

Utah should not expand the government's role in censoring free speech

We urge Gov. Cox to veto SB228 because it leverages the power of the government to violate the First Amendment rights of private companies

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By [Marina Lowe, Contributor](#) and [Connor Boyack, Contributor](#)

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In a show of bipartisanship, both conservatives and progressives testified against [SB228](#) (Electronic Free Speech Amendments), which passed both chambers during the recent Utah legislative session and currently sits on Gov. Spencer Cox's desk for his signature or veto. We urge Cox to veto SB228 because it leverages the power of the government to violate the First Amendment rights of private companies. Despite the hopeful title of this bill, giving governments more control over private speech is the opposite of promoting free speech.

For starters, this bill requires technology companies like [Facebook](#), Google and even [Parler](#) to follow specific notification procedures, timelines and rules — set by Utah lawmakers — and submit to an untested appeals processes — also set by Utah lawmakers — for account holders who are suspended or find their content removed.

By requiring technology corporations to jump through new hoops created by government regulations, this bill could discourage social media platforms from halting online voter suppression, stopping the spread of misinformation directed by foreign governments, and even prevent the blocking of credible threats of violence if they relate to a political viewpoint.

If this bill takes effect, it could also result in less online speech for Utahns and expose them to more harassment and vitriol because technology companies would fear lawsuits and sanctions if they tried to proactively moderate content on their platforms.

Even worse, this bill would effectively authorize the government to force private online platforms to carry and distribute speech they would have previously restricted. Historically, the Internet has been less regulated than traditional media outlets like television and radio. This approach has given consumers more options and platforms to express themselves than ever before. Twitch, Discord, Reddit, Snapchat, Clubhouse, Locals, Pinterest, TikTok — the list of alternatives to consider is expanding all the time. If the goal of this bill is to promote “electronic free speech,” it should follow the successful origins of the internet and rely on less government intervention, not more.

In addition, by trying to mandate absolute consistency in applying a social media platform's terms of use, legislators are making a bold assumption that such mandates are even feasible. Platforms like Facebook have tens of thousands of content moderators reviewing hundreds of thousands or even millions of posts, rendering moderation a daunting task.

Additionally, human content moderators carry implicit biases, and it is highly unlikely that you could get any random group of moderators to have a consensus decision on flagged content. While some supporters will call for a tech-based solution, that is based in fantasy, not reality. Even the most advanced artificial intelligence programs integrated into content moderation currently make mistakes, flagging harmless content as problematic, or vice versa. Content moderation, even with technology assistance, remains a subjective task that makes compelling consistency by law deeply problematic. While we discourage private social media companies from blocking content based on viewpoint, it's an entirely different matter — and much clearer violation of our constitutional rights — for the government to dictate what online platforms must publish or how they must exercise their subjective discretion in content moderation.

Lastly, constitutional experts have noted that SB228 clearly violates Section 230 of the Communications Decency Act, a federal law that protects websites from liability for content posted by third parties. This means the bill violates federal law and opens Utah up to lawsuits that will be a waste of time and taxpayer dollars to defend.

Perhaps sensing the shaky legal ground for this bill, the sponsor of SB228 delayed its effective date until July 1, 2022, to give time for its future repeal. But we don't have to wait for the likely lawsuits to stop this bill. Cox can — and should — veto it now.

Marina Lowe is the legislative and policy counsel at the ACLU of Utah. Connor Boyack is president of Libertas Institute and the author of 28 books.