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Tweaked Judge Security Measure Passed in House Defense Bill

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A judicial security measure tucked into the House-passed defense authorization bill didn't include proposed language that raised concerns about potential liability for major tech companies like Facebook and Twitter.

The long-stalled bill (S. 2340; H.R. 4436) to protect judges' personal information from being shared online is named in honor of a federal judge's son who was killed by a disgruntled lawyer at their family home.

Language added to the bill in the House text earlier this week included a reference to Section 230 of the Communications Decency Act, a statute that protects certain websites from liability for what users post. That reference, scholars said, appeared to imply websites could be liable if they failed to comply with a request to take down personal information about a judge or their family.

"This does not provide an explicit exception to 230, but it does create a rule of construction that at least implies an exception for platforms that do not fulfill requests to remove covered info," Jeff Kosseff, a cybersecurity law professor at the US Naval Academy who focuses on Section 230, said on Twitter of the bill text released Dec. 5.

The reference to Section 230 got dropped from the version of the bill passed by the House by a 350-80 margin on Thursday.

A Democratic Hill aide, who spoke on the condition of anonymity, said the language was initially added to address concerns about Section 230, but it was removed after it was clear that no one involved in the discussions found the language helpful.

The legislation, which is supported by the federal judiciary, still faces opposition from judicial watchdog groups, progressives, and legal scholars who say it runs afoul of the First Amendment.

"It's well intended, but it's overwrought and it creates a lot of problems for being able to tell ethics and accountability stories about federal judges," Daniel Schuman, the policy director for Demand Progress, an progressive group focused on internet issues, said in an interview.

Demand Progress had encouraged House lawmakers to vote against the bill citing concerns with the judicial security measure.

The House sponsor of the bill, Rep. Mikie Sherrill (D-N.J.) rejected criticisms of the bill's scope in an interview, saying they've already been addressed in the legislation and underscored the broad bipartisan support for the bill.

"Among the over 100 cosponsors—bipartisan cosponsors—of this bill, we have an incredible range across the Congress of the United States," Sherrill said.

To avoid expanding liability, the Democratic aide said the House-passed text also changed who would bring the lawsuits from an individual judge to the Administrative Office of the US Courts.

Having individual judges bring those actions, Sherrill said, "would have expanded some of the law regarding Section 230 and would have been a new area, not opposed to 230, but a different way of moving forward." But changing the text to have the Administrative Office, a government agency, bringing those actions is in line with existing statutes, she said.

Deleting the section removes "the uncertainty about whether this is creating whole new causes of action or exceptions to Section 230 above and beyond the requirements in the text itself," said Thomas Berry, a research fellow in the Cato Institute's Robert A. Levy Center.

The House-passed version, however, can still be read as applying to social media companies because it includes references to displaying information as well as posting information. "That's what social media companies should still be concerned about," Berry said.

Section 230 of the Communications Decency Act has faced fierce scrutiny in recent years, with lawmakers and advocates on both sides of the aisle arguing that it does too much to shield social media giants from accountability for crimes committed through their platforms.

Congress has considered numerous proposals to amend or repeal Section 230, but few have achieved consensus. The last major amendment, a 2018 sex trafficking carve-out to the immunity, has confounded federal courts over its complicated language.

The US Supreme Court will also weigh in on the scope of the legal shield after deciding to hear a case that tests whether Section 230 covers YouTube algorithms that recommended ISIS propaganda.