



Social Media Has a “Voluntary” Censorship Problem

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As social media companies increasingly act at the behest of politicians, the threshold for censorship becomes harder to define.

During a recent interview with Joe Rogan, Mark Zuckerberg conceded that limiting the Hunter Biden laptop story was an overreaction to a warning from the FBI, which asked him to take the threat of Russian election disinformation “seriously.” Both Facebook and Twitter garnered criticism back in October 2020 for limiting the visibility of the New York Post article, interference that contributed to perceptions of a rigged election.

While the effects of this overly-broad moderation are difficult to discern, it’s important to consider why the tech giants felt compelled to act swiftly. In the preceding years, members of Congress criticized social media platforms’ handling of Russian information operations in 2016 and threatened to enact laws to remedy the problem. In the context of this legislative pressure, Zuckerberg’s deference to the FBI is unsurprising.

This pressure, known as “jawboning,” occurs when government officials threaten private actors to coerce them into doing things the government can’t. Jawboning is a form of extralegal censorship that raises serious questions about the First Amendment’s ability to prevent censorship by intimidation. The government has a constitutional obligation to respect free speech, but as indicated by the Facebook CEO’s comments, informal pressure can still influence private action.

In a recent paper entitled “Jawboning against Speech,” Will Duffield of the Cato Institute unpacks how politicians can use this bullying tactic to limit politically-disfavored speech, such as criticisms of the COVID-19 vaccines. He notes that “because jawboning is the most readily available or practical method of internet censorship available to [the] American government, there is a real danger that it will become a common method of informal speech regulation.”

The rise of social media has lowered the cost of speaking, making it easier than ever for speakers to discuss unpopular and controversial topics. For governments, ailing institutions, and elites, this

“cheap speech” is a headache. Around the world, other countries have passed laws to curtail disfavored speech. Jawboning as a way to circumvent our strong constitutional speech protections is a relatively better response than the censorship laws adopted abroad, but it is still censorship. As Duffield explains:

“In many countries, this deluge of cheap speech has been met by government censorship. In Turkey, intermediaries can be ordered to remove content that ‘offends Turkishness.’ This trend is not limited to autocratic countries — Germany’s Network Enforcement Act (NetzDG) law requires platforms to remove content that violates local hate-speech laws. However, in the United States, the First Amendment prohibits government censorship of unpopular views. Cheap speech has provoked censorship demands in America, just as it has elsewhere. But, because of the First Amendment, these demands cannot be satisfied by legislation... Within the confines of our Constitution, jawboning is the path of least resistance for censorship demands.”

Public officials have been pushing technology companies to act according to their beliefs for years. After Donald Trump was elected president in 2016, Democratic legislators implored platforms to investigate Russian disinformation and election interference, or face targeted legislative intervention. Social media companies responded by modifying their community guidelines and increasing content oversight. Subsequently—but perhaps not coincidentally—anecdotes of anti-conservative bias became more prevalent and significant, leading Republican lawmakers to join their colleagues across the aisle and propose antitrust and content moderation legislation. The COVID-19 pandemic and the 2020 election strained these policies even further, prompting the platforms to overregulate and accept more of what Zuckerberg referred to as “false positives.”

Americans should be wary of the bipartisan effort to combat “Big Tech” and its effects on constitutionally-protected speech. If government officials continue to make informal demands of social media companies, the appearance of corruption will discourage users and prompt further regulatory proposals.