lewis (GA)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lowey
Lucas
Maloney
Manton
Manzullo
Markey
Martini
Mascara
McCrery
McDade
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Mica
Miller (FL)
Minge
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myrick
Neal
Nethercutt
Ney
Nussle
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quinn
Radanovich
Rahall
Regula
Riggs
Roberts
Roemer
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Schaefer
Seastrand
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thompson
Thornberry
Tiahrt
Torkildsen
Towns
Upton
Visclosky
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Wicker
Wilson
Wise
Wolf
Wynn
Young (FL)
Zeliff
Zimmer

NOT VOTING—12

Andrews
Bateman
Bishop
Hutchinson
McHugh
Moakley
Ortiz
Reynolds
Scarborough
Thurman
Williams
Young (AK)

☐ 1150

So the amendment, as modified, was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California [Mr. COX] on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 4, not voting 10, as follows:

[Roll No. 631]

AYES—420

Abercrombie
Ackerman
Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula

Richardson	Skaggs	Towns
Riggs	Skeen	Traficant
Rivers	Skelton	Tucker
Roberts	Slaughter	Upton
Roemer	Smith (MI)	Velazquez
Rogers	Smith (TX)	Vento
Rohrabacher	Smith (WA)	Visclosky
Ros-Lehtinen	Solomon	Volkmer
Rose	Spence	Vucanovich
Roth	Spratt	Waldholtz
Roukema	Stark	Walker
Roybal-Allard	Stearns	Walsh
Royce	Stenholm	Wamp
Rush	Stockman	Ward
Sabo	Stokes	Waters
Salmon	Studds	Watt (NC)
Sanders	Stump	Watts (OK)
Sanford	Stupak	Waxman
Sawyer	Talent	Weldon (FL)
Saxton	Tanner	Weldon (PA)
Schaefer	Tate	Weller
Schiff	Tauzin	White
Schroeder	Taylor (MS)	Whitfield
Schumer	Taylor (NC)	Wicker
Scott	Tejeda	Wilson
Seastrand	Thomas	Wise
Sensenbrenner	Thompson	Woolsey
Serrano	Thornberry	Wyden
Shadegg	Thornton	Wynn
Shaw	Tiahrt	Yates
Shays	Torkildsen	Young (FL)
Shuster	Torres	Zeliff
Sisisky	Torricelli	Zimmer

NOES—4

Hunter	Souder
Smith (NJ)	Wolf

NOT VOTING—10

Andrews	Ortiz	Williams
Bateman	Reynolds	Young (AK)
Moakley	Scarborough	
Nethercutt	Thurman	

□ 1156

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. NETHERCUTT. Mr. Chairman, I was not recorded on rollcall vote No. 631. The RECORD should reflect that I would have voted ''aye.''

AMENDMENT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MARKEY: Page 150, beginning on line 24, strike paragraph (1) through line 17 on page 151 and insert the following:

''(1) NATIONAL AUDIENCE REACH LIMITATIONS.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, controlling, or having a cognizable interest in, television stations which have an aggregate national audience reach exceeding 35 percent. Within 3 years after such date of enactment, the Commission shall conduct a study on the operation of this paragraph and submit a report to the Congress on the development of competition in the television marketplace and the need for any revisions to or elimination of this paragraph.''

Page 150, line 4, strike ''(a) AMENDMENT.—''.

Page 150, line 9, after ''section,'' insert ''and consistent with section 613(a) of this Act,''.

Page 154, strike lines 9 and 10.

The CHAIRMAN. Under the rule, the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 15 minutes, and a Member in opposition will be recognized for 15 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment which we are now considering addresses one of the most fundamental changes which has ever been contemplated in the history of our country. The bill, as it is presented to the floor, repeals for all intents and purposes all the cross-ownership rules, all of the ownership limitation rules, which have existed since the 1970's, the 1960's, to protect against single companies being able to control all of the media in individual communities and across the country.

□ 1200

In this bill it is made permissible for one company in your hometown to own the only newspaper, to own the cable system, to own every AM station, to own every FM station, to own the biggest television station and to own the biggest independent station, all in one community. That is too much media concentration for any one company to have in any city in the United States.

This amendment deals with a slice of that. The amendment to deal with all of it was not put in order by the Committee on Rules when it was requested as an amendment, but it does deal with a part of it. It would put a limitation on how many television stations, CBS, ABC, NBC, and Fox could own across our country, how many local TV stations, and whether or not in partnership with cable companies individual TV stations being owned by cable companies at the local level could partner to create absolutely impossible obstacles for the other local television broadcasters to overcome.

Who do we have supporting our amendment? We have just about every local CBS, ABC, and NBC affiliate in the United States that supports this amendment. We do not have ABC, CBS, and NBC in New York because they want to gobble up all the rest of America. This would be unhealthy, it would run contrary to American traditons of localism and diversity that have many voices, especially those at the local level that can serve as well as a national voice but with a balance.

Vote for the Markey amendment to keep limits on whether or not the national networks can gobble up the whole rest of the country and whether or not in individual cities and towns cable companies can purchase the biggest TV station or the biggest TV station can purchase the cable company and create an absolute block on other stations having the same access to viewers, having the same ability to get their point of view out as does that cable broadcasting combination in your hometown.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself 2 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Chairman, I rise in opposition to the amendment of the gentleman from Massachusetts [Mr. MARKEY] restricting the national ownership limitations on television stations to 35 percent of an aggregate national audience reach.

The gentleman's amendment would limit the ability of broadcast stations to compete effectively in a multichannel environment. Indeed, the Federal Communications Commission on this issue in its further notice of proposed rulemaking issued this year, the FCC noted that group ownership does not, I repeat does not result in a decrease in viewpoint diversity. According to the FCC the evidence suggests the opposite.

Mr. Chairman, I ask the Members to look at their own broadcast situation. Who owns your local ABC, NBC, CBS affiliate? Is it local? I venture to say that 90 percent of us the answer is no, they are owned by somebody else out of town. So it is a nonissue.

As to what the gentleman says about cross ownership and saturation, I invite the Members to read page 153 of the bill. The commission may deny the application if the commission determines that the combination of such station and more than one other nonbroadcast media of mass communication and would result in a undue concentration of media voices in the respective local market. This amendment is not needed. Vote it down.

Mr. Chairman, I rise in opposition to Mr. MARKEY'S amendment restricting the national ownership limitations on telephone stations to 35 percent of an aggregate national audience reach. Mr. MARKEY'S amendment would limit the ability of broadcast stations to compete effectively in a multichannel environment. Mr. MARKKEY'S amendment would limit the ability of broadcast stations to compete effectively in the multichannel environment. Mr. MARKEY defends the retention of an arbitrary limitation in the name of localism and diversity. The evidence, however, does not support his claim.

I would simply refer Mr. MARKEY to the findings of the Federal Communications Commission on this issue in its further notice of proposed rulemaking issued this year. The FCC noted that group ownership does not result in a decrease in viewpoint diversity. According to the FCC, the evidence suggests the opposite, that group television station owners generally allow local managers to make editorial and reporting decisions autonomously. Contrary to Mr. MARKEY'S suggestion that relaxation of these limits are anticompetitive, the FCC has found that in today's markets, common ownership of larger numbers of broadcast stations nationwide, or of more than one station in the market, will permit exploitation of economies of scale and reduce costs and permit improved service.

Finally, I would note that in its notice of proposed rulemaking, the FCC questioned whether an increase in concentration nationally has any effect on diversity or the local market. Most local stations are not local at all, but are run from headquarters found outside the State in which the TV station is located. Moreover,

many local stations are affiliated with networks. As a result, even though these stations are not commonly owned, they air the identical programming for a large portion of the broadcast day irrespective of the national ownership limits.

For these reasons, the amendment proposed by Mr. MARKEY is anticompetitive and I strongly urge my colleagues to oppose his amendment.

Mr. MARKEY. Mr. Chairman, I yield 1 minute to the gentleman from Maryland [Mr. WYNN].

Mr. WYNN. Mr. Chairman, it goes without saying that media is a major force in our society. Some people even blame our crime problems, our moral decay on the media. Now, I am not willing to go that far, but I am concerned about putting the control of our ideas and messages in the hands of fewer and fewer people in this country.

Right now the national audience capture is 25 percent. That seems appropriate to me in light of the fact that there is no network that reaches 25 percent, but certainly 35 percent is a reasonable compromise. There is no reason to double the concentration to 50 percent. I think 35 percent is certainly appropriate.

We talk about small business. Mr. Chairman, this bill goes in the exact opposite direction. Even big businesses may not be able to get into the market if we pass this legislation. It is clearly a barrier to market interests. In fact, 10 years ago if this bill had been in place Fox television probably could not have gotten started. It represents a threat to local broadcast decisions. Please vote with the Markey amendment.

Mr. FIELDS of Texas. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. STEARNS].

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Chairman, I rise in strong opposition to the Markey amendment.

The rules regulating broadcasters were written in the 1950's. but the world for which those broadcast provisions were necessary doesn't exist anymore. It's gone. Most of us have recognized that fact and bidden it a fond farewell.

But not the supporters of this amendment. They would take the U.S. broadcasting industry back to the days of the 1950's. This amendment would ensure that while every other industry in America surges ahead, U.S. broadcasters remain mired in rules written when the slide rule was still state-of-the-art technology.

We should be thankful that we didn't impose the same regulations on the computer industry as we have on the broadcast industry. If we had, we'd all still be using mechanical typewriters.

The Markey amendment is the equivalent of trying to stuff a full-grown man into boys clothes—they simply won't fit anymore. The broadcast industry has outgrown the rules written for it when it was still a child.

If I could direct your attention to the graph, you will see that to reach that 50 percent limit, one would have to buy a station in more than each of the top 25 markets out of the 211 television markets. That in itself is no small feat. But keep in mind the result: Broadcasters would own a mere 30 stations out of the 1,500 TV stations nationwide. Who has this money, the financing, for that would be mind boggling.

On the question of localism—it isn't lost. Networks and group-owned stations typically air more local coverage. Covering local news simply makes good business sense—give viewers what they want or go out of business. Business succeed by making people satisfied.

Opponents will also tell you we will lose diversity in the local market with this bill. That is simply not true. Just keep in mind the following:

The FCC can deny any combination if it will harm the preservation of diversity in the local market; and under no circumstance will the FCC allow less than three voices in a market.

We must reject this backward-looking amendment. We must reject the advice of the Rip Van Winkles of broadcasting who went to sleep in the 1950's and think we are still there.

If the supporters of this amendment had their way, smoke signals would still be cutting-edge technology.

The dire predictions about the harm of lifting broadcast restrictions remind me of Chicken Little's warning that the sky is falling. Ladies and gentlemen, the sky is not falling. Freeing broadcasters from outdated ownership rules will do us no harm. If I can steal from Shakespeare, the Markey amendment is ''full of sound and fury, signifying nothing.''

Mr. MARKEY. Mr. Chairman, I yield 1½ minutes to the gentleman from Pittsburgh, PA [Mr. KLINK].

Mr. KLINK. Mr. Chairman, the Markey amendment is really very important to this bill. I will tell you that for us to have a free Nation, for people who are going to elect those of us who are their representatives in Government, they have to have different points of views.

I have had some experience in the broadcast industry for 24 years, and in fact I worked for Westinghouse, which is one of the companies who just this last week made national history in buying CBS, ABC is being bought by Disney.

I am talking to my colleagues in the business. They said, look, we are already merging news rooms. You have four or five different entities, radio and TV owned by Westinghouse and by CBS, we are merging news rooms, so before as a Member of Congress or as any public servant you may have three or four different people there gathering points of view you now have one.

So this is not a divergence of viewpoints. We are bringing all the viewpoints in there. We are creating information czars. We are creating a situation where a handful of people will in fact be able to control the opinions across this Nation, and what we are saying is, no, we do not want that, we want free broadcast, we want the broadcast signals which are owned by the people of this Nation, which are licensed by the FCC for these large corporations to broadcast on to continue.

I urge you to support the Markey amendment.

Mr. FIELDS of Texas. Mr. Chairman, I yield 1½ minutes to the gentleman from New York [Mr. PAXON].

Mr. PAXON. Mr. Chairman, one of the major fallacies of Mr. MARKEY's arguments is that the broadcast ownership reform provisions will harm local ownership of broadcast stations.

There is an unfounded fear that networks or broadcasting groups will buy up local stations and drop local programming in favor of network programs or a bland, national fare—and that is just plain wrong.

First, under today's restrictive broadcast ownership provisions, 75 percent of television stations are owned by broadcast corporations, and of those companies, 90 percent are headquartered in States other than where their individual stations are located.

Second, networks cannot currently force an affiliate to air any specific network program. Local stations today enjoy the ''right of refusal'' which means they can air a local program instead of a network program. Nothing in H.R. 1555 will change this right of refusal.

Finally, and perhaps most important to broadcasters, is the fact that local programming is profitable. Good business sense dictates that broadcasters address the needs of the local community.

There will always be demand for local programming, especially local news, weather forecasts and traffic reports, since this is something that the networks just can't match.

In conclusion, we must also remember that H.R. 1555 does nothing to weaken existing antitrust laws regarding undue media concentration.

Mr. Chairman, I urge all of my colleagues to oppose the amendment by Mr. Markey.

The CHAIRMAN. The Committee will rise informally to receive a message.

MESSAGE FROM THE PRESIDENT

The SPEAKER pro tempore (Mr. WALKER) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

Appendix E:

H.R. Rep. 104-458 (Excerpts)

104TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
104–458

TELECOMMUNICATIONS ACT OF 1996

JANUARY 31, 1996. Ordered to be printed

Mr. BLILEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Telecommunications Act of 1996".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

House amendment

Section 104 of the House amendment protects from civil liability those providers and users of interactive computer services for actions to restrict or to enable restriction of access to objectionable online material.

Conference agreement

The conference agreement adopts the House provision with minor modifications as a new section 230 of the Communications Act. This section provides "Good Samaritan" protections from civil liability for providers or users of an interactive computer service for actions to restrict or to enable restriction of access to objectionable online material. One of the specific purposes of this section is to overrule *Stratton-Oakmont* v. *Prodigy* and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material. The conferees believe that such decisions create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services.

These protections apply to all interactive computer services, as defined in new subsection 230(e)(2), including non-subscriber systems such as those operated by many businesses for employee use. They also apply to all access software providers, as defined in new section 230(e)(5), including providers of proxy server software.

The conferees do not intend, however, that these protections from civil liability apply to so-called "cancelbotting," in which recipients of a message respond by deleting the message from the computer systems of others without the consent of the originator or without having the right to do so.

SUBTITLE B—VIOLENCE

SECTION 551—PARENTAL CHOICE IN TELEVISION PROGRAMMING

Senate bill

Sections 501–505 of Senate bill gives the industry one year to voluntarily develop a ratings system for TV programs. If the industry fails to do so, a Federal TV Ratings Commission would set the ratings. The Commission would be appointed by the President, subject to confirmation by the Senate and would establish rules for rating the level of violence and other objectionable content in programs. The Board would also establish rules for TV broadcasters and cable systems to transmit the ratings to viewers. The Commission would be authorized funds necessary to carry out its duties. The Senate bill requires TV manufacturers to equip all 13 inch or greater TV sets with circuitry to block rated shows.

House amendment

Section 305 of the House amendment gives the cable and broadcast industries one year to develop voluntary ratings for video programming containing violence, sex and other indecent materials and to agree voluntarily to broadcast signals containing such ratings. If the industry fails to come up with an acceptance plan, the

LARRY PRESSLER,
TED STEVENS,
SLADE GORTON,
TRENT LOTT,
FRITZ HOLLINGS,
DANIEL K. INOUYE,
WENDELL FORD,
J.J. EXON,
JAY ROCKEFELLER,
Managers on the Part of the Senate.

○

Appendix F:

H.R. 1865 115th Cong. (1st Sess.)

I

115TH CONGRESS
1ST SESSION

H. R. 1865

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2017

Mrs. WAGNER (for herself, Mrs. BEATTY, Mr. SMITH of New Jersey, Ms. CLARKE of New York, Mr. POE of Texas, Mrs. CAROLYN B. MALONEY of New York, Mr. ROYCE of California, Mrs. ROBY, Mr. KINZINGER, and Ms. JENKINS of Kansas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Allow States and Victims to Fight Online Sex Trafficking Act of 2017''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the ''Communications Decency Act of 1996'') was never intended to provide legal protection to websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.

(2) Clarification of such section is warranted to ensure that such section does not provide such protection to such websites.

SEC. 3. ENSURING ABILITY TO ENFORCE FEDERAL AND STATE CRIMINAL AND CIVIL LAW RELATING TO SEXUAL EXPLOITATION OF CHILDREN OR SEX TRAFFICKING.

(a) IN GENERAL.—Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''; and'' and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) to ensure vigorous enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, including through the availability of a civil remedy for victims of sex trafficking.''; and

(2) in subsection (e)—

(A) in paragraph (1)—

(i) by inserting ''section 1591 of such title (relating to sex trafficking),'' after ''title 18, United States Code,'';

(ii) by striking ''impair the enforcement of section'' and inserting the following: ''impair the enforcement of, or limit the availability of victim restitution under—

''(A) section''; and

(iii) by striking ''statute.'' and inserting the following: ''statute; or

''(B) any State criminal statute that prohibits—

''(i) sexual exploitation of children;

''(ii) sex trafficking of children; or

''(iii) sex trafficking by force, threats of force, fraud, or coercion.'';

(B) in the second sentence of paragraph (3), by striking ''No cause of action'' and inserting ''Except as provided in paragraphs (1)(B) and (5)(B), no cause of action''; and

(C) by adding at the end the following:

''(5) NO EFFECT ON CIVIL LAW RELATING TO SEXUAL EXPLOITATION OF CHILDREN OR SEX TRAFFICKING.—Nothing in this section shall be construed to impair the enforcement or limit the application of—

''(A) section 1595 of title 18, United States Code; or

''(B) any other Federal or State law that provides causes of action, restitution, or other civil remedies to victims of—

''(i) sexual exploitation of children;

''(ii) sex trafficking of children; or

''(iii) sex trafficking by force, threats of force, fraud, or coercion.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and the amendment made by subsection (a)(2)(C) (and, to the extent it relates to such amendment, the amendment made by subsection (a)(2)(B)) shall apply regardless of whether the conduct alleged occurred, or is

alleged to have occurred, before, on, or after such date of enactment.

SEC. 4. ENSURING FEDERAL LIABILITY FOR PUBLISHING INFORMATION DESIGNED TO FACILITATE SEX TRAFFICKING.

(a) IN GENERAL.—Section 1591 of title 18, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f);

(2) in subsection (f), as redesignated by paragraph (1), by adding at the end the following:

''(6) ''The terms 'information content provider' and 'interactive computer service' have the meanings given those terms in section 230 of the Communications Act of 1934 (47 U.S.C. 230).

''(7) The term 'participation in a venture' includes knowing or reckless conduct by any person or entity and by any means that furthers or in anyway aids or abets the violation of subsection (a)(1).''; and

(3) by inserting after subsection (d) the following:

''(e)(1) Whoever, being a provider of an interactive computer service, publishes information provided by an information content provider, with reckless disregard that

the information provided by the information content provider is in furtherance of an offense under subsection (a) or an attempt to commit such an offense, shall be fined in accordance with this title or imprisoned not more than 20 years, or both.

''(2) Nothing in paragraph (1) shall be construed to require the Federal Government in a prosecution, or a plaintiff in a civil action, to prove any intent on the part of the information content provider.''.

(b) CLERICAL AMENDMENTS.—Such section is further amended by striking ''subsection (e)(2)'' each place it appears and inserting ''subsection (f)(2)''.

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Appendix G:

H.R. 1865 115th Cong. (2d Sess.)

Union Calendar No. 432

115TH CONGRESS
2D SESSION

H. R. 1865

[Report No. 115–572, Part I]

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2017

Mrs. WAGNER (for herself, Mrs. BEATTY, Mr. SMITH of New Jersey, Ms. CLARKE of New York, Mr. POE of Texas, Mrs. CAROLYN B. MALONEY of New York, Mr. ROYCE of California, Mrs. ROBY, Mr. KINZINGER, and Ms. JENKINS of Kansas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

FEBRUARY 20, 2018

Additional sponsors: Mr. SMUCKER, Mr. STIVERS, Mr. WEBER of Texas, Mr. FLEISCHMANN, Mr. LANCE, Ms. SEWELL of Alabama, Mr. ROSKAM, Mr. ROUZER, Ms. MOORE, Mr. SHIMKUS, Mr. VARGAS, Mr. TURNER, Ms. ROSEN, Mrs. HARTZLER, Mr. EVANS, Mr. GARRETT, Mr. KATKO, Ms. KELLY of Illinois, Ms. WILSON of Florida, Mr. LAHOOD, Mr. COFFMAN, Mr. LUETKEMEYER, Mr. BISHOP of Michigan, Ms. STEFANIK, Mr. CRIST, Mr. CARBAJAL, Mrs. COMSTOCK, Mr. RODNEY DAVIS of Illinois, Mr. THOMAS J. ROONEY of Florida, Mr. GRAVES of Missouri, Mr. SMITH of Missouri, Mr. ZELDIN, Mr. MACARTHUR, Mr. PITTENGER, Mr. CONAWAY, Mr. YOUNG of Iowa, Mr. WALKER, Mr. WALBERG, Mr. HARRIS, Mr. MESSER, Mr. SMITH of Texas, Mr. BRAT, Mr. POLIQUIN, Mr. VALADAO, Mrs. MIMI WALTERS of California, Mr. GIBBS, Ms. HERRERA BEUTLER, Mr. LONG, Mr. BUTTERFIELD, Mr. PAYNE, Ms. BASS, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. HANABUSA, Ms. BLUNT ROCHESTER, Mrs. LAWRENCE, Ms. DELAURO, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. HASTINGS, Mr. RICHMOND, Mrs. LOVE, Mr. CLAY, Mr. KILDEE, Mr. BROWN of Maryland, Ms. PLASKETT, Ms. ADAMS, Mr. THOMPSON of Mississippi, Mr. CLEAVER, Mr. BOST, Ms. TENNEY, Mr. HUDSON, Mrs. HANDEL, Mr. CUELLAR, Mr. COLE, Mr. BILIRAKIS, Mrs. NOEM, Mrs. BROOKS of Indiana, Ms. ROS-LEHTINEN, Mr. ROSS, Mr. KELLY of Mississippi, Mr. DONOVAN, Ms. KUSTER of New Hampshire, Mr. BISHOP of Georgia, Mrs. WATSON COLEMAN, Mr. PALMER, Mr. DAVIDSON, Ms. FOXX, Mrs. BLACK, Mr. CONNOLLY, Mr. FASO, Mr. ROTHFUS, Mr. MCCAUL, Mr. FITZPATRICK, Mrs. WALORSKI, Mr. REED, Mr. JOYCE of Ohio, Mr. BRADY of Pennsylvania, Mr. STEWART, Mr. FRANKS of Arizona, Ms. SINEMA, Mr. RUSH, Mr. MEEKS, Mr. O'HALLERAN, Mr. JOHNSON of Louisiana, Mr. POSEY, Mr. JENKINS of West Virginia, Mr. GONZALEZ of Texas, Mr. DANNY K. DAVIS of Illinois, Mr. MCGOVERN, Mr. GENE GREEN of Texas, Mr. LEWIS of Georgia, Mr. ESPAILLAT, Mr. KEATING, Mr. NOLAN, Ms. TITUS, Mr. SEAN PATRICK MALONEY of New York, Mr. SERRANO, Mr. DESJARLAIS, Mr. CURBELO of Florida, Mr. ADERHOLT, Mr. HULTGREN, Mrs. BLACKBURN, Mr. FORTENBERRY, Mr. KELLY of Pennsylvania, Mr. KING of Iowa, Mr. LAMALFA, Mr. LAMBORN, Mr. OLSON, Mr. PEARCE, Mr. SESSIONS, Mr. WILSON of South Carolina, Mr. COHEN, Ms. NORTON, Mr. FRELINGHUYSEN, Mr. PAULSEN, Mr. REICHERT, Mr. ROE of Tennessee, Mr. BRADY of Texas, Mr. FLORES, Mr. SHUSTER, Mr. HOLLINGSWORTH, Mr. BYRNE, Mr. AUSTIN SCOTT of Georgia, Mr. LAWSON of Florida, Miss RICE of New York, Mr. MULLIN, Mr. GUTHRIE, Mr. TIBERI, Mr. GOHMERT, Mr. RICE of South Carolina, Mr. WILLIAMS, Mr. BARLETTA, Mr. SENSENBRENNER, Mr. MARSHALL, Mr. BURGESS, Mr. KNIGHT, Mr. KUSTOFF of Tennessee, Mr. LUCAS, Ms. VELÁZQUEZ, Mr. CAPUANO, Mr. CULBERSON, Mr. PERLMUTTER, Ms. WASSERMAN SCHULTZ, Mr. COSTA, Mr. CALVERT, and Mr. YOHO

Deleted sponsor: Mr. MCNERNEY (added September 13, 2017; deleted September 25, 2017)

FEBRUARY 20, 2018

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

FEBRUARY 20, 2018

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 3, 2017]

A BILL

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the "Communications Decency Act of 1996") was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and contribute to sex trafficking;

(2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and

(3) clarification of such section is warranted to ensure that such section does not provide such protection to such websites.

SEC. 3. PROMOTION OF PROSTITUTION AND RECKLESS DISREGARD OF SEX TRAFFICKING.

(a) PROMOTION OF PROSTITUTION.—Chapter 117 of title 18, United States Code, is amended by inserting after section 2421 the following:

"§ 2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking

"(a) IN GENERAL.—Whoever uses or operates a facility or means of interstate or foreign commerce or attempts to do so with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

"(b) AGGRAVATED VIOLATION.—Whoever uses or operates a facility or means of interstate or foreign commerce with the intent to promote or facilitate the prostitution of another person and—

"(1) promotes or facilitates the prostitution of 5 or more persons; or

"(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of 1591(a),

shall be fined under this title, imprisoned for not more than 25 years, or both.

"(c) CIVIL RECOVERY.—Any person injured by reason of a violation of section 2421A(b) may recover damages and reasonable attorneys' fees in an action before any appro-

priate United States district court. Consistent with section 230 of the Communications Act of 1934 (47 U.S.C. 230), a defendant may be held liable, under this subsection, where promotion or facilitation of prostitution activity includes responsibility for the creation or development of all or part of the information or content provided through any interactive computer service.

"(d) MANDATORY RESTITUTION.—Notwithstanding sections 3663 or 3663A and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this section.

"(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a) where the defendant proves, by a preponderance of the evidence, that the promotion or facilitation of prostitution is legal in the jurisdiction where the promotion or facilitation was targeted.".

(b) TABLE OF CONTENTS.—The table of contents for such chapter is amended by inserting after the item relating to section 2421 the following:

"2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking.".

SEC. 4. COMMUNICATIONS DECENCY ACT.

Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

"(5) NO EFFECT ON STATE LAWS CONFORMING TO 18 U.S.C. 1591(A) OR 2421A.—Nothing in this section shall be construed to impair or limit any charge in a criminal prosecution brought under State law—

"(A) if the conduct underlying the charge constitutes a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted; or

"(B) if the conduct underlying the charge constitutes a violation of section 1591(a) of title 18, United States Code.".

SEC. 5. SAVINGS CLAUSE.

Nothing in this Act or the amendments made by this Act shall be construed to limit or preempt any civil action or criminal prosecution under Federal law or State law (including State statutory law and State common law) filed before or after the day before the date of enactment of this Act that was not limited or preempted by section 230 of the Communications Act of 1934 (47 U.S.C. 230), as such section was in effect on the day before the date of enactment of this Act.

Union Calendar No. 432

115TH CONGRESS
2D SESSION

H. R. 1865

[Report No. 115–572, Part I]

A BILL

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

FEBRUARY 20, 2018

Reported from the Committee on the Judiciary with an amendment

FEBRUARY 20, 2018

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Appendix H:

H.R. 1865 115th Cong. (2d Sess.) (Enacted)

115TH CONGRESS
2D SESSION

H. R. 1865

AN ACT

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Allow States and Victims to Fight Online Sex Trafficking Act of 2017''.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the ''Communications Decency Act of 1996'') was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims;

(2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and

(3) clarification of such section is warranted to ensure that such section does not provide such protection to such websites.

SEC. 3. PROMOTION OF PROSTITUTION AND RECKLESS DISREGARD OF SEX TRAFFICKING.

(a) PROMOTION OF PROSTITUTION.—Chapter 117 of title 18, United States Code, is amended by inserting after section 2421 the following:

"§ 2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking

"(a) IN GENERAL.—Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service (as such term is defined in defined in section 230(f) the Communications Act of 1934 (47 U.S.C. 230(f))), or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

"(b) AGGRAVATED VIOLATION.—Whoever, using a facility or means of interstate or foreign commerce or in or affecting interstate or foreign commerce, owns, manages, or operates an interactive computer service (as such term is defined in defined in section 230(f) the Communications Act of 1934 (47 U.S.C. 230(f))), or conspires or attempts to do so, with the intent to promote or facilitate the prostitution of another person and—

"(1) promotes or facilitates the prostitution of 5 or more persons; or

"(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of 1591(a),

shall be fined under this title, imprisoned for not more than 25 years, or both.

''(c) CIVIL RECOVERY.—Any person injured by reason of a violation of section 2421A(b) may recover damages and reasonable attorneys' fees in an action before any appropriate United States district court.

''(d) MANDATORY RESTITUTION.—Notwithstanding sections 3663 or 3663A and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any violation of subsection (b)(2). The scope and nature of such restitution shall be consistent with section 2327(b).

''(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a), or subsection (b)(1) where the defendant proves, by a preponderance of the evidence, that the promotion or facilitation of prostitution is legal in the jurisdiction where the promotion or facilitation was targeted.''.

(b) TABLE OF CONTENTS.—The table of contents for such chapter is amended by inserting after the item relating to section 2421 the following:

''2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking.''.

SEC. 4. ENSURING ABILITY TO ENFORCE FEDERAL AND STATE CRIMINAL AND CIVIL LAW RELATING TO SEX TRAFFICKING.

(a) IN GENERAL.—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

''(5) NO EFFECT ON SEX TRAFFICKING LAW.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

''(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

''(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18, United States Code; or

''(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and the amendment made by subsection (a) shall apply regardless of whether the conduct alleged occurred, or is alleged to have occurred, before, on, or after such date of enactment.

SEC. 5. ENSURING FEDERAL LIABILITY FOR PUBLISHING INFORMATION DESIGNED TO FACILITATE SEX TRAFFICKING OR OTHERWISE FACILITATING SEX TRAFFICKING.

Section 1591(e) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(2) by inserting after paragraph (3) the following:

''(4) The term 'participation in a venture' means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).''.

SEC. 6. ACTIONS BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—Section 1595 of title 18, United States Code, is amended by adding at the end the following:

''(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents

of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as parens patriae, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1595 of title 18, United States Code, is amended—

(1) in subsection (b)(1), by striking ''this section'' and inserting ''subsection (a)''; and

(2) in subsection (c), in the matter preceding paragraph (1), by striking ''this section'' and inserting ''subsection (a)''.

SEC. 7. SAVINGS CLAUSE.

Nothing in this Act or the amendments made by this Act shall be construed to limit or preempt any civil action or criminal prosecution under Federal law or State law (including State statutory law and State common law) filed before or after the day before the date of enactment of this Act that was not limited or preempted by section 230 of the Communications Act of 1934 (47 U.S.C. 230), as such section was in effect on the day before the date of enactment of this Act.

SEC. 8. GAO STUDY.

On the date that is 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, a report which includes the following:

(1) Information on each civil action brought pursuant to section 2421A(c) of title 18, United States Code, that resulted in an award of damages, including the amount claimed, the nature or description of the losses claimed to support the amount claimed, the losses proven, and the nature or description of the losses proven to support the amount awarded.

(2) Information on each civil action brought pursuant to section 2421A(c) of title 18, United States Code, that did not result in an award of damages, including—

(A) the amount claimed and the nature or description of the losses claimed to support the amount claimed; and

(B) whether the case was dismissed, and if the case was dismissed, information describing the reason for the dismissal.

(3) Information on each order of restitution entered pursuant to section 2421A(d) of title 18, United States Code, including—

(A) whether the defendant was a corporation or an individual;

(B) the amount requested by the Government and the justification for, and calculation of, the amount requested, if restitution was requested; and

(C) the amount ordered by the court and the justification for, and calculation of, the amount ordered.

(4) For each defendant convicted of violating section 2421A(b) of title 18, United States Code, that was not ordered to pay restitution—

(A) whether the defendant was a corporation or an individual;

(B) the amount requested by the Government, if restitution was requested; and

(C) information describing the reason that the court did not order restitution.

Passed the House of Representatives February 27, 2018.

Attest:

Clerk.

115TH CONGRESS
2D SESSION

H. R. 1865

AN ACT

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

Appendix I:

FOSTA Committee Report

Calendar No. 292

115TH CONGRESS
2d Session

SENATE

REPORT
115–199

STOP ENABLING SEX TRAFFICKERS ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1693

JANUARY 10, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE
79–010 WASHINGTON : 2018

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

JOHN THUNE, South Dakota, *Chairman*

ROGER F. WICKER, Mississippi	BILL NELSON, Florida
ROY BLUNT, Missouri	MARIA CANTWELL, Washington
TED CRUZ, Texas	AMY KLOBUCHAR, Minnesota
DEB FISCHER, Nebraska	RICHARD BLUMENTHAL, Connecticut
JERRY MORAN, Kansas	BRIAN SCHATZ, Hawaii
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115TH CONGRESS, *2d Session* | SENATE | REPORT 115–199

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Mr. THUNE, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1693]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1693) to amend the Communications Act of 1934 to clarify that section 230 of that Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sex trafficking, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1693 would amend Federal law to ensure that section 230 of the Communications Act of 1934[1] (section 230) does not prohibit the enforcement of Federal and State criminal and civil law relating to sex trafficking against providers and users of interactive computer services (ICSs).

BACKGROUND AND NEEDS

The Communications Decency Act of 1996 (CDA), enacted as part of the Telecommunications Act of 1996,[2] was the first bill signed into law seeking to regulate obscenity and indecency on the internet. It was an attempt to address, among other things, concerns about minors' access to pornography and other indecent material

[1] 47 U.S.C. § 230.
[2] Public Law 104–104, 110 Stat. 56, 133.

online. Section 230 (as added by the CDA), the section central to the discussion around S. 1693, states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[3] This provision has had the practical effect of preventing ICSs from being held liable for the content that people who use their services create, unless a violation of Federal criminal law has occurred.

Over the years, much of the CDA as originally enacted has been struck down in court on freedom of speech grounds,[4] but section 230 and its liability protections remain. Many have argued that this section provides an essential underpinning of the modern internet and is critical to the explosive growth of websites that facilitate user-generated content.[5] At the same time, however, those protections have been held by courts to shield from civil liability and State criminal prosecution nefarious actors, such as the website BackPage.com, that are accused of knowingly facilitating sex trafficking.[6] S. 1693 would eliminate section 230 as a defense for websites that knowingly facilitate sex trafficking. It would also empower State law enforcement to enforce criminal statutes against websites, and introduce new civil liabilities for violations of Federal criminal laws relating to sex trafficking.

Legislative History

S. 1693 was introduced on August 1, 2017, by Senator Portman (for himself, Senator Blumenthal, and 23 other original cosponsors), and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On September 19, 2017, the Committee held a legislative hearing on the bill. On November 8, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 1693 reported favorably with an amendment (in the nature of a substitute).

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1693—Stop Enabling Sex Traffickers Act of 2017

S. 1693 would aim to eliminate legal obstacles to the successful prosecution of people or entities that violate federal laws against

[3] An "interactive computer service" is any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. 47 U.S.C. § 230(f)(2). This term has been found to include, among other things, the following: websites (Carafano v. Metrosplash.com Inc., 207 F.Supp.2d 1055 (C.D. Cal. 2002), affirmed on other grounds, 339 F.3d 1119); website hosting services (Ricci v. Teamsters Union Local 456, 781 F.3d 25 (2d Cir. 2015)); search engines (Baldino's Lock & Key Service, Inc. v. Google, Inc., 88 F.Supp.3d 543 (E.D. Va. 2015), affirmed 624 Fed.Appx. 81, 2015 WL 7888322); and social networking sites (Klayman v. Zuckerberg, 753 F.3d 1354 (D.C. Cir. 2014), certiorari denied 135 S.Ct. 680).

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sex trafficking. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the bill would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such spending would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 1693 could be subject to criminal fines, the federal government might collect additional fines under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and associated direct spending would not be significant because the legislation would probably affect only a small number of cases.

Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant in any year.

CBO estimates that enacting S. 1693 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1693 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Because S. 1693 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section. 1. Short title.

This section would provide that the bill may be cited as the "Stop Enabling Sex Traffickers Act of 2017."

Section 2. Findings.

This section would find the following: that section 230 was never intended to provide legal protection to websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims; and that clarification of section 230 is warranted to

ensure that that section does not provide such protection to such websites.

Section 3. Ensuring ability to enforce Federal and State criminal and civil law relating to sex trafficking.

Section 3(a) would amend section 230(b) to declare that it is the policy of the United States to ensure vigorous enforcement of Federal criminal and civil law relating to sex trafficking.

Section 3(a) would further amend section 230(e) to clarify that nothing in the section should be construed to impair or limit: (1) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of the Federal sex trafficking statute (18 U.S.C. 1591); or (2) any charge in a criminal prosecution brought under State law if the conduct underlying the charge constitutes a violation of the Federal sex trafficking statute.

The Committee notes that this Act would not abrogate section 230(c)(2)(A). This provision would ensure that ICSs cannot be held liable on account of actions taken in good faith to restrict access to objectionable material. With this provision preserved, an ICS should not be concerned that it will face liability for knowingly assisting, supporting, or facilitating sex trafficking based on its actions to restrict access to material that violates the Federal sex trafficking statute. As section 230(c)(2)(A) provides, an ICS would not have their good faith efforts to restrict access to objectionable content used against them.

If a plaintiff shows that an ICS is knowingly assisting, supporting, or facilitating sex trafficking, then the ICS cannot avoid liability by characterizing those actions as efforts to remove objectionable material. For example, if a website screens advertisements in an effort to remove objectionable material, but then merely edits illegal advertisements to make them more difficult for law enforcement to identify, or knowingly assists, supports, or facilitates sex trafficking, then even an ICS's efforts to remove objectionable content are no bar to liability. Section 230(c)(2)(A) was never intended to, and does not, pose a barrier to liability on these facts.

Section 3(b) would establish that the amendments made by this section would take effect on the date of enactment of this Act, and that the specific amendment to section 230 related to allowing State criminal prosecution or civil enforcement actions would apply regardless of when the alleged conduct occurred.

Section 4. Ensuring Federal liability for publishing information designed to facilitate sex trafficking or otherwise facilitating sex trafficking.

This section would amend the Federal sex trafficking statute to clarify that "participation in a venture" means "knowingly assisting, supporting, or facilitating a violation" of subsection (a)(1) of that statute.

Section 5. Actions by State Attorneys General.

This section would amend the Federal civil remedy statute for sex trafficking (18 U.S.C. 1595) to clarify that the attorney general of a State may, as parens patriae, bring a civil action against a violator of the Federal sex trafficking statute on behalf of the resi-

dents of that State in an appropriate district court of the United States.

Section 6. Savings clause.

This section would establish that nothing in this Act or the amendments made by this Act is intended to limit: (1) any claim or cause of action under Federal law that was filed, or could have been filed, before the date of enactment of this Act; or (2) any claim or cause of action under State law, including statutory and common law, that was filed or could have been filed before the date of enactment of this Act, and that was not preempted by section 230.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

CHAPTER 77. PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS

§ 1591. Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of

such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "participation in a venture" means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

[(4)**]***(5)* The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

[(5)**]***(6)* The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

§ 1595. Civil remedy

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)

(1) Any civil action filed under **[**this section**]** *subsection (a)* shall be stayed during the pendency of any criminal action

arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under [this section] *subsection (a)* unless it is commenced not later than the later of—

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as parens patriae, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

COMMUNICATIONS ACT OF 1934

[47 U.S.C. 151 et seq.]

SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

[47 U.S.C. 230]

(a) FINDINGS.—The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) POLICY.—It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower par-

ents to restrict their children's access to objectionable or inappropriate online material; [and]

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer[.]*; and*

(6) to ensure vigorous enforcement of Federal criminal and civil law relating to sex trafficking.

(c) PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.—

(1) TREATMENT OF PUBLISHER OR SPEAKER.—No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) CIVIL LIABILITY.—No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE.—A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) EFFECT ON OTHER LAWS.—

(1) NO EFFECT ON CRIMINAL LAW.—Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.—Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) NO EFFECT ON SEX TRAFFICKING LAW.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title; or

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge constitutes a violation of section 1591 of title 18, United States Code.

(f) DEFINITIONS.—As used in this section:

(1) INTERNET.—The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) INFORMATION CONTENT PROVIDER.—The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) ACCESS SOFTWARE PROVIDER.—The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

○

Appendix J:
S. Rep. 115-199

Calendar No. 292

115TH CONGRESS
2d Session

SENATE

REPORT
115–199

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Because those prosecuted and convicted under S. 1693 could be subject to criminal fines, the federal government might collect additional fines under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and associated direct spending would not be significant because the legislation would probably affect only a small number of cases.

Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant in any year.

CBO estimates that enacting S. 1693 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1693 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Because S. 1693 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section. 1. Short title.

This section would provide that the bill may be cited as the "Stop Enabling Sex Traffickers Act of 2017."

Section 2. Findings.

This section would find the following: that section 230 was never intended to provide legal protection to websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims; and that clarification of section 230 is warranted to

ensure that that section does not provide such protection to such websites.

Section 3. Ensuring ability to enforce Federal and State criminal and civil law relating to sex trafficking.

Section 3(a) would amend section 230(b) to declare that it is the policy of the United States to ensure vigorous enforcement of Federal criminal and civil law relating to sex trafficking.

Section 3(a) would further amend section 230(e) to clarify that nothing in the section should be construed to impair or limit: (1) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of the Federal sex trafficking statute (18 U.S.C. 1591); or (2) any charge in a criminal prosecution brought under State law if the conduct underlying the charge constitutes a violation of the Federal sex trafficking statute.

The Committee notes that this Act would not abrogate section 230(c)(2)(A). This provision would ensure that ICSs cannot be held liable on account of actions taken in good faith to restrict access to objectionable material. With this provision preserved, an ICS should not be concerned that it will face liability for knowingly assisting, supporting, or facilitating sex trafficking based on its actions to restrict access to material that violates the Federal sex trafficking statute. As section 230(c)(2)(A) provides, an ICS would not have their good faith efforts to restrict access to objectionable content used against them.

If a plaintiff shows that an ICS is knowingly assisting, supporting, or facilitating sex trafficking, then the ICS cannot avoid liability by characterizing those actions as efforts to remove objectionable material. For example, if a website screens advertisements in an effort to remove objectionable material, but then merely edits illegal advertisements to make them more difficult for law enforcement to identify, or knowingly assists, supports, or facilitates sex trafficking, then even an ICS's efforts to remove objectionable content are no bar to liability. Section 230(c)(2)(A) was never intended to, and does not, pose a barrier to liability on these facts.

Section 3(b) would establish that the amendments made by this section would take effect on the date of enactment of this Act, and that the specific amendment to section 230 related to allowing State criminal prosecution or civil enforcement actions would apply regardless of when the alleged conduct occurred.

Section 4. Ensuring Federal liability for publishing information designed to facilitate sex trafficking or otherwise facilitating sex trafficking.

This section would amend the Federal sex trafficking statute to clarify that "participation in a venture" means "knowingly assisting, supporting, or facilitating a violation" of subsection (a)(1) of that statute.

Section 5. Actions by State Attorneys General.

This section would amend the Federal civil remedy statute for sex trafficking (18 U.S.C. 1595) to clarify that the attorney general of a State may, as parens patriae, bring a civil action against a violator of the Federal sex trafficking statute on behalf of the resi-

dents of that State in an appropriate district court of the United States.

Section 6. Savings clause.

This section would establish that nothing in this Act or the amendments made by this Act is intended to limit: (1) any claim or cause of action under Federal law that was filed, or could have been filed, before the date of enactment of this Act; or (2) any claim or cause of action under State law, including statutory and common law, that was filed or could have been filed before the date of enactment of this Act, and that was not preempted by section 230.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

CHAPTER 77. PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS

§ 1591. Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of

such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "participation in a venture" means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

[(4)**]***(5)* The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

[(5)**]***(6)* The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

§ 1595. Civil remedy

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)

(1) Any civil action filed under **[**this section**]** *subsection (a)* shall be stayed during the pendency of any criminal action

arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under [this section] *subsection (a)* unless it is commenced not later than the later of—

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as parens patriae, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

COMMUNICATIONS ACT OF 1934

[47 U.S.C. 151 et seq.]

SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

[47 U.S.C. 230]

(a) FINDINGS.—The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) POLICY.—It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower par-

ents to restrict their children's access to objectionable or inappropriate online material; [and]

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer[.]*; and*

(6) to ensure vigorous enforcement of Federal criminal and civil law relating to sex trafficking.

(c) PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.—

(1) TREATMENT OF PUBLISHER OR SPEAKER.—No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) CIVIL LIABILITY.—No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE.—A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) EFFECT ON OTHER LAWS.—

(1) NO EFFECT ON CRIMINAL LAW.—Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.—Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) NO EFFECT ON SEX TRAFFICKING LAW.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title; or

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge constitutes a violation of section 1591 of title 18, United States Code.

(f) DEFINITIONS.—As used in this section:

(1) INTERNET.—The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) INFORMATION CONTENT PROVIDER.—The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) ACCESS SOFTWARE PROVIDER.—The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

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Appendix K:
TVPA (Excerpts)

PUBLIC LAW 106–386—OCT. 28, 2000

VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000

inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

"(iii) EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.".

(e) IMPLEMENTATION.—

(1) DELEGATION OF AUTHORITY.—The President may delegate any authority granted by this section, including the authority to designate foreign persons under paragraphs (1)(B) and (1)(C) of subsection (a).

(2) PROMULGATION OF RULES AND REGULATIONS.—The head of any agency, including the Secretary of Treasury, is authorized to take such actions as may be necessary to carry out any authority delegated by the President pursuant to paragraph (1), including promulgating rules and regulations.

(3) OPPORTUNITY FOR REVIEW.—Such rules and regulations shall include procedures affording an opportunity for a person to be heard in an expeditious manner, either in person or through a representative, for the purpose of seeking changes to or termination of any determination, order, designation or other action associated with the exercise of the authority in subsection (a).

(f) DEFINITION OF FOREIGN PERSONS.—In this section, the term "foreign person" means any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state.

(g) CONSTRUCTION.—Nothing in this section shall be construed as precluding judicial review of the exercise of the authority described in subsection (a).

22 USC 7109.

SEC. 112. STRENGTHENING PROSECUTION AND PUNISHMENT OF TRAFFICKERS.

(a) TITLE 18 AMENDMENTS.—Chapter 77 of title 18, United States Code, is amended—

(1) in each of sections 1581(a), 1583, and 1584—

(A) by striking "10 years" and inserting "20 years"; and

(B) by adding at the end the following: "If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.";

(2) by inserting at the end the following:

"§ 1589. Forced labor

"Whoever knowingly provides or obtains the labor or services of a person—

"(1) by threats of serious harm to, or physical restraint against, that person or another person;

"(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

"(3) by means of the abuse or threatened abuse of law or the legal process,

shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

"§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

"Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

"§ 1591. Sex trafficking of children or by force, fraud or coercion

"(a) Whoever knowingly—

"(1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

"(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

"(b) The punishment for an offense under subsection (a) is—

"(1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or

"(2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

"(c) In this section:

"(1) The term 'commercial sex act' means any sex act, on account of which anything of value is given to or received by any person.

"(2) The term 'coercion' means—

"(A) threats of serious harm to or physical restraint against any person;

"(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

"(C) the abuse or threatened abuse of law or the legal process.

"(3) The term 'venture' means any group of two or more individuals associated in fact, whether or not a legal entity.

"§ 1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor

"(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person—

"(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);

"(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or

"(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

shall be fined under this title or imprisoned for not more than 5 years, or both.

"(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

"§ 1593. Mandatory restitution

"(a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

"(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

"(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

"(3) As used in this subsection, the term 'full amount of the victim's losses' has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

"(c) As used in this section, the term 'victim' means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent,

incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

"§ 1594. General provisions

"(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

"(b) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

"(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

"(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

"(c)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

"(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

"(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

"(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

"(d) WITNESS PROTECTION.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).''; and

(3) by amending the table of sections at the beginning of chapter 77 by adding at the end the following new items:

"1589. Forced labor.
"1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor.
"1591. Sex trafficking of children or by force, fraud, or coercion.
"1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.
"1593. Mandatory restitution.
"1594. General provisions.".

(b) AMENDMENT TO THE SENTENCING GUIDELINES.—

(1) Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons including component or related crimes of peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

(2) In carrying out this subsection, the Sentencing Commission shall—

(A) take all appropriate measures to ensure that these sentencing guidelines and policy statements applicable to the offenses described in paragraph (1) of this subsection are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses;

(B) consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) consider providing sentencing enhancements for those convicted of the offenses described in paragraph (1) of this subsection that—

(i) involve a large number of victims;

(ii) involve a pattern of continued and flagrant violations;

(iii) involve the use or threatened use of a dangerous weapon; or

(iv) result in the death or bodily injury of any person.

(3) The Commission may promulgate the guidelines or amendments under this subsection in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

22 USC 7110.

SEC. 113. AUTHORIZATIONS OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS IN SUPPORT OF THE TASK FORCE.—To carry out the purposes of sections 104, 105, and 110, there are authorized to be appropriated to the Secretary of State $1,500,000 for fiscal year 2001 and $3,000,000 for fiscal year 2002.

(b) AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Health and Human Services $5,000,000 for fiscal year 2001 and $10,000,000 for fiscal year 2002.

(c) AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF STATE.—

(1) ASSISTANCE FOR VICTIMS IN OTHER COUNTRIES.—To carry out the purposes of section 107(a), there are authorized to be appropriated to the Secretary of State $5,000,000 for fiscal year 2001 and $10,000,000 for fiscal year 2002.

(2) VOLUNTARY CONTRIBUTIONS TO OSCE.—To carry out the purposes of section 109, there are authorized to be appropriated to the Secretary of State $300,000 for voluntary contributions to advance projects aimed at preventing trafficking, promoting respect for human rights of trafficking victims, and assisting the Organization for Security and Cooperation in Europe participating states in related legal reform for fiscal year 2001.

(3) PREPARATION OF ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS.—To carry out the purposes of section 104, there are authorized to be appropriated to the Secretary of State such sums as may be necessary to include the additional information required by that section in the annual Country Reports on Human Rights Practices, including the preparation and publication of the list described in subsection (a)(1) of that section.

"(1) IN GENERAL.—A remedy under this section is in addition to any other remedies provided by law.

"(2) STATE COURT PROCEEDINGS.—Nothing in this section may be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any State law.

27 USC 122b.

"SEC. 3. GENERAL PROVISIONS.

"(a) EFFECT ON INTERNET TAX FREEDOM ACT.—Nothing in this section may be construed to modify or supersede the operation of the Internet Tax Freedom Act (47 U.S.C. 151 note).

"(b) INAPPLICABILITY TO SERVICE PROVIDERS.—Nothing in this section may be construed to—

"(1) authorize any injunction against an interactive computer service (as defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)) used by another person to engage in any activity that is subject to this Act;

"(2) authorize any injunction against an electronic communication service (as defined in section 2510(15) of title 18, United States Code) used by another person to engage in any activity that is subject to this Act; or

"(3) authorize an injunction prohibiting the advertising or marketing of any intoxicating liquor by any person in any case in which such advertising or marketing is lawful in the jurisdiction from which the importation, transportation or other conduct to which this Act applies originates.".

27 USC 122a note.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective 90 days after the date of the enactment of this Act.

Deadline. 27 USC 122a note.

(c) STUDY.—The Attorney General shall carry out the study to determine the impact of this section and shall submit the results of such study not later than 180 days after the enactment of this Act.

Approved October 28, 2000.

LEGISLATIVE HISTORY—H.R. 3244:

HOUSE REPORTS: Nos. 106–487, Pt. 1 (Comm. on International Relations) and Pt. 2 (Comm. on the Judiciary) and 106–939 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 146 (2000):
May 9, considered and passed House.
July 27, considered and passed Senate, amended.
Oct. 6, House agreed to conference report.
Oct. 11, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 36 (2000):
Oct. 28, Presidential statement.

○

Appendix L:
TVPRA

Public Law 108–193
108th Congress

An Act

To authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000, and for other purposes.

Dec. 19, 2003
[H.R. 2620]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Trafficking Victims Protection Reauthorization Act of 2003.
22 USC 7101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trafficking Victims Protection Reauthorization Act of 2003".

22 USC 7101 note.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Trafficking in persons continues to victimize countless men, women, and children in the United States and abroad.

(2) Since the enactment of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106–386), the United States Government has made significant progress in investigating and prosecuting acts of trafficking and in responding to the needs of victims of trafficking in the United States and abroad.

(3) On the other hand, victims of trafficking have faced unintended obstacles in the process of securing needed assistance, including admission to the United States under section 101(a)(15)(T)(i) of the Immigration and Nationality Act.

(4) Additional research is needed to fully understand the phenomenon of trafficking in persons and to determine the most effective strategies for combating trafficking in persons.

(5) Corruption among foreign law enforcement authorities continues to undermine the efforts by governments to investigate, prosecute, and convict traffickers.

(6) International Law Enforcement Academies should be more fully utilized in the effort to train law enforcement authorities, prosecutors, and members of the judiciary to address trafficking in persons-related crimes.

SEC. 3. ENHANCING PREVENTION OF TRAFFICKING IN PERSONS.

President.

(a) BORDER INTERDICTION, PUBLIC INFORMATION PROGRAMS, AND COMBATING INTERNATIONAL SEX TOURISM.—Section 106 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104) is amended—

(1) by redesignating subsection (c) as subsection (f);

(2) by inserting after subsection (b) the following new subsections:

"(c) BORDER INTERDICTION.—The President shall establish and carry out programs of border interdiction outside the United States.

Such programs shall include providing grants to foreign nongovernmental organizations that provide for transit shelters operating at key border crossings and that help train survivors of trafficking in persons to educate and train border guards and officials, and other local law enforcement officials, to identify traffickers and victims of severe forms of trafficking, and the appropriate manner in which to treat such victims. Such programs shall also include, to the extent appropriate, monitoring by such survivors of trafficking in persons of the implementation of border interdiction programs, including helping in the identification of such victims to stop the cross-border transit of victims. The President shall ensure that any program established under this subsection provides the opportunity for any trafficking victim who is freed to return to his or her previous residence if the victim so chooses.

"(d) INTERNATIONAL MEDIA.—The President shall establish and carry out programs that support the production of television and radio programs, including documentaries, to inform vulnerable populations overseas of the dangers of trafficking, and to increase awareness of the public in countries of destination regarding the slave-like practices and other human rights abuses involved in trafficking, including fostering linkages between individuals working in the media in different countries to determine the best methods for informing such populations through such media.

"(e) COMBATING INTERNATIONAL SEX TOURISM.—

"(1) DEVELOPMENT AND DISSEMINATION OF MATERIALS.—The President, pursuant to such regulations as may be prescribed, shall ensure that materials are developed and disseminated to alert travelers that sex tourism (as described in subsections (b) through (f) of section 2423 of title 18, United States Code) is illegal, will be prosecuted, and presents dangers to those involved. Such materials shall be disseminated to individuals traveling to foreign destinations where the President determines that sex tourism is significant.

"(2) MONITORING OF COMPLIANCE.—The President shall monitor compliance with the requirements of paragraph (1).

Deadline.

"(3) FEASIBILITY REPORT.—Not later than 180 days after the date of the enactment of the Trafficking Victims Protection Reauthorization Act of 2003, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Affairs of the Senate a report that describes the feasibility of such United States Government materials being disseminated through public-private partnerships to individuals traveling to foreign destinations."; and

(3) in subsection (f) (as redesignated), by striking "initiatives described in subsections (a) and (b)" and inserting "initiatives and programs described in subsections (a) through (e)".

(b) TERMINATION OF CERTAIN GRANTS, CONTRACTS AND COOPERATIVE AGREEMENTS.—Section 106 of such Act (as amended by subsection (a)) is further amended by adding at the end the following new subsection:

"(g) TERMINATION OF CERTAIN GRANTS, CONTRACTS AND COOPERATIVE AGREEMENTS.—

"(1) TERMINATION.—The President shall ensure that any grant, contract, or cooperative agreement provided or entered into by a Federal department or agency under which funds described in paragraph (2) are to be provided to a private

entity, in whole or in part, shall include a condition that authorizes the department or agency to terminate the grant, contract, or cooperative agreement, without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement.

"(2) ASSISTANCE DESCRIBED.—Funds referred to in paragraph (1) are funds made available to carry out any program, project, or activity abroad funded under major functional budget category 150 (relating to international affairs).".

SEC. 4. ENHANCING PROTECTION FOR TRAFFICKING VICTIMS.

(a) AMENDMENTS TO TRAFFICKING VICTIMS PROTECTION ACT OF 2000.—

(1) COOPERATION BETWEEN FOREIGN GOVERNMENTS AND NONGOVERNMENTAL ORGANIZATIONS.—Section 107(a)(1)(B) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(a)(1)(B)) is amended by adding at the end before the period the following: ", and by facilitating contact between relevant foreign government agencies and such nongovernmental organizations to facilitate cooperation between the foreign governments and such organizations".

(2) ASSISTANCE FOR FAMILY MEMBERS OF VICTIMS OF TRAFFICKING IN UNITED STATES.—Section 107(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)) is amended—

(A) in subparagraph (A), by inserting ", or an alien classified as a nonimmigrant under section 101(a)(15)(T)(ii)," after "in persons"; and

(B) in subparagraph (B)—

(i) by inserting "and aliens classified as a nonimmigrant under section 101(a)(15)(T)(ii)," after "United States,"; and

(ii) by adding at the end the following new sentence: "In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.".

(3) CERTIFICATION OF VICTIMS OF A SEVERE FORM OF TRAFFICKING IN PERSONS.—Section 107(b)(1)(E) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)(E)) is amended by adding at the end the following new clause:

"(iv) ASSISTANCE TO INVESTIGATIONS.—In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes

such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.".

(4) PRIVATE RIGHT OF ACTION.—

(A) IN GENERAL.—Chapter 77 of part I of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1595. Civil remedy

"(a) An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

"(b)(1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

"(2) In this subsection, a 'criminal action' includes investigation and prosecution and is pending until final adjudication in the trial court.".

(B) CONFORMING AMENDMENT.—The table of contents of chapter 77 of part I of title 18, United States Code, is amended by adding at the end the following new item:

"1595. Civil remedy.".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—

(1) NONIMMIGRANT ALIEN CLASSES.—Section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) is amended—

(A) in clause (i)(III)(bb), by striking "15 years of age," and inserting "18 years of age,"; and

(B) in clause (ii)(I), by inserting "unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause," before "and parents".

(2) ADMISSION OF NONIMMIGRANTS.—Section 214(n) of the Immigration and Nationality Act (8 U.S.C. 1184(n)) is amended—

(A) in paragraph (3), by inserting "siblings," before "or parents"; and

(B) by adding at the end the following:

"(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(T)(i), and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(T)(ii), if the alien attains 21 years of age after such parent's application was filed but while it was pending.

"(5) An alien described in clause (i) of section 101(a)(15)(T) shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

"(6) In making a determination under section 101(a)(15)(T)(i)(III)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons

(as defined in section 103 of the Trafficking Victims Protection Act of 2000) appear to have been involved, shall be considered.".

(3) ADJUSTMENT OF STATUS.—Section 245(l) of the Immigration and Nationality Act (8 U.S.C. 1255(l)) (as added by section 107(f) of Public Law 106–386) is amended—

(A) in paragraph (1)—

(i) by striking "admitted under that section" and inserting "admitted under section 101(a)(15)(T)(ii)"; and

(ii) by inserting "sibling," after "parent,"; and

(B) in paragraph (3)(B), by inserting "siblings," after "daughters,".

(4) EXEMPTION FROM PUBLIC CHARGE GROUND FOR INADMISSIBILITY.—Section 212(d)(13) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(13)), as added by section 107(e)(3) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(e)(3)), is amended—

(A) in subparagraph (A), by striking the period at the end and adding the following:

", except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant."; and

(B) in subparagraph (B)—

(i) by amending clause (i) to read as follows:

"(i) subsection (a)(1); and"; and

(ii) in clause (ii)—

(I) by striking "such subsection" and inserting "subsection (a)"; and

(II) by inserting "(4)," after "(3),".

(5) AGGRAVATED FELONY DEFINED.—Section 101(a)(43)(K)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(K)(iii)) is amended to read as follows:

"(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);".

SEC. 5. ENHANCING PROSECUTIONS OF TRAFFICKERS.

(a) SEX TRAFFICKING OF CHILDREN OR BY FORCE, FRAUD, OR COERCION.—Section 1591 of title 18, United States Code, is amended—

(1) in the heading, by inserting a comma after "**FRAUD**";

(2) in subsection (a)(1), by striking "in or affecting interstate commerce" and inserting "in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States"; and

(3) in subsection (b), by striking "the person transported" each place it appears and inserting "the person recruited, enticed, harbored, transported, provided, or obtained".

(b) DEFINITION OF RACKETEERING ACTIVITY.—Section 1961(1)(A) of title 18, United States Code, is amended by striking "sections 1581–1588 (relating to peonage and slavery)" and inserting "sections 1581–1591 (relating to peonage, slavery, and trafficking in persons).".

(c) CONFORMING AMENDMENTS.—(1) The heading for chapter 77 of part I of title 18, United States Code, is amended to read as follows:

"CHAPTER 77—PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS".

(2) The table of contents for part I of title 18, United States Code, is amended in the item relating to chapter 77 to read as follows:

"77. Peonage, slavery, and trafficking in persons".

SEC. 6. ENHANCING UNITED STATES EFFORTS TO COMBAT TRAFFICKING.

(a) REPORT.—

(1) IN GENERAL.—Section 105(d) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(d)) is amended by adding at the end the following new paragraph:

Deadline.

"(7) Not later than May 1, 2004, and annually thereafter, the Attorney General shall submit to the Committee on Ways and Means, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives and the Committee on Finance, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate, a report on Federal agencies that are implementing any provision of this division, or any amendment made by this division, which shall include, at a minimum, information on—

"(A) the number of persons who received benefits or other services under section 107(b) in connection with programs or activities funded or administered by the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and other appropriate Federal agencies during the preceding fiscal year;

"(B) the number of persons who have been granted continued presence in the United States under section 107(c)(3) during the preceding fiscal year;

"(C) the number of persons who have applied for, been granted, or been denied a visa or otherwise provided status under section 101(a)(15)(T)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)(i)) during the preceding fiscal year;

"(D) the number of persons who have been charged or convicted under one or more of sections 1581, 1583, 1584, 1589, 1590, 1591, 1592, or 1594 of title 18, United States Code, during the preceding fiscal year and the sentences imposed against each such person;

"(E) the amount, recipient, and purpose of each grant issued by any Federal agency to carry out the purposes of sections 106 and 107 of this Act, or section 134 of the Foreign Assistance Act of 1961, during the preceding fiscal year;

"(F) the nature of training conducted pursuant to section 107(c)(4) during the preceding fiscal year; and

"(G) the activities undertaken by the Senior Policy Operating Group to carry out its responsibilities under section 105(f) of this division.".

(2) CONFORMING AMENDMENT.—Section 107(b)(1) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7105(b)(1)) is amended by striking subparagraph (D).

(b) SUPPORT FOR THE TASK FORCE.—

(1) AMENDMENT.—The second sentence of section 105(e) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(e)) is amended by inserting at the end before the period the following: ", who shall be appointed by the President, by and with the advice and consent of the Senate, with the rank of Ambassador-at-Large". President.

(2) APPLICABILITY.—The individual who holds the position of Director of the Office to Monitor and Combat Trafficking of the Department of State may continue to hold such position notwithstanding the amendment made by paragraph (1). 22 USC 7103 note.

(c) SENIOR POLICY OPERATING GROUP.—

(1) AMENDMENT.—Section 105 of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103) is amended by adding at the end the following new subsection:

"(f) SENIOR POLICY OPERATING GROUP.—

"(1) ESTABLISHMENT.—There shall be established within the executive branch a Senior Policy Operating Group.

"(2) MEMBERSHIP; RELATED MATTERS.—

"(A) IN GENERAL.—The Operating Group shall consist of the senior officials designated as representatives of the appointed members of the Task Force (pursuant to Executive Order No. 13257 of February 13, 2002).

"(B) CHAIRPERSON.—The Operating Group shall be chaired by the Director of the Office to Monitor and Combat Trafficking of the Department of State.

"(C) MEETINGS.—The Operating Group shall meet on a regular basis at the call of the Chairperson.

"(3) DUTIES.—The Operating Group shall coordinate activities of Federal departments and agencies regarding policies (including grants and grant policies) involving the international trafficking in persons and the implementation of this division.

"(4) AVAILABILITY OF INFORMATION.—Each Federal department or agency represented on the Operating Group shall fully share all information with such Group regarding the department or agency's plans, before and after final agency decisions are made, on all matters relating to grants, grant policies, and other significant actions regarding the international trafficking in persons and the implementation of this division.

"(5) REGULATIONS.—Not later than 90 days after the date of the enactment of the Trafficking Victims Protection Reauthorization Act of 2003, the President shall promulgate regulations to implement this section, including regulations to carry out paragraph (4).". Deadline. President.

(2) CONFORMING AMENDMENT.—Section 406 of the Department of State and Related Agency Appropriations Act, 2003 (as contained in division B of Public Law 108–7) is hereby repealed. 22 USC 7103 note.

(d) MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.—Section 108(b) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7106(b)) is amended—

(1) in paragraph (1)—

(A) by striking "that take place wholly or partly within the territory of the country" and inserting ", and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country"; and

(B) by adding at the end the following new sentences: "After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.";

(2) in paragraph (7)—

(A) by striking "and prosecutes" and inserting ", prosecutes, convicts, and sentences"; and

(B) by adding at the end the following new sentence: "After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.".

(3) by adding the following new paragraphs at the end:

"(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

"(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

"(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.".

(e) SPECIAL WATCH LIST.—Section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL WATCH LIST.—

"(A) SUBMISSION OF LIST.—Not later than the date on which the determinations described in subsections (c) and (d) are submitted to the appropriate congressional committees in accordance with such subsections, the Secretary of State shall submit to the appropriate congressional committees a list of countries that the Secretary

determines requires special scrutiny during the following year. The list shall be composed of the following countries:

"(i) Countries that have been listed pursuant to paragraph (1)(A) in the current annual report and were listed pursuant to paragraph (1)(B) in the previous annual report.

"(ii) Countries that have been listed pursuant to paragraph (1)(B) pursuant to the current annual report and were listed pursuant to paragraph (1)(C) in the previous annual report.

"(iii) Countries that have been listed pursuant to paragraph (1)(B) pursuant to the current annual report, where—

"(I) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

"(II) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or

"(III) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

"(B) INTERIM ASSESSMENT.—Not later than February 1st of each year, the Secretary of State shall provide to the appropriate congressional committees an assessment of the progress that each country on the special watch list described in subparagraph (A) has made since the last annual report. Deadline.

"(C) RELATION OF SPECIAL WATCH LIST TO ANNUAL TRAFFICKING IN PERSONS REPORT.—A determination that a country shall not be placed on the special watch list described in subparagraph (A) shall not affect in any way the determination to be made in the following year as to whether a country is complying with the minimum standards for the elimination of trafficking or whether a country is making significant efforts to bring itself into compliance with such standards.".

(f) ENHANCING UNITED STATES ASSISTANCE.—Section 134(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2152d(b)) is amended by adding at the end the following new sentence: "Assistance may be provided under this section notwithstanding section 660 of this Act.".

(g) RESEARCH RELATING TO TRAFFICKING IN PERSONS.—

(1) IN GENERAL.—The Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 et seq.) is amended by inserting after section 112 the following new section:

President.
22 USC 7109a.

"SEC. 112A. RESEARCH ON DOMESTIC AND INTERNATIONAL TRAFFICKING IN PERSONS.

"The President, acting through the Council of Economic Advisors, the National Research Council of the National Academies, the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, the Secretary of State, the Administrator of the United States Agency for International Development, and the Director of Central Intelligence, shall carry out research, including by providing grants to nongovernmental organizations, as well as relevant United States Government agencies and international organizations, which furthers the purposes of this division and provides data to address the problems identified in the findings of this division. Such research initiatives shall, to the maximum extent practicable, include, but not be limited to, the following:

"(1) The economic causes and consequences of trafficking in persons.

"(2) The effectiveness of programs and initiatives funded or administered by Federal agencies to prevent trafficking in persons and to protect and assist victims of trafficking.

"(3) The interrelationship between trafficking in persons and global health risks.".

(2) CONFORMING AMENDMENT.—The table of contents of the Victims of Trafficking and Violence Protection Act of 2000 is amended by inserting after the item relating to section 112 the following new item:

"Sec. 112A. Research on domestic and international trafficking in persons.".

(h) SANCTIONS AND WAIVERS.—Section 110(d) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(d)) is amended—

(1) in paragraph (4), by inserting after "nonhumanitarian, nontrade-related foreign assistance" the following: "or funding for participation in educational and cultural exchange programs"; and

(2) in paragraph (5)(A)(i), by inserting after "foreign assistance" the following: "or funding for participation in educational and cultural exchange programs".

(i) SUBSEQUENT WAIVER AUTHORITY.—Section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107) is amended by adding at the end the following new subsection:

"(f) After the President has made a determination described in subsection (d)(1) with respect to the government of a country, the President may at any time make a determination described in paragraphs (4) and (5) of subsection (d) to waive, in whole or in part, the measures imposed against the country by the previous determination under subsection (d)(1).".

SEC. 7. AUTHORIZATION OF APPROPRIATIONS; RELATED MATTERS.

Section 113 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7110) is amended—

(1) in subsection (a)—

(A) by striking "105" and inserting "105(e), 105(f)"; and

(B) by striking "and $3,000,000 for each of the fiscal years 2002 and 2003" and inserting ", $3,000,000 for each of the fiscal years 2002 and 2003, and $5,000,000 for each of the fiscal years 2004 and 2005";

(2) in subsection (b), by adding at the end before the period the following: "and $15,000,000 for each of the fiscal years 2004 and 2005";

(3) in subsection (c)—

(A) in paragraph (1) to read as follows:

"(1) BILATERAL ASSISTANCE TO COMBAT TRAFFICKING.—

"(A) PREVENTION.—To carry out the purposes of section 106, there are authorized to be appropriated to the Secretary of State $10,000,000 for each of the fiscal years 2004 and 2005.

"(B) PROTECTION.—To carry out the purposes of section 107(a), there are authorized to be appropriated to the Secretary of State $15,000,000 for fiscal year 2003 and $10,000,000 for each of the fiscal years 2004 and 2005.

"(C) PROSECUTION AND MEETING MINIMUM STANDARDS.—To carry out the purposes of section 134 of the Foreign Assistance Act of 1961, there are authorized to be appropriated $10,000,000 for each of the fiscal years 2004 and 2005 to assist in promoting prosecution of traffickers and otherwise to assist countries in meeting the minimum standards described in section 108 of this Act, including $250,000 for each such fiscal year to carry out training activities for law enforcement officers, prosecutors, and members of the judiciary with respect to trafficking in persons at the International Law Enforcement Academies."; and

(B) in paragraph (2), by striking "for each of the fiscal years 2001, 2002, and 2003" and inserting "for each of the fiscal years 2001 through 2005";

(4) in subsection (d)—

(A) by adding at the end before the period the following: "and $15,000,000 for each of the fiscal years 2004 and 2005"; and

(B) by adding at the end the following new sentence: "To carry out the purposes of section 134 of the Foreign Assistance Act of 1961 (as added by section 109), there are authorized to be appropriated to the President, acting through the Attorney General and the Secretary of State, $250,000 for each of fiscal years 2004 and 2005 to carry out training activities for law enforcement officers, prosecutors, and members of the judiciary with respect to trafficking in persons at the International Law Enforcement Academies.";

(5) in subsection (e)—

(A) in paragraphs (1) and (2), by striking "for fiscal year 2003" each place it appears and inserting "for each of the fiscal years 2003 through 2005"; and

(B) by adding at the end the following new paragraph:

"(3) RESEARCH.—To carry out the purposes of section 112A, there are authorized to be appropriated to the President $300,000 for fiscal year 2004 and $300,000 for fiscal year 2005.";

(6) in subsection (f), by adding at the end before the period the following: "and $10,000,000 for each of the fiscal years 2004 and 2005"; and

(7) by adding at the end the following new subsection:

"(g) LIMITATION ON USE OF FUNDS.—

"(1) RESTRICTION ON PROGRAMS.—No funds made available to carry out this division, or any amendment made by this division, may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to promote the purposes of this Act by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

"(2) RESTRICTION ON ORGANIZATIONS.—No funds made available to carry out this division, or any amendment made by this division, may be used to implement any program that targets victims of severe forms of trafficking in persons described in section 103(8)(A) of this Act through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution. The preceding sentence shall not apply to organizations that provide services to individuals solely after they are no longer engaged in activities that resulted from such victims being trafficked.".

SEC. 8. TECHNICAL CORRECTIONS.

(a) IMMIGRATION AND NATIONALITY ACT.—

(1) CLASSES OF NONIMMIGRANT ALIENS.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(A) by moving the margins of subparagraphs (T) and (U) 2 ems to the left;

(B) in subparagraph (T), by striking "214(n)," and inserting "214(o),";

(C) in subparagraph (U), by striking "214(o)," and inserting "214(p),"; and

(D) in subparagraph (V), by striking "214(o)," and inserting "214(q),".

(2) CLASSES OF ALIENS INELIGIBLE FOR VISAS AND ADMISSION.—Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by redesignating the paragraph (13) added by section 1513(e) of the Battered Immigrant Women Protection Act of 2000 (title V of division B of Public Law 106–386; 114 Stat. 1536) as paragraph (14).

(3) ADMISSION OF NONIMMIGRANTS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by redesignating subsections (m) (as added by section 105 of Public Law 106–313), (n) (as added by section 107(e) of Public Law 106–386), (o) (as added by section 1513(c) of Public Law 106–386), (o) (as added by section 1102(b) of the Legal Immigration Family Equity Act), and (p) (as added by section 1503(b) of the Legal Immigration Family Equity Act) as subsections (n), (o), (p), (q), and (r), respectively.

(4) ADJUSTMENT OF STATUS OF NONIMMIGRANTS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(A) in the subsection (l) added by section 107(f) of Public Law 106–386, by redesignating the second paragraph (2), and paragraphs (3) and (4), as paragraphs (3), (4), and (5), respectively; and

(B) by redesignating the subsection (l) added by section 1513(f) of Public Law 106–386 as subsection (m).

(b) TRAFFICKING VICTIMS PROTECTION ACT OF 2000.—(1) Section 103(7)(A)(i) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(7)(A)(i)) is amended by inserting after "part II of that Act" the following: "in support of programs of nongovernmental organizations".

(2) Section 107(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(g)) is amended by striking "214(n)(1)" and inserting "214(o)(2)".

Approved December 19, 2003.

LEGISLATIVE HISTORY—H.R. 2620:

HOUSE REPORTS: No. 108–264, Pt. 1 (Comm. on International Relations) and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Nov. 4, 5, considered and passed House.

Dec. 9, considered and passed Senate.

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