



Florida Republicans tout bill targeting 'Silicon Valley elites,' but challenges loom

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Florida Republicans have celebrated the passage of a new bill that would fine tech platforms for banning political candidates and subject them to lawsuits from users for removing content, but some experts doubt the law will have the dramatic impact on social media companies that its proponents promised.

At a signing ceremony in Miami Monday, Florida Gov. Ron DeSantis denounced “Silicon Valley elites,” likening the supposed censorship of conservatives on social media to tyrannical regimes in Cuba and Venezuela. However, critics say it is his state that is trying to control the flow of information on private websites, and possibly violating the Constitution in the process.

“From a constitutional point of view, this is a doomed piece of legislation,” said Matthew Feeney, director of the Cato Institute’s Project on Emerging Technologies.

S.B. 7072 allows the state to fine large tech companies up to \$250,000 per day if they attempt to ban a political candidate for state office and \$25,000 a day for removing the account of a local candidate. It also gives Florida’s attorney general power to sue companies under the state’s Deceptive and Unfair Trade Practices Act, and it allows individuals to sue for up to \$100,000 if they feel content rules were applied inconsistently.

Social media platforms would be required to publish standards for censoring, de-platforming, and “shadow banning” users, they must apply those standards “in a consistent manner,” and they could not make changes to their policies more than once every 30 days. They would also be barred from censoring content from a “journalistic enterprise.”

The bill contains an explicit exemption from these provisions for companies that operate a theme park or entertainment venue larger than 25 acres. That appears to protect any websites owned by Disney and Comcast, which run the Walt Disney World Resort and Universal Studios Florida, respectively.

“Day in and day out, our freedom of speech as conservatives is under attack by the ‘big tech’ oligarchs in Silicon Valley. But in Florida, we said this egregious example of biased silencing will not be tolerated,” state Rep. Blaise Ingoglia, one of the sponsors of the bill, said Monday.

Republican legislators in nearly two dozen other states have proposed similar laws, although few have made much progress so far. A bill targeting social media companies passed the state Senate in Texas in March with support from Republican Gov. Greg Abbott, but it is still awaiting action in the House.

“If our democracy is going to survive, we must stand up to these technological oligarchs and hold them accountable,” said Florida House Speaker Chris Sprowls.

The wave of legislation seeking to punish Big Tech came after sites like Twitter and Facebook took increasingly aggressive steps to police former President Donald Trump’s online speech during the 2020 election cycle. Many of his posts were flagged for spreading false information about voter fraud and voting by mail, and several were removed for promoting violence.

Social media sites also faced harsh scrutiny from Republicans for decisions to limit the reach of news reports related to information recovered from a laptop belonging to Hunter Biden, the son of then-Democratic nominee Joe Biden, weeks before the election. Twitter CEO Jack Dorsey later acknowledged the company erred in its handling of that incident.

The indefinite ban of Trump by most major social media platforms in the wake of the Jan. 6 riot by his supporters at the Capitol spurred new complaints about unfair and inconsistent application of content policies. During the signing ceremony Monday, DeSantis noted Trump was removed from Twitter while inflammatory figures like Iranian leader Ayatollah Ali Khamenei are still allowed to post.

“When you de-platform the president of the United States but you let Ayatollah Khamenei talk about killing Jews, that is wrong,” he said. Governor signs bill targeting social media platforms

Social media sites have long been criticized for opaque and erratic moderation policies, and their algorithms often mistakenly flag content as inappropriate. However, critics have been unable to

present concrete data that such decisions are driven by political bias or a deliberate intent to censor conservative speech.

“It’s best to think of this Florida bill as just one of many, many attempts by Republicans to punish companies they don’t like very much,” Feeney said.

Experts see little chance the major provisions of the Florida bill will survive inevitable legal challenges once it takes effect on July 1. Forcing companies to publish political content would likely run afoul of the First Amendment, and federal law grants social media platforms wide latitude to set content moderation policies.

The Supreme Court has ruled that editorial decisions are protected by the Constitution, and it has generally rejected the premise that private companies can be required to meet state-imposed fairness standards. According to Gus Hurwitz, an expert on telecommunications law and technology at the University of Nebraska-Lincoln College of Law, there is “no question” S.B. 7072 violates the current understanding of the First Amendment.

“Requiring platforms to host content with which they disagree is compelled speech, just like a university requiring loyalty oaths, requiring students to profess belief in ideas they find objectionable, or requiring newspapers to publish op-eds the editorial board disagrees with,” Hurwitz said.

Under Section 230 of the Communications Decency Act, tech platforms are protected from civil liability for removing content they deem offensive or objectionable if they act “in good faith.” That 1996 legislation also explicitly limits the ability of states to set stricter rules regarding content moderation.

DeSantis aides maintained S.B. 7072 would stand up to legal scrutiny. However, tech industry trade groups and digital freedom advocates accused Florida Republicans of blatantly disregarding the Constitution by trying to dictate parameters of political speech to social media platforms.

“The law is a First Amendment train wreck,” said Corbin K. Barthold, internet policy counsel at TechFreedom. “When it comes to free speech, a website is no different from a newspaper or a parade: it has a fundamental right to decide what speech it will allow, and what speech it won’t, on its platform.

They also warned the bill, if implemented, would result in more pornography, violence, and hate speech flowing online because removing offensive content would carry too much legal risk. Adam Kovacevich, CEO of the Chamber of Progress, a left-leaning tech policy coalition, said it would turn the internet into “a cesspool of lies and hate.”

“At a time when many people want to see healthier online communities free of hate and conspiracy theories, this bill ties platforms’ hands in the fight against toxic and incendiary content,” Kovacevich said. “It would turn Facebook, Twitter, and YouTube into anything-goes sites like 4Chan and Gab.”

Some say Republicans are trying to score points with their base, rather than attempting to ensure freedom of expression online. Critics have pointed to the exemption for theme park operators as evidence the Florida legislation is little more than a political stunt.

“By carving out companies like Disney and Universal, Florida’s legislature revealed its anti-tech fervor and true intent to punish social media for allegations of anti-conservative bias,” said Carl Szabo, vice president and general counsel at NetChoice.

Even if companies like Facebook and Twitter have little to fear from state legislation in terms of legal consequences, Hurwitz cautioned such measures could do lasting damage to public discourse about these issues. Americans are still trying to figure out the role of social media in their lives, and laws like this can create lasting confusion.

“These laws a little more than an annoyance for the social media companies, mostly helping to keep us lawyers employed,” he said. “The real problem they pose is that they further erode public understanding of the law and confidence in our political process.”

The Florida bill claims social media platforms are “the new public square” and asserts they should be treated as “common carriers,” similar to public utilities, which are subject to special regulations and required to provide service to all users without discrimination. Absent new legislation by Congress, though, that does not appear to be a designation a state can make on its own.

If Section 230 is repealed or reformed, that could potentially open the door to penalizing platforms for content decisions, though the First Amendment would still present some barriers. In a deeply divided Congress with many other priorities on its agenda, it seems unlikely significant legislative action on tech regulation is coming anytime soon.

The statute has drawn increasingly vocal criticism from the right and the left in recent years, though for very different reasons. Many Democrats say platforms have been too lax in their enforcement of policies prohibiting hate speech and disinformation, but Republicans argue they have overstepped in restricting content posted by conservatives.

Some bipartisan proposals to update federal policies and increase accountability and transparency for tech companies have been introduced. Lawmakers broadly agree the 25-year-old protections enumerated in the Communications Decency Act are outdated, but they have been unable to unite behind a solution to modernize them.

Although President Joe Biden has backed repealing Section 230, he has not been nearly as eager as his predecessor to do anything about it. He recently revoked an executive order issued by Trump that would have punished tech platforms and prodded federal agencies to re-interpret the statute.

New federal laws or regulations would pose a much graver threat to social media companies than anything Republican-controlled state legislatures could do. However, legal experts say the focus in Washington on Section 230 obscures the role of the First Amendment in protecting content decisions, and that is much harder for Congress to change.

“Oftentimes, I think these complaints are aiming at the wrong target,” Feeney said.

The Florida bill and similar efforts across the country underscore the challenges of policing and protecting freedom of speech in the uncharted frontiers of the internet. That is unlikely to get easier in the years ahead, particularly if the debate continues to grow more politicized.

“The First Amendment means that people can say bad stuff, and they do all the time,” Hurwitz said. “But it's better to live in a world where people can say bad stuff than one in which politicians, Republican or Democrat, get to decide what we're allowed to say.”