

Online speech

12

Online speech is under attack on two fronts. The first front is government chipping away or repealing the protections granted by Section 230 of the 1996 Communications Decency Act.

The second front is government officials' "jawboning" of citizen's speech on major online platforms. To address these threats to a fundamental right, Congress should:

- Oppose all efforts to repeal Section 230 of the 1996 Communications Decency Act;
- Oppose all efforts to curtail Section 230 in child safety legislation; and
- Make government "jawboning" more difficult with transparency and oversight requirements.

Save Section 230: In the 118th session, Congress considered an all-out repeal of Section 230 of the Communications Decency Act of 1996, the liability shield that places legal responsibility on the speaker of content instead of the host of that content. This arrangement has allowed for the greatest egalitarian increase of speech ever known to humanity.

Assuring that platforms will not be sued for other's content has allowed them to leave up more speech and build a business model to support those forums. To remove Section 230 legal protections would undo those incentives, cause more content to be removed, and create a windfall for the plaintiff's bar. All efforts to repeal Section 230 should be opposed.

Different child safety protections: More targeting dismantling of Section 230 protections often focuses on child safety issues online, like the Kids Online Safety Act. KOSA would not only bring the same harmful consequences as mentioned above, but would also do little to keep kids safer online and sacrifice even adult's online privacy and anonymity by triggering age verification. Efforts to improve child safety online are better pursued with legislation like the Invest in Child Safety Act, which invests in law enforcement resources.

Curtail jawboning: Content moderation decisions, which are not First Amendment violations and, in fact, protected as the speech rights of the platforms themselves, are not the threat to free speech that government “jawboning” is. Evidence of government pressure on major social media platforms about elections integrity concerns, COVID information, and other issues, came to light in the so-called “Twitter files.” The issue was considered at the Supreme Court in the last term, but the Court resolved very little.

Congress should act to clarify the limits of government’s power to influence online content moderation decisions, even if only demanding more transparency. CEI recommends model legislation, like that of Foundation for Individual Rights and Expression’s, be considered by Congress.

Experts: Jessica Melugin, Dan Greenberg

For further reading:

Jessica Melugin, “Don’t Let the Sun Go Down on Section 230,” National Review Online, May 22, 2024, <https://www.nationalreview.com/2024/05/dont-let-the-sun-go-down-on-section-230/>

Dan Greenberg and Jessica Melugin, “Don’t Confuse the Platform with the Train,” Competitive Enterprise Institute Issue Analysis 2022 No. 3, March 3, 2022, <https://cei.org/wp-content/uploads/2022/03/Dan-Greenberg-and-Jessica-Melugin-Dont-Confuse-the-Platform-with-the-Train-1.pdf>

Jessica Melugin, “Let Parent, Not Politicians, Keep Kids Safe Online,” The Dispatch, February 2, 2024, <https://thedispatch.com/article/let-parents-not-politicians-keep-kids-safe-online/>

Will Duffield, “Jawboning Against Speech,” CATO Policy Analysis No. 934, September 12, 2022 <https://www.cato.org/policy-analysis/jawboning-against-speech>