



Senate legislation would make it easier to sue Big Tech over political bias

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U.S. Sen. Josh Hawley, R-Missouri, has introduced legislation making it easier for consumers to sue big tech companies such as Facebook or Twitter for showing overt political bias. To do so, Hawley wants to remove automatic protections tech companies have under Section 230 of the Communications Decency Act of 1996 and instead force them to act in a politically neutral manner.

It's a bad idea, says John Samples, a vice president and director of the Center for Representative Government at the Cato Institute.

"Section 230 has been in place for more than 25 years. Inevitably it has become a target," Samples said. "Tech companies have become a target on both the left and the right."

Section 230 of the Communications Decency Act states, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This means tech companies including Facebook or Twitter aren't legally responsible for the content that appears on their sites.

Section 230 kept the government out and allowed the internet to grow, Samples said.

"Why would you want to wreck a company like Facebook that is a shining example of American innovation?" Samples questioned.

Hawley's proposed bill, Ending Support for Internet Censorship Act, would strip protections tech companies currently receive under Section 230.

"With Section 230, tech companies get a sweetheart deal that no other industry enjoys: complete exemption from traditional publisher liability in exchange for providing a forum free of political censorship," Hawley said. "Unfortunately, and unsurprisingly, big tech has failed to hold up its end of the bargain."

Some Republicans including Hawley have accused tech giants of political bias in how they moderate content on their sites.

"There's a growing list of evidence that shows big tech companies making editorial decisions to censor viewpoints they disagree with," Hawley said in a [news release](#). "Even worse, the entire process is shrouded in secrecy because these companies refuse to make their protocols public."

Hawley's bill would maintain protections for small and medium sized companies, but big tech companies would have to undergo an audit every two years to receive immunity from the Federal Trade Commission. Big tech companies would have to prove to the FTC by clear and convincing evidence that their moderating algorithms are politically neutral. A supermajority vote from the FTC would be required to earn immunity.

"This legislation simply states that if the tech giants want to keep their government-granted immunity, they must bring transparency and accountability to their editorial processes and prove that they don't discriminate," Hawley said.

Carolina Journal asked North Carolina's U.S. senators, Republicans Richard Burr and Thom Tillis, for their views on the Hawley bill. Neither office responded by press time.

Sample said Hawley's plans repudiates former President Ronald Reagan's legacy. Reagan and conservative policymakers fought hard to defeat the Fairness Doctrine, which required the holders of broadcast licenses to cover controversial ideas and present opposing viewpoints. The Federal Communications Commission overturned the doctrine in 1987.

But Hawley's plans are reminiscent of the Fairness Doctrine, Sample said, and go against free market principles. Requiring tech companies to answer to a FTC panel every two years is akin to central planning.

Jon Guze, director of legal studies at the John Locke Foundation, said it's reasonable to take another look at Section 230. The internet has changed significantly since the Communication Decency Act was passed in 1996.

"I tend to think private companies should be free to run their businesses as they see fit, but there may be a compelling reason to make an exception for these giant internet monopolies," Guze said. "I am worried about these companies and what they are doing."

Facebook, Twitter, Youtube, and other major tech companies are constantly curating content on their sites and are acting similar to a publisher, Guze said. Some have accused these sites of moderating their content in a politically biased manner, typically against conservatives.

"There's nothing wrong with Congress going back and amending this act or simply repealing that provision, in my opinion," Guze said.

What concerns Guze is Hawley's plan to require tech giants to appeal to the FTC every two years for the protections.

"While I don't like how these guys are curating their sites, that doesn't mean I want Congress deciding which ones are allowed to go on curating and which ones aren't," Guze said. "It's a hard call."

The likelihood of Hawley's proposed bill actually passing are slim, Sample said, but it's the start of a formal policy discussion about regulating tech giants and social media. It's a topic likely to get a lot of attention in the next election cycle.