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From the Desk of Brian R. Knight

October 19, 2018

Senator Sherrod Brown
713 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Brown,

Thank you for the opportunity to testify before the Senate Committee on Banking, Housing, and Urban Affairs on September 18, 2018, at the hearing entitled "Fintech: Examining Digitization, Data, and Technology." I am happy to provide my response to your Question for the Record, as follows.

Question: Given that companies like Google and Facebook collect enormous amounts of information, and are also in a position to influence what information consumers are exposed to. For example, Facebook might show payday loan or private student loan advertisements to servicemembers or to minorities but not its other users. Should fair lending laws be updated to cover not just the provision of credit, but also targeted advertisement of such products on social media platforms?

Answer: It is reasonable and appropriate to prohibit social media platforms from enabling lenders to use prohibited characteristics to target or withhold credit offers, and regulators should have the ability to enforce this prohibition. An illustrative example in a related area is found in the Assistant Secretary for Fair Housing & Equal Opportunity filing's of a housing discrimination complaint against Facebook for violations of the Fair Housing Act.[1] In its complaint, the assistant secretary alleges that Facebook allowed advertisers of housing and housing-related services to directly target or withhold ads on the basis of protected classes such as race, religion, age, and gender. Such conduct should be prohibited.[2]

The question of whether social media sites should be prohibited from using neutral data that may correlate with protected classes is more complex. Concerns about disparate impact must be balanced with the fact that accurate algorithms based on neutral data may also be the most effective way to communicate useful information to potential customers. Additionally, seeking to prohibit the use of algorithms using neutral data for conveying ads to customers could face

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[1] Anna Maria Farías, *Housing Discrimination Complaint: Assistant Secretary for Fair Housing & Equal Opportunity v. Facebook, Inc.*, August 13, 2018, https://www.hud.gov/sites/dfiles/PIH/documents/HUD_01-18 -0323_Complaint.pdf.

[2] Facebook has not been found liable for any such acts, and to my knowledge it has not admitted to the allegations in the Assistant Secretary's complaint.

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potential constitutional issues.[3] Beyond identifying these potential issues, I have not done sufficient study to come to a conclusion on the issue.

I hope this additional information is helpful in the committee's consideration of issues related to fintech. Please feel free to contact me if I can provide any additional information.

Sincerely,

Brian R. Knight
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[3] Some courts have found that algorithms like those used by Google are speech protected by the First Amendment. See Langdon v. Google, Inc., 474 F. Supp. 2d 622, 629–30, (D. Del. 2007). Additionally, the Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, acknowledged that disparate impact liability must be limited to avoid "serious constitutional questions." See Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 2512 (2015).