Myth vs. Fact:
Ohio's Bill to Combat Big Tech Totalitarianism (HB 441)

Free speech is a sacred and fundamental right. America wouldn't be the incredible nation it is today without it. Increasingly, Big Tech companies are abusing their power to censor the speech of Americans. In the past four years, we've seen Big Tech:

- Act as agents of the state, taking orders from Washington bureaucrats to censor Americans and squelch dissenting opinions.
- Act as agents of a political party, deciding which news stories are allowed to be shared in the week before an election.
- Act as agents of foreign governments, including the Chinese Communist Party.

The Supreme Court has recognized that large social media companies are now the "modern public square." HB 441 would rein in Big Tech in Ohio, prohibiting companies from censoring Ohioans, and allowing customers to hold them accountable in court for violating the law. The bill would protect Ohioans' natural rights against abuse from the consolidation of power—whether by the government, private corporations, or a combination of the two.

Big Tech companies and their allies have attempted to spread misinformation about Ohio HB 441. Here are the facts:

Myth 1: Conservative messages can now reach Americans via a multitude of social media platforms.

The number of social media platforms in existence does not eliminate serious concerns about how Big Tech's censorship is impacting the public square. As The Heritage Foundation has written, "[a] handful of Big Tech corporations now manipulate the flow of information in such an expansive way as to fundamentally reshape the public discourse." Without other platforms that can truly compete in terms of influence in our society, a revealing example of this concern is Big Tech's ability to unduly influence elections.

In the final weeks before the 2020 election, both Facebook and Twitter suppressed the New York Post's reporting on the Biden family. In November 2020, one study by the Media Research Center found that one in six Biden voters claimed they would have changed their vote had they been aware of information such as the Hunter Biden laptop story. It is becoming evident that Big Tech is taking editorial discretion in what information it allows users to see on their platforms.

Myth 2: Leftists could use HB 441 as a weapon to threaten emerging social media platforms.

HB 441 would apply to platforms with more than 50 million active users in the United States in a calendar month, not new platforms with relatively fewer users. The biggest threat to new conservative-leaning social media platforms is not lawsuits by Left-wing users who share differing viewpoints; it is Big Tech companies' ability and willingness to threaten these new companies' existence altogether.

Big Tech now has the power to pull the plug on entire companies with very limited recourse. The case of Parler drives this point home. In January 2021, Google and Apple removed Parler from their app stores – shutting them out of one layer of access to consumers. This was followed by Amazon Web Services declining to host Parler on its cloud servers – completely shutting down the platform and preventing the platform from acquiring users at a moment of business-critical growth. This is a stark example of Big Tech companies working as a cartel to cripple their emerging competition.

There is a growing number of new platforms, but Big Tech companies have created an operational monopoly on access to many of the technological building blocks for any prospective new company. Their near-total control of portions of the market means censorship is a problem that must not be ignored.

Myth 3: Restrictions on content moderation should only apply to the government, not private actors such as social media platforms.

There is a troubling trend in the digital public square: the growing unholy alliance between the federal government and Big Tech. Policymakers are right to push back against these government attempts to circumvent the Constitution and the First Amendment. When Big Tech companies do the government's bidding by removing users and content that the government tells them are objectionable, they are essentially acting as government agents—a potential violation of the First Amendment.

In July 2021, White House Press Secretary Jen Psaki described how the government is coordinating with social media platforms to flag users and content that cut against the Administration's COVID messaging. Department of Homeland Security Secretary Alejandro Mayorkas also declared that his organization is "working with the tech companies that are the platform for much of the disinformation that reaches the American public." Further concerning was when GoFundMe – an American company – shut down a campaign to raise funds for Canadian truckers under pressure from the Trudeau administration. They went as far as to seize the funds with the intent to redistribute them. While GoFundMe has partially walked back their decision, the fact they acted under pressure by a foreign government should concern all Americans.

The Biden Administration has been open in its desire to push tech companies to ban users across all platforms. Once banned, whether justly or unjustly, users would have nowhere else to go, and effectively cut them off from the public square. Refusing to address this growing problem would risk extinguishing a culture of free speech.

Myth 4: Big Tech companies are not common carriers and shouldn't be regulated as such.

When an enterprise or technology becomes so widely used that an individual's ability to effectively participate in society relies on their access to it, governments treating a company as a common carrier is a legitimate policy approach.

In seeking to avoid accountability, many Big Tech companies claim they cannot be treated as common carriers because they exert editorial control on their platforms in the way publishers do. Yet, Big Tech companies enjoy Section 230 protections from liability usually faced by publishers who are responsible for the content published on their platforms. Online service providers are protected when removing content that is "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable," but going beyond that to alter or restrict content based on political opinion, association, or viewpoint is not what Congress had in mind when it passed The Communications Decency Act in the 1990s.

These companies seek to have it both ways – claiming they are not common carriers due to exerting editorial control, but that they are not publishers subject to Section 230 – in order to escape accountability.

Myth 5: The First Amendment precludes the government from forcing a private social media platform to carry content that is against its policies or preferences.

The First Amendment does not give companies the right to exploit their consumers. Social media companies provide the market with a product. While many companies would claim that they are providing a free (or zero-price) product, in reality, they are providing a product in exchange for their users' data.

The value of that data is increasing, and Americans have the right to pursue redress when companies are abusing their power over users. The First Amendment does not exclude legislators from ensuring that consumer welfare standards apply even in zero-price markets.

Additionally, it is becoming an increasing trend that government is determining what content is allowed on social media platforms. That chilling of speech raises serious First Amendment concerns.

Myth 6: HB 441 violates conservative principles of limited government and free markets.

Government has the responsibility of setting a legal framework where markets can exist and flourish. A respect for property and contract rights is essential to a free market. HB 441 seeks to create a healthy and flourishing free market of ideas by ensuring that consumers in Ohio have rightful protection and recourse in the event that the terms and conditions of a transaction with a Big Tech company are violated, as in any other market exchange.

Having a large share of the market is not intrinsically bad, but how you attempt to maintain that market share matters. Big Tech firms acting as cartels do not constitute the free market. HB 441 rejects the notion that certain companies should be allowed disproportionate power over potential competitors and a stranglehold on the public square.

Myth 7: HB 441 would penalize social media platforms that remove harmful content such as explicit material and pornography, or foreign propaganda such as ISIS videos, as well as blocking SPAM messages.

The bill explicitly states that it would not prohibit "censoring expression that the interactive computer service or social media platform is specifically authorized to censor by federal law." It also makes clear it would not prohibit "censoring unlawful

expression, including expression that unlawfully harasses individuals or unlawfully incites violence."

Myth 8: HB 441 will immediately be challenged in court at the expense of Ohio taxpayers. Ohio should wait to see how other cases are decided before taking action.

America is a country with fifty "laboratories of democracy" and other states have passed bills with differing legislative approaches to reining in Big Tech's abuses that have faced court challenges. These cases are moving this important debate outside D.C.'s 9th Circuit Court and into courts around the country. It is simply too soon to tell how the courts will view different legislative approaches to regulating Big Tech and what the final outcome of pending cases in other states will be.

Big Tech companies will likely sue any state that attempts to challenge their monopolies in any scenario. Deferring action will not end up saving taxpayer dollars, but it could allow these companies to strengthen their stranglehold on the public square and cost Ohioans their First Amendment right to free speech in the meantime. This bill defends the free speech of Ohioans and should be upheld by the courts.