



ROBINSON CENTER FOR YOUNG SCHOLARS  
UNIVERSITY of WASHINGTON

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UW Transition School

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Dr. Amanda Zink and Madeline Werner  
UW Robinson Center

Dear Dr. Zink and Madeline,

At Transition School English, I have developed and strengthened my skills in academic writing. I believe I have demonstrated the six-course objectives.

In my midterm essay, I analyzed two positions on education: one that views it as imparting information for society to hold in common, and another that views it as exploring internal passions and interests. I argued that the latter was more practical and truer to the meaning of education, both for the individual and society. I laid out my initial ideas in the Midterm Rough Components assignment (p. 5), in which I summarized, identified, and analyzed claims in the academic arguments of two essays, "Preface to *Cultural Literacy*" by E.D. Hirsch and "Who Are You and What Are You Doing Here?" by Mark Edmundson. Particularly, while Hirsch rather explicitly outlines his vision of the ideal education, Edmundson is less obvious. His essay encourages college students not to equate college learning with the degree at the end of it. Such a belief, he asserts, can lead to problems of unmotivated students and a misguided faculty that seeks to preserve instead of to disrupt that apathy. I identified and articulated, though, his deeper vision of an ideal education: an exploratory process in which the individual passions are continually developed through individualized learning. In my midterm essay (p. 9), I present these two positions to the reader by summarizing these complex academic arguments' answers to the root-level question of the nature of effective education. This demonstrates the skills of summarizing, identifying, and analyzing claims in complex academic arguments.

However, I believe that there were two key things that my midterm essay could have improved on, after receiving feedback from Dr. Zink and reflecting on my work. Firstly, the paper could have better prioritized my voice and argument, instead of detailing at length the ideas of others to shape my argumentation. Secondly, I tried to cover too many points in my essay, such that many ideas were introduced but few were explored at significant depth. I believe I have addressed these two concerns in my Revised Midterm Essay (p. 13). In terms of the organization of my academic argument, I made large restructuring changes to the paper. The unrevised midterm essay followed the structure of first presenting in detail the two opposing views, then incorporating my argument. The revised version first presents my argument as the foundation of the paper, then draws support from one stance and points to the inefficacy of another stance,

while acknowledging legitimate concerns that stance poses. Furthermore, I slightly changed my thesis to centralize around one idea: the “empirical arts”, a concept I had introduced but did not quite develop in the midterm essay. I shifted the definition from being “individual passions that still satisfy the constraints of being beneficial to society” to “learning through individual-lead exploration and experiencing”. This choice of not including the broadness of what is or isn’t “beneficial to society” helped better concentrate the ideas. The resulting revised midterm essay is more cohesive and explores the “empirical arts” at a deeper level by bringing into conversation Edmundson’s, Hirsch’s, and my arguments. It demonstrates the ability to compose and organize well-structured academic arguments to effectively communicate a thesis and to incorporate feedback into revisions of essays.

In the process of researching and writing my research essay, I believe I have also demonstrated the course objectives. For my initial Research Questions and Initial Sources Discussion Post (p. 17), I proposed an initial question regarding how to ensure social media upheld free speech without too much government meddling. I found two sources that discussed this question, and after reading both to better understand the topic, decided that my question was too broad. Instead, I decided to focus on a bill called Section 230, which both sources had mentioned as being important to the general question. This bill was tangible and rich in the source material, so I decided to frame my thesis around it. As I built my thesis and the surrounding sub-arguments, I was able to identify components of my research sources that would help support them. In “Research Essay Notes on Scholarly Sources,” (p. 23) I summarize the main arguments of several scholarly sources I had identified as being relevant to the Section 230 debate. Using that information to guide me, I identified in the second table more specific ideas in each source relevant to the arguments of my paper. This demonstrates my ability to develop lines of inquiry that led to productive research but also to identify and analyze claims in complex academic arguments. By analyzing the intersection of another scholar’s work and my argumentative framework, I was able to effectively compile useful ideas from my research.

I found that performing productive research is closely tied with developing an arguable thesis and organization of the paper. That is, a successful layout lets me look with a closer eye on what to look for during research, and successful research allows me to build a more effective layout. The knowledge obtained from my research is demonstrated in “Research Essay Concept Maps” (p. 20), in which I assembled various perspectives on Section 230 in visual form, with pieces of evidence or arguments as boxes connected by lines. My initial thesis and layout, however, attempted to address too much of the discussion, not only around Section 230 but including larger questions of the relationship between hate speech and free speech. I later revised my thesis and layout to be more narrowly centered on Section 230 itself. This decision was based on feedback given during office hours with Dr. Zink, and by a peer in the Reading Reflection 5 (p. 18) that recommended I approach the topic with a more restricted scope.

Working with the visual structure of the concept map allowed me to restructure and remove components such that my paper conveyed a clear and well-articulated yet complex argument. I later converted the graphic layout into a text one, under the section “Research Essay Layout” (p. 22). In the textual form, I incorporated evidence I had collected from my research into the framework I had fine-tuned through peer feedback. Using this structure, I wrote my Research Essay First Draft (p. 26). In the process of writing this, I visited Madeline’s office hours and made sure to address her concerns, including making the thesis more concrete. After finishing the first draft and a second draft with minor revisions, I began writing the final draft. I incorporated feedback I had received from three sources: peer reviews, office hours with Dr.

Zink, and annotations and comments for the second draft. A common theme in each of these feedback sources was increasing clarity; that is, better explaining and linking together sub-claims. For instance, both peers and Dr. Zink had addressed confusion caused by a statement that argued an anti-sex trafficking bill, SESTA-FOSTA, quashed the speech of groups that argued for the decriminalization of sex work. In the final draft (p. something), I better connected and explained this argument by adding the sentence, “[s]uch speech would be scrutinized and potentially be held liable as ‘reckless actions’ towards prostitution under the SESTA-FOSTA.” As another example, I rewrote the topic sentence of the second body paragraph to make it more explicit, better outlining the argument: “However, revoking or even altering Section 230 will fail to address only specific content problems; because the bill covers all content on the Internet, any edits to it hold dangerous implications for *all* Internet speech.” Incorporating analysis of claims from scholars that argue both for and against my thesis, the final draft was a cohesive academic argument. Additionally, it summarized and explained two perspectives on the complex debate surrounding Section 230.

In conclusion, through the process of writing and revising my midterm and research essays, I have demonstrated significant learning in academic writing and the six course objectives.

Sincerely,

A handwritten signature in black ink that reads "Andre Ye". The signature is written in a cursive, slightly slanted style.

Andre Ye

## Contents

Midterm Essay Rough Components .....	5
Midterm Essay .....	9
Revised Midterm Essay .....	13
Research Question and Initial Sources Discussion Post .....	16
Reading Reflection 5 .....	18
Research Essay Concept Map (Thesis and Essay Structure) Development .....	20
Research Essay Layout .....	22
Research Essay Notes on Scholarly Sources .....	23
Research Essay First Draft .....	26
Research Essay Final Draft .....	33

### Midterm Essay Rough Components

*Choose the two author/essays you will write about.*

I will write about Mark Edmundson's "Who Are You and What Are You Doing Here? A Word to the Incoming Class" and E.D. Hirsch Jr.'s "Preface to *Cultural Literacy*".

*Choose 2-3 points from each essay that you will write about. Steps 1 and 2 might happen together.*

E.D. Hirsch Jr. outlines in "Preface to *Cultural Literacy*" his view of education and its role in 'cultural literacy', which he believes can break the cycle of illiteracy and poverty, as well as enhancing the literacy of everyone. He makes an argument against the writings of Jean Jacques Rousseau, which advocates for education that aligned with a child's natural development without regard for any specific education content, with disdain for accumulating information and support for learning universal "general skills". Hirsch responds by asserting that it has been observed anthropologically that human communities center around shared information, and that thus the purpose of education should be to teach children cultural and specific content such that they can engage in nuanced interactions with the community.

Mark Edmundson's broad claim in "Who Are You and What Are You Doing Here? A Word to the Incoming Class" is that students need to fight against forces working against them to obtain a true education. What is more important and relevant to the theme of education is how Edmundson defines and shapes a 'true education'; he writes that "Education is about finding out what form of work for you is close to being play — work you do so easily that it restores you as you go" (Greene & Lidinsky, 2020). Education, Edmundson argues, is not about finding a job, chasing money, or obediently carrying out parental wishes; instead, it revolves around exploring and finding a true passion, for even if money is a problem in a job that pays little but gives your life and happiness, it is a good problem to have.

*Back up and think about the main topic the essays discuss in relation to education. Is it textbooks? Is it technology? Is it access? Is it purpose? How might the Education Essay YOU wrote speak to this main topic?*

Hirsch and Edmundson both make claims about the purpose of education and how it should be carried out; the two authors look at this concept from differing scopes. Hirsch approaches the goal of education from a cultural perspective, arguing that education's purpose in preventing larger societal problems of poverty and illiteracy is to *teach cultural information* (a specific content-driven curricula) and to unify students under commonly shared interests and ideas. On the other hand, Edmundson takes a more individualistic approach and argues that the desires, influences, and pushes from a community – what one may call *culture* – should be independent from personal pursuits and passions; they may coincide, Edmundson admits, or they may not.

My education essay is an engagement with themes from both these writers, with a specific focus on mathematics, a pillar of common American and global education. Specifically, I talk about understanding and loving to learn mathematics as an empirical art. It is both practical, in the sense that it models the world, and beautiful, in its elegance and simplification of complex phenomena. This position sides more with Edmundson and less with Hirsch; education as individual passion and pursuit of what is beautiful and fascinating trumps education as fitting everyone into a mold and hoping something complex comes out of it. However, it is important that mathematics is an *empirical* art; obviously there needs to be some level of standardized content and education, as Hirsch suggests, but I believe it is to inspire more than to impart

information. I understand that the idealistic view of a young student inspired and awed by the beauty of some esoteric subject can be very separate from students that come from poverty-ridden communities and don't have the ability or support to have an education at all. The goal then, I believe, should be *even more* to inspire and not to tell them what to think. In declaring that the solution to illiteracy and poverty is maintaining constant content, Hirsch assumes a fundamental interest in 'cultural literacy' – that everyone will accept and vigorously learn the content, then hold hands to sing Kumbaya – thus enabling circular logic. Those that are interested in the academics usually can enter it and rise in financial status; the key is to foster it in the first place.

*Write a rhetorical analysis of each of the two published essays. Provide evidence from the text to show each step in the rhetorical analysis. This evidence can come in the form of summary, paraphrase, or direct quotation as you see fit, but you should not rely too heavily on one form or another.*

In "Preface to *Cultural Literacy*", Hirsch believes he is entering an arena of discussion on education that has been dominated by the ideas of Rousseau and Dewey, two scholars that believed not in the mere agglomeration of information but the development of general and broad intellectual and social skills. John Dewey left a deep imprint on American education theory and practice, Hirsch believes, and Rousseau's "...content-neutral conception of educational development has long been triumphant in American schools of education and has long dominated the 'developmental,' content-neutral curricula of our elementary schools." (Greene & Lidinsky, 2020) His purpose is to advocate for education practice he believes will break the poverty chain, and his claim is that education and cultural literacy requires the continued transmission of specific information, instead broad-based notions of developing 'skills'. To support this, he asserts that history is against Rousseauian theories of education, and that culture is developed around shared information. This shared information, he argues, is how individuals can communicate effectively and find a place within a large community. Hirsch primarily uses pathos to communicate his ideas; he debates the validity and implications of great thinkers' ideas by looking towards history and scrutinizing them with an analytical eye. This piece falls towards the esoteric sides of audiences; this is exemplified by little introduction for Rousseau, Dewey, and Plato, as well as broader ideas of anthropology and relative cultures. Hence, it is reasonable to conclude that Hirsch directed this towards policymakers and educators who can understand his writing at the depth he writes with, and who have the power to enact his purpose.

Mark Edmundson enters the conversation of academics he believes is being dominated by mediocrity. A real education in modern America has one enemy, he writes, "and that enemy is education." (Greene & Lidinsky, 2020) Edmundson's purpose is to convince university students in particular to rethink their goals in education, and to center their academic path not around external influences and a comfortability in mediocrity, but around their own passions. He claims that both the administration, the professors, and the students are not incentivized to put in effort towards a real education; the first is lenient on students for fear of retaliation, the second are busy conducting their own research, and the third are off partying thinking that they'll have a good job with the piece of paper they receive after their tenure as college students. Instead, Edmundson believes, a true education is one that is characterized by being *active* and not passive; following what one truly loves to do instead of being directed. This, he asserts, is the only way to live a fulfilling and complete life. Edmundson uses a variety of argumentative methods; he tells personal anecdotes through ethos (proving he knows something about the subject) and makes them stick with pathos; to a lesser degree he makes logos-type statements but seldom cites any explicitly. For instance, to support his claim that scholarly faculty research has little to actually

do with teaching, he asserts that “virtually no undergraduate students can read and understand their professors’ scholarly publications” (Greene & Lidinsky, 2020) – this very well may be true, but the audience has no reason to believe it. Edmundson’s audience is focused primarily on students – the title is a direct address to students entering college – but also on faculty and the administration, which he believes plays a part in disrupting true education by upholding their end of mediocrity and passiveness.

*Make a claim about the main topic of the essays. For instance, you might claim that the purpose of a higher education is to get a good job upon graduation. This step should be the result of the observations and analyses you make in the previous step.*

The purpose of education is to inspire and encourage its students to follow *empirical passions* – a palette of interests wide enough to provide meaningful work, but practical enough for decent living standards in our society. The greatest threat to education is boredom; educational systems that fail to inspire and motivate their students will never go any further on their own, and systems that *are* able to do so produce active and passionate citizens that regenerate themselves and continually contribute fresh ideas to their field of work. Education is not measured by where it takes the student, but where the student will go.

*Discuss how you arrived at this claim by analyzing points in all three education essays – yours and the two others. How has your own education experience shaped your claim? That is, are there details you wrote about in your education essay that you can also summarize, paraphrase, or quote that will help readers follow your argument?*

Hirsch writes in “Preface to *Cultural Literacy*” about the idea that education serves as an institution whose purpose is to increase cultural literacy. Thus, Hirsch writes, in accordance with an anthropological view of education, schools should be responsible for teaching students specific content such that this shared content can be the basis for a shared culture and a solution to poverty and illiteracy. From my personal experiences, I disagree with this idea, primarily because as a student I have felt the impact of education Hirsch advocates for; Hirsch neglects *boredom and interest*. On the other hand, Edmundson provides a stark contrast that is appealing in that it advocates for extreme individuality and complete separation of individual and societal spheres. However, in my article I communicate the idea of an “empirical art” – mathematics – which I find beautiful because “these two descriptors are not in contradiction with each other, but instead *complementary*.” Thus I agree with Edmundson’s individuality and education as an inspirational tool to develop general skills that aid in finding work that “restores [you] as you go” (Greene & Lidinsky, 2020), but additionally consider the school’s work in pursuing the practical arts, which are a broad but still solidly defined set.

*Create a Works Cited page using either MLA or APA. Use the [Purdue OWL Website \(Links to an external site.\)](#) often!*

Edmundson, Mark. “Who Are You and What Are You Doing Here? A Word to the Incoming Class”. *From Inquiry to Academic Writing: A Text and Reader*, edited by Stuart Greene and April Lidinsky, 5th ed., 2020. *Macmillan Learning*. Originally published in *Why Teach? In Defense of a Real Education*, 2013.

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## Midterm Essay

Andre Ye

Dr. Zink

TS English

9 November 2020

Education – its meaning, implementation, and value – has shifted significantly throughout history. Even the roots of its etymology reveal its complexity; education comes from the Latin *educere*, which some define as *bringing* or *drawing out* – education as finding and developing something within, centered around developing general skills – and others as *training* or being *led forth* – the cultivation of the mind with imparted knowledge, aiming for a knowledgeable population. These represent two fundamental pillars of thought on education’s purpose and scope, yet neither are complete individually. The purpose of education is to inspire and to guide its students along the empirical arts with emphasis on individuality and fostering passion, for it is both moral *and* practical.

In “Who Are You and What Are You Doing Here? A Word to the Incoming Class”, Mark Edmundson, a professor of English at the University of Virginia, places the purpose of education on the individual. Education, Edmundson argues, has been corrupted by societal influences, from eager parents imposing their wishes on their children to the continual societal upholding of poverty as failure. Students are often taught to follow what they are told to do – to get good grades, graduate from college, find a well-paying job – with little or no consideration of personal interest, dictated by blind orders of what society needs. Instead, education centers around the individual – finding work that is so personal and enjoyable that it “restores you as you go” (Greene & Lidinsky, 468) – for the most valuable payment is not money but fulfillment. Thus, education serves to *bring out* what is within – to foster fascination in the individual.

On the other hand, in “Preface to *Cultural Literacy*”, Eric Donald Hirsch Jr., a professor emeritus of education and humanities at the University of Virginia, maintains that the abstract notions of teaching general cognitive skills and content-neutral curriculum that have pervaded American education further the cycle of illiteracy and poverty. Instead, education should aim for *cultural literacy* – information required to thrive in the modern world, for culture, in accordance with anthropological study, revolves around commonly shared information. Hirsch argues for specific and content-driven education; thus, the purpose of education is to serve society’s interest in a literate *culture*, for effective communication and a society that supports mobility can be achieved only “by accumulating shared symbols, and the shared information that the symbols represent.” (Greene & Lidinsky, 57) To educate, then, is to *train* and *lead forth* the nation’s students on the same set of ideas, concepts, and knowledge.

Edmundson and Hirsch’s writings represent opposing perspectives on education; between focus on the individual and focus on society, the romantic appeal and the seemingly stone-cold practical one, bringing beyond what is within and imparting within what is beyond. I believe in Edmundson’s articulation of education for the individual but ground his ideas with aspects of Hirsch’s argument. The purpose of education should be to inspire students, not strictly to teach and impart information; both *motivation* and *knowledge* are equally integral, but there is a direction. A motivated student will always surpass an unmotivated one in the end, even if they start with large knowledge deficiencies. Especially in an era where education is available to almost all, from community colleges with evening classes to a plethora of online courses, it is key to *inspire first*, and deliver knowledge second.

It is, of course, silly to suggest that the two are distinct – there is tremendous overlap, and content is inextricably tied to motivation; Hirsch is correct in pointing this out. The goal of education, then, should be to teach the “*empirical arts*” - studies that are *empirical* in that they

are guided by practical content, but *artistic* in that the focus is on developing a deep-seeded understanding, individuality, and creativity within that realm. Consider mathematics: one cannot learn math without learning content, of course, but there is so much to explore and discover within the simple ideas without rushing ahead to “pile up information” (Greene & Lidinsky, 56), a core idea of Hirsch’s education philosophy. I followed a relatively standard math pathway with a curriculum that struck at the *art* of an empirical study – from constructions to proofs – and now I love math just as the 12-year-old prodigy who has mastered calculus does.

The core of Hirsch’s ideas, while masquerading under a tenor of practicality, has serious pragmatic deficits. In ignoring the individual, Hirsch accepts that all curricula are created and accepted equally by students. In my experience as a student, I have felt the impact of an education Hirsch advocates for: there is nothing more boring than a curriculum whose sole purpose is to tell students what to think day after day. What use are the high-minded virtues of a content-driven education if our nation’s schools are filled with bored and apathetic students? Is it that education can ignore the agency of individual students and prevent poverty by droves of all-star students that have faithfully studied the curriculum right to the door of the job market? Edmundson recognizes this erroneous assumption and makes clear that even at college – the highest level of academic achievement – students are never done learning.

Education centers around student initiative, and any educational system that ignores this will find that their students stop wherever the system drops them, if not earlier. Even as a drive to learn is anchored to content, it is possible – and much more effective – to forgo advancing rapidly with content and ensure that students fully understand and appreciate what has been learned so far. A strong discovery-centric curriculum can give students of all abilities depth and interest in any subject, regardless how simple. Education, while serving society, is at its root

for the individual. Passivity can do little; invigoration and fascination will always be able to overcome any knowledge deficit.

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Edmundson, Mark. "Who Are You and What Are You Doing Here? A Word to the Incoming Class". *From Inquiry to Academic Writing: A Text and Reader*, edited by Stuart Greene and April Lidinsky, 5th ed., 2020. *Macmillan Learning*. Originally published in *Why Teach? In Defense of a Real Education*, 2013.

Hirsch, E.D. "Preface to *Cultural Literacy*". *From Inquiry to Academic Writing: A Text and Reader*, edited by Stuart Greene and April Lidinsky, 5th ed., 2020. *Macmillan Learning*. Originally published in *Why Knowledge Matters: Rescuing Our Children from Failed Educational Theories*, 2016.

## Revised Midterm Essay

Andre Ye

Dr. Zink

TS English

15 December 2020

Education – its meaning, implementation, and value – have shifted significantly throughout history. Even the roots of its etymology reveal its complexity; education comes from the Latin *educere*, which some define as *bringing* or *drawing out* – education as finding and developing something within, centered around developing general skills. On the other hand, others believe it to mean *training* or being *led forth* – the cultivation of the mind with imparted knowledge, aiming for a broadly erudite population. These opposing interpretations reflect a deeper division of ideas in what education should do and serve. In this conversation on education, I argue that education should guide its students alongside the doctrine of the “empirical arts”, aiming for meaningful exploration rather than the pure absorption of content. Furthermore, I assert that *passion is practical*; individualized and exploratory learning serves the interests of society as well as the student.

The term “empirical arts” may seem contradictory, since empiricism is usually equated with the strict and universal language of logic, and arts are thought to be a place of creativity and passion. However, the beauty of the empirical arts stems from the mutualistic, not opposing, role that empiricism and art play. The philosophy of empiricism proposes that all knowledge stems from empirical evidence, or the receiving of information by the senses. Particularly, active documentation and experimentation of patterns, rather than passive observation, are crucial for the development of true understanding. Thus, the “empirical” in “empirical arts” is anything but

suffocating and overgeneralized; instead, it places first and foremost the student, interacting with the educational world to make sense of what they see. Mark Edmundson, a professor of English at the University of Virginia, concurs with the role of a student leading the academic exploration. Education, Edmundson argues, has been corrupted by societal influences, from eager parents imposing their wishes on their children to the continual societal upholding of poverty as a failure. Students are often taught to obediently follow what they are told to do – to get good grades, graduate from college, find a well-paying job – with little or no consideration of their exploration in the world, dictated by blind orders of ‘what society needs’. Edmundson identifies an imperative pillar in the doctrine of the empirical arts – *passion is practical*. Work should be so personal and enjoyable that it “restores you as you go” (Greene & Lidinsky, 468), for the most valuable payment, not only to oneself but to society, is not money but fulfillment. Does the passionate but poor kindergarten teacher inspiring young minds have more of a social impact than the well-paid but unsatisfied and resentful businessman? At the very least, it’s not obvious what the answer is. Pursuing what one loves to do – exploring the space of roles society can offer – not only regenerates and sustains oneself but is more practical for society.

The incorporation of the empirical arts into education and society, for example with a discussion and hands-on approach towards learning, inevitably produces difference. Empiricism centers around individual different perspectives in the pursuit of knowledge; treating this pursuit as art catalyzes that difference in thought with creativity and freedom to produce something truly meaningful. However, some see that difference as dangerous. Eric Donald Hirsch Jr., a professor emeritus of education and humanities at the University of Virginia, maintains that the abstract notions of teaching general cognitive skills and content-neutral curriculum that have pervaded American education further the cycle of illiteracy and poverty. Instead, education should aim for *cultural literacy* – a common set of information required to thrive in the modern world. When

everyone is taught the same, specific set of content, Hirsch argues, society shares more in common, and those that have been disadvantaged are closer to having more opportunity. Indeed, Hirsch's concerns of difference produced by too much exploration and the perpetuation of poverty are legitimate. Any society relies on structured knowledge and commonalities, so how can an educational philosophy with the absence of one serve society well?

However, the solutions that Hirsch proposes – characterized as the logical and pragmatic educational model – have a serious pragmatic deficit: it ignores the principle that passion is practical. In my experience as a student, I have felt the impact of an education Hirsch advocates for: there is nothing quite as uninteresting as a curriculum whose sole purpose is to tell students what to think day after day. What use are the high-minded virtues of a content-driven education if our schools are filled with apathetic students? Is it that a stellar education ignores the agency of individuals and prevents poverty by sending droves of all-star students that have faithfully studied the curriculum right to the front door of the job market? Individuals can choose where and what they want to do with their life after school; thus, it is the purpose of school to inspire them to pursue something of interest. The economically disadvantaged student inundated with specific mathematical formulas and problems may not have the resources to do well in that class; discouraged by low letter grades, they believe mathematics is simply not the route for them. On the other hand, another disadvantaged student that follows a simpler but more exploratory mathematics course decides that mathematics is elegant and intriguing, then enters and pursues an education and career in the STEM field. The former student learned more content in school, yes, but the latter ended up further. Encouraging the pursuit of individual passions is in the interest of society.

The individual's exploration of the educational and professional world, guided by their interests, is not separate from the brutal realities of the world. Passion exists, and it continues

to fuel innovation and financial mobility in society. When the distinguished leaders, researchers, and influencers of our time point to what led them to their current position, they almost always point not to relentless imparting of a complex and specific curriculum, but to the inspiration a passionate teacher or moment in the classroom sparked. A good education must recognize that it is at the beginning of a long journey in learning; for its students to travel far, it must focus on the empirical arts. Instead of pushing everyone into a mold, learning and teaching in this way is not only practical for innovation and financial mobility in society, but – most importantly – allows the student’s mind to flourish.

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- Edmundson, Mark. “Who Are You and What Are You Doing Here? A Word to the Incoming Class”. *From Inquiry to Academic Writing: A Text and Reader*, edited by Stuart Greene and April Lidinsky, 5th ed., 2020. *Macmillan Learning*. Originally published in *Why Teach? In Defense of a Real Education*, 2013.
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#### Research Question and Initial Sources Discussion Post

My question/topic: Social media censorship is a threat to democracy; censorship being used by a body that controls such a large information stream is dangerous to free speech, a pillar of our society. However, solutions - which often involve regulating social media - entail government regulation of social media content to prevent social media from regulating content, which contradicts the rationale for regulating social media in the first place. How can social media be democratized with democratic principles?



Popular Source: "The Platform Problem" by Matthew Feeney

Link: [The Platform Problem: EBSCOhost \(washington.edu\)](#) ([Links to an external site.](#))

In "The Platform Problem", Feeney explores Section 230, a bill that allows websites to moderate content while avoiding liability for the content. While Section 230 does have problems, Feeney admits, he investigates why changes to it may be misguided. Section 230 is at the heart of my topic because it explores government regulation and motivations behind the regulation of social media. His perspectives help address the potential limitations and dangers of government reform of media.

Scholarly Source: "Democratizing Tech Giants! A Roadmap." by Hans Gersbach

Link: [Democratizing Tech Giants! A roadmap.: EBSCOhost \(washington.edu\)](#) ([Links to an external site.](#))

Gersbach explores in his piece "Democratizing Tech Giants! A Roadmap" ideas for making big tech more democratic. Gersbach discusses why big tech is a self-strengthening monopoly, finding democratic solutions from a pillar of democracy: voting, and its implementation. His ideas will provide one potential solution for consideration, but additionally, provide plenty of context and ideas for democratic regulation.

### Reading Reflection 5

#### *My Post:*

The tremendous rise of social media and communication platforms has brought with it both the good and the bad; the surge of free speech and flow of ideas is accompanied by the power of private companies to censor, misinformation, and even worse, facilitating crimes like sex trafficking. There is currently fierce debate over social media companies and their liability for user-created content. Section 230 of the Communications Decency Act, known as the "26 words that created the Internet", is at the center of this debate, which could shape the nature of free speech and the Internet going forward.

Section 230 is under fire from all political aisles. Some claim that companies, under the liability protections of Section 230, are free to act like publishers in that they can censor and suppress user speech. Others claim that liability protections allow these companies to be negligent in censoring misinformation and extremism. For one, the SESTA-FOSTA bill, which made large revisions and exceptions to section 230 to prevent sex trafficking, received bipartisan support. State courts have interpreted and stretched section 230 to reduce its scope and liability protections, and politicians of both parties, including Sen. Cruz and Speaker Pelosi, have spoken against section 230 on the premises mentioned in paragraph 1.

I believe that while opposition to section 230 is often premised on good intentions, it is misguided and will backfire if materialized. For one, severely altering section 230 would force large companies that can afford it to restrict open speech by acting as moderators to prevent liability from user content, smaller platforms would close, and new competitors entering the space would be de-incentivized from arriving, thus *further* centralizing power in large tech corporations. On the other hand, bills like SESTA-FOSTA that restrict content in the good name of stopping sexual exploitation and trafficking still have many issues and punish marginalized communities. Solutions to both addressing the potential damage and Constitutional importance of the discourse social media wields do not involve touching section 230.

Working thesis: Changes to section 230 will backfire and do more damage than good. The concerns that justify revisions can and should be addressed through legal means other than section 230.

I believe this is a misinterpretation model, since I suggest that although many have argued that section 230 should be repealed for a variety of reasons, a careful examination suggests that these revisions would backfire and are not necessary towards accomplishing the change desired.

#### *Peer Feedback:*

**Does he answer the question:** Yes. He answers the question quite well, if anything making it more specific. Good wording made it easy to understand.

**Has he taken a position that others might challenge or oppose:** Yes. Some would argue that Sec. 230 needs to be changed, some would argue there would be no affect, some would argue it needs to be abolished, there are many stances to take on this issue.

**Is his thesis statement specific enough:** Yes. Section 230 is an incredibly specific topic to cover, and your phrasing with it works nicely.

**Does it pass the "so what?" test:** Yes and no. I think yes, but it also is very specific so it can be difficult to gauge how interesting it is. To make it more interesting, perhaps try adding a bit more of a unique wording, describe the problems that would happen, etc.

**"How and Why?" test:** It needs to address his views a bit better, he just gives very broad ideas. Perhaps taking a more defined stance on how changes to Section 230 will backfire.

### Research Essay Concept Map (Thesis and Essay Structure) Development

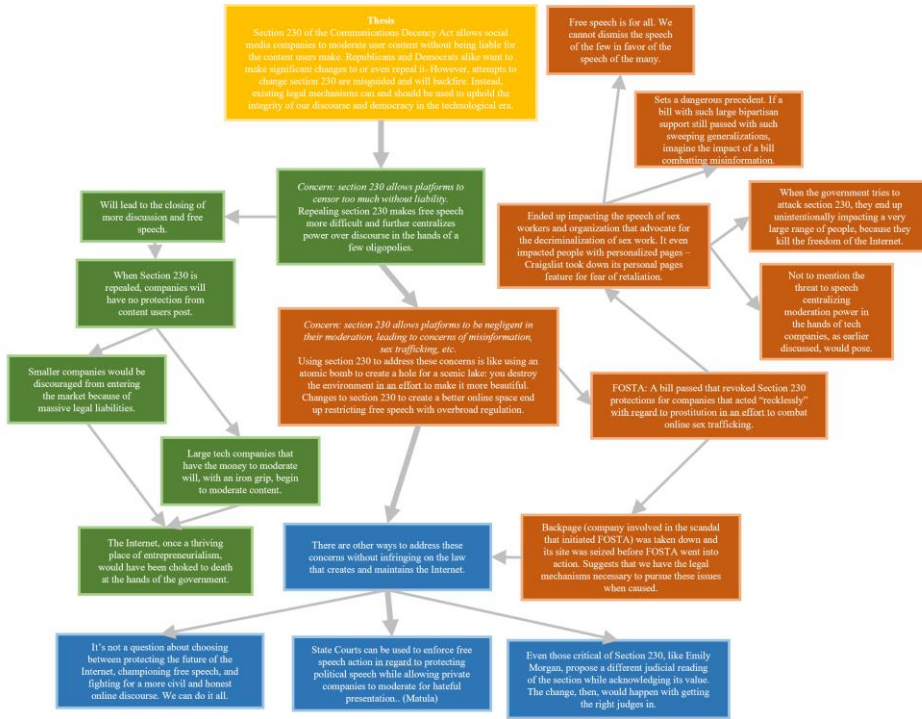
**Initial Thesis:** Section 230 of the Communications Decency Act allows social media companies to moderate user content (acting as a publisher) without being liable for the content users make (legally considered a platform). Republicans and Democrats alike want to make significant changes to or even repeal it. because it allows social media to censor without liability and because it does not place enough liability on the failure of social media to prevent extremism and misinformation, respectively. However, attempts to change section 230 are misguided and will backfire. Making one minor change and allowing the existing legal system to fulfill its role will ensure the integrity of our discourse and democracy in the technological era.

#### Initial Concept Map / Layout of Essay:



**Revised Thesis:** Section 230 of the Communications Decency Act allows social media companies to moderate user content without being liable for the content users make. Republicans and Democrats alike want to make significant changes to or even repeal it. However, attempts to change section 230 are misguided and will backfire. Instead, existing legal mechanisms can and should be used to uphold the integrity of our discourse and democracy in the technological era.

Revised Concept Map / Layout of Essay:



\*Concept maps have been condensed to fit within the margins of the document.

### Research Essay Layout

- *Introduction paragraph.*
  - Give context of section 230, give brief summary of opposing stances in principle but politically both against section 230.
  - Present thesis.
- *Body paragraph 1.* One concern is that section 230 allows platforms to censor at will without liability. However, revising section 230 makes free speech more difficult and further centralizes power over discourse in the hands of a few tech oligopolies.
  - Large tech companies support changes to section 230, whereas smaller ones do not (Any Safe Harbor).
    - Will further centralize power in the hands of a few.
    - Will encourage tech monopolies to regulate even more with protections gone.
- *Body paragraph 2.* Another concern – the more prevailing one courts prosecute – is that section 230 allows platforms to be negligent in their moderation and censorship, leading to concerns of sex trafficking and misinformation. However, using section 230 to address these concerns is inadequate, too all-encompassing such that it harms multiple communities, and a real threat to free speech and the first amendment.
  - SESTA-FOSTA and failure not only to protect speech of the community it intended to help but made free speech a liability.
  - Section 230 is blanket-natured; whenever it is punctured with haphazard exceptions all the Internet’s speech comes under scrutiny and potentially censorship.
- *Body paragraph 3.* These problems can be addressed through another legal solution, but section 230 should remain untouched.
  - State court can be used to enforce free speech action without violating the first amendment Constitutionality. There is interpretation available.
    - Allows political speech to be protected, but not hate speech.
      - Presentation can be moderated, and that is in the interest of the companies.
    - Section 230 may pose a barrier, but these can be looped around. (State Constitutions as a check..., page 160)
  - The markets are not always reliably secure, but they are good safeguards against rampant political censorship.
    - Page 907, Apps Too; companies do not benefit materially from abusing and harassing third parties.
- *Conclusion.* Nancy Pelosi (insert Pelosi quote: “Section 230 is a gift to Big Tech”) is right – section 230 is a gift, but not only to the tech companies, to us all. We should think carefully and look at the many avenues for change before striking down the law that created the Internet.

## Research Essay Notes on Scholarly Sources

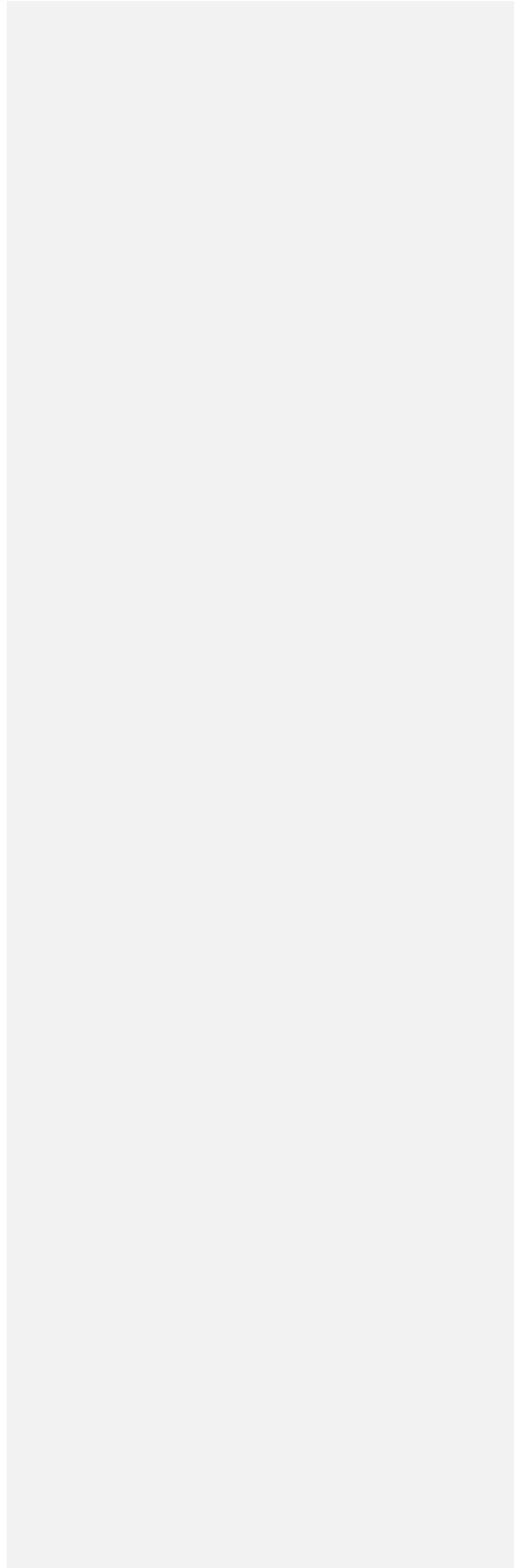
Source Information	Main Idea/Abstract
<i>"Any Safe Harbor in a Storm: SESTA-FOSTA and the Future of Section 230 of the Communications Decency Act"</i> By Charles Matula	Section 230 of the CDA allows the Internet to flourish by shielding web platforms from liability for user-created content, but also lets companies off the hook for facilitating crime. SESTA-FOSTA (legislation designed to target internet sex traffickers) tries to chip away at this liability to ensure some sort of accountability yet is constructed such that it included language that was broader than necessary and impacted unintended groups.
<i>"On FOSTA and the Failures of Punitive Speech Restrictions"</i> by Emily Morgan	SESTA-FOSTA fails to provide real relief to its intended beneficiaries and falls into the trap of punitiveness. It makes ex work more dangerous and poses concerns for Internet speakers (p. 5/46).
<i>"Apps Too: Modifying ISP Immunity Under Section 230 of the Communications Decency Act in the Wake of 'Me Too'"</i> by Alexandra Lotty	Section 230 offers extensive immunity to ISPs, but it is interpreted too widely. Therefore, courts should modify the section 230 doctrine, adopt narrower interpretation of what a "publisher" conduct is, and placing elevated status on "Good Samaritan" language.
<i>"State Constitutions as a Check on the New Governors: Using Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms"</i> by Elijah O'Kelley	Social media platforms like Facebook are increasingly becoming arbiters of political viewpoints. Platforms have faced increasing external pressure to silence objectionable or offensive content, and the Constitution provides no check on this power. The First Amendment does not apply. However, free speech clauses in state constitutions have been used to apply to private actors. Allows Facebook the right to moderate content and can moderate the way they are expressed without modifying the content of the viewpoint itself. Allow courts to check Facebook's otherwise unchecked power.

Source Information	Notes on Particularly Useful Information for Essay
<i>"Any Safe Harbor in a Storm: SESTA-FOSTA and the Future of Section 230 of the Communications Decency Act"</i> By Charles Matula	<ul style="list-style-type: none"> <li>• Stop Enabling Sex Traffickers Act and the Fight Online Sex Trafficking Act (SESTA-FOSTA) received wide bipartisan support. This modified section 230 of the Communication Decency Act (CDA) by making web platforms responsible for third parties posting prostitution ads on their sites.</li> <li>• Revoking Section 230 would centralize power in oligarch tech companies and make them control a heavier flow of information, if not cut off that information in the first place.</li> <li>• Helpful information half-way "IV. Role of CDA in Expansion of the Internet" for background. Includes cutbacks to CDA and political branch attacks on CDA.</li> </ul>

	<ul style="list-style-type: none"> <li>• Backpage: state and federal law enforcement agents were able to pursue Backpage for facilitating sex trafficking before SESTA-FOSTA. (p. 5/17)</li> </ul>
<p><i>“On FOSTA and the Failures of Punitive Speech Restrictions”</i> by Emily Morgan</p>	<ul style="list-style-type: none"> <li>• FOSTA chills Internet speech by curtailing immunity for online service providers and providing civil/criminal liability. Groups that advocate for free speech and decriminalizing sex work (e.g. Woodhull Freedom Foundation and Human Rights Watch) argue the act chills their 1<sup>st</sup> amend. Rights. (p. 3/46)</li> <li>• Silenced sex workers’ speech.</li> <li>• Principles of the first amendment: “Two key First Amendment principles are particularly relevant for this Note: (1) a given statute cannot be overbroad in its restriction of speech,<sup>38</sup>and (2) where the government regulates the content of speech—as opposed to its time, place, or manner—the regulation is almost certainly invalid.<sup>39</sup>These are the attacks leveled at FOSTA, and they are also the kind of attacks that have successfully invalidated other legislation promoted by feminists in the past.” (p. 8/46)</li> <li>• Speech that violates this probably violates some other law, which makes it unprotected from the first amendment. E.g. child pornography. (p. 11/46)</li> <li>• Lengthy section about overreach of content restriction in pornography (around p. 20/46ish)</li> <li>• FOSTA First-Amendment implications (around p. 33/46ish)</li> <li>• FOSTA’s free speech restrictions have implications of Americans and sets a dangerous precedent. (p. 38/46)</li> </ul>
<p><i>“Apps Too: Modifying ISP Immunity Under Section 230 of the Communications Decency Act in the Wake of “Me Too”</i> by Alexandra Lotty</p>	<ul style="list-style-type: none"> <li>• Good background on the history of the CDA and section 230, (p. 5/38)</li> <li>• Puts emphasis on courts interpreting the case too broadly.</li> <li>• Admits that the legislative case towards altering the CDA (with example of SESTA-FOSTA) is likely to be unproductive.</li> </ul>
<p><i>“State Constitutions as a Check on the New Governors: Using Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms”</i> by Elijah O’Kelley</p>	<ul style="list-style-type: none"> <li>• Information on determining private companies to be responsible for upholding free speech (examples of public shopping mall court cases).</li> </ul>
<p><i>The Wolf of Wall Street...</i></p>	<ul style="list-style-type: none"> <li>• Descriptions of hate speech concerns.</li> </ul>



	<ul style="list-style-type: none"><li>• Description of Josh Hawley’s proposed amendments to 230 and refutation. Could add to the first paragraph refuting concerns about overregulation.</li></ul>
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## Research Essay First Draft

Andre Ye

Dr. Zink

TS English

7 December 2020

## In Defense of Section 230: How Misguided Revisions Will Trample the Internet

Section 230, known as the ‘26 words that created the Internet’, allows companies to moderate content on their website – acting as ‘publishers’ – while not being held liable for user content – prosecuted as a ‘platform’. Part of the Communications Decency Act (CDA), the bill was first proposed in February of 1995 to combat spreading pornography and obscenity on the Internet.<sup>1</sup> As a result, the Internet has thrived – most websites, especially social media, could not grow if they risked being sued every time a user posted objectionable content. Under this shield, social media companies like Facebook have become massive hubs of information and ideas. The staggering power yielded by these companies has led many, on all sides, to question and attack Section 230. Republicans assert that Section 230 allows social media companies to censor at will from market pressures, threatening first amendment rights. Democrats, on the other hand, argue that the bill lets companies off the hook for not moderating their content *enough*, allowing sexual exploitation, hate speech and extremism to run rampant.<sup>2</sup> However, I argue that Section 230 should remain standing. Proposed revisions to or the repeal of Section 230 fail to address the

**Commented [1]:** Wait i am confused, on the second paragraph you mention that joe biden, a democrat, wants to completly repeal section 230...If one wants more regulation by companies shouldnt it be in support of 230. Maybe clarify that.

**Commented [2]:** Is this issue purely political, then, because different parties view section 230 as two separate ends of a spectrum?

<sup>1</sup> Lotty, “Apps Too”, 889.

<sup>2</sup> Matula, “Any Safe Harbor in a Storm”, 367. Note that concerns over section 230 are not purely along partisan lines of too much or too little censorship; there was, for instance, bipartisan support for the SESTA-FOSTA bill that restricted section 230 with the goal of preventing sex trafficking. This is further discussed in Matula’s work.

problems they seek to solve and unravel the free speech and decentralization of the digital world that we rely so heavily on. Other legal mechanisms can and should be used to address legitimate concerns of Internet misconduct without threatening the integrity of the Internet itself.

“The predicate for Section 230 immunity under the CDA,” Senator Ted Cruz opined in a Senate hearing, “is that you’re a neutral public forum.”<sup>3</sup> He, along with several media figures and politicians, have advocated for the revision or complete repeal of Section 230. Their concern, and one that 58% of registered voters hold, is that technology companies have bias against conservatives.<sup>4</sup> Given the power to moderate content at will, social media companies can overtly censor political speech they disagree with, or more subtly adjust visibility and reach on certain posts, which could shift national opinion and elections. While these concerns may be credible, the proposed solutions fail to address free speech concerns. If Section 230 were to be repealed, companies would have no protection from user content, and would need to regulate it *significantly more*. As legal scholar Charles Matula notes in the *Duke Law & Technology Review*, revoking liability protections centralizes power over information in the hands of the technology oligopolies.<sup>5</sup> Only large corporations can afford the resources for extensive moderation to avoid liability. Smaller platforms will shut down and any competition will be discouraged from entering the industry. This explains why the largest technology companies supported Section 230 revisions while smaller ones objected to it. The open conversation brought about by the relative openness, diversity, and quantity of platforms like Twitter would perish, if

**Commented [3]:** I like the flow of the introduction here. it gives me what I need to understand what is going on. One thing that i noticed is that u establish the points if views of the two parties, so which ideology are you leaning towards, or are you saying the government should do something entirely different. I think making that clear sets the frame for when you develop these paragraphs later on

**Commented [4]:** I think this is a strong claim, especially considering that Republicans and Democrats are rarely united on one issue. Though you did outline different reasons for their support, it's still weird to see the agreement. This does, however, set you up against most of your audience, where people who are either democratic or republican siding with their party. The fact that you're going against both of them makes a strong statement, which makes for a very clear thesis.

**Commented [5]:** You should try to start your paragraphs off with some sort of lead-in before going directly to quotes.

**Commented [6]:** seems a bit confusing how this quote relates to the rest of the para. I think first setting the topic or subclaim that you are talking about then mentioning the quote can make it easier to undestans what is going on. Also do you think it woudl be helpful to clarify again what side of the conversaaion you sre talking about first?

**Commented [7]:** Though you don't necessarily have to include this in your essay, it might be good background information for you to think about what might have caused them to think that that bias is there.

**Commented [8]:** Italicized i think

**Commented [9]:** i know the top says to ignore the footnotes but shouldn't this be footnoted too? (i could be wrong)

**Commented [10]:** Good point, I'll do that.

<sup>3</sup> Joshua A. Geltzer, *The President and Congress are Thinking of Changing This Important Internet law*, Slate Feb. 25, 2019), <https://slate.com/technology/2019/02/cda-section-230-trump-congress.html>.

<sup>4</sup> Matthew Sheffield, *Majority Think That Tech Giants are Biased Against Conservatives*, Poll Shows, Hill (Dec. 31, 2018), <https://thehill.com/hilltv/what-americas-thinking/421238-poll-majority-of-americans-think-social-media-companies-are>.

<sup>5</sup> Matula, “Any Safe Harbor in a Storm”, 361.

not at the hands of lawsuits, then by restrictive moderation. The free discourse brought about by the Internet would die a suffocating death, tragically by those who sought to protect it.

On the other hand, many believe Section 230 allows companies to be negligent in their policing of content. “Section 230... immediately should be revoked, number one,” President Joe Biden argued in a New York Times Interview. “It’s [underregulation at Facebook] totally irresponsible.”<sup>6</sup> An almost universal concern of under-regulation, for instance, is that of the Internet’s facilitation of sex trafficking. In 2018, the SESTA-FOSTA<sup>7</sup> bills revoked liability protections under Section 230 for platforms that acted in “reckless disregard” to sex trafficking or prostitution. While passed with noble intent, it had an enormously negative ripple effect across the digital *and* the physical world. It silenced, for one, the speech of groups like the Woodhull Freedom Foundation and the Human Rights Watch, which argue for the decriminalization of sex work.<sup>8</sup> Furthermore, many law enforcement agencies have attributed an *increase* in violence towards sex workers, as digital platforms used to facilitate transactions are torn down.<sup>9</sup> Yet, one may inclined to ask: why should *I* care? What does this have to do with *me* and *my speech*? The answer: plenty. As Lucy Khan, a sex worker, writes:

While currently the impact of FOSTA/SESTA is felt most acutely by those of us participating in the commercial sex trade, this bill affects everyone — escorts are just the canaries in the coal mine trying to make our warning call before it’s too late.<sup>10</sup>

Indeed, toxic gas is already beginning to fill the coal mine. The revision made free speech a liability for companies to uphold; in mere *anticipation* of the bill, Craigslist dismantled its

**Commented [11]:** Okay so you frame it as a first conservative para, then dem para. Maybe make that clear in the subclaim itself. Because essentially what you are doing is brining ur opinion into the ideas that are pointed out

**Commented [12]:** It is unerregulation at facebook totally irresponsible? Instead u could say The underregulation at facebook, "its totally irresponsible," joe biden asserts.

**Commented [13]:** This seems counterintuitive: how?

**Commented [14]:** It prosecuted content that was 'reckless' with regards to prostitution, and the speech of those arguing for the decriminalization of sex worker fell under that. I'll see how to make it more clear.

**Commented [15]:** Block quotes are single spaced

**Commented [16]:** I would expand on this example to make it clearer.

<sup>6</sup> Joe Biden, “The Choice: Joe Biden, Former vice president of the United States,” interview by New York Times Editorial Board, *New York Times*, December 16, 2019, <https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html>.

<sup>7</sup> Abbreviation for Stop Enabling Sex Traffickers Act and the Fight Online Sex Trafficking Act.

<sup>8</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions”, 505.

<sup>9</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions”, 505.

<sup>10</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions”, 504.

personal ads section, and Google and Microsoft began monitoring and deleting content from possibly suspicious users all to avoid potential liability.<sup>11</sup> SESTA-FOSTA was only one example of the impact revisions to Section 230 make, and a mild one at that, being passed with bipartisan support. Section 230 is the thin blanket that covers and maintains the integrity of the Internet. When it is haphazardly punctured with exceptions, not to mention completely revoked, all free speech – not just the target speech of revisions – becomes a liability, subjected to scrutiny and even censorship. Using Section 230 to target problems with Internet discourse is like using an atomic bomb to create the hole for a lake in a garden; in the attempt to make the environment more pleasant, it is completely trampled. As Emily Morgan, J.D., writes, these types of revision “present... First Amendment concerns regarding its chilling effect on internet speech.”<sup>12</sup> First Amendment speech is a right for all, for the many *and* the few. As courts have ruled in the past, it is the duty of these public platforms – even if they are companies – to uphold this sacred principle of democracy.<sup>13</sup>

This is not to be flippant of concerns of overregulation and under-regulation that are legitimate. Section 230 is simply not the vessel to address them. There are many mechanisms to do so without infringing on the law that created and maintains free speech on the Internet. For instance, the sex trafficking scandal that initiated SESTA-FOSTA was addressed when state attorneys successfully pursued criminal cases – one month before the bill went into effect.<sup>14</sup> This suggests that the legal mechanisms to prosecute and disincentivize serious breaches of humanity

**Commented [17]:** though i think the use of an analogy is good, you might want to pick a different word for trampled, as it doesn't really fit the analogy. I wouldn't say that something hit by an atomic bomb only looked "trampled"

<sup>11</sup> Matula, “Any Safe Harbor in a Storm,” 361.

<sup>12</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions,” 507.

<sup>13</sup> O’Kelley, “State Constitutions as a Check on the New Governors,” 130-136. O’Kelley outlines in these sections the idea of private companies being held as traditional public forums whose obligation is to uphold free speech. Malls, he highlights, have become information and gathering hubs for communities, and courts have ruled that these shopping centers, and other private companies that satisfy a delicate test of commercial and public function, cannot bar unobtrusive speech.

<sup>14</sup> Matula, “Any Safe Harbor in a Storm,” 358.

exist without violating speech rights. Even Alexandra Lotty, Executive Senior Editor of the Southern California Law Review, of the strong opinion that section 230 is harmful, acknowledges the impracticality of legislative revisions in curtailing sexual harassment and instead proposes judicial reinterpretation.<sup>15</sup> But similar methods can be employed for more ambiguous problems, like that of not censoring hate speech and censoring political speech. For one, the free speech clauses in state constitutions are textually different from the First Amendment and can be used to fill in the gaps a solidly free-speech stance can leave. If these problems are more routinely brought to state courts, social media companies will be able to moderate *how* the political speech is expressed – where hate applies – but its content.<sup>16</sup> While this still leaves some to be addressed, such as misinformation, it is a large step in confronting both concerns of hate speech and censorship of political speech.

At a news conference on December 10, House Speaker Nancy Pelosi declared that Section 230 “is a real gift to Big Tech”.<sup>17</sup> She, and opponents of Section 230 on both sides of the aisle, fail to see that the largest gift of the monumental bill is *to us*, the people. Our most creative, uplifting, and empowering ideas and thoughts have spread across the Internet as a decentralized system open to speech. Because of the blanket nature of Section 230, piercing its defense of the platforms that let ideas from all peoples and perspectives flourish will pose a

**Commented [18]:** What gaps do they fill in, and how does this make a difference? you mention in the next line that this will make a difference in court, but how?

**Commented [19]:** Maybe give a brief explanation of what "Big Tech" is.

<sup>15</sup> Lotty, “Apps Too,” 908-909. In the journal article, Lotty takes the opinion that Section 230 does little to stop sexual harassment on the Internet. However, in this section she hesitantly notes that changing Section 230 legislatively fails to be practical, arguing that the best avenue for change is in judicial reinterpretation. That is, “Section 230 Doctrine”, not Section 230 itself, can be modified by placing judges that will more narrowly interpret Section 230 into courts.

<sup>16</sup> O’Kelley, “State Constitutions as a Check on the New Governors,” 146-154. O’Kelley argues that state constitutions give platforms a delicate balance of public and commercial function. If platforms are significant to the public, and the public function does not damage the commercial value of the platform, then state courts will allow public functions. Thus, hate speech, which social media companies have a commercial investment in regulating, can be moderated. On the other hand, political speech that may be unconventional in its content but polite in its rhetoric would be allowed to stay. This generally addresses concerns about hate and political speech.

<sup>17</sup> Dean DeChiaro, ‘A real gift to Big Tech’: Both parties object to immunity provision in USMCA, Roll Call (December 17, 2019), <https://www.rollcall.com/2019/12/17/a-real-gift-to-big-tech-both-parties-object-to-immunity-provision-in-usmca/>.

serious risk to the freedom of those ideas. Altering Section 230 isn't a stand for free speech – it is asking for that speech to be centralized and controlled by Big Tech, even bigger and more powerful. It's also not a practical way to control hate speech and under-regulation – as a blanket covering the Internet, any change will cause ripples throughout the entire digital world, impacting minorities and ordinary citizens. Legal scholars – even ones opposed to Section 230 – agree that there are better ways to address these questions. It's not a question about choosing between protecting the future of the Internet, championing free speech, or fighting for a more civil online discourse. We can do it all, but only if Section 230 remains.

**Commented [20]:** you should either put this in quotations, or explain more of what this means.

**Commented [21]:** usually you don't have evidence in a conclusion, if this is the conclusion.

### Bibliography

Lotty, Alexandra. “Apps Too: Modifying Interactive Computer Service Provider Immunity Under Section 230 of the Communications Decency Act in the Wake of ‘Me Too.’” *Southern California Law Review*, 93, 93, no. 4 (September 2020).

Matula, Charles. “ANY SAFE HARBOR IN A STORM: SESTAFOSTA AND THE FUTURE OF § 230 OF THE COMMUNICATIONS DECENCY ACT.” *Duke Law and Technology Review*, May 18, 2020.

Morgan, Emily. “ON FOSTA AND THE FAILURES OF PUNITIVE SPEECH RESTRICTIONS.” *Northwestern University Law Review* 115, no. 2 (October 2020).

O'Kelley, Elijah. “State Constitutions as a Check on the New Governors: Using State Free Speech Clauses to Protect Social Media Users from Arbitrary Political Censorship by Social Media Platforms.” *Emory Law Journal* 69, no. 1 (2019).

Russo, Regina A. "Online Sex Trafficking Hysteria: Flawed Policies, Ignored Human Rights, and Censorship." *Cleveland State Law Review* 68, no. 2 (March 2020).



## Research Essay Final Draft

Andre Ye

Dr. Zink

TS English

7 December 2020

In Defense of Section 230: How Misguided Revisions Will Trample the Internet

Section 230, known as the ‘26 words that created the Internet’, allows companies to moderate content on their website – acting as ‘publishers’ – while not being held liable for user content – prosecuted as a ‘platform’. Part of the Communications Decency Act (CDA), the bill was first proposed in February of 1995 to combat spreading pornography and obscenity on the Internet<sup>18</sup>. As a result, the Internet has thrived – most websites, especially social media, could not grow if they risked being sued every time a user posted objectionable content. Under this shield, social media companies like Facebook have become massive hubs of information and ideas. The staggering power yielded by these companies has led many, on all sides, to question and attack Section 230. Republicans assert that Section 230 allows social media companies to censor at will from market pressures, threatening first amendment rights. Democrats, on the other hand, argue that the bill lets companies off the hook for not moderating their content *enough*, allowing sexual exploitation, hate speech, and extremism to run rampant<sup>19</sup>. However, I argue that Section 230 should remain standing. Proposed revisions to or the repeal of Section 230 fail to address the

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<sup>18</sup> Lotty, “Apps Too,” 889.

<sup>19</sup> Matula, “Any Safe Harbor in a Storm,” 367. Note that concerns over section 230 are not purely along partisan lines of too much or too little censorship; there was, for instance, bipartisan support for the SESTA-FOSTA bill that restricted section 230 with the goal of preventing sex trafficking. This is further discussed in Matula’s work.

problems they seek to solve and unravel the free speech and decentralization of the digital world that we rely so heavily on. Other legal mechanisms can and should be used to address legitimate concerns of Internet misconduct without threatening the integrity of the Internet itself.

“The predicate for Section 230 immunity under the CDA,” Senator Ted Cruz opined in a Senate hearing, “is that you’re a neutral public forum.”<sup>20</sup> He, along with several media figures and politicians, have advocated for the revision or complete repeal of Section 230. Their concern, and one that 58% of registered voters hold, is that technology companies have bias against conservatives.<sup>21</sup> Given the power to moderate content at will, social media companies can overtly censor political speech they disagree with, or more subtly adjust visibility and reach on certain posts, which could shift national opinion and elections. While these concerns may be credible, the proposed solutions fail to address free speech concerns. If Section 230 were to be repealed, companies would have no protection from user content, and would need to regulate it *significantly more*. As legal scholar Charles Matula notes in the Duke Law & Technology Review, revoking liability protections centralizes power over information in the hands of the technology oligopolies.<sup>22</sup> Only large corporations can afford the resources for extensive moderation to avoid liability. Smaller platforms will shut down and any competition will be discouraged from entering the industry. This explains why the largest technology companies supported Section 230 revisions while smaller ones objected to it. The open conversation brought about by the relative openness, diversity, and quantity of platforms like Twitter would perish, if

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<sup>20</sup> Joshua A. Geltzer, The President and Congress are Thinking of Changing This Important Internet law, Slate Feb. 25, 2019), <https://slate.com/technology/2019/02/cda-section-230-trump-congress.html>.

<sup>21</sup> Matthew Sheffield, Majority Think That Tech Giants are Biased Against Conservatives, Poll Shows, Hill (Dec. 31, 2018), <https://thehill.com/hilltv/what-americans-thinking/421238-poll-majority-of-americans-think-social-media-companies-are>.

<sup>22</sup> Matula, “Any Safe Harbor in a Storm,” 361.

not at the hands of lawsuits, then by restrictive moderation. The free discourse brought about by the Internet would die a suffocating death, tragically by those who sought to protect it.

On the other hand, many believe Section 230 allows companies to be negligent in their policing of content. “Section 230 ... immediately should be revoked, number one,” President Joe Biden argued in a New York Times Interview. “It’s [under-regulation at Facebook] totally irresponsible.”<sup>23</sup> However, revoking or even altering Section 230 will fail to address only specific content problems; because the bill covers all content on the Internet, any edits to it hold dangerous implications for *all* Internet speech. An almost universal concern of under-regulation, for instance, is that of the Internet’s facilitation of sex trafficking. In 2018, the SESTA-FOSTA<sup>24</sup> bills revoked liability protections under Section 230 for platforms that acted in “reckless disregard” to sex trafficking or prostitution. While passed with noble intent, it had an enormously negative ripple effect across the digital *and* the physical world. It effectively silenced, for one, the speech of groups like the Woodhull Freedom Foundation and the Human Rights Watch, which argue for the decriminalization of sex work.<sup>25</sup> Such speech would be scrutinized and potentially be held liable as ‘reckless actions’ towards prostitution under the SESTA-FOSTA. Furthermore, many law enforcement agencies have attributed an *increase* in violence towards sex workers to the bill, as digital platforms used to facilitate transactions are torn down.<sup>26</sup> Yet, one may be inclined to ask: why should *I* care? What does this have to do with *me* and *my speech*? The answer: plenty. As Lucy Khan, a sex worker, writes: “While currently the impact of FOSTA/SESTA is felt most acutely by those of us participating in the commercial sex trade, this bill affects everyone — escorts are just the canaries in the coal mine trying to make our warning

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<sup>23</sup>Joe Biden, “The Choice: Joe Biden, Former vice president of the United States,” interview by New York Times Editorial Board, *New York Times*, December 16, 2019, <https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html>.

<sup>24</sup> Stop Enabling Sex Traffickers Act and the Fight Online Sex Trafficking Act.

<sup>25</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions”, 505.

<sup>26</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions”, 507.

call before it's too late."<sup>27</sup> Indeed, toxic gas is already beginning to fill the coal mine. The revision, importantly, made free speech a *liability* for companies to uphold. In mere anticipation of the bill, Craigslist dismantled its personal ads section, and Google and Microsoft began monitoring and deleting questionable content from users – all to avoid potential liability.<sup>28</sup> SESTA-FOSTA was only one example of the impact revisions to Section 230 make, and a mild one at that, being passed with bipartisan support. Section 230 is the thin blanket that covers and maintains the integrity of the Internet. When it is haphazardly punctured with exceptions, not to mention completely revoked, all free speech – not just the target speech of revisions – becomes a liability, subjected to scrutiny and even censorship. Using Section 230 to target problems with Internet discourse is like using a bomb to create the hole for a pond in a garden; in the attempt to make the environment more pleasant, the environment itself has become uninhabitable. As Emily Morgan, J.D., writes, these types of revision “present... First Amendment concerns regarding its chilling effect on internet speech.”<sup>29</sup> First Amendment speech is a right for all, for the many *and* the few. As courts have ruled in the past, it is the duty of these public platforms – even if they are companies – to uphold this sacred principle of democracy.<sup>30</sup>

This is not to be flippant about concerns of overregulation and under-regulation that are legitimate. Section 230 is simply not the vessel to address them. There are many mechanisms to do so without infringing on the law that created and maintains free speech on the Internet. For instance, the sex trafficking scandal that initiated SESTA-FOSTA was addressed when state

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<sup>27</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions”, 504.

<sup>28</sup> Matula, “Any Safe Harbor in a Storm,” 361.

<sup>29</sup> Morgan, “On FOSTA and the Failures of Punitive Speech Restrictions,” 507.

<sup>30</sup> O’Kelley, “State Constitutions as a Check on the New Governors,” 130-136. O’Kelley outlines in these sections the idea of private companies being held as traditional public forums whose obligation is to uphold free speech. Malls, he highlights, have become information and gathering hubs for communities, and courts have ruled that these shopping centers, and other private companies that satisfy a delicate test of commercial and public function, cannot bar unobtrusive speech.

attorneys successfully pursued criminal cases – one month before the bill went into effect.<sup>31</sup> This suggests that the legal mechanisms to prosecute and disincentivize serious breaches of humanity exist without violating speech rights. Even Alexandra Lotty, Executive Senior Editor of the *Southern California Law Review*, of the strong opinion that section 230 is harmful, acknowledges the impracticality of legislative revisions in curtailing sexual harassment and instead proposes judicial reinterpretation.<sup>32</sup> But similar methods can be employed for more ambiguous problems, like that of under-censoring hate speech and over-censoring political speech. For one, the free speech clauses in state constitutions are textually different from the First Amendment, and can be used to fill in the gaps a solidly free-speech stance can leave, like dangerous speech. If these problems are more routinely brought to state courts, social media companies will be able to moderate *how* the political speech is expressed – where a hateful communication may be regulated – but not by its content.<sup>33</sup> While this still leaves some to be addressed, such as misinformation, it is a large step in confronting both concerns of hate speech and censorship of political speech.

At a news conference on December 10, House Speaker Nancy Pelosi declared that Section 230 “is a real gift to Big Tech”.<sup>34</sup> She, and opponents of Section 230 on both sides of the aisle, fail to see that the largest gift of the monumental bill is *to us*, the people. Our most

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<sup>31</sup> Matula, “Any Safe Harbor in a Storm,” 358.

<sup>32</sup> Lotty, “Apps Too,” 908-909. In the journal article, Lotty takes the opinion that Section 230 does little to stop sexual harassment on the Internet. However, in this section she hesitantly notes that changing Section 230 legislatively fails to be practical, arguing that the best avenue for change is in judicial reinterpretation. That is, “Section 230 Doctrine”, not Section 230 itself, can be modified by placing judges that will more narrowly interpret Section 230 into courts.

<sup>33</sup> O’Kelley, “State Constitutions as a Check on the New Governors,” 146-154. O’Kelley argues that state constitutions give platforms a delicate balance of public and commercial function. If platforms are significant to the public, and the public function does not damage the commercial value of the platform, then state courts will allow public functions. Thus, hate speech, which social media companies have a commercial investment in regulating, can be moderated. On the other hand, political speech that may be unconventional in its content but polite in its rhetoric,

<sup>34</sup> Dean DeChiaro, “‘A real gift to Big Tech’: Both parties object to immunity provision in USMCA, Roll Call” (December 17, 2019), <https://www.rollcall.com/2019/12/17/a-real-gift-to-big-tech-both-parties-object-to-immunity-provision-in-usmca/>.

creative, uplifting, and empowering ideas and thoughts have spread across the Internet as a decentralized system open to speech. Because of the blanket nature of Section 230, piercing its defense of the platforms that let ideas from all peoples and perspectives flourish will pose a serious risk to the freedom of those ideas. Altering Section 230 isn't a stand for free speech – it is asking for that speech to be centralized and controlled by massive tech companies, even bigger and more powerful. It's also not a practical way to control hate speech and under-regulation – as a blanket covering the Internet, any change will cause ripples throughout the entire digital world, impacting minorities and ordinary citizens. Legal scholars – even ones opposed to Section 230 – agree that there are better ways to address these questions. It's not a question about choosing between protecting the future of the Internet, championing free speech, or fighting for a more civil online discourse. We can do it all, but only if Section 230 remains.

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