



Sen. Josh Hawley isn't a censorship victim, he's a free speech menace

Too many on the left and right agree that the government can use economic leverage to curb our rights.

By Ilya Somin

January 19, 2021

Simon & Schuster recently terminated its contract to publish Republican Sen. Josh Hawley's book, "The Tyranny of Big Tech," because of his role in promoting dubious objections to congressional certification of Joe Biden's victory in the 2020 presidential election. Hawley responded by condemning the decision as "a direct assault on the First Amendment."

Numerous commentators justifiably derided Hawley's claim — and not just because he'd get picked up by another publisher. Under Supreme Court precedent, Hawley has no constitutional right to force Simon & Schuster to publish his book. Indeed, any such effort would be a violation of the publisher's own First Amendment rights to refuse to publish authors it disapproves of.

Nonetheless, Hawley's statement is not simply the result of ignorance. It is rooted in a broader worldview under which government should have vastly expanded power to control the private sector and thereby restrict constitutional rights. That vision is widespread on the right, among "national conservatives." But it also has close analogues on the left. Both variants are menaces to liberty.

Josh Hawley's fight with 'big tech'

The link between Hawley's complaint about the contract termination and his broader ideology is evident in the very book Simon & Schuster chose not to publish, "The Tyranny of Big Tech." In the book (most likely) and in many previous statements, Hawley argues that the government should use regulation to pressure social media providers and other tech firms to end supposed discrimination against right-wingers, thereby forcing them to host speech they disapprove of.

Hawley and other national conservatives claim that Big Tech firms wield too much influence over the marketplace for political speech, and thus can be pressured into posting material they object to. The government, of course, would have to decide what qualified as appropriate nondiscrimination. This line of argument is similar to progressive claims that the influence of tech firms on political discourse justifies breaking them up (as Sen. Elizabeth Warren and others advocate), or forcing them to exclude political expression governments deem to be inaccurate, "hate speech" or otherwise dangerous. Here too, the government would have to decide what

qualified as a firm so big that its influence must be curbed, and what qualified as speech too inaccurate or prejudicial to permit on social media.

Both left and right versions of this argument rely on the assumption that constitutional rights can be circumvented by focusing regulation on the economic activities and property rights of commercial entities. The emerging nationalist right, of which Hawley has been a leader, holds that government should have a free hand to constrain economic liberties and property rights when it concludes that doing so might advance the common good.

This emerging trend on the right is similar to longstanding views of some on the left, who likewise seek to curb corporate influence, holding that government can constrain property rights as it wishes, because it — supposedly — created those property rights in the first place. Many progressives have also argued that government can restrict political speech by corporations because corporate status is likewise a creation of the state.

In their zeal to counter supposedly dangerous concentrations of corporate influence, both right and left have gone astray. Giving government control over online speech and economic activity does not reduce the concentration of power. It increases it. Instead of a marketplace, however flawed, with competing firms, we end up with a single power center — the federal government — deciding what qualifies as equal treatment of speech (Hawley), what qualifies as misleading or “hate speech” deserving of suppression (the left-wing approach), and which private actors have supposedly excessive influence that must be curbed (both). Moreover, the monopoly regulator in question is far from a neutral umpire. The party in power has obvious incentives to favor its supporters’ speech and repress that of opponents.

Conservatives who are comfortable with their own preferred leaders wielding such vast power should ask themselves whether they have similar faith in President-elect Biden, Vice President-elect Kamala Harris or Sen. Warren.

Progressives should ask themselves how they feel about handing it over to the likes of Hawley.

Free speech and government interference in property rights

Speech restricted by Twitter or Facebook can still appear on other websites and other media. Outgoing President Donald Trump’s recent exclusion from Twitter, for example, has not prevented him from making his views known to the public. To the extent that some firms reject speech demanded by consumers on one side of the political spectrum, that just increases the incentive for competitors to emerge to fill the gap.

Parler, the right-wing site that emerged as a rival to Twitter, was recently denied hosting services by Amazon, but it found an alternative host within a few days, thereby undermining claims that the market is uncompetitive.

Some sites, of course, have more influence and reach more people than others. But that has always been true of media. A New York Times article reaches more people than one published in a small local newspaper. Moreover, the market is dynamic; websites that are influential today

may not be so in a few years, just as Facebook and Twitter themselves displaced previously dominant competitors.

Giving the federal government broad power over online speech, by contrast, will empower regulators to impose restrictions that all sites must obey, thereby potentially stifling diversity and competition. Social media firms have their flaws. But the best solution is competition, not government control.

The denigration of property rights and economic liberties common to both Hawley and his progressive counterparts is misplaced. Virtually any right can be undermined by targeting the economic resources used to exercise it, as Hawley and others seek to do with speech. Freedom of religion can be targeted by limiting the use of property for religious purposes. The right to contraception can be undercut by restricting the purchase of contraceptives. And so on.

If Big Tech firms can be restricted because of their supposedly excessive influence, why not big churches, big labor unions or big political movements? Government cannot be trusted with the power to determine who has too much influence over public discourse and who has too little.

And if corporate rights and property rights can be overridden because they are “created” and defined by the state, the same can be said for nearly all other rights, because they too are defined and protected by law. Governments enact laws defining and banning murder, assault, slavery and rape. It does not follow they are thereby entitled to take away our lives and bodily autonomy anytime they please.

Regulation can be justified in situations where there are serious market failures, and government action will not lead to worse failures of its own. But we should be wary of giving the government the vast power advocated by Hawley and others.

Hawley’s star might be fading because of his role in the attempt to negate the results of the 2020 election. But the threat posed by the worldview he espouses will continue. Both it and similar ideas on the left are a menace to freedom of speech and other vital liberties.

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