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Judiciary Subcommittee Considers Conflicting Solutions to Cyberbullying

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The chairman and ranking member of the House Judiciary Crime Subcommittee appeared dubious Wednesday about a bill to make cyberbullying a crime. The ranking member didn't seem much more enthusiastic about a bill that would create federal grants for online safety education. The subcommittee considered the Megan Meier Cyberbullying Prevention Act, introduced by Rep. Linda Sanchez, D-Calif., and the Adolescent Web Awareness Requires Education Act, introduced by Reps. Debbie Wasserman Schultz, D-Fla., and John Culberson, R-Texas.

Chairman Bobby Scott, D-Va., and Ranking Member Louie Gohmert, R-Texas, wondered whether the Sanchez bill would contribute to the overcriminalization of federal law. Gohmert said the subcommittee is trying to reverse the trend. "We don't want the unintended consequence of converting our youth into criminals, particularly felons," Scott said. Gohmert dryly observed that perhaps the Sanchez bill could be used to go after what he called the mean-spirited liberals who have harassed him and his family online for political reasons. States should be taking the lead on criminal laws, Gohmert said, and in fact 26 states have enacted cyberbullying statutes. "This conduct is deplorable, but the question is whether it's criminal," he said.

Sanchez acknowledged the First Amendment line in her testimony. She said she doesn't intend to override Supreme Court decisions. But she said there are exceptions to free speech protections, including for true threats and some commercial speech. The law should be able to distinguish between "an annoying chain e-mail, a righteously angry political blog post or a miffed text to an ex-boyfriend" and "serious, repeated and hostile communications made with the intent to harm." Prof. Robert O'Neil of the University of Virginia said the Sanchez bill might be reconciled with the First Amendment through an exception for intentional infliction of emotional distress. That's a long-recognized tort, he said, but it doesn't generally apply to criminal law. To strengthen the Sanchez bill, he said, it should look at all possible types of intent, require proof that a particular individual has been singled out, and require evidence of an impact or effect on the individual. Attorney Harvey Silverglate, affiliated with the Cato Institute, disagreed with O'Neil's assessment. Aside from the overcriminalization issue, he said, the Sanchez bill suffers from vagueness.

Gohmert questioned the value of the Wasserman Schultz bill as well. He said he didn't know whether another grant program is needed, because there are already groups that give parents and students tips on online safety. He questioned whether the government should spend "\$120 million in Chinese money we'll have to borrow" for a matter that should be handled in the home.

In his opening statement, Scott said Section 230 of the Communications Decency Act may need to be reviewed to see whether it went too far. Prof. John Palfrey of Harvard Law School said he hesitated to encourage such a move, knowing how many of his compatriots would feel. But he said he thinks that the immunity may so broad that it provides incentives for wrongdoers online. But, he added, "I would urge great caution in tinkering with this," because Section 230 has allowed innovation to flourish. -- Leslie Cantu

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