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contemporaneously in early 2021.<sup>2</sup> And this phenomenon was never more obvious than in 2020, when major Big Tech platforms simultaneously banned reporting on, and discussion of, the Hunter Biden laptop story.<sup>3</sup>

The antitrust laws generally do not forbid competitors from engaging in unilateral, parallel conduct—that is, identical or substantially similar conduct that occurs at about the same time but coincidentally.<sup>4</sup> They do, however, prohibit agreements among competitors not to compete.<sup>5</sup> If the platforms colluded amongst each other to set shared censorship policies, such an agreement would be tantamount to an agreement not to compete on contract terms or product quality.<sup>6</sup> “[A]s far as the Sherman Act ... is concerned, concerted agreements on contract terms are as unlawful as boycotts.”<sup>7</sup>

The prospect of Big Tech censorship collusion is not merely hypothetical. Litigation has revealed the proclivity of some Big Tech firms to conspire on censorship policies. In *Missouri v. Murthy*,<sup>8</sup>

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Biden laptop story.”<sup>9</sup> The Supreme Court ultimately concluded that the States had failed to demonstrate that their speech was removed because of government coercion, as opposed to decisions made by the platforms of their own volition.<sup>10</sup> But discovery in that case revealed the shocking extent of the collaboration between various organs of the federal government—including the White House, CDC, FBI, CISA, and State Department—and Big Tech firms to suppress dissident speech.<sup>11</sup> The record thus demonstrates that Big Tech firms were happy to work with others to determine their censorship policies—a point driven home by the Supreme Court’s conclusion that government coercion did not principssb1 (i)-2 (on)5 ( 12 166.3/MCID( p)2 (o)2 (lic)6 (ie)6 To

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