

Committee Report

CONSENT CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
133,**

**AN ACT creating a cause of action for censorship by
social media websites. Having considered the same,
report the same with the following resolution:**

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Michael Sylvia

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 133
Title:	creating a cause of action for censorship by social media websites.
Date:	March 2, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill seeks to control the actions of social media corporations. It would only be applicable to New Hampshire corporations, putting them at a competitive disadvantage. It also suffers from a serious constitutional defect in its infringement on free speech.

Vote 21-0.

Rep. Michael Sylvia
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 133, creating a cause of action for censorship by social media websites. **INEXPEDIENT TO LEGISLATE.**

Rep. Michael Sylvia for Judiciary. This bill seeks to control the actions of social media corporations. It would only be applicable to New Hampshire corporations, putting them at a competitive disadvantage. It also suffers from a serious constitutional defect in its infringement on free speech. **Vote 21-0.**

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: **HB 133** Motion: ITL AM #: _____ Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	21		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A.	5		
Silber, Norman J. Smith, Steven	6		
Greene, Bob J.	7		
Kelley, Diane E.	8		
Tausch, Lindsay	9		
Trottier, Douglas R.	10		
Smith, Marjorie K.	11		
Berch, Paul S.	12		
Horrigan, Timothy O.	13		
DiLorenzo, Charlotte I.	14		
Chase, Wendy	15		
Kenney, Cam E.	16		
Langley, Diane M.	17		
McBeath, Rebecca Susan	18		
Paige, Mark	19		
Simpson, Alexis	20		
TOTAL VOTE:	21	0	

Rep Kurt Wuelper *Kurt Wuelper*

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 133

BILL TITLE: creating a cause of action for censorship by social media websites.

DATE:2/26/2021

LOB ROOM: 208/Remote **Time Public Hearing Called to Order:** 9:00 AM
Time Adjourned: 9:35 AM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors: Rep Plett

Blue Sheet Support 52 Oppose 11
TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Plett** This bill allows people to sue social media for blocking content based upon the point of view expressed. Depending on your political view you may want some things shut down. I have a late amendment to cap the amount at \$75,000 vice start there. This censorship is happening everywhere. Q Gordon: You mention your son being shut down on social media? A Yes. He posted against vaccination and is just a typical example of what is going on. Q Berch: The 'state of NH should tell private businesses how to do their business by telling them what to allow and not allow? A At some point a business gets so big it becomes a common carrier. A small business may have no large effect, but when you get to the size of Facebook and others, there should be some regulation.


Christine Weihle Special Forces of Liberty Supports My ministry is nationwide and have connections in NH. I personally have been censored. Because sites like Facebook are so large, they have become a real problem. I posted about my ministry in Nevada and told it was sexually explicit when it most certainly was not. These large entities are taking away our rights in ways we all know is happening. This is about them taking control of public conversation. This bill just gives a citizen an opportunity to be recompensed for some of the damage they can inflict.

Kam Ouellette Special Forces of Liberty Supports Social media companies are literally dying because of the censorship over public discourse they censor. People want information about how to participate in local government and are prohibited from communicating with even local people Q Gordon: The bill as I understand prohibits censorship of religious or political speech. Do you have NH examples? Q It's about our God given rights to free speech and outsit of our own happiness.

***Christopher Sevier** Special Forces of Liberty Supports 25 other states are carrying this bill. I have five points. Federal Section 230 gives these companies immunity for censorship. HB133 says if a large social media website censors certain speech it will be subject to civil liability. Contract law is state law. This bill supports the First amendment rights of free exercise and free speech. These sites have purposely set up a public forum and censoring is equivalent to fraud. We suggest several amendments based on hearings in other states. See written.

Elizabeth 'Ellis V Public affairs Motion Picture Association Oppose Our members are well known. This bill private right of action plus punitive actions. The definition of social media in this bill is so broad it could cover make parent companies responsible for actions of smaller parts. We believe the bill is unconstitutional because it intrudes on contracts. It is also barred by 'section 230. See written.

***Cameron Sholty** For Rep Berch: Big Tech can't operate without government protection and the state stepping up to protect speech. These companies are largely immune from competition and they are effectively government censors.


Rep Kurt Wuelper

House Remote Testify

Judiciary Committee Testify List for Bill HB133 on 2021-02-26

Support: 84 Oppose: 11 Neutral: 0 Total to Testify: 3

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Ellis, Elizabeth	Chevy Chase, MD elizabeth_ellis@motionpictures.org	A Lobbyist	Motion Picture Association-America	Oppose	Yes (5m)	No	2/25/2021 5:19 PM
Womack, Sheri	Loudon, NH snobrdrinnh@gmail.com	A Member of the Public	Myself	Support	Yes (5m)	No	2/22/2021 3:37 PM
Weihle, Christine	St. Paul, MN oneheartmn@gmail.com	A Member of the Public	Myself and One Heart Ministries	Support	Yes (2m)	No	2/26/2021 1:44 AM
Anthony, Pastor Shane	Nashville, TN vp@powerhouseministries.us	A Member of the Public	Myself and Powerhouse Ministries	Support	No	No	2/26/2021 1:41 AM
Bishop, Sherrona	Denver, CO sherronna7@gmail.com	A Member of the Public	Myself and Moms that take action	Support	No	No	2/26/2021 1:43 AM
Vogt, Robin	Portsmouth, NH robin.w.vogt@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/23/2021 9:41 AM
abner, paul	oklahoma city, OK patw@sbcglobal.net	A Member of the Public	Myself	Support	No	No	2/25/2021 10:58 AM
Gunter, john	miami shores, FL johnjr@tel-electronics.com	A Member of the Public	Myself	Support	No	No	2/25/2021 11:00 AM
taggart, julie	miami shores, FL jewels94@comcast.net	A Member of the Public	Myself	Support	No	No	2/25/2021 11:01 AM
Fordey, Nicole	Litchfield, NH nikkif610@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/20/2021 1:54 PM
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/21/2021 2:49 PM
Howland, Curt	Manchester, NH howland@priss.com	A Member of the Public	Myself	Oppose	No	No	2/21/2021 7:51 PM
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Oppose	No	No	2/21/2021 10:46 PM

Zaenglein, Barbara	Amherst, NH bzaenglein@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/22/2021 7:38 AM
Zaenglein, Eric	Amherst, NH henley11@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/22/2021 7:38 AM
Penkoski, Pastor Rich	Manchester, TN pastor@wfcchurch.org	A Member of the Public	Myself and Warriors For Christ	Support	No	No	2/26/2021 1:46 AM
Britcher, Gary	Pittsburgh, NH gbritcher@me.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:24 PM
Brogan, Deric	Columbus, OH dbrogan@statussolutions.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:28 PM
Bromley, Jess	portland, OR BromJess@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:29 PM
Bromley, James	Lehi, UT james@jriteam.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:39 PM
Bromley, Reed	Lehi, UT rbromley@naiutah.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:40 PM
Brown, Ann	Bountiful, UT abrown70@cox.net	A Member of the Public	Myself	Support	No	No	2/26/2021 12:43 PM
Brown, Brock	Bluffdale, UT brownkids57@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:46 PM
Brown, Camille	Bluffdale, UT cami@camilleebrown.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:47 PM
birkeland, kera	salt lake city, UT kbirkeland@utah.gov	State Agency Staff	Myself	Support	No	No	2/26/2021 11:22 AM
bishop, michelle	portland, OR michelle@gotuck.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:23 AM
bishop, robert	SLC, UT robert@innflicks.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:24 AM
bledsoe, milt	las vegas, NV milton.bledsoe@newporthillcapital.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:27 AM
gunter, sean	american fork, UT sean@tel-electronics.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:30 AM
Gunter, Phyllis	Pleasant Grove, UT Diane@tel-electronics.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:31 AM
Mehler, Bob	Hanover, MD bob.mehler@marriott.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:32 AM

Westwood, Barry	Provo, UT barry@tel-electronics.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:34 AM
Taylor, Jim	San Antonio, TX jim@tel-electronics.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:35 AM
Bodily, Eileen	Salt Lake City, UT eileenb@59com.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:39 AM
Bowen, Janet	Pittsburgh, PA jbowen@ecsinc.com	A Member of the Public	Myself	Support	No	No	2/26/2021 11:41 AM
Canterbury, Chuck	Silver Spring, MD fopchuck@outlook.com	A Member of the Public	Myself	Support	No	No	2/26/2021 1:56 PM
Cohen, Carol	Parsippany, NJ carol.co312@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 1:58 PM
Brown, Dennis	Fort Smith, AR dennis429.brown@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:48 PM
Brown, Derek	Bluffdale, UT derkclair@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:52 PM
Brown, Lindsey Freed	Bluffdale, UT lindseyfree1@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:54 PM
Brown, Robin	Bluffdale, UT robinbrownrealty@yahoo.com	A Member of the Public	Myself	Support	No	No	2/26/2021 12:55 PM
Sessions, Julie	Cedar Hills, UT jwsessions@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 5:11 PM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Support	No	No	2/25/2021 2:08 PM
Rodriguez, Barbara	richardson, TX refugecity@refuge-city.org	A Member of the Public	Myself	Support	No	No	2/25/2021 11:20 AM
Ofe, Caroline	richardson, TX refugecity@refuge-city.org	A Member of the Public	Myself	Support	No	No	2/25/2021 11:21 AM
Beyke, Shelly	Indianapolis, IN sbeyke@matrixintegration.com	A Member of the Public	Myself	Support	No	No	2/25/2021 9:02 PM
Thomas, Nicholas	Manchester, NH nicholas.w.thomas@uconn.edu	A Member of the Public	Myself	Oppose	No	No	2/25/2021 10:27 PM
aguglia, jeannette	rochester, NY jaguglia@rcomm.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:13 PM
albert, amy	sioux falls, SD aalbert@pinn360.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:15 PM

alders, tim	slc, UT timaalders@live.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:16 PM
Aldrich, Brad	Washington, DC baldrich@ahla.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:17 PM
Alexander, Zach	Columbus, OH zalexander@statussolutions.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:18 PM
Alexis, Shawn	Dallas, PA Shawn.Alexis@FTR.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:19 PM
Allan, Ila	Salt Lake, UT ilaallan@yahoo.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:21 PM
James, Amy	Bountiful, UT amy@rmvd.org	A Member of the Public	Myself	Support	No	No	2/25/2021 6:24 PM
Mennella, Alexandra	Hooksett, NH amennella1@protonmail.com	A Member of the Public	Myself	Oppose	No	No	2/25/2021 6:25 PM
Anderson, Shaine	River, UT SHAINEX@gmail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:25 PM
Andrus, Steve	Provo, UT scandrus@yahoo.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:26 PM
Gunter, Angela	south mountain, UT 6missangel3@gmail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:27 PM
Angelo, Michelle	Dallas, PA Michelle.Angelo@ftr.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:28 PM
Aponte, Luis	Silver Spring, MD laponte@pinn360.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:30 PM
Appling, Julianne	Green Bay, WI jkappling@wifamilyaction.org	A Member of the Public	Myself	Support	No	No	2/25/2021 6:31 PM
Andrew, ash	Bozeman, MT aash@comfortinnbozeman.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:32 PM
Ashdown, Pete	SLC, UT pashdown@xmission.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:33 PM
Aston, Shawnelle	Salt Lake City, UT shawnelleaston@my911mail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:35 PM
Atha, Martin	Orlando, FL martin.atha@obtssolutions.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:35 PM
Atkinson, Pamela	Salt Lake City, UT pa44@comcast.net	A Member of the Public	Myself	Support	No	No	2/25/2021 6:38 PM

Atwood, Aaron	Orem, UT aaron@frontstageoperations.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:39 PM
Auth, Robert	Trenton, NJ asmauth@njleg.org	An Elected Official	Myself	Support	No	No	2/25/2021 6:40 PM
Bacchi, Stephen	Pittsburgh, PA sbacchi@watsonconnects.com	A Member of the Public	Myself	Support	No	No	2/25/2021 6:41 PM
Burns, Mike	Columbia, SC MikeBurns@schouse.gov	An Elected Official	Myself	Support	No	No	2/26/2021 8:35 AM
Ording Esq., Elizabeth	Gorham, NH rougeattorneyatlaw@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 8:40 AM
Williams, Sarah	Hanover, NH humantraffickingpreventionact@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 8:41 AM
Gilrein, Christopher	Boston, MA cgilrein@technet.org	A Lobbyist	TechNet	Oppose	No	No	2/25/2021 4:51 PM
Lunsford, Michael	La Fayette, LA michaellunsford@me.com	A Lobbyist	Myself	Support	No	No	2/26/2021 8:43 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	2/26/2021 8:51 AM
Wiehle, Tim	BETHEL, MN tim.wiehle@gmail.com	A Member of the Public	Myself	Support	No	No	2/26/2021 8:53 AM
Bailey, Donald	Salt Lake City, UT Donald.Bailey@Integratelecom.com	A Member of the Public	Myself	Support	No	No	2/25/2021 7:58 PM
Bain, Sherry	Indianapolis, IN sbain@matrixintegration.com	A Member of the Public	Myself	Support	No	No	2/25/2021 7:59 PM
Balallo, Natalie	Columbus, OH nbalallo@statussolutions.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:01 PM
Ballard, Tim	Salt Lake City, UT info@ourrescue.org	A Member of the Public	Myself	Support	No	No	2/25/2021 8:02 PM
Balluch, Heath	Denver, CO heath.balluch@redliondenverse.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:03 PM
Bangerter, Paulo	American Fork, UT paulo.bangerter@gmai.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:04 PM
Barch, Art	Monroe, WI super8.monroeWI@gmail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:05 PM
Barillaro, Trevor	Pittsburgh, PA tbarillaro@ericryan.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:07 PM

Barnette, Robert	Puyallup, WA BarnetRA@pyuallup.k12.wa.us	State Agency Staff	Myself	Support	No	No	2/25/2021 8:08 PM
Barton, Brad	Orem, UT brad@bradspeaks.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:11 PM
Beasley, Daniel	Pittsburgth, PA danielb@hslida.org	A Member of the Public	Myself	Support	No	No	2/25/2021 8:13 PM
Behmer, John	Marion, IN john1247@hotmail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:14 PM
Belles, Nita	Trenton, NJ nitabelles@gmail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:15 PM
Bellino, Maggie	Tucson, AZ southernazagainstslavery@gmail.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:16 PM
Bendoski, Josh	San Juan, UT josh@revmediausa.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:18 PM
Benedict, Robert	Wyoming Downs, WY rbenedict@snowking.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:18 PM
Best, Drue	Indy, IN dbest@matrixintegration.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:21 PM
Betz, Ron	Indianapolis, IN rbetz@matrixintegration.com	A Member of the Public	Myself	Support	No	No	2/25/2021 8:22 PM

Testimony

Arizona Revised Statutes Annotated

Title 12. Courts and Civil Proceedings

Chapter 13. Evidence

Article 4. Privileged Communications (Refs & Annos)

A.R.S. § 12-2237

§ 12-2237. Reporter and informant

[Currentness](#)

A person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station, shall not be compelled to testify or disclose in a legal proceeding or trial or any proceeding whatever, or before any jury, inquisitorial body or commission, or before a committee of the legislature, or elsewhere, the source of information procured or obtained by him for publication in a newspaper or for broadcasting over a radio or television station with which he was associated or by which he is employed.

Credits

Amended by Laws 1960, Ch. 116, § 1.

[Notes of Decisions \(15\)](#) A. R. S. § 12-2237, AZ ST § 12-2237

Current through the Second Regular Session of the Fifty-Fourth Legislature (2020)

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[West's Revised Statutes of Nebraska Annotated](#)

[Chapter 20. Civil Rights \(Refs & Annos\)](#)

[Article 1. Individual Rights](#)

[\(d\) Free Flow of Information Act](#)

Neb.Rev.St. § 20-146

20-146. Procuring, gathering, writing, editing, or disseminating news or other information; not required to disclose to courts or public

[Currentness](#)

No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding:

(1) The source of any published or unpublished, broadcast or nonbroadcast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or

(2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

Credits

Laws 1973, LB 380, § 3.

Neb. Rev. St. § 20-146, NE ST § 20-146

Current through the end of the 2nd Regular Session of the 106th Legislature (2020)

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[West's Annotated California Codes](#)
[Evidence Code \(Refs & Annos\)](#)
[Division 8. Privileges \(Refs & Annos\)](#)
[Chapter 5. Immunity of Newsmen from Citation for Contempt](#)
West's Ann.Cal.Evid.Code § 1070
§ 1070. Refusal to disclose news source
[Currentness](#)

(a) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas, for refusing to disclose, in any proceeding as defined in [Section 901](#), the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

(b) Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

(c) As used in this section, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1971, c. 1717, p. 3658, § 1; Stats.1972, c. 1431, p. 3126, § 1; Stats.1974, c. 1323, p. 2877, § 1; Stats.1974, c. 1456, p. 3184, § 2.)

Editors' Notes

COMMENT--ASSEMBLY COMMITTEE ON JUDICIARY

Section 1070 continues without change the provisions of subdivision 6 of [Code of Civil](#)

[Procedure Section 1881.](#)

It should be noted that Section 1070, like the existing law, provides an immunity from being adjudged in contempt; it does not create a privilege. Thus, the section will not prevent the use of other sanctions for refusal of a newsman to make discovery when he is a party to a civil proceeding. See [Code Civ.Proc. § 2034](#); *Bramson v. Wilkerson*, Civil No. 760973 (L.A.Super.Ct., January 4, 1962), as reported in 3 Cal.Disc.Proc. 72 (Metropolitan News Review Section, January 30, 1962) (memorandum opinion by Judge Philbrick McCoy).

[Notes of Decisions \(135\)](#)

West's Ann. Cal. Evid. Code § 1070, CA EVID § 1070
Current with urgency legislation through Ch. 372 of 2020 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

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[West's Annotated California Codes](#)
[Evidence Code \(Refs & Annos\)](#)
[Division 8. Privileges \(Refs & Annos\)](#)
[Chapter 5. Immunity of Newsmen from Citation for Contempt](#)

West's Ann.Cal.Evid.Code § 1070

§ 1070. Refusal to disclose news source

[Currentness](#)

(a) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas, for refusing to disclose, in any proceeding as defined in [Section 901](#), the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

(b) Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

(c) As used in this section, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1971, c. 1717, p. 3658, § 1; Stats.1972, c. 1431, p. 3126, § 1; Stats.1974, c. 1323, p. 2877, § 1; Stats.1974, c. 1456, p. 3184, § 2.)

Editors' Notes

COMMENT--ASSEMBLY COMMITTEE ON JUDICIARY

Section 1070 continues without change the provisions of subdivision 6 of [Code of Civil](#)

[Procedure Section 1881.](#)

It should be noted that Section 1070, like the existing law, provides an immunity from being adjudged in contempt; it does not create a privilege. Thus, the section will not prevent the use of other sanctions for refusal of a newsman to make discovery when he is a party to a civil proceeding. See [Code Civ.Proc. § 2034](#); *Bramson v. Wilkerson*, Civil No. 760973 (L.A.Super.Ct., January 4, 1962), as reported in 3 Cal.Disc.Proc. 72 (Metropolitan News Review Section, January 30, 1962) (memorandum opinion by Judge Philbrick McCoy).

[Notes of Decisions \(135\)](#)

West's Ann. Cal. Evid. Code § 1070, CA EVID § 1070
Current with urgency legislation through Ch. 372 of 2020 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

[Code of Alabama](#)

[Title 12. Courts.](#)

[Chapter 21. Evidence and Witnesses. \(Refs & Annos\)](#)

[Article 1. General Provisions.](#)

[Division 2. Witnesses.](#)

[Subdivision 1. Generally. \(Refs & Annos\)](#)

Ala.Code 1975 § 12-21-142

§ 12-21-142. Exemption of news-gathering persons from disclosing sources.

[Currentness](#)

No person engaged in, connected with or employed on any newspaper, radio broadcasting station or television station, while engaged in a news-gathering capacity, shall be compelled to disclose in any legal proceeding or trial, before any court or before a grand jury of any court, before the presiding officer of any tribunal or his agent or agents or before any committee of the Legislature or elsewhere the sources of any information procured or obtained by him and published in the newspaper, broadcast by any broadcasting station, or televised by any television station on which he is engaged, connected with or employed.

Credits

(Acts 1935, No. 253, p. 649; Code 1940, T. 7, § 370; Acts 1949, No. 376, p. 548.)

[Notes of Decisions \(3\)](#)

Ala. Code 1975 § 12-21-142, AL ST § 12-21-142

Current through Act 2020-206.

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[West's Colorado Revised Statutes Annotated](#)

[Title 13. Courts and Court Procedure](#)

[Witnesses](#)

[Article 90. Witnesses \(Refs & Annos\)](#)

[Part 1. General Provisions](#)

C.R.S.A. § 13-90-119

§ 13-90-119. Privilege for newsperson

[Currentness](#)

(1) As used in this section, unless the context otherwise requires:

(a) "Mass medium" means any publisher of a newspaper or periodical; wire service; radio or television station or network; news or feature syndicate; or cable television system.

(b) "News information" means any knowledge, observation, notes, documents, photographs, films, recordings, videotapes, audiotapes, and reports, and the contents and sources thereof, obtained by a newsperson while engaged as such, regardless of whether such items have been provided to or obtained by such newsperson in confidence.

(c) "Newsperson" means any member of the mass media and any employee or independent contractor of a member of the mass media who is engaged to gather, receive, observe, process, prepare, write, or edit news information for dissemination to the public through the mass media.

(d) "Press conference" means any meeting or event called for the purpose of issuing a public statement to members of the mass media, and to which members of the mass media are invited in advance.

(e) "Proceeding" means any civil or criminal investigation, discovery procedure, hearing, trial, or other process for obtaining information conducted by, before, or under the authority of any judicial body of the state of Colorado. Such term shall not include any investigation, hearing, or other process for obtaining information conducted by, before, or under the authority of the general assembly.

(f) "Source" means any person from whom or any means by or through which news information is received or procured by a newsperson, while engaged as such, regardless of whether such newsperson was requested to hold confidential the identity of such person or means.

(2) Notwithstanding any other provision of law to the contrary and except as provided in

subsection (3) of this section, no newsperson shall, without such newsperson's express consent, be compelled to disclose, be examined concerning refusal to disclose, be subjected to any legal presumption of any kind, or be cited, held in contempt, punished, or subjected to any sanction in any judicial proceedings for refusal to disclose any news information received, observed, procured, processed, prepared, written, or edited by a newsperson, while acting in the capacity of a newsperson; except that the privilege of nondisclosure shall not apply to the following:

(a) News information received at a press conference;

(b) News information which has actually been published or broadcast through a medium of mass communication;

(c) News information based on a newsperson's personal observation of the commission of a crime if substantially similar news information cannot reasonably be obtained by any other means;

(d) News information based on a newsperson's personal observation of the commission of a class 1, 2, or 3 felony.

(3) Notwithstanding the privilege of nondisclosure granted in subsection (2) of this section, any party to a proceeding who is otherwise authorized by law to issue or obtain subpoenas may subpoena a newsperson in order to obtain news information by establishing by a preponderance of the evidence, in opposition to a newsperson's motion to quash such subpoena:

(a) That the news information is directly relevant to a substantial issue involved in the proceeding;

(b) That the news information cannot be obtained by any other reasonable means; and

(c) That a strong interest of the party seeking to subpoena the newsperson outweighs the interests under the first amendment to the United States constitution of such newsperson in not responding to a subpoena and of the general public in receiving news information.

(4) The privilege of nondisclosure established by subsection (2) of this section may be waived only by the voluntary testimony or disclosure of a newsperson that directly addresses the news information or identifies the source of such news information sought. A publication or broadcast of a news report through the mass media concerning the subject area of the news

information sought, but which does not directly address the specific news information sought, shall not be deemed a waiver of the privilege of nondisclosure as to such specific news information.

(5) In any trial to a jury in an action in which a newsperson is a party as a result of such person's activities as a newsperson and in which the newsperson has invoked the privilege created by subsection (2) of this section, the jury shall be neither informed nor allowed to learn that such newsperson invoked such privilege or has thereby declined to disclose any news information.

(6) Nothing in this section shall preclude the issuance of a search warrant in compliance with the federal "Privacy Protection Act of 1980", [42 U.S.C. sec. 2000aa](#).

Credits

Added by [Laws 1990, S.B.90-49, § 1, eff. April 16, 1990](#).

[Notes of Decisions \(13\)](#)

C. R. S. A. § 13-90-119, CO ST § 13-90-119

Current through all legislation of the 2020 Regular Session.

End of Document

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[Connecticut General Statutes Annotated](#)

[Title 52. Civil Actions](#)

[Chapter 899. Evidence \(Refs & Annos\)](#)

C.G.S.A. § 52-146t

§ 52-146t. Protection from compelled disclosure of information obtained by news media

[Currentness](#)

(a) As used in this section:

(1) "Information" has its ordinary meaning and includes, but is not limited to, any oral, written or pictorial material, whether or not recorded, including any notes, outtakes, photographs, video or sound tapes, film or other data of whatever sort in any medium; and

(2) "News media" means:

(A) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite or other transmission system or carrier, or channel or programming service for such station, network, system or carrier, or audio or audiovisual production company that disseminates information to the public, whether by print, broadcast, photographic, mechanical, electronic or any other means or medium;

(B) Any person who is or has been an employee, agent or independent contractor of any entity specified in subparagraph (A) of this subdivision and is or has been engaged in gathering, preparing or disseminating information to the public for such entity, or any other person supervising or assisting such person with gathering, preparing or disseminating information; or

(C) Any parent, subsidiary, division or affiliate of any person or entity specified in subparagraph (A) or (B) of this subdivision to the extent the subpoena or other compulsory process seeks the identity of a source or the information described in subsection (b) of this section.

(b) No judicial, executive or legislative body with the power to issue a subpoena or other compulsory process may compel the news media to testify concerning, or to produce or otherwise disclose, any information obtained or received, whether or not in confidence, by the news media in its capacity in gathering, receiving or processing information for potential communication to the public, or the identity of the source of any such information, or any information that would tend to identify the source of any such information, unless such judicial, executive or legislative body complies with the provisions of subsections (c) to (e), inclusive, of this section.

(c) Prior negotiations with the news media shall be pursued in all matters in which the issuance of a subpoena to, or the initiation of other compulsory process against, the news media is contemplated for information described in subsection (b) of this section or the identity of the source of such information, or any information that would tend to identify the source of any such information.

(d) If the news media and the party seeking to compel disclosure of information described in subsection (b) of this section or the identity of the source of any such information, or any information that would tend to identify the source of any such information, fail to reach a resolution, a court may compel disclosure of such information or the identity of the source of such information only if the court finds, after notice to and an opportunity to be heard by the news media, that the party seeking such information or the identity of the source of such information has established by clear and convincing evidence:

(1) That (A) in a criminal investigation or prosecution, based on information obtained from other sources than the news media, there are reasonable grounds to believe that a crime has occurred, or (B) in a civil action or proceeding, based on information obtained from other sources than the news media, there are reasonable grounds to sustain a cause of action; and

(2) That (A) the information or the identity of the source of such information is critical or necessary to the investigation or prosecution of a crime or to a defense thereto, or to the maintenance of a party's claim, defense or proof of an issue material thereto, (B) the information or the identity of the source of such information is not obtainable from any alternative source, and (C) there is an overriding public interest in the disclosure.

(e) A court of this state shall apply the procedures and standards specified by this section to any subpoena or other compulsory process whether it arises from or is associated with a proceeding under the laws of this state or any other jurisdiction, except that with respect to a proceeding arising under the laws of another jurisdiction, a court of this state shall not afford lesser protection to the news media than that afforded by such other jurisdiction. No subpoena or compulsory process arising from or associated with a proceeding under the laws of another jurisdiction shall be enforceable in this state unless a court in this state has personal jurisdiction over the person or entity against which enforcement is sought.

(f) The provisions of subsection (b) of this section protecting from compelled disclosure information described in said subsection and the identity of the source of any such information shall also apply if a subpoena is issued to, or other compulsory process is initiated against, a third party that seeks information concerning business transactions between such third party and the news media for the purpose of obtaining information described in said subsection or discovering the identity of a source of any such information. Whenever a subpoena is issued to, or other compulsory process is initiated against, a third party that seeks information concerning business transactions between such third party and the news media, the affected news media shall be given reasonable and timely notice of the subpoena or compulsory

process before it is executed or initiated, as the case may be, and an opportunity to be heard.

(g) Publication or dissemination by the news media of information described in subsection (b) of this section, or a portion thereof, shall not constitute a waiver of the protection from compelled disclosure provided in said subsection with respect to any information that is not published or disseminated.

(h) Any information obtained in violation of the provisions of this section, and the identity of the source of such information, shall be inadmissible in any action, proceeding or hearing before any judicial, executive or legislative body.

(i) Whenever any person or entity seeks the disclosure from the news media of information that is not protected against compelled disclosure pursuant to subsection (b) of this section, such person or entity shall pay the actual cost that would be incurred by the news media in making a copy of such information if a subpoena or other compulsory process was not available, and may not use a subpoena or other compulsory process as a means to avoid paying such actual cost.

(j) Nothing in subsections (a) to (i), inclusive, of this section shall be construed to deny or infringe the rights of an accused in a criminal prosecution guaranteed under the sixth amendment to the Constitution of the United States and article twenty-ninth of the amendments to the Constitution of the state of Connecticut.

Credits

[\(2006, P.A. 06-140](#), §§ 1-8.)

C. G. S. A. § 52-146t, CT ST § 52-146t

The statutes and Constitution are current with all enactments of the 2020 Regular Session, the 2020 July Special Session, and the 2020 September Special Session.

End of Document

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[Minnesota Statutes Annotated](#)
[Evidence \(Ch. 595-603\)](#)
[Chapter 595. Witnesses](#)
M.S.A. § 595.022
595.022. Public policy
[Currentness](#)

In order to protect the public interest and the free flow of information, the news media should have the benefit of a substantial privilege not to reveal sources of information or to disclose unpublished information. To this end, the freedom of press requires protection of the confidential relationship between the news gatherer and the source of information. The purpose of [sections 595.021](#) to [595.025](#) is to insure and perpetuate, consistent with the public interest, the confidential relationship between the news media and its sources.

Credits

Laws 1973, c. 735, § 2. Amended by Laws 1981, 1st Sp., c. 4, art. 1, § 182.

Editors' Notes

RULES OF CRIMINAL PROCEDURE

<Statutes relating to special rules, evidence, privileges, and witnesses found in sections 595.02 to 595.025 and in chapter 634 remain in full force and effect notwithstanding the promulgation of the Rules of Criminal Procedure. See § 480.059, subd. 7.>

[Notes of Decisions \(5\)](#)

M. S. A. § 595.022, MN ST § 595.022

Current with all legislation from the 2020 Regular Session and 1st through 5th Special Sessions. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

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[Minnesota Statutes Annotated](#)

[Evidence \(Ch. 595-603\)](#)

[Chapter 595. Witnesses](#)

M.S.A. § 595.023

595.023. Disclosure prohibited

[Currentness](#)

Except as provided in [section 595.024](#), no person who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public shall be required by any court, grand jury, agency, department or branch of the state, or any of its political subdivisions or other public body, or by either house of the legislature or any committee, officer, member, or employee thereof, to disclose in any proceeding the person or means from or through which information was obtained, or to disclose any unpublished information procured by the person in the course of work or any of the person's notes, memoranda, recording tapes, film or other reportorial data whether or not it would tend to identify the person or means through which the information was obtained.

Credits

Laws 1973, c. 735, § 3. Amended by Laws 1986, c. 444; [Laws 1998, c. 357, § 1](#).

Editors' Notes

RULES OF CRIMINAL PROCEDURE

<Statutes relating to special rules, evidence, privileges, and witnesses found in sections 595.02 to 595.025 and in chapter 634 remain in full force and effect notwithstanding the promulgation of the Rules of Criminal Procedure. See § 480.059, subd. 7.>

[Notes of Decisions \(7\)](#)

M. S. A. § 595.023, MN ST § 595.023

Current with all legislation from the 2020 Regular Session and 1st through 5th Special Sessions. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

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HB133 Testimony

We have three proposed amendments to HB 133 under section VIII(a) add these subparagraphs:

(9) Constitutes trademark or copyright infringement;

(10) Is excessively violent; and

(11) Constitutes harassing spam of a commercial, not political or religious, nature.

Summary of the argument of a bill that 29 other states are carrying:

1. The Communications Decency Act was created to protect decent speech, not deceptive trade practices.
2. Repealing section 230 of the Communications Decency Act at the federal level is unnecessary because it already includes a state-law exemption and the Stop Social Media Censorship Act was crafted to fall squarely in the state-law exemption of section 230 to cure abuses of section 230 to protect the consumers of this state.
2. Contract law is a state-law issue, and when a citizen of this state signs up to use certain social media websites, they are entering into a contract.
4. This state has a compelling interest in holding certain social media websites to higher standards for having substantially created a digital public square through fraud, false advertising, and deceptive trade practices.
5. Major social media websites have engaged in the greatest bait and switch of all times by marketing themselves as free, fair, and open to all ideas to induce subscribers only to then prove otherwise at great expense to consumers and election integrity.
6. Breach of contract, false advertising, bad faith, unfair dealing, fraudulent inducement, and deceptive trade practices are not protected forms of speech for purpose of the first amendment of the United States Constitution or the Constitution of this state.
7. The major social media websites have already reached critical mass, and they did it through fraud, false advertising, and deceptive trade practices at great expense to the health, safety, and welfare of consumers of this state, while making it difficult for others to compete with them.
8. The state has an interest in helping its citizens enjoy their free exercise rights in certain semi-public forums commonly used for religious and political speech, regardless of which political party or religious organization they ascribe to.
9. This state is generally opposed to online censorship unless the content is injurious to children or promotes human trafficking; only then does this state accept limited censorship.

ARGUMENT:

1. What is the best policy solution to the on-going problem of social media censorship - is it (1) an executive order from the President, (2) the repeal of Section 230 of the Communications Decency Act (CDA) by Sen. Hawley, or (3) a state law solution? A state law solution in the form of the Stop Social Media Censorship Act that causes deceptive trade practice law to catch up to modern-day technology is the best solution to the on-going problem of social media censorship because once enacted the statute

HB133 Testimony

would fall squarely within the “state law” exemption that is already built into Section 230 of the Communications Decency Act.

2. What is Section 230 of the Communications Decency Act (CDA)? Section 230 of the CDA is a federal statute enacted in the 1990s that creates an immunity defense that shields “internet intermediaries” from the actions of third parties.

3. Why would it be a bad idea to repeal Section 230 of the CDA on the federal level?

A total repeal of section would not be wise because section 230 is a good law in many situations and a total repeal would have secondary unintended adverse consequences. The best way to understand section 230 is through an example. For instance, if a person posts a defamatory comment on Youtube, the person who was defamed could sue the person who defamed them, but they could not successfully sue Youtube because Youtube could invoke a Section 230 immunity defense and have the case dismissed. Instead of repealing Section 230, the state legislature can enact the Stop Social Media Censorship Act that falls squarely within the “state law” exemption that is already built into Section 230. This means that in a civil lawsuit brought under the Stop Social Media Censorship Act against a social media website for wrong censorship, the social media website could not successfully invoke a section 230 immunity defense. The Stop Social Media Censorship Act pieces through the immunity defense in civil litigation and prevents it from being successfully raised as a shield.

4. How is Section 230 being abused by Social Media Websites that censor political speech?

Currently, the major social media websites are censoring users whose religious and political views offend the delicate sensibilities of the employees who work there in view of arbitrary shifting standards. To date, in cases where the social media websites are being sued for this kind of censorship, the social media website have been able to have the cases dismissed by invoking section 230 immunity defense, arguing that by deleting users speech, the social media website merely engaged in “editorializing” and was not acting as speaker or publisher. However, the Communications Decency Act was designed to protect “decent speech” - not “indecent” deceptive trade practices. The state law exemption allows the state legislature to pass legislation, like the Stop Social Media Censorship Act, that cures abusive trade practices through the misuse of section 230 immunity defense.

5. What does the Stop Social Media Censorship Act say? The Stop Social Media Censorship Act creates a private right of action that allows citizens of this state to bring against the major social media website that have more than 75 million subscribers that were never affiliated with any religious or political group from their inception that censor the user for religious or political reasons, after having marketed themselves falsely as being free, fair, and open to the public from its inception. A censored person who sues under the Stop Social Media Censorship Act can seek \$75,000 in statutory damages, attorneys fees, costs, and other forms of relief. Social media websites can still censor for all of the common-sense reasons. This act applies to social media websites like Facebook, Twitter, and Youtube.

7. What is the significance of allowing a censored party to seek \$75,000 in statutory damages and attorney fees? It is important to include statutory damages in this bill because some times it can be difficult to determine actual damages. Also, \$75,000 is a magic number in that it is the jurisdictional minimum that will permit a party to proceed in Federal District Court under “diversity jurisdiction.”

HB133 Testimony

Presumably, the social media website will be headquartered in a different state than the one where the censored user resides. Additionally, by including in the bill

that plaintiff can get attorney fees, it will incentivize local lawyers to represent clients for free knowing that if they prevail, they can recover attorney fees, getting around the problem known as the “American Rule.”

6. Does the Stop Social Media Censorship Act violate the Commerce Clause - how does a state have jurisdiction to regulate this? The Stop Social Media Censorship Act does not violate the Commerce Clause and the state has jurisdiction to regulate this problem because when a person in this state signs up to use Facebook, Twitter, and Youtube, they are entering into a contract inside of this state. “Contract law” is a “state law issue.” The states have paramount jurisdiction to regulate contracts and to place restrictions on them. When a social media website censors a user for religious or political reasons after it has marketed itself as being free, fair, and open to the public from its inception, it is engaging in an existing form of breach of contract, bad faith, unfair dealing, unjust enrichment, false advertising, and deceptive trade practices. The courts in this state have jurisdiction under the “long-arm statute” for breach of contract and deceptive trade practices. This bill merely causes existing consumer protection law to catch up to modern-day technology, making it a progressive bill.

7. Does the Stop Social Media Censorship Act violate the First Amendment in some general way? No. Dishonest lawyers with a self-serving agenda often float that the Stop Social Media Censorship Act violates the First Amendment in some vague way as an unethical scare tactic. They cannot explain how the act violates the First Amendment. It is true that the First Amendment applies to the state government through the Fourteenth Amendment, and not to social media websites, who are private actors. The First Amendment does not protect deceptive trade practice, fraud, false advertising are not forms of protected speech - because that kind of speech is harmful unprotected speech. Facebook, Twitter, and Youtube have engaged in the greatest bait and switch of all time by marketing themselves as free, fair, and open to the public to induce people to subscribe only to hit them with a “gotcha game.” Such deceptive trade practices are not protected by the First Amendment free speech clause, and all intellectually honest lawyers know it.

8. What is the underlying Constitutional legal basis for the Stop Social Media Censorship Act?

The underlying Constitutional legal basis supporting the Stop Social Media Censorship Act is the free speech and free exercise clauses of the first amendment of the United States Constitution. The first amendment can be used to restrain the government from encroaching on free speech, and it can be used as a catalyst by which the government can promote protected forms of speech. The states have a narrowly tailored compelling interest pursuant to the free speech and free exercise clauses to ensure that their citizens are allowed to express their religious and political worldviews in the modern-day digital public square that was built on the false promise by the tech enterprise that it would be a place that was free, fair, and open to all religious and political views.

9. Why is it problematic to suggest that if Republicans do not like Facebook, Youtube, and Twitters arbitrary censorship policies they should go out and form their own social media websites like Parler?

The idea that if a person does not like the censorship practices of Facebook, Twitter, and Youtube, they should go form their own Facebook, Twitter, and Youtube is a proposed solution that amounts to a shallow oversimplification. Facebook, Twitter, and youtube have already reached critical mass, and they

HB133 Testimony

did so by fraud. To try to compete with them now is unrealistic. Furthermore, Parlor attempted to form a new social media platform to compete with Facebook, Twitter, and Youtube and they are being shut down by big Tech through unfair competition practices.

10. Should Social Media Websites be broken up?

Currently, it is not necessary to break up Facebook, Twitter, and Youtube if the Stop Social Media Censorship Act is enacted.

Best,

Christopher Sevier Esq. De Facto Attorneys General www.specialforcesofliberty.com

Good afternoon,

In advance of Friday's Judiciary hearing, I have attached Internet Association's opposition letter to HB 133 as well as an article detailing the genesis of legislation like this that has been introduced throughout the country.

Regards,

John Olsen Director, State Government Affairs, Northeast Region

INTERNET ASSOCIATION 111 Washington Ave Suite 602, Albany, NY 12210

O: [518-242-7828](tel:518-242-7828) olsen@internetassociation.org

Good afternoon,

Attached, please find TechNet's written testimony in opposition to HB 133.

Thank you,

Christopher Gilrein Executive Director | Massachusetts & Northeast

[TechNet](#) / The Voice of the Innovation Economy (c): 774-230-6685 | cgilrein@technet.org

Dear Chairman Gordon and the members of the House Judiciary Committee,

Please find attached the ACLU-NH's testimony concerning HB133, which is being heard tomorrow. Do not hesitate to contact me if you have any questions.

Best,

Gilles Bissonnette ACLU-NH Legal Director

HB133 Testimony



MOTION PICTURE ASSOCIATION – AMERICA

TESTIMONY OF ELIZABETH ELLIS
VICE-PRESIDENT, MOTION PICTURE ASSOCIATION – AMERICA
in opposition to House Bill 133
before the House Judiciary Committee
New Hampshire State House of Representatives
Concord, New Hampshire

Friday, February 26, 2021

GOOD MORNING, CHAIRMAN GORDON AND MEMBERS OF THE COMMITTEE. MY NAME IS ELIZABETH ELLIS AND I AM VICE PRESIDENT OF STATE GOVERNMENT AFFAIRS OF THE MOTION PICTURE ASSOCIATION – AMERICA (MPA-A). I VERY MUCH APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO SHARE MPA-A’S MEMBERS’ CONCERNS REGARDING HOUSE BILL 133.

*MPA-A’S MEMBER COMPANIES ARE THE LEADING PRODUCERS AND DISTRIBUTORS OF MOTION PICTURES AND OTHER AUDIOVISUAL WORKS FOR ALL MEDIA PLATFORMS, INCLUDING MOTION PICTURE THEATERS, DIGITAL VIDEO HOME ENTERTAINMENT, CABLE, SATELLITE AND BROADCAST TELEVISION, AS WELL AS ON THE INTERNET. OUR MEMBERS ARE NO DOUBT FAMILIAR NAMES TO

HB133 Testimony

YOU: WALT DISNEY STUDIOS, PARAMOUNT PICTURES, NETFLIX, UNIVERSAL STUDIOS, WARNER BROTHERS, AND SONY PICTURES. CBS IS ALSO AN ASSOCIATE MEMBER.

*HOUSE BILL 1144 WOULD CREATE A NEW PRIVATE RIGHT OF ACTION ALLOWING A USER WHOSE SPEECH HAS BEEN DELETED TO SUE FOR \$75,000 PER DELETION, PLUS ACTUAL AND PUNITIVE DAMAGES, PLUS “OTHER FORMS OF EQUITABLE RELIEF” IF THEIR ONLINE COMMENT IS REMOVED.

*MPA MEMBER COMPANIES AND THEIR AFFILIATES ARE HOST TO PLATFORMS WHICH ALLOW VIEWERS TO POST COMMENTS AND REVIEWS. THE DEFINITION OF “SOCIAL MEDIA WEBSITE” IN THIS BILL IS SO BROAD THAT IT WOULD ENCOMPASS MANY COMPANIES, SUCH AS MPA MEMBER COMPANIES, THAT ALLOW USERS TO SHARE COMMENTS OR PRODUCT REVIEWS ONLINE. MPA MEMBER COMPANY DISNEY, FOR EXAMPLE, OWNS ESPN, WHICH ALLOWS SPORTS FANS TO COMMENT ON ONLINE STORIES. IT IS SOMETIMES NECESSARY FOR DISNEY TO REMOVE CERTAIN INAPPROPRIATE MATERIAL SHARED BY A USER IN THEIR COMMENT OR REVIEW, IN ORDER TO ENSURE A POSITIVE ONLINE EXPERIENCE FOR THE REST OF THEIR VIEWERS.

*BUT BY DOING SO, THIS BILL COULD THEN MAKE THE WALT DISNEY COMPANY LIABLE FOR \$75,000, PLUS EQUITABLE DAMAGES, PUNITIVE DAMAGES, AND OTHER FORMS OF RELIEF, EVERY TIME THEY WERE FORCED TO DELETE AN INAPPROPRIATE COMMENT MADE BY AN ONLINE USER.

*WHILE WE DON'T BELIEVE OUR MEMBER COMPANIES ARE THE INTENDED TARGETS OF THIS LEGISLATION, THE DEFINITION OF “SOCIAL MEDIA COMPANY” IS SO BROAD THAT IT WOULD PUT OUR COMPANIES, AND MANY OTHERS,

HB133 Testimony

SQUARELY WITHIN THE SCOPE OF THE BILL AND ITS AND THE NEW LIABILITY THAT THE BILL WOULD CREATE FOR MANY BUSINESSES.

*WE ALSO BELIEVE THE BILL IS UNCONSTITUTIONAL AS AN INVASION OF THE EDITORIAL PROCESS BARRED BY THE FIRST AMENDMENT. THE FIRST AMENDMENT BARS THE STATE FROM INTERFERING WITH EDITORIAL DECISIONS, INCLUDING BY WEBSITES AND INTERNET PLATFORMS, ABOUT WHAT TO PRINT OR NOT TO PRINT.

*WE ALSO BELIEVE HOUSE BILL 133 WOULD BE BARRED BY [SECTION 230](#) OF THE COMMUNICATION DECENCY ACT. SECTION 230 IS A FEDERAL LAW THAT BARS STATES FROM EITHER IMPOSING CRIMINAL LIABILITY OR PROVIDING A CIVIL CAUSE OF ACTION AGAINST WEBSITES, PLATFORMS, SOCIAL MEDIA SITES AND ISPS RELATED TO USER-GENERATED CONTENT.

FOR THESE REASONS, WE RESPECTFULLY REQUEST THE COMMITTEE DEFEAT HOUSE BILL 133. I VERY MUCH APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY, AND AM HAPPY TO ANSWER ANY QUESTIONS.

Dear Chairman Gordon and Members of the Committee,

I very much appreciate the opportunity to appear before you this morning.

Attached please find a copy of my testimony.

Thank you again for your time and consideration of MPA members' concerns with H 133.

Sincerely,
Elizabeth Ellis
Vice President, State Government Affairs
Motion Picture Association - America
1600 Eye Street, NW
Washington, DC 20006
Cell 301-346-5442



Statement by Gilles Bissonnette, Legal Director of the ACLU-NH
House Judiciary Committee
House Bill 133
February 26, 2021

I am the Legal Director of the American Civil Liberties Union of New Hampshire (ACLU-NH)—a non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. On behalf of the ACLU-NH, I appreciate the opportunity to testify today in opposition to HB133, which creates a cause of action for censorship by social media websites.

This bill is problematic for at least two reasons. *First*, this bill is preempted by Section 230 of the CDA, which prohibits holding media platforms liable as the publisher or speaker of content that is provided by others.¹ The CDA also explicitly protects good faith decisions to remove certain content.² Therefore, unless and until Congress changes Section 230, this bill will be preempted by federal law and not have an effect here in New Hampshire.

Second, the bill almost certainly would violate the First Amendment if enacted. The government cannot force social media platforms to distribute the speech of third parties, particularly not when the bill clearly discriminates on the basis of content by creating a category of “must-carry” speech (e.g. speech favoring “religious” or “political” speech over all other speech on any other topic).

The ACLU has long discouraged big platforms from censoring on the basis of viewpoint; however, it is an entirely different matter for the government to dictate what online platforms must publish. Just as the First Amendment restricts the government from banning speech, it also forbids the government from compelling speech.

In short, whatever the right approach to creating platform accountability might be, having the government dictate what media platforms publish is the wrong approach.

Accordingly, we respectfully urge the members of this Committee to vote HB133 “inexpedient to legislate.”

¹ 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

² 47 U.S.C. § 230(c)(2)(A) (“No provider or user of an interactive computer service shall be held liable on account of ... any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected[.]”).



February 26, 2021

Honorable Ned Gordon, Chair
House Judiciary Committee
New Hampshire General Court
107 Main St
Concord, NH 03301

RE: Opposition to HB 133

Dear Chairman Gordon:

Internet Association's mission is to foster innovation, promote economic growth, and empower people through the free and open internet. The internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, we ensure stakeholders understand these benefits.

IA respectfully opposes **HB 133** which would create a cause of action when privately owned internet platforms exercise their First Amendment right to remove harmful content. IA shares the author's interest in promoting diverse online discourse, however this legislation would prevent service providers from taking critical actions for the safety of their users. Despite the characterization of social media platforms as "digital public squares" the fact remains these forums are still controlled by private entities whose rights to moderate content on their platforms are secured by Article 22 of the New Hampshire Constitution's Bill of Rights and the First Amendment of the U.S Constitution. In addition, **HB 133** conflicts with Section 230 of the Communications Decency Act which prohibits liability in cases of content moderation.

In 1996 the US Congress passed Section 230 of the Communications Decency Act (Section 230) with bipartisan support. The purpose was to ensure that online service providers could allow individuals to post content to their platforms and that the platform could moderate that content without being legally viewed as the "publisher." Without Section 230, the law could treat a provider who turns a blind eye to harmful content more favorably than a platform that takes action to try to protect consumers. *Congress made clear its intent that Section 230 should empower providers to engage in content moderation. [including by blocking any state law that aims to do otherwise, such as **HB 133**.]*

To realize the full benefits of online services, it is critical that service providers can set and enforce robust rules designed to protect the quality and integrity of their services. Today, providers regularly act against spam, malware and viruses, child sexual abuse material, scams,



threats and harassment, impersonation, non-consensual intimate images, and other content that, regardless of whether illegal or legal, is harmful to the users of their services and the public at large. While we appreciate the effort to include exceptions for a range of harmful content, it is unrealistic to expect that any law can fully capture future harms and thus more flexibility is needed. In addition, **HB 133** encourages, through statutory damages, lawsuits seeking to argue whether specific content falls within one of those categories or outside it. The net result is that this legislation would put the safety measures providers take daily at risk by seeking to limit the scope of enforcement that can be undertaken without the threat of litigation. Consumers will not benefit from this.

Decisions regarding the removal of objectionable content are sometimes easy and uncontroversial, but other times these decisions are not black and white, they are tough calls, different shades of gray, where reasonable individuals can disagree with the results. Regardless, these decisions are made constantly and as consistently as possible as hundreds of millions of pieces of new content are shared every single day across social media platforms.

HB 133 would put online companies in the position of defending these content moderation decisions in the court of law. Regardless of whether a platform was acting appropriately under the bill, individual users would still be empowered to sue and take the company to court to challenge content decisions. This could easily lead to an unbridled internet where harmful content overwhelms the healthy discourse and exchange of ideas that we all desire.

The companies IA represents understand their success depends on attracting a broad user base regardless of party affiliation or political perspective. This is core to the principles of free enterprise, and we should encourage it. Before online platforms gave the general public access to services where they could publish their own thoughts and opinions, there were only a few options, many of which were out of reach to most Americans unless they could get a letter to the editor of a newspaper or a book published. Social media has without question empowered MORE voices to be heard, MORE diversity of opinions, MORE information to be available at our fingertips than any other communication tool in human history.

For these reasons and more, Internet Association strongly encourages you to oppose **HB 133**. I welcome any questions you may have regarding IA's position on this bill and can be reached at olsen@internetassociation.org or 518-242-7828.

Very truly yours,



A handwritten signature in black ink, appearing to read 'JOHN OLSEN'.

John Olsen
Director, State Government Affairs Northeast Region

Cc: House Judiciary Committee Members

The Salt Lake Tribune

Man who claimed he married a laptop pitches social media censorship bill to Utah lawmakers

By Bethany Rodgers | Oct. 21, 2020

A proposal to punish social media platforms for deleting content for political or religious reasons made its way to Utah this week, peddled by a controversial, anti-gay activist who says he's lobbying states to quash online censorship.

Rep. Jon Hawkins presented the idea Wednesday to a legislative committee, citing [Twitter's attempts to contain the spread of the New York Post story on Hunter Biden as an example of online censorship](#). After a brief introduction to the panel, he yielded the floor to Chris Sevier, an [attorney who once protested gay unions by claiming he'd married his laptop](#) and is currently on a crusade to regulate social media companies.

"We really hope that you guys will enact this bill," said Sevier, who was introduced as in-house counsel for a group called Special Forces of Liberty. "We think it will promote a lot of human flourishing and fairness."

The legislation as described by Sevier would empower a social media user to sue if the platform deletes or suppresses one of their posts for political or religious reasons. The social media company could be on the hook for \$75,000 in statutory damages, in addition to other forms of relief, he explained.

But several representatives of internet and tech companies spoke against the bill, which they said would place inappropriate restrictions on social media platforms and make it difficult to remove objectionable content. In a phone interview after the hearing ended, Hawkins said he'd decided not to move forward with the bill because his colleagues seemed concerned about it and because Sevier "doesn't have the best reputation."

"I don't want to pick a loser right off the bat," the Pleasant Grove Republican said of the censorship proposal. "And that's what it would be with the kind of appetite I got from members of the interim committee."

Hawkins said a Utah resident brought the drafted censorship bill to his attention and that he wasn't aware of Sevier's efforts to marry his computer until after the Judiciary Interim Committee hearing.

Several years ago, Sevier [sued Alabama for recognition of his marriage to his MacBook](#) and filed legal claims in Utah, among other states, to force a baker to make a wedding cake celebrating his union with the computer.

He also tried to advance anti-pornography legislation mandating internet filters that would cost \$20 to deactivate and named the bill for Elizabeth Smart, who was kidnapped from her Utah home when she was 14. In 2018, Smart [sent a cease-and-desist letter to Sevier demanding that her name be removed](#) from his proposal.

Last year, the Arkansas Democrat-Gazette reported that [Sevier was pressing state lawmakers there to consider a social media censorship bill](#). A website for Sevier's organization claims that 20 states are looking at the proposal, although a tech industry advocate disputed that assertion during Wednesday's hearing.

Carl Szabo, vice president and general counsel for NetChoice, a group that promotes free online expression, said the legislation would run afoul of the First Amendment, constrain social media moderators and go against free market principles cherished by conservatives.

"Not only is this an unnecessary bill, it comes with a panoply of unintended consequences," said Szabo, who identified himself as a conservative. "And for that reason — and the same reason why every other state who's considered this bill has not moved forward on it — we ask you not to advance this legislation."

On the other hand, Sevier argued his bill would protect free discourse while still leaving social media companies at liberty to purge their platforms of pornographic content, calls to violence and posts from fake accounts.

"The state of Utah has a compelling interest to protect the speech of people of all different religions," he said, raising his voice as he spoke to lawmakers. "The other side doesn't have a fundamental right to falsely induce people to sign up to use their platforms only to turn around to bully them and punish them because the employees of that company have a different world view."

Debate over online censorship has reached a fevered pitch lately, after Twitter [last week blocked an unverified New York Post story about alleged emails from Democratic presidential nominee Joe Biden's son](#). The decision has been denounced by Fox News and some Republicans, [including Utah Sen. Mike Lee](#), who are accusing tech companies of anti-conservative bias.

However, Hawkins and Sevier argued that the issue of censorship crosses party lines. The state lawmaker [cited a recent Pew Research Center survey that found about two-thirds of Americans](#) indicated they have little or no confidence in social media companies to properly identify and label inaccurate or misleading posts.

However, Pew also showed that these concerns are far more pronounced among Republicans, with about nine in 10 saying they believe social media companies likely censor political viewpoints. By comparison, only about 59% of Democrats expressed this viewpoint.

Rose Feliciano, a representative of the Internet Association, challenged the idea that social media companies are muffling conservative voices, saying it wouldn't be in their own best interest. On Facebook, for instance, the [posts with the highest engagement on most days are from conservative accounts](#), Politico has reported.

"Right now, conservative voices are more prominent because of social media. Online platforms offer the most open and accessible form of communication for all Americans," Feliciano said. "The platforms do not have a political ideology. It would make no business sense for companies to stifle half of their users."



THE MEDIA COALITION

DEFENDING THE FIRST AMENDMENT SINCE 1973

American Booksellers Association Association of American Publishers Authors Guild Comic Book Legal Defense Fund
Entertainment Software Association Freedom to Read Foundation Motion Picture Association of America

March 1, 2021

Chairman Edward Gordon and Members of the Committee
House Judiciary Committee, LOB Room 208
107 North Main Street,
Concord, New Hampshire, 03301,

Re: New Hampshire House Bill 133 – Opposed.

Chairman Gordon and Members of the Committee,

We firmly believe that H.B. 133 violates the protections for publishers and websites afforded by the First Amendment of the U.S. Constitution and is pre-empted by federal law. The trade associations and organizations that comprise Media Coalition have many members throughout the country, including New Hampshire: authors, publishers, booksellers and librarians, producers and retailers of films, home video and video games. They have asked me to explain their concerns.

Summary of the bill:

H.B. 133 creates a cause of action for a social media user if he or she contracts with the owner or operator of a social media website in New Hampshire, if the site purposely deletes or censors the person's "religious" or "political speech" and uses an algorithm to disfavor, "shadowban," or "censor" the user's "religious" or "political" speech.

Social media websites would not be liable for "censoring" a user's posts even if they are about politics or religion if it comes from an "inauthentic" source or "involves false impersonation." Neither of these terms is defined in the bill.

The injured party or the attorney general may file a suit, and if they prevail, the injured party is entitled to minimum of \$75,000 in statutory damages and may receive actual damages, punitive damages, if there are "aggravating factors," and other forms of equitable relief. The prevailing party may be awarded attorney's fees and costs.

"Social media website" is defined as a site that lets users communicate with each other by posting content, has 75 million users; is not affiliated with a religious or political group at its inception and has a place to report obscene materials, which are then investigated.

"Political speech" is defined as "speech relating to the state, government, body politic, or public administration as it relates to governmental policy-making, and the term includes speech by the government or candidates for office and any discussion of social issues." "Religious speech" is

Executive Director: David Horowitz **Chair:** David Grogan, American Booksellers Association
Immediate Past Chair: James LaRue, Freedom to Read Foundation
General Counsel: Michael A. Bamberger and Richard M. Zuckerman, Dentons US LLP

defined as “a set of unproven answers, truth claims, faith-based assumptions, and naked assertions that attempt to explain such greater questions such as how the world was created, what constitutes right and wrong actions by humans, and what happens after death.” The terms “censor,” “aggravating factors,” “inauthentic” and “involves false impersonation” are not defined.

Legal analysis of H.B. 133:

H.B.133 fails because it is pre-empted by the Communications Decency Act, 47 U.S. Code [§230](#). Subsection (c)(1) says “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” This means that no website can be held liable for content posted to the site by another person. Subsection (c)(2)(A) allows websites to remove, edit or hide user-generated posts for certain kind of content, including anything the site finds to be “otherwise objectionable subject matter.” Courts have read this term very broadly so that it includes virtually any content a site does not want to host. In subsection (e)(3) the law specifically states, “No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” The law cannot get around §230 by making references to “digital public squares” or “semi-public forums.”

Even if §230 did not pre-empt the bill, they are unconstitutional because the government cannot punish a website by making it liable for damages for exercising its editorial prerogative to remove user-generated content that it is not willing to host. The First Amendment bars the state from interfering with decisions about what to print or not to print, including by websites and internet platforms. In *Miami Herald Publ’g Co. v. Tornillo*, the U.S. Supreme Court struck down a Florida law that required newspapers to provide candidates for elected office the opportunity to clarify or respond to reporting they believe to be critical of them. 418 U.S. 241 (1974). Chief Justice Burger, writing for the Court, made plain:

“The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.”

Id., at 258. See also, *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 653 (1994) (“The First Amendment protects the editorial independence of the press.”).

H.B. 133 is likely unconstitutional as compelled speech. The government cannot force a website to publish or host speech or face financial penalties just like it cannot tell a bookstore what books to carry or tell a newspaper what letters to the editor it must publish. Generally, “freedom of speech prohibits the government from telling people what they must say.” *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). The First Amendment allows individuals or companies not only the right to communicate freely but creates the complimentary right “to refrain from speaking at all,” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). See also, *Pacific Gas & Elec. Co. v. Washington, DC Pub. Utils. Comm’n*, 475 U.S. 1

(1986) (government cannot require a private electric company to include environmentalists' inserts in its monthly bills).

The bill is also very likely unconstitutionally vague. There are several terms in H.B. 133 that determine whether a site can be sued but are not defined, and other terms that are defined in a way that gives little guidance to a website as to what content moderation is permitted. Most importantly, H.B. 133 uses the terms "censor" and "disfavor" but does not define either of them. Does it mean that the speech must be entirely erased or does it include editing for brevity or grammar, fact checking or adding a disclaimer or removing certain words that the site operator thinks are inappropriate? The lack of clarity is exacerbated because 359-S-4 I (a) refers to "deletes" or "censors." This construction means the words must mean something different. In section II(c) it permits punitive damages if there are "aggravating factors" but there is no definition of the term or reference to another code section. In VIII(a)(6) there is an exemption for "inauthentic" speech but it also is not defined. The dictionary defines the term as false, fake, imitation or counterfeit. If the state wants to allow the removal of false speech, it must say so. Using "inauthentic" gives little guidance on what the bill allows.

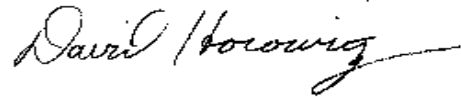
Vagueness is a fatal flaw in legislation that abridges constitutional rights. As the Supreme Court has held, "It is settled law that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment." *Winters v. New York*, 333 U.S. 507, 509 (1948) (citations omitted). The requirement of clarity is especially stringent when a law interferes with First Amendment rights. *See Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 604 (1967) (quoting *NAACP v. Button*, 371 U.S. 415, 432-33 (1963)) ("Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."). Inevitably, the vagueness would have an unconstitutional chilling effect on websites and platforms. *See Baggett v. Bullitt*, 370 U.S. 360 (1964). The bill's lack of definitions will prompt websites to prevent or restrict posting about politics and religion to avoid controversy rather than risking costly litigation for exercising their editorial prerogative by removing something after it was posted. No website will want to risk an award of significant money damages, possibly including punitive damages, when they do not know the parameters of what posts they can and cannot edit, fact check or remove.

The bill may be unconstitutional because it allows civil liability against sites with 75 million users or more but allows a site with 74 million users to retain its editorial discretion to keep or remove an identical post by the same poster without any consequences. The Supreme Court has condemned the selective imposition of a punishment on one publisher or one medium but not others. *Minneapolis Star v. Minnesota Commission of Revenue*, 460 U.S. 575 (1983) (Singling out newspapers but not magazines for a special tax was unconstitutional). *See also, U.S. v. Playboy Entertainment Group*, 529 U.S. 803, 812 (2000) (striking down a regulation that targeted "adult" cable channels but permitted similar expression by other speakers); *Turner Broad. Sys. v. FCC*, 512 U.S. at 659 ("Regulations that discriminate among media ... often present serious First Amendment concerns."); *Arkansas Writers' Project v. Ragland*, 481 U.S. 221, 228 (1983). ("Selective taxation of the press — either singling out the press as a whole or targeting individual members of the press — poses a particular danger of abuse by the State.").

Finally, H.B. 133 cannot be saved by promises from legislators or the attorney general that it should be read narrowly to apply only to the most egregious examples of content moderation. In *U.S. v. Stevens* the Court said, “[T]he First Amendment protects against the Government; it does not leave us at the mercy of noblesse oblige. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” 559 U.S. 460, 480 (2010).

If you would like to discuss our concerns further, we would welcome the opportunity to do so. Please contact me at horowitz@mediacoalition.org or by phone at 212-587-4025 x3. We ask you to protect the First Amendment rights of all the people of New Hampshire and defeat H.B. 133.

Respectfully submitted,

A handwritten signature in black ink that reads "David Horowitz". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Horowitz
Executive Director
Media Coalition, Inc.

[Minnesota Statutes Annotated](#)

[Evidence \(Ch. 595-603\)](#)

[Chapter 595. Witnesses](#)

M.S.A. § 595.022

595.022. Public policy

[Currentness](#)

In order to protect the public interest and the free flow of information, the news media should have the benefit of a substantial privilege not to reveal sources of information or to disclose unpublished information. To this end, the freedom of press requires protection of the confidential relationship between the news gatherer and the source of information. The purpose of [sections 595.021 to 595.025](#) is to insure and perpetuate, consistent with the public interest, the confidential relationship between the news media and its sources.

Credits

Laws 1973, c. 735, § 2. Amended by Laws 1981, 1st Sp., c. 4, art. 1, § 182.

Editors' Notes

RULES OF CRIMINAL PROCEDURE

<Statutes relating to special rules, evidence, privileges, and witnesses found in sections 595.02 to 595.025 and in chapter 634 remain in full force and effect notwithstanding the promulgation of the Rules of Criminal Procedure. See § 480.059, subd. 7.>

[Notes of Decisions \(5\)](#)

M. S. A. § 595.022, MN ST § 595.022

Current with all legislation from the 2020 Regular Session and 1st through 5th Special Sessions. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

End of Document

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[Minnesota Statutes Annotated](#)

[Evidence \(Ch. 595-603\)](#)

[Chapter 595. Witnesses](#)

M.S.A. § 595.023

595.023. Disclosure prohibited

[Currentness](#)

Except as provided in [section 595.024](#), no person who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public shall be required by any court, grand jury, agency, department or branch of the state, or any of its political subdivisions or other public body, or by either house of the legislature or any committee, officer, member, or employee thereof, to disclose in any proceeding the person or means from or through which information was obtained, or to disclose any unpublished information procured by the person in the course of work or any of the person's notes, memoranda, recording tapes, film or other reportorial data whether or not it would tend to identify the person or means through which the information was obtained.

Credits

Laws 1973, c. 735, § 3. Amended by Laws 1986, c. 444; [Laws 1998, c. 357, § 1](#).

Editors' Notes

RULES OF CRIMINAL PROCEDURE

<Statutes relating to special rules, evidence, privileges, and witnesses found in sections 595.02 to 595.025 and in chapter 634 remain in full force and effect notwithstanding the promulgation of the Rules of Criminal Procedure. See § 480.059, subd. 7.>

[Notes of Decisions \(7\)](#)

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THE HEARTLAND INSTITUTE

FREEDOM RISING

Testimony Before the New Hampshire House Committee on Judiciary on House Bill 133 in Reference to Prohibiting Censorship by Certain Technology Platforms and Providing a Private Cause of Action

The Heartland Institute
February 26, 2021

Chairman Gordon and Members of the Committee:

Thank you for holding a hearing on House Bill 133, legislation that provides Granite Staters recourse when they have been censored or “de-platformed” on the various social media platforms that have become ubiquitous and integral to contemporary political speech and expression.

My name is Cameron Sholty, and I am the Director of Government Relations at The Heartland Institute. The Heartland Institute is a 37-year-old independent, national, nonprofit organization whose mission is to discover, develop, and promote free-market solutions to social and economic problems. Heartland is headquartered in Illinois and focuses on providing national, state, and local elected officials with reliable and timely research and analysis on important policy issues.

In less than a generation, emerging technologies and mediums promised democratization of free speech and political activism in a way never dreamed of by either its creators or users. Free speech and political activism, once the realm of partisans and professional pundits, was accessible such that people who were once spectators were now engaged, sharing their ideas and seeing their opinions manifest as public policy, and were challenging orthodoxies of a political class that seemed untouchable.

Yet that democratization gave way to the powers and pillars of technology in the blink of an eye. The consolidation of that power into the hands of a few titans in the sector has now effectively erased the empowerment of millions of Americans and their newfound voices.

Simply, these new technologies have been a blessing and a curse for our political discourse. On that, I think we can all agree.

Where it has empowered voices and people across the political spectrum, it has also empowered the voices that seek to divide us, misinform us, and manipulate us. I would like to tell you that the very platforms on which those messages are spread have been fair and impartial, yet the truth is that they haven't been. In fact, their behavior in recent years certainly suggest it is not an indifferent actor on our national stage.

As partisans squabble and media apparatchiks chirp, the social media companies have ascended from mere stages where players perform to being the protagonists and villains rolled into one driving force of the storyline. The result has been near universal frustration with the behavior of what has become colloquially known as Big Tech.

As a free-market organization, The Heartland Institute continues to grapple with and delineate a

comprehensive and deserving response to this ever-impinging force in our politics. Indeed, in a perfect world, I want to submit to you that legislation to rein in social media companies like Twitter or Facebook or technology giants like Amazon or Apple wouldn't be necessary. But that's not where we are today.

A consensus has yet to emerge on the best way to address Big Tech's censorship of voices on its platforms in a way that recognizes and reinforces America's treasured tradition of free speech - either ideologically or practically.

That is, though, ultimately, a generous and perhaps naive reading of the current landscape. Of course, you and I are free to use or not use the products offered by Facebook, Twitter, Amazon, or Apple and Google. Of that, there ought to be no question. However, to forego using products as ubiquitous and woven into the fabric of our modern daily life is to forego being engaged with family and friends or knowing in real time what our elected officials are doing (or not doing) on our behalf or to struggle to grow a small business and procure customers.

So here we are today, challenging the behavior of Big Tech, which has been less than transparent and lacks respect for the moral responsibilities that it has as a primary outlet for political discourse in our nation and the dissemination of information of public import.

Further, I remain skeptical that there is a single silver bullet and believe the solution likely lies in the congruence of federal legislation, state legislation, and judicial action.

In politics and public policy, perception is reality and if Granite Staters are being censored and the response they hear from Concord is that the issue is too complicated or that Big Tech is adjusting its practices, their frustration with policymakers will be well-placed.

Industry opponents of this idea – of providing redress for censorship and suppression – enjoy a government sanctioned market where the dominant players are largely immune to competition by which our economy is underpinned. That Section 230 of the 1996 Telecommunications Decency Act exists is prima facie evidence of a corrupted market.

For Big Tech, the status quo is lucrative and rewards their own pious views while the users from which they profit are subject to their whims.

House Bill 133 should spur a state-based and national debate on the role of Big Tech in our civic conversations. New Hampshire should be clear that robust public debate is sacrosanct and any action or failure to act to ensure a robust debate will be met with hard questions, and if necessary, enabling policies.

Thank you for your time today.

For more information about The Heartland Institute's work, please visit our websites at www.heartland.org or <http://news.heartland.org>, or call Cameron Sholty at 312/377-4000. You can reach Cameron Sholty by email at csholty@heartland.org.



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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February 26, 2021

The Honorable Representative Edward Gordon, Chair
House Judiciary Committee
The New Hampshire General Court
107 North Main Street
Concord, NH 03301

Re: TechNet Opposition to HB 133

Dear Chair Gordon and Members of the Committee:

I write on behalf of TechNet respectfully **in opposition to House Bill 133**, which will subject New Hampshire residents to more abhorrent and illegal content on the internet by creating liability risks for social media companies that remove objectionable content from their platforms.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than three and a half million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our members are committed to keeping their users safe online, which is why social media companies review millions of pieces of content every day in order to remove harmful content that conflicts with their policies. New Hampshire should encourage these companies to have content policies, as they govern the removal of content showing the exploitation of children, bullying, harassment, gore, pornography, and spam. Instead, HB 133 creates a perverse incentive for companies to not prohibit and remove any objectionable content in order to avoid frivolous litigation brought by users who feel their content was removed in violation of this chapter. The result would be the rapid spread of abhorrent and illegal content that will cause real-world harm in New Hampshire communities and beyond.

Social media companies understand that they have an obligation to remove objectionable content, otherwise, their users will be subjected to dangers like images of child endangerment, financial scams, spam, and other nefarious links. Companies take this responsibility seriously, removing harmful content in an unbiased manner while keeping their services open to a broad range of ideas. In the overwhelming number of cases, removal of offensive content is accomplished as intended. However, the sheer volume of content – hundreds of millions of posts per day – ensures that both artificial intelligence and human reviewers at companies cannot get it right 100 percent of the time. Billions of transactions,

after all, will inevitably lead to errors. It would be fundamentally unfair to implement such a draconian penalty for instances where code misfired or a simple mistake was made.

HB 133 would put the New Hampshire Attorney general in the position of policing content online and the courts as the referees. The sheer volume of content would place an untold burden on the state by forcing them to regulate all of social media.

Additionally, the bill runs counter to the American free speech law governing content liability on the internet, Section 230 of the federal Communications Decency Act. Since its enactment in 1996, Section 230's two key provisions have empowered online intermediaries to remove harmful content while providing them with the same "conduit immunity" that commonly exists in other real world offline contexts – for example, not holding a bookseller liable for libelous books, but rather the individual who committed the libel.

Under Section 230, American companies have the right to curate information on their service to meet the needs and expectations of their customers. Section 230 has supported innovation across the internet while also encouraging companies to be "Good Samaritans" by allowing them to "to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."

For these reasons, TechNet opposes HB 133. We thank you in advance for your consideration, and please do not hesitate to reach out with any questions.

Sincerely,



Christopher Gilrein
Executive Director, Massachusetts and the Northeast
TechNet
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Bill as
Introduced

HB 133 - AS INTRODUCED

2021 SESSION

21-0106
08/04

HOUSE BILL **133**

AN ACT creating a cause of action for censorship by social media websites.

SPONSORS: Rep. Plett, Hills. 6

COMMITTEE: Judiciary

ANALYSIS

This bill creates a private right of action by a social media website user in this state against a social media website.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

21-0106
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT creating a cause of action for censorship by social media websites.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Legislative Findings. The general court finds that:

I. The general court is generally opposed to online censorship unless the content is injurious to children or promotes human trafficking; only then does the general court accept limited censorship.

II. New Hampshire has a compelling interest in holding certain social media websites to higher standards for having substantially created a digital public square.

III. New Hampshire has an interest in helping its citizens enjoy their free exercise rights in certain semi-public forums commonly used for religious and political speech, regardless of which political party or religious organization they ascribe to.

IV. New Hampshire has an interest in deterring the owners and operators of social media websites that have substantially created a digital public square from maliciously interfering in elections.

2 New Chapter; Indecent Deceptive Trade Practices and Social Media Censorship. Amend RSA by inserting after chapter 359-R the following new chapter:

CHAPTER 359-S

INDECENT DECEPTIVE TRADE PRACTICES
AND SOCIAL MEDIA CENSORSHIP

359-S:1 Short Title. This chapter may be cited as the "Stop Social Media Censorship Act."

359-S:2 Purpose. The purpose of this chapter is to:

I. Promote fair dealings between consumers and the major social media websites.

II. Encourage the free flow of political and religious ideas and robust debate.

- III. Hold major social media websites to a higher standard for having substantially created a digital public square.
- IV. Deter bad-faith, unfair dealing, fraud, breach of contract, unjust enrichment, and the marginalization or oppression of competing worldviews.
- V. Establish that:
 - (a) Without truth, there is no freedom;
 - (b) Freedom comes from the truth;
 - (c) The proliferation of truth is vital to the health of our constitutional republic;
 - (d) Social media censorship regarding religious and political ideology has the potential to suppress the truth by preventing different doctrines and ideologies from competing and vying for superiority.
- VI. Deter the owner or operator of a social media website from engaging in false advertising.
- VII. Deter the owner or operator of a social media website from maliciously interfering with local, regional, and national elections.

359-S:3 Definitions. In this chapter:

- I. "Algorithm" means a set of instructions designed to perform a specific task.
- II. "Hate speech" means a phrase concerning content that an individual finds offensive based on his or her personal moral code.
- III. "Material" shall have the same meaning as RSA 650:1, II.
- IV. "Obscene" shall have the same meaning as RSA 650:1, IV.
- V. "Political speech" means speech relating to the state, government, body politic, or public administration as it relates to governmental policy-making, and the term includes speech by the government or candidates for office and any discussion of social issues.
- VI. "Religious speech" means a set of unproven answers, truth claims, faith-based assumptions, and naked assertions that attempt to explain such greater questions such as how the world was created, what constitutes right and wrong actions by humans, and what happens after death.
- VII. "Shadowban" means the act of blocking or partially blocking a user or their content from an online community such that it will not be readily apparent to the user that they have been banned. The term also means "stealth banning," "ghost banning," or "comment ghosting."
- VIII. "Social media website" means an Internet website or application that enables users to communicate with each other by posting information, comments, messages, or images and that meets all of the following requirements:
 - (a) Is open to the public;
 - (b) Has more than 75 million subscribers;
 - (c) From its inception has not been specifically affiliated with any one religion or political party; and
 - (d) Provides a means for the website's users to report obscene materials and has in place procedures for evaluating those reports and removing obscene material.

359-S:4 Civil Action To Stop Social Media Censorship; Deceptive Trade Practice; Exceptions.

- I. A social media user who contracts with the owner or operator of a social media website in New Hampshire shall have a right of action against such owner or operator if the social media website purposely:
 - (a) Deletes or censors the user's religious speech or political speech; and
 - (b) Uses an algorithm to disfavor, shadowban, or censor the user's religious speech or political speech.
- II. A social media website user may be awarded all of the following damages under this section:
 - (a) A minimum of \$75,000 in statutory damages per purposeful deletion or censoring of the social media website user's speech;
 - (b) Actual damages;
 - (c) If aggravating factors are present, punitive damages; and
 - (d) Other forms of equitable relief.
- III. The prevailing party in a cause of action under this section may be awarded costs and reasonable attorney fees.
- IV. A social media website that restores from deletion or removes the censoring of a social media website user's speech in a reasonable amount of time may use that fact to mitigate any damages.
- V. A social media website shall not use the social media website user's alleged hate speech as a basis for justification or defense of the social media website's actions at trial.

VI. The attorney general may also bring a civil cause of action under this section on behalf of a social media website user who resides in New Hampshire and whose religious speech or political speech has been censored by a social media website.

VII. An owner or operator of social media social website that has engaged in practices described in paragraph I has engaged in an unfair and deceptive trade practice in violation of RSA 358-A:2 and shall be subject to the penalties for violating that section.

VIII. This section shall not apply to any of the following:

(a) A social media website that deletes or censors a social media website user's speech or that uses an algorithm to disfavor or censure speech that:

- (1) Calls for immediate acts of violence;
 - (2) Calls for a user to harm themselves;
 - (3) Is obscene material or material harmful to minors;
 - (4) Is the result of operational error;
 - (5) Is the result of a court order;
 - (6) Comes from an inauthentic source or involves false impersonation;
 - (7) Entices criminal conduct; and
 - (8) Involves minors bullying minors;
- (b) A social media website user's censoring of another social media website user's speech.

IX. Only users who are 18 years of age or older may seek enforcement of this section.

X. The venue for any civil action brought under section shall be in New Hampshire.

3 Effective Date. This act shall take effect upon its passage.