

Leave Section 230 Alone

BY MATTHEW FEENEY

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IN 1996 CONGRESS PASSED THE COMMUNICATIONS DECENCY ACT, WHICH includes Section 230. The law provides interactive computer services with immunity from liability for almost all harms created by third-party users. It has promoted innovation and entrepreneurship, allowing start-ups to experiment with new ideas and products without having to employ a large team of lawyers tasked with policing forums, comment sections and event pages. Unfortunately, this widely misunderstood law is under bipartisan attack. Critics of “Big Tech” should proceed with caution when considering Section 230 reform.

At the core of Section 230 is personal responsibility. The law states that you—not the service you use to share content—are responsible for what you post. There are a few exceptions, but by and large Section 230 leaves the responsibility for online posts with the appropriate agent: the user.

The law embraces the freedom of speech and association. In the United States we are fortunate enough to enjoy a freedom of speech unmatched by any other country. “Hate speech” is not a legal category in the United States, and people have the freedom to express even the worst ideas. Racists are free to express their hatred through the expression of racist symbols and historical ignorance. Footage of animal cruelty is also protected, as is the shocking protesting of soldiers’ funerals. As Americans, we are fortunate to enjoy both a broad freedom of speech and the ability to disassociate ourselves from awful but legal content.

Rabbis are free to eject white supremacists from their synagogues, and newspaper editors are free to reject an op-ed written by someone convinced that Trump is battling a powerful left-wing pedophile organization. The fact that speech is legal does not mean it can be forced on an unwilling audience or venue.

Today, many conservatives seem intent on undermining personal responsibility and the freedom of association, in large part because of an alleged systemic anti-conservative bias in Silicon Valley. Such bias has become an article of faith in the modern conservative movement—though I have found little evidence of it. Yes, some conservative content has been taken down in error. But the political Left has its own complaints on that score, indicating that the mistakes of Big Tech are more random and less systemic. But even if Big Tech harbors bias against conservatives, proposed reforms to Section 230 would be misguided.

Republican lawmakers have introduced a variety of bills to amend Section 230. Each suffers from fatal flaws. None of them would achieve the goal of increasing online conservative speech while passing constitutional muster. Take, for example, the Stopping Big Tech Censorship Act, sponsored by Georgia senator Kelly Loeffler. The bill would restrict Section 230 protections to interactive computer services that moderate content in a “viewpoint neutral manner.” Sen. Loeffler perhaps believes that if her bill passed, Facebook and Twitter would rush to adopt the First Amendment as their content moderation policy.

Sen. Loeffler’s bill makes a common mistake that is regularly on display in many Section 230 debates. Critics of Big Tech are keen to put Section 230 in their crosshairs, when the more likely target of their proposals would be the First Amendment itself.

Content moderation is protected by the First Amendment. Congress could not pass a constitutional bill requiring a newspaper to print an op-ed written by a Holocaust denier. Even if social media sites could be forced to host all legal speech, would that produce an internet that conservatives would welcome? Hardly. Beheading videos, spam, pornography, videos of murders and

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other atrocities are all protected by the First Amendment. Anyone interested in such content can easily find it online. Facebook, Twitter, YouTube and many, many other services have taken the understandable decision to restrict such legal content. If Section 230's liability protections are made contingent on a "viewpoint neutral" content moderation policy, users can expect an internet that increasingly resembles 8chan and Pornhub.

Other Republican proposals would expand the scope of government at the expense of free association. Missouri senator Josh Hawley (R-MO) introduced the **Ending Support for Internet Censorship Act**. The bill would make large platforms' Section 230 protections contingent on certification of neutrality from the Federal Trade Commission (FTC), which would require a lack of political bias.

There was a time when giving an alphabet soup agency the power of life or death over private businesses for exercising their freedom of association would be considered anathema to Republican politics. It was the GOP that brought an end to the Fairness Doctrine. Yet today one of the party's rising stars embraces government control of business.

Sens. Hawley and Loeffler are not alone. Senators John Kennedy (R-LA), **Lindsey Graham** (R-SC), Roger Wicker (R-MS), John Thune (R-SD), John Cornyn (R-TX) and Marsha Blackburn (R-TN) have all written or cosponsored Section 230 bills in the last year, as have their Democratic colleagues Sens. Brian Schatz (D-HI), Joe Manchin. (D-WV), Richard Blumenthal (D-CT) and others. Never mind all of the members of the House of Representatives who have also introduced Section 230 bills. It seems that in 2020 barely a week passes before another lawmaker introduces a Section 230 bill.

Each proposed bill undermines the freedom of association, free enterprise, the First Amendment or security and privacy. In many instances, such as Republican attempts to address bias, they present a solution in search of a problem.

Even if there is political bias in Silicon Valley, Section 230 reform is not a necessary solution. There are alternatives to Big Tech. The internet is much larger than Google, Facebook and Twitter. One of the most puzzling features of the ongoing social media debate is that conservative activists have ignored the vast speech ecosystem that exists on the internet.

Parler, MeWe, Mastodon, Gab, Minds, BitChute, LBRY, the InterPlanetary File System and many others offer users the opportunity to connect with each other and share ideas. A handful of these companies, such as Parler, BitChute and Gab emerged in response to alleged anti-conservative bias. Some of these services use centralized content moderation policies akin to those pioneered by Facebook and Twitter, while others embrace decentralized content moderation policies.

Rhetoric that portrays Big Tech as having a stranglehold on online speech misrepresents the state of affairs and only offers unhelpful hyperbole. Comparing it **to the authoritarian Chinese government** and asserting that Twitter blocking links to a news story constitutes "election interference" only detracts from conservative claims. Twitter and Facebook cannot put you in jail or block you from using their competitors, and a private company blocking access to content embarrassing to a political figure is only "election interference" if every instance of TV channels, newspapers and magazines choosing to reject an article or news story is also "election interference." If that is the case, the term has lost any useful meaning.

Even if it is the case that Twitter, Facebook, Google and the rest of Silicon Valley are out to stifle conservative speech, conservatives should resist Section 230 reform. Such reform would change the internet for the worse. The internet is larger than Facebook, Twitter and Google. Some conservatives can and have launched their own social media sites. Competition and innovation, not regulation and legislation, are the best ways for conservatives to address concerns about bias in Silicon Valley.



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