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***The Nature of the Threats Posed by Platform Monopolists
to Democracy, Liberty, and Individual Enterprise.***

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I - Introduction

AMERICA'S MONOPOLY CRISIS.

Let me start with two quotes from Senator John Sherman of Ohio, from a speech he gave in 1890 in support of the antitrust bill that bears his name.

The first quote is one of the most famous in the history of the fight for American democracy, and you have probably heard it already.

“If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessities of life,” Sherman said. “If we would not submit to an emperor, we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity.”

The second quote is equally important because it begins to explain how to address such power, and also provides another reason why it is necessary to do so.

“It is the right of every man to work, labor, and produce in any lawful vocation and to transport his production on equal terms and conditions and under like circumstances,” Sherman said. “This is industrial liberty, and lies at the foundation of the equality of all rights and privileges.”

I am here today to make three basic points.

First, the danger we face today from the concentration of economic power is in many respects greater than what Americans faced at the time that Senator Sherman introduced and defended his bill. Google, Facebook, and Amazon each pose a variety of direct and immanent threats to our democratic institutions, to fundamental individual liberties, and to the stability and vibrancy of our economic system.

Second, we have all the intellectual and legal tools we need to address the problem, and indeed we know exactly what we need to do. The basic fix has long been fundamental to the American tradition of antimonopoly enforcement. Indeed, it is the essential point of the second of Senator Sherman's two quotes, as I will address in a moment.

Third, it is your duty here in Ohio to act. Congress and the Trump Administration simply do not today have the capacity to deal with all aspects of America's monopoly crisis. That means American citizens all across this nation must also use the power of our state governments to fix the problem. In the specific case of Ohio, the fight against concentrated monopoly power is also a rich part of your heritage. Ohioans have long stood at the forefront of protecting American democracy from dangerous concentrations of political economic power. This was true shortly after the founding, as Ohioans took the lead in making a society that protected the interests of the independent farmer and entrepreneur. It was true during the Civil War, when Ohioans led the assault on the power of the Slave Power. It was true after the war, when Senator Sherman and other Ohioans led the efforts to break the power of concentrated capital over America's political economy.

Before I get to the meat of the specifics of the crisis we face today, however, it is important to provide some background.

II – What is Antitrust?

THE TWO PHILOSOPHIES OF ECONOMIC DEMOCRACY

Antitrust is in a period of radical change. There are now two different antitrust philosophies in competition with one another, both in the United States and around the world. The two philosophies could hardly be more different from one another.

The first philosophy dates to the Founding of the United States. Indeed it dates to shortly before the founding, to the Tea Party rebellion against the British East India Company's monopoly over trade.

A main goal of this original antitrust philosophy is to protect the liberty of the individual citizen to sell goods or services on an open market, without any regulation by any intermediary. A second main goal of this approach is to protect democratic institutions and balances from dangerous concentrations of power and control.

This traditional philosophy of antitrust – or rather, “antimonopoly” – is constitutional in nature. It is essentially an effort to extend the system of checks and balances from the political system into the political economy.

This vision of antimonopoly was first formalized in the United States under the administrations of Thomas Jefferson and James Madison. But it would be wrong to see the philosophy as in any way partisan in nature; leaders including George Washington and John Adams also contributed great to its establishment. In the middle of the 19th Century, the philosophy was renewed by the Republican Party of Abraham Lincoln and Frederick Douglass. Senator Sherman of Ohio, as you know, was a key leader of this party.

In the first half of the 19th Century, antimonopoly policy in America was enforced mainly at the state and local level. Beginning in the 1860s, during the Civil War, Americans began to empower the federal government to regulate and to break apart concentrations of economic power. They did so first in banking and communications. They then did so with transportation, most dramatically with the Interstate Commerce Act of 1887, which imposed non-discrimination rules on railroads. Then, with Senator Sherman’s Antitrust Act in 1890, they set out to do so in the economy more widely.

By the early decades of the 20th Century, Americans had developed three distinct approaches to antimonopoly enforcement. In the case of essential services like railroads and banking, the main goal was to ensure that all users have equal access to any essential good or service. This was achieved mainly through laws and regulations that ensured that any corporation with a monopoly over the supply of such a good or service never discriminate in its pricing or terms of service. Or put another way that such monopolists treat every seller and every buyer the same.

This is what Sherman meant when he said that liberty depends on the right to have one’s production transported “on equal terms and conditions and under like circumstances” with everyone else.

In the case of manufacturing activities that clearly benefited from some concentration of capacity and control, but that did not naturally lead to monopoly, the general goal was to prevent any one corporation from concentrating control over more than about a quarter of any particular market.

Finally, in the case of activities that could be more easily divided into small holdings – such as farming, retail, and most banking and light manufacturing – the general goal was to promote as wide a distribution of ownership and control as possible.

Of these three goals, the most politically important was to ensure the neutrality of any provider of any good or service essential to the business of any producer or seller. Americans viewed such neutrality as fundamental to the security of the personal property of these entrepreneurs, hence to the basic rule of law within society.

By the early years of the 20th Century, Americans had distributed the power to promote and enforce antimonopoly law across almost the entire government. In addition to the Antitrust Division of the Justice Department and the Federal Trade Commission, this included the Federal Reserve, Treasury Department, Agriculture Department, Defense Department, Securities and Exchange Commission, Federal Energy Regulatory Commission, and many other agencies. Americans also used the power of the federal government to reinforce the antimonopoly powers of every state government.

One result was the widest distribution of power, property, wealth, and opportunity in American history. Another result was the greatest period of prosperity and innovation. This wide distribution of prosperity and opportunity was true in terms of the individual. It was true also in terms of geography, as this antimonopoly philosophy helped to promote the localization of business and entrepreneurship in ways that ensured that cities like Dayton and Akron and Toledo could compete with New York and Chicago and San Francisco.

In the early 1980s, however, the Reagan Administration introduced a radically different philosophy of antimonopoly law and enforcement. The philosophy was largely based on the work of the legal scholars

Robert Bork and Richard Posner. It was part of a larger effort to rethink economic regulation, which we sometimes call Chicago School economics or neoliberalism. Like America's traditional antimonopoly philosophy this philosophy also became bipartisan in nature, as it came to be embraced by every administration from the 1980s until today, both Republican and Democratic.

The main theoretical goal of the alternative philosophy was to promote the "efficient" use of capital, and to reduce "wasteful" regulation, based on the idea that doing so would promote the "welfare" of the "consumer." The main practical goal was – again according to the theory – to drive prices lower. The act of judging whether a particular corporate or market structure promoted "consumer welfare" was shifted from the legislature and judiciary – and the practically trained enforcer – to the economist.

Although radically opposed to the ideas that had prevailed since the Founding, the Chicago School approach to antimonopoly law was anything but new. On the contrary, it marked a resurrection of ideas that had been promoted at the turn of the last century by men including J.P. Morgan, John D. Rockefeller, and Andrew Carnegie.

Indeed, the argument that antitrust should focus on pricing was so old that Senator Sherman himself had dismissed it in his 1890 speech. "It is sometimes said of these combinations that they reduce prices to the consumer by better methods of production, but all experience shows that this saving of cost goes to the pockets of the producer," he said. "The price... depends upon the supply, which can be reduced at pleasure by the combination."

Another idea the Chicago School operators resurrected was that there was no need to prevent discrimination by any monopolists who controlled access to any particular essential good or service, or any essential marketplace. They did so based on the idea that such discrimination might prove to be more efficient. As Robert Bork wrote in his book *The Antitrust Paradox*, "the case for allowing discrimination freely is strengthened by the observation that the more a monopolist is able to discriminate, the more likely becomes the favorable outcome of an increase in output."

To the extent the Chicago School operators introduced something new, it was the idea that the economist should be the main judge of whether a market structure or particular corporate behavior would be found to be legal, hence just. To enforce this new rule of economics and of the economist, the Reagan Administration reengineered the decision-making systems within the Antitrust Division of the Justice Department and the Federal Trade Commission to ensure that it would be an economist who would ultimately decide whether or not to take a case.

This “Chicago School” philosophy of antitrust dominated the American approach to enforcement from 1981 to 2017. But thanks to a series of events and speeches aimed at resurrecting America’s traditional antimonopoly philosophy, the consensus in favor of the “consumer welfare” approach has broken down, and the two philosophies are once again contending for dominance.

Just over the last two years, we have seen high-level public debates between advocates of the two philosophies take place within the Antitrust Subcommittee of the U.S. Senate, a series of special hearings by the Federal Trade Commission, the University of Chicago School of Economics, the Federalist Society, among antimonopoly and privacy regulators in Europe, and increasingly in the public sphere, as the issue has become a topic of presidential and press debate.

III – What Are the Platforms?

HOW TO CATEGORIZE GOOGLE, FACEBOOK, AND AMAZON?

Google, Facebook, and Amazon are remarkably complex conglomerates. This is especially true of Google and Amazon. Google, for instance, controls multiple key online platforms, including search, maps, email, android, Chrome, YouTube, and DoubleClick, as well as a growing suite of other key technologies and businesses. Amazon meanwhile has invested many billions of dollars into warehouses, distribution hubs, transportation systems, robotics technologies, manufacturing relationships, as well as “Cloud” computing services, in addition to its core platforms in e-commerce and online video gaming.

By contrast, Facebook has thus far largely retained its character as a horizontal platform. It’s main acquisitions in recent years – of Instagram and WhatsApp – were designed mainly to buttress this horizontal dominance of social network empowered communications by eliminating two of its main potential competitors. Facebook’s predatory efforts to undercut the market for Snap and other threatening rivals aimed at the same basic outcome.

Until recently, most in the Chicago School camp held that Google, Facebook, and Amazon are businesses that exist within markets, hence that they are regulated by the need to compete with other corporations offering similar services. This has begun to change, however, as a growing number of conservatives have spoken out about the power that these organizations have captured over vital communications, transportation, and commercial systems.

Many liberal proponents of a restoration of America’s traditional philosophy of antimonopoly, by contrast, have for years held that Google, Facebook, and Amazon already have power over a great array of markets and the people who depend on those markets to buy and sell certain goods and services.

In the past, Americans have always applied some form of common carriage law to any networks or monopoly providers of essential services or goods. Common Carriage, of course, means requiring that the monopoly provider treat every customer the same, and that they charge

every user the same price for the same basic service. This is the main theory behind the Interstate Commerce Act of 1887.

Americans have traditionally allowed some discrimination based on the class or type of a particular good or service, as long as such discriminations are approved and audited by the public. But under common carriage regimes, there must be no “first-degree” or personalized discrimination in pricing or terms.

Today, however, although Google, Facebook, and Amazon have each monopolized the provision of multiple essential services, neither federal nor antimonopoly enforcers treat them as common carriers. As a result, these three corporations enjoy a de facto license to discriminate in how they treat each individual seller and supplier, and how they treat each individual buyer.

This in turn has enabled these corporations to concentrate power and control to a degree that has not been true for any essential network since the early days of railroading in the United States. Indeed, as we will see in the next section, they have built their business models largely around this license, and have used it to establish themselves as the de facto regulators or an immense and growing swath of the political economy of the United States and of much of the world.

IV – The Business Models of Google, Facebook, and Amazon: HOW DO THE PLATFORM MONOPOLIES MAKE MONEY?

As noted, these corporations are remarkably complex conglomerates. But at bottom, the way they make money is pretty simple.

These three corporations have developed business models that depend on their ability to combine this license to discriminate in how they serve different sellers and different buyers with their monopoly control over an essential good or service(s), and the knowledge they have developed about the interests, habits, and business models of the sellers and buyers who use their platforms.

That said, these three corporations do differ somewhat in how they turn this combination into cash. What Google and Facebook do is sell advertising. And they sell a lot of it, with Google taking in \$116 billion last year, and Facebook taking in \$55 billion. And these figures are going up fast, as advertising swiftly shifts from other media to the Internet, and as these two corporations swiftly monopolize an ever greater share of online advertising.

These two corporations captured control over advertising by building the world's most powerful manipulation systems. They designed their systems to manipulate where you go, what you buy, what you watch, what you read, how you vote, even how you think. They then rent out this manipulation machine to just about whoever will pay them. That could be Procter & Gamble. It could be Vladimir Putin.

Amazon by contrast makes most of its money charging sellers “fees” for different types of fulfillment “services.” This can include listing their products on its website, storing them in its warehouses, and shipping them to the customer. Increasingly it also charges “fees” to buyers. Over the last two years Amazon has also begun to earn a lot from advertising.

What allowed these three corporations to build such powerful and effective manipulation machines was the absence of common carrier rules. The liberty to price what each seller must pay for basic services, and what each end buyer must pay for the good or service being sold, is

what allows Google, Facebook, and Amazon to individually target and exploit each seller and buyer.

Under traditional antimonopoly law, such individualized pricing for access to a vital good or service was viewed as highly destructive of economic, social, and political balances. Corporations that exploited their control over the gate to the market to extract the maximum amount of money possible from a particular customer for a particular service were believed to be engaging in a form of extortion. In the days of the railroads, this was known as charging “what the market will bear.” More accurately, it was charging what the individual corporation or entrepreneur could afford to pay at any particular moment.

Corporations that control the gate to the market and that enjoy a license to engage in discriminatory pricing also use their power to extort political favors. Most often this takes the form of demanding that the victims of such use of power do not speak in public about the act of extortion itself. We will discuss this form of extortion in greater detail in a moment.

Google, Facebook, and Amazon did not invent this business model. It has been used many times in the past, most systematically by railroads in the period before the passage of the Interstate Commerce Act. What these three corporations have done is simply to update this business model for the era of the Internet platform and of massed caches of data.

V – The Immediate Threat:

HOW THE PLATFORMS THREATEN DEMOCRACY.

It is increasingly evident that Google, Facebook, and Amazon pose a wide and fast growing array of economic threats to the people of the United States. This includes the choking off of entrepreneurship and innovation across a wide range of business sectors, ranging from manufacturing to retail to transportation to the structure of the Internet and the nature of the applications designed to operate on the Internet.

This also includes the concentration of risk in a wide and growing array of systems. These concentrations of risk have severely eroded the security of our nation, the stability and vibrancy of our capital markets, the flexibility of our monetary and financial systems, and the security and privacy of our families and our individual selves.

All of these incredibly important and pressing effects, however, pale in comparison with the wide array of immediate political dangers posed by these three corporations. The rapid chokepointing of control by Google, Facebook, and Amazon over the flow of information and commerce in our society now poses what is perhaps the gravest set of threats to American democracy, and individual liberty, since the Gilded Age, perhaps even since the Civil War.

The most fundamental threats to our democracy include:

Misinformation and Propaganda.

There is nothing new about misinformation and propaganda. We can read about such actions in Thucydides' *History of the Peloponnesian War*. What is new today are the structure and power of the manipulation machines that Google and Facebook have built to broadcast, and amplify, misinformation and propaganda. Democracies around the world, from the United States and Europe to Asia, Africa, and Latin America, have been severely disrupted in recent years by various forms of "fake news." The problem is created not by the people who

seek to spread such misinformation; rather it is created by the fact that they now have such powerful means for doing so.

The Warping of Debate.

It has become a truism to say that Facebook now serves as America's "public square." This is especially true if we add in Google and Twitter. Unfortunately, debate within today's public square is not regulated by the public itself, nor by officials elected by the citizenry. Rather debate today is regulated, and to a very real degree manipulated, by these corporations. The issue here is not so much their efforts to censor certain forms of speech, although this is a regulatory power that cannot be turned over to such private providers of essential communications services, any more than it would have been right to use AT&T to censor American political debate a century ago. Rather, the issue is the way in which these corporations manipulate who gets to talk to who, who sees what book or article and when they see it (if ever). Individuals have developed a wide set of platforms that put the individual in control of what news, books, and postings he or she wishes to read. But Google, Facebook, and Amazon are designed to actively manipulate such exchanges, at the behest of those able to hire them to do so.

The Starving of Journalism.

Those billions of dollars that Google and Facebook took in last year – \$116 billion and \$55 billion respectively – did not come out of the ether. They came mainly from competing media, from companies also supported by advertising. One result? Over the last nine years advertising revenue at U.S. newspapers fell from more than \$50 billion to less than \$20 billion. We see similar declines in news magazines, in television news, and in online native news publications. This means thousands of fewer journalists on the beat. It means a growing number of towns and even mid-size cities in America no longer have a local newspaper. The free press plays a fundamental role in our democracy. Without a healthy free press, we cannot keep our democracy healthy.

Censorship of Traditional Media.

There is growing evidence that Facebook and Google engage in various forms of direct political censorship over mainstream media outlets. One example was recently reported by Nick Thompson, the editor of *Wired*. Thompson's story begins in February 2018, when he published a feature on Facebook that included the following concise description of his fear, as a journalist. "Every publisher," Thompson wrote, "knows that, at best, they are sharecroppers on Facebook's massive industrial farm... And journalists know that the man who owns the farm has the leverage. If Facebook wanted to, it could quietly turn any number of dials that would harm a publisher – by manipulating its traffic, its ad network, or its readers."

In April 2019, Thompson wrote a new article titled "15 Months of Fresh Hell Inside Facebook." In this year's article, Nick tells us that just after that first article appeared – with that quote in it – "traffic from Facebook suddenly dropped by 90 percent, and for four weeks it stayed there. After protestations, emails, and a raised eyebrow or two about the *coincidence*, Facebook finally got to the bottom of it. An ad run by a liquor advertiser... had been *mistakenly* categorized as engagement bait by the platform. In response, the algorithm had let all the air out of WIRED's tires. The publication could post whatever it wanted, but few would read it. Once the *error* was identified, traffic soared back." (Emphasis added). Nick then concluded by doubling down on what he wrote last year. "It was a reminder that journalists are just sharecroppers on Facebook's giant farm."

Read between the lines of these two quotes and what Thompson wants us to understand is clear. In response to what was a very positive article overall, one that Nick structured to provide Facebook with ample room to prove its good intentions, Facebook responded by shutting *Wired* down and keeping the magazine shut down for a month. Does Facebook do the same thing with the *New York Times*, *Wall Street Journal*, PBS, Fox News? The answer is we don't know. Can they do so? Yes. At will.

The Pyramiding of Political Power.

Google, Facebook, Amazon are gatekeepers to many individual markets in addition to those for news and information. As noted above, these corporations use their gatekeeper power to extort money. As we also noted, in a growing number of these markets they also extort various forms of political power. As a result, today even extremely large corporations – such as Procter & Gamble, Unilever, Bertelsmann, Hachette, the BBC and PBS – depend on Google and Facebook and Amazon to get to market. And every one is afraid that as much money as the platforms may have already extorted from them for basic services, that they will extort more. Or that they will simply cut them off from the market in ways that will cost them big money, or will even bankrupt them. And the political result of this license to open and close the gate to the market based on the whim of the gatekeeper? It is a pyramiding of power – into the hands of these three great master manipulators, these three private super-regulators, Google, Facebook, and Amazon.

In recent weeks, Americans have learned how a number of large U.S. corporations now censor their speech and actions out of fear of retribution by the Chinese government. This includes the National Basketball Association, Disney, Apple, and Marriott. To protect their access to the Chinese market, these corporations willingly repeat Chinese state propaganda, alter map of East Asia, suppress certain news and information, and promote Chinese political aims to the U.S. government in Washington. The same is increasingly true also for the fast growing number of corporations that fear Google, Facebook, and Amazon. For the same reasons that a growing number of powerful corporations toe Beijing's line, a growing number toe Silicon Valley's line.

The Destruction of the Public.

Increasingly the platform monopolists apply these same tools of manipulation and extortion to individual members of the public in their capacity as consumers. This first-degree discrimination by monopolists in the pricing and terms of vital goods and services is leading to what can be described as an atomization of the American citizenry. The issue

here is not that the price for the services of Google, Facebook, and Amazon is free to the “consumer.” It’s that the price for individual goods and services imposed, from outside the market. And that the real price is different for each seller and each buyer. In the world regulated by Google, Facebook, and Amazon, price is no longer a function of competition. Rather, it is a tool of power. The tailored price is both the purpose of the system of manipulation that these corporations have built. And it is a key part of the means of manipulation.

The political result of such personalized pricing, on such a wide scale, is a growing inability by the public to understand what exactly is wrong within our political economy, and what to do about it. After all, to understand a problem, the public needs information. One of the most important forms of information is the price of a good or service. In a world in which every price is unique, it becomes impossible for the public to concentrate knowledge about a particular human commercial activity. Hence it becomes impossible for the public to concentrate sufficient political power to affect that human activity. Without public prices, we can’t really function as a public. And obviously, without a public, it’s very hard to have a democracy.

VI – Next Steps: TO SAVE DEMOCRACY IN THE 21ST CENTURY

Americans all across the country, from all political backgrounds, have begun to debate how to make the platform monopolies safe for our democracy. Just this week, in the Democratic Party presidential debate at Otterbein University, in Westerville, Ohio, all the candidates agreed that the American people must do something dramatic, and that we must do something soon. Meanwhile, Republicans ranging from Missouri Senator Josh Hawley to Florida Senator Marco Rubio to Texas Senator Ted Cruz not only agree, but often drive the debate forward.

Until recently, adherents of the Chicago School antimonopoly philosophy contended that the threat posed by the platforms was not grave, that to the extent any problem did exist we should let the market

resolve it, and that no matter what, the tools of the DOJ and FTC were inadequate to any such effort to restructure these markets and alter the behaviors and business models of these corporations. Although this denialist, pro-monopoly attitude has begun to change, adherents of the Chicago School philosophy are further inhibited in their ability to address America's monopoly crisis by the fact that they still focus almost entirely on harms to the citizen as a "consumer" rather than as someone seeking the liberty to "sell" goods, services, and work through open market systems unregulated by any intermediary.

The good news is that the American people, over the first two centuries of our history, developed a vast array of tools to address precisely the challenges posed by Google, Facebook, Amazon and other platform monopolists. These tools are easy to see once we look through the lens of the traditional American philosophy of antimonopoly, back to the original rebellion against the original gatekeeper monopoly, the British East India Company. Just as was true in 1773, our aim today is to break the power of these monopolist to use a gatekeeper position to regulate and govern us. Just as was true for the first two centuries of our nation, the way to do so is to use the power of the public government to regulate and – when possible, break apart – the private monopolist.

As for practical next steps, what the American tradition teaches us is that the most immediately important step is to eliminate entirely any ability of the platform monopolists to engage in any discrimination in pricing or terms of service to the citizen, as either a seller or buyer. This means that prices for all services must be posted, and the pricing and delivery of these services must be audited by the public.

At the Democratic debate in Ohio this week there was also a lot of discussion about whether or not we need to break up the platforms.

What America's history teaches us is that the answer is yes. Breaking up these corporations is a necessary, albeit a second-level action, one that can be used to buttress the neutrality of the platforms, and also to engineer competition in ways that ensure more constructive forms of technological and business process innovation, as well as a strengthening of American democracy through a radical increase in the opportunity for any individual to take full part in our political economy.

Finally, what America's history teaches us is that the states can play a huge role in this process. We saw this in the late 1990s with the case against Microsoft. We are witnessing this today with the new state investigations into the actions of Google and Facebook. The challenge now is to speed that process, not least by providing the antitrust agencies in our state governments with sufficient resources to protect the citizens of our states from these great and growing threats to our democracy and our most fundamental liberties.

In 1890, when Senator Sherman delivered his great speech in defense of American democracy, the most pressing need was to federalize antitrust enforcement. By 1914, however, the American people had realized that the states also must continue to play a vital role, which is why Congress structured the Clayton Antitrust Act to give every state the same powers enjoyed by the federal government.

The time has come to use those powers.