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The Cancellation of Josh Hawley's Book Deal Isn't a First Amendment Issue

Ilya Shapiro

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Last Thursday, Simon & Schuster canceled its contract with Senator Josh Hawley (R-MO) to publish his planned book, *The Tyranny of Big Tech*, over criticism of Hawley's efforts to object to several states' slates of electors and thus overturn the result of the presidential election. "As a publisher, it will always be our mission to amplify a variety of voices and viewpoints," Simon & Schuster's statement said. "At the same time we take seriously our larger public responsibility as citizens, and cannot support Senator Hawley after his role in what became a dangerous threat." The publisher later added that it was well within its contractual rights to take this action.

Hawley replied on Twitter that his erstwhile publisher was a "woke mob" engaged in "Orwellian" behavior, that "Simon & Schuster is canceling my contract because I was representing my constituents, leading a debate on the Senate floor on voter integrity, which they have now decided to redefine as sedition." He further said that "this is not just a contractual dispute. It's a direct assault on the First Amendment. ...This is the Left looking to cancel everyone they don't approve of."

As an academic might say, let's unpack this. There are (at least) three levels of analysis to be had here: constitutional, legal and cultural. On the constitutional front, the First Amendment concerns government action ("Congress shall make no law..."), so what a private company chooses to publish is of no concern. The First Amendment certainly can't *compel* a publisher to publish a book, whether that book is written by a public official or otherwise.

But could this cancellation violate Hawley's contract? Well, the contract hasn't been made public, but as I recently experienced with my own book deal, book contracts generally give the publisher great leeway. It could be that Simon & Schuster gets to walk away but Hawley gets to keep his advance, or there could be some other previously agreed-upon arrangement. There's certainly a chance that the publisher is breaching the contract—it may have determined that it would lose money if it published the book, meaning that this is what law-and-economics scholars call an "efficient breach"—in which case it owes Hawley "liquidated damages" as set out in the contract or under generally accepted principles of contract law. Either way, the First Amendment isn't at issue.

Finally, though, there's a non-legal issue at play: the idea that large corporations, cultural and otherwise, are "canceling" conservatives (and libertarians) in various ways. Indeed, such "censorship" by Facebook, Google and Twitter is the very subject of Hawley's book. The extent to which this phenomenon is real or concerning depends a lot on specific facts. Surely, if it had turned out that an author was a neo-Nazi Holocaust denier—or a Klan member, or a Stalinist—few would object to "de-platforming" him. So this is largely a debate about the "Overton

window" of appropriate public discourse and policing what I've previously called the Satan-Scherbatsky line.

It's certainly troubling that, for example, *The New York Times*' publication of an op-ed by Senator Tom Cotton (R-AR) on how best to quell last summer's rioting caused the opinion editor to lose his job, while the Gray Lady publishes regular apologies for Communist regimes (as recently as last Monday). And there are indeed "woke mobs" out there, most notably on social media, even if that choice of words was unfortunate in light of the actual mob that Hawley fist-pumped last Wednesday.

These are real cultural pathologies that our society must grapple with. But that doesn't mean there's a role for government to fix these issues—and they're certainly not First Amendment violations.

Ilya Shapiro is director of the Robert A. Levy center for constitutional studies at the Cato Institute and author of the new book Supreme Disorder: Judicial Nominations and the Politics of America's Highest Court. Follow him on Twitter: @ishapiro.