



## MEMORANDUM

To: Interested Parties

From: Sacha Haworth, Executive Director, Tech Oversight Project

Re: Vulnerable Democrats Take Tech Accountability Stand

Date: October 6, 2022

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**PURPOSE:** *Big Tech never loses a legislative fight – and they just did.* Google, Apple, Amazon, Facebook, the U.S. Chamber of Commerce, and a number of well-heeled tech-funded trade associations threw the kitchen sink at opposing H.R. 3843, the *Merger Filing Fee Modernization Act*, and yet it passed in a 242 to 184 vote.

It's not surprising that Big Tech – the most cash-flush and predatory industry in the mergers and acquisitions space – would oppose a measure that helps arm the Federal Trade Commission (FTC) and the Department of Justice's Antitrust Division, but what is surprising is their 11th hour opposition to a reasonable bipartisan and bicameral measure – supported by members across the ideological spectrum. So, why do this? To them, this was an attempt to kill off antitrust legislation that levels the playing field and fixes the platform competition crisis. For allies, this was real win that builds momentum for the legislative and regulatory fights ahead.

As Members of Congress head home to their districts to campaign and while Big Tech continues to spend millions on lobbying and TV ads to block tech accountability measures, this memo is designed to provide takeaways from last week's vote the *Merger Filing Fee Modernization Act* and make the case for why the lame duck session provides an opening for S.2992, the *American Innovation and Choice Online Act* (AICO), and S.2710, the *Open App Markets Act* (OAMA).

- I. **Democrats from the most competitive House Districts in the country stood up to Big Tech monopolies' last-minute attacks.** Despite the *Merger Filing Fee Modernization Act*'s bicameral and bipartisan support, Big Tech attempted to wage an 11th-hour assault to kill the bill – in the hopes of claiming a victory and starving the FTC and the DOJ's Antitrust Division of the resources needed to properly scrutinize their unfair mergers and acquisitions, which have doubled over the last 10 years. They were denied.

Frontline House Democrats and other incumbents in tough re-elections cut through the noise and stood up to Big Tech monopolies like Google, Apple, Facebook, and Amazon. According to data from the [Cook Political Report](#), **none of the House Democrats who voted against the bill were in the 20% of the most competitive districts in the country.** Why does that matter? Despite [poll](#) after [poll](#) (after [poll](#), after [poll](#)) displaying how popular reining in Big Tech is across the country, some of the pushback on antitrust



reform has been the concern that Democrats in competitive races should not stick their necks out on a hot political issue. Not only were Big Tech and their K Street proxies dealt a real blow, but **if this voting pattern holds, AICO and OAMA will breeze past both chambers with ease.**

- II. **Representative Ken Buck (H.R. 3843 co-lead) promised and delivered a tidal wave of Republican votes.** While House Minority Leader Kevin McCarthy and Judiciary Committee Ranking Member Jim Jordan cosplay as "anti-Big Tech Trump Republicans," they both sided with maligned-Tech giants and attempted to whip their members against the *Merger Filing Fee Modernization Act*. Not only did they fail to the tune of 39 votes, they proved that among rank-and-file Republicans, but there is also a willingness to buck party leaders to get something done on tech accountability.

For antitrust supporters, this was an important metric that validates the hard work both Representative Ken Buck and [Senator Chuck Grassley have put into their respective whip operations](#). Despite attempts by Big Tech to discredit Grassley and Buck's efforts, they proved their hypothesis right: If brought to the full floor, a significant portion of Republicans would cross over to join Democrats in holding Big Tech accountable. Moving forward, allies and media should take their assertions seriously.

This serves as a marker for an AICO and OAMA floor vote, proves that Senator Grassley and Representative Buck can count and deliver votes, and shows that Minority Leader McCarthy and Ranking Member Jordan are all bark and no bite when it comes to Big Tech.

- III. **BOTH SIDES! Big Tech's content moderation defense got the split-screen treatment and proved their argument is a red herring meant to muddy the waters.** Silicon Valley Democrat Zoe Lofgren and MAGA Republican Jim Jordan generally don't agree on much, but when it comes to defending Big Tech, [they are in lock-step with Google, Apple, Facebook, and Amazon's talking points](#).

From the onset, Big Tech telegraphed its strategy – run down the clock and avoid accountability. The easiest way to accomplish that goal is to mire the antitrust debate in third-rail, culture war politics, which is exactly what tech has tried to do in pushing their content moderation concern troll.

The first problem with that strategy: It's fundamentally not true. AICO and OAMA address the competition crisis in tech, and the *Merger Filing Fee Modernization Act* reforms the fee structure around legal reviews for mergers and acquisitions – compelling larger companies to pay more than smaller ones. By design, they have



*NOTHING* to do with Section 230 or any company’s ability to moderate content on their platform.

The second problem with that strategy: It just looks ridiculous. Lofgren and Jordan traded one-minute speeches that simultaneously argued that the bill would block content moderation and unleash a torrent of censorship – clearly conflicting arguments. This left both antitrust activists and [journalists scratching their heads](#).

**Their arguments had nothing to do with the merger reform bill on the floor, and that’s the point.** The content moderation concern troll has been Big Tech’s default defense, and that’s because they wield it to incite buzz-word outrage, rather than engage on the substance of any legislation.

Big Tech will continue to deploy content moderation attacks in the lame duck to try and kill AICO and OAMA, and advocates and media should refuse to take the bait. **It’s smoke and mirrors to dodge any meaningful accountability and oversight.**

- IV. **Congress has increasingly relied on lame duck sessions to pass landmark legislation.** From time to time, Washington’s conventional wisdom needs updating. [According to Pew Research Center](#), lame duck sessions have “become routine in recent decades” and have lasted longer. Since 2000, legislation has been passed in the lame duck session at the end of every Congress, which was not the case in the 1980s or 1990s. Over the years, they’ve gradually shouldered more of the legislative workload.

In fact, during the last lame duck session that started in November 2020, the 116th Congress set a record for productivity. More than 40% of bills that became law during the last Congress were passed in the final two months of the term. That was the highest share of lame-duck legislation since at least the 93rd Congress of 1973-74, as far as Pew’s data goes back.

Why does this matter? Big Tech and their allies will continue to push the narrative that bipartisan antitrust reform is dead. Not so fast. While anti-Big Tech advocates remain clear-eyed about the task at hand, the outcome is not set in stone.

**If last week’s vote proved anything, AICO and OAMA might be some of the only sure-fire bipartisan wins available for Congress in the coming months, and leaders of both parties would be wise to make good on their promises and bring these bills to a vote.**