

THE STOP SOCIAL MEDIA CENSORSHIP ACT TALKING POINTS

1. What is the best policy solution to the on-going problem of social media censorship - is it (1) an executive order from the President, (2) the efforts to repeal of Section 230 of the Communications Decency Act (CDA) by Sen. Hawley on the federal level, or (3) a state law solution? A state law solution in the form of the Stop Social Media Censorship Act that causes deceptive trade practice law to catch up to modern-day technology is the best solution to the on-going problem of social media censorship because once enacted the statute would fall squarely within the “state law” exemption that is already built into Section 230 of the Communications Decency Act.

2. What is Section 230 of the Communications Decency Act (CDA)? Section 230 of the CDA is a federal statute enacted in the 1990s that creates an immunity defense that shields “internet intermediaries” from the actions of third parties.

3. Why would it be a bad idea to repeal Section 230 of the CDA on the federal level?

A total repeal of section 230 would not be wise because section 230 is a good law in many situations and a total repeal would have secondary unintended adverse consequences. The best way to understand section 230 is through an example. For instance, if a person posts a defamatory comment on Youtube, the person who was defamed could sue the person who defamed them, but they could not successfully sue Youtube because Youtube could invoke a Section 230 immunity defense and have the case dismissed. Instead of repealing Section 230, the state legislature can enact the Stop Social Media Censorship Act that falls squarely within the “state law” exemption that is already built into Section 230. This means that in a civil lawsuit brought under the Stop Social Media Censorship Act against a social media website for wrong censorship, the social media website could not successfully invoke a section 230 immunity defense. The Stop Social Media Censorship Act pieces through the immunity defense in civil litigation and prevents it from being successfully raised as a shield.

4. How is Section 230 being abused by Social Media Websites that censor political speech?

Currently, the major social media websites are censoring users whose religious and political views offend the delicate sensibilities of the employees who work there in view of arbitrary shifting standards. To date, in cases where the social media websites are being sued for this kind of censorship, the social media website have been able to have the cases dismissed by invoking section 230 immunity defense, arguing that by deleting users speech, the social media website merely engaged in “editorializing” and was not acting as speaker or publisher. However, the Communications Decency Act was designed to protect “decent speech” - not “indecent deceptive trade practices.” The state law exemption allows the state legislature to pass legislation, like the Stop Social Media Censorship Act, that cures abusive trade practices through the misuse of section 230 immunity defense.

5. What does the Stop Social Media Censorship Act say? The Stop Social Media Censorship Act creates a private right of action that allows citizens of this state to bring against the major social media website that have more than 75 million subscribers that were never affiliated with any religious or political group from their inception that censor the user for religious or political reasons, after having marketed themselves falsely as being free, fair, and open to the public from its inception. A censored person who sues under the Stop Social Media Censorship Act can seek \$75,000 in statutory damages,

attorneys fees, costs, and other forms of relief. Social media websites can still censor for all of the common-sense reasons. This act applies to social media websites like Facebook, Twitter, and Youtube.

6. What is the significance of allowing a censored party to seek \$75,000 in statutory damages and attorney fees? It is important to include statutory damages in this bill because some times it can be difficult to determine actual damages. Also, \$75,000 is a magic number in that it is the jurisdictional minimum that will permit a party to proceed in Federal District Court under “diversity jurisdiction.” Presumably, the social media website will be headquartered in a different state than the one where the censored user resides. Additionally, by including in the bill that plaintiff can get attorney fees, it will incentivize local lawyers to represent clients for free knowing that if they prevail, they can recover attorney fees, getting around the problem known as the “American Rule.”

7. Does the Stop Social Media Censorship Act violate the Commerce Clause - how does a state have jurisdiction to regulate this? The Stop Social Media Censorship Act does not violate the Commerce Clause and the state has jurisdiction to regulate this problem because when a person in this state signs up to use Facebook, Twitter, and Youtube, they are entering into a contract inside of this state. “Contract law” is a “state law issue.” The states have paramount jurisdiction to regulate contracts and to place restrictions on them. When a social media website censors a user for religious or political reasons after it has marketed itself as being free, fair, and open to the public from its inception, it is engaging in an existing form of breach of contract, bad faith, unfair dealing, unjust enrichment, false advertising, and deceptive trade practices. The courts in this state have jurisdiction under the “long-arm statute” for breach of contract and deceptive trade practices. This bill merely causes existing consumer protection law to catch up to modern-day technology, making it a progressive bill.

8. Does the Stop Social Media Censorship Act violate the First Amendment in some general way? No. Dishonest lawyers with a self-serving agenda often float that the Stop Social Media Censorship Act violates the first amendment in some vague way as a scare tactic. When pressed, they cannot explain how the act violates the first amendment or cite any authority to back up their position. It is true that the first amendment applies to the state government through the fourteenth amendment, and not to social media websites, who are private non-government actors. Yet, the first amendment does not protect deceptive trade practice, fraud, false advertising because that kind of speech is harmful unprotected speech. Facebook, Twitter, and Youtube have engaged in the greatest bait and switch of all time by marketing themselves as free, fair, and open to the public to induce people to subscribe only to hit them with a “gotcha game.” Such deceptive trade practices are not protected by the first amendment free speech clause, and the state has a compelling interest to protect its citizens from harmful speech.

9. What is the underlying Constitutional legal basis for the Stop Social Media Censorship Act? The underlying constitutional legal basis supporting the Stop Social Media Censorship Act is the free speech and free exercise clauses of the first amendment of the United States Constitution. The first amendment can be used to restrain the government from encroaching on free speech, and it can be used as a catalyst by which the government can promote protected forms of speech. The states have a narrowly tailored compelling interest pursuant to the free speech and free exercise clauses to ensure that their citizens are allowed to express their religious and political worldviews in the modern-day digital public

square that was built on the false promise by the tech enterprise that it would be a place that was free, fair, and open to all religious and political views.

10. Why is it problematic to suggest that if Republicans do not like Facebook, Youtube, and Twitters arbitrary censorship policies they should go out and form their own social media websites like Parler?

The idea that if a person does not like the censorship practices of Facebook, Twitter, and Youtube, they should go form their own Facebook, Twitter, and Youtube is a proposed solution that amounts to a shallow oversimplification. Facebook, Twitter, and Youtube have already reached critical mass, and they did so by fraud. To try to compete with them now is unrealistic. Furthermore, Parler attempted to form a new social media platform to compete with Facebook, Twitter, and Youtube, and they were shut down.

11. Should Social Media Websites be broken up?

Currently, it is not necessary to break up Facebook, Twitter, and Youtube if the Stop Social Media Censorship Act is enacted.

12. Why are Democrats prime sponsoring this bill in some states?

The Stop Social Media Censorship Act is a bipartisan measure. Some Democrats in deep blue states are prime sponsoring the bill because many Democrats are being censored for not being “woke enough” or for not being too progressive enough. Social media censorship is not a right or left issue. It is a right and wrong issue that is best addressed by the state legislature through the Stop Social Media Censorship Act.

13. Exceptions: There are some exceptions and exemptions. The social media website can censor certain speech like pornography, accounts that are falsely impersonating, or speech that calls for immediate acts of violence. It is ok for this section to be debated to determine if it should be left as it is or expanded.