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## Testimony Before the Ohio House of Representatives Civil Justice Committee on HB 441

January 18, 2022

Chairman Hilyer and Members of the Committee:

My name is James Taylor and I am the president of The Heartland Institute. The Heartland Institute is a nonprofit, nonpartisan, public policy organization whose mission is to discover, develop, and promote freedom-oriented solutions to social and economic problems. Heartland pays special attention to freedom-oriented issues at the state-government level throughout the 50 states.

I want to sincerely thank the committee for inviting our testimony. The censorship of online free speech is one of the most important issues facing Americans and Ohioans today. Without free speech, we have no freedom.

Mr. Chairman, I will give brief remarks and then welcome any questions the Committee may have:

### Online Free Speech Cannot Be Separated from Overall Free Speech Rights

Interactive and social media are the primary means by which contemporary Americans communicate political, cultural, and other information and ideas with each other. Freedom of speech in modern America cannot exist if there is no freedom of speech on the Internet.

Over the past decade, a few large entities have gained monopoly control over social media platforms. As of December 2021, Facebook and its popular subsidiary Instagram [control 76 percent of social media traffic](#) in the United States. The top three social media companies [control 97 percent of social media traffic](#) in the United States.

### Free Speech Is Clearly Being Suppressed

Being a large and market-dominant entity does not necessarily equate to being a bad actor, of course. Indeed, a primary reason companies become large and market-dominant is because they are better than their competitors at providing a product or service that consumers value. Such successful companies typically offer a net societal benefit, not a net societal harm. A very serious problem emerges, however, when a market-dominant company, or cartel of companies, wields its power in a manner and with the purpose of suppressing Americans' unalienable rights.

It is incontrovertible that Big Tech is wielding its power with the purpose of suppressing people's sharing of political, cultural, and religious views. Nor is it possible to question whether Big Tech companies have been successful in that endeavor. Big Tech has censored and blocked scientists and medical doctors from questioning World Health Organization narratives about COVID-19 origins; scientists and medical doctors from questioning the U.S. Centers for Disease Control's ever-shifting narratives about masks, economic shutdowns, vaccines, and social distancing; pastors from presenting online church services; news media from presenting facts and opinions regarding election topics; and everyday Americans from sharing their own views with friends, family, and

acquaintances.

## **Protecting Unalienable Rights Is the Primary Purpose of Limited Government**

To assess whether state governments may rightfully protect online free speech from tech censorship, it is imperative to look at first principles. In the Declaration of Independence, the Founding Fathers mapped out the central purpose and role of government in a free society: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men ..."

The Declaration of Independence makes it clear that we have unalienable rights that precede the existence of government, including life, liberty, and the pursuit of happiness. Freedom of speech is certainly one of these unalienable rights. The Founding Fathers emphasized that no entity may rightfully take away those rights, as they have been provided by God or nature.

To be sure, the Founders were deeply concerned about unchecked government, which often poses significant threats to people's rights. That is, for example, why the Founding Fathers created the First Amendment, which explicitly safeguards free speech from government suppression.

But the Declaration of Independence also acknowledges and clearly implies that non-government entities often threaten the rights of the people as well. Indeed, to secure our unalienable rights from private-actor threats is the primary reason why governments are instituted among men. That is why the Founders included in the Declaration the text, "That to secure these rights, Governments are instituted among men ..."

Government exists to protect people's rights from all abuses, not just those posed by authoritarian governments and threats from foreign countries.

## **The Enforcement Arm of Government Narratives**

Importantly, although not a prerequisite for states stepping up to safeguard online free speech, Big Tech has become the enforcement arm of government-sanctioned and government-disfavored speech. Big Tech has eagerly restricted free speech on government's behalf, often following calls by politicians to engage in such activities.

Big Tech suppressing speech that questions government policy is no accident. White House Press Secretary Jen Psaki admitted in a July 15, 2021, press briefing that the Biden administration "is in regular touch with the social media platforms" and is "flagging posts for Facebook." Psaki further added that Big Tech should coordinate censorship efforts so that when a person is censored and banned by one social media platform, all social media platforms censor and ban that person.

Similarly, when Big Tech censors online speech and bans a person from posting speech in the future, it often justifies its censorship and banishment based on the user posting material questioning or contradicting a government narrative. Big Tech has explicitly justified censorship decisions based on the speech in question contradicting the U.S. Centers for Disease Control, the World Health Organization, the United Nations Intergovernmental Panel on Climate Change, etc. Facebook, for example, acknowledges removing more than 18 million posts that contradict government narratives regarding COVID-19.

## Big Tech's Arguments Fall Short

Big Tech raises several arguments against governments protecting online free speech. All such arguments miss their mark.

### *1. There are no reasonable social media alternatives.*

Big Tech frequently argues that people who don't like censorship of their online speech can find some other platform that doesn't censor speech. That argument ignores the fact that only three social media entities control 97 percent of social media traffic and coordinate with each other to censor free speech. Telling Americans they can simply join some other social media platform with only a very small number of users is like government telling people they can exercise free speech only in a few, small designated places that a fraction of the population frequents. Excessively burdening free speech to the point that speech is being largely suppressed violates unalienable free-speech rights and is morally indefensible, whether perpetrated by government or private actors.

### *2. Our free-speech rights are not subject to the whims of industry.*

Big Tech frequently argues that if people don't like having their speech censored, they should start their own company or patiently wait for a speech-respecting social media platform to arrive. Our free-speech rights, however, are not subject to whether some entity can somehow, someday, do better than Parler, which made great strides in that arena until the Big Tech cartel acted in concert to destroy the platform.

### *3. A hoped-for future of free speech does not justify speech suppression today.*

Big Tech frequently argues that MySpace once held a large market share before Facebook knocked it off its perch. Big Tech tells us there is no reason to act against Facebook and the other dominant Big Tech actors because some other entities are likely to someday displace Facebook and the others. Arguing, however, that there may be a successor to Facebook that may or may not censor free speech in the future does nothing to protect our unalienable free-speech rights today. Our unalienable rights cannot rightfully be taken away for a century, a decade, a year, or even a day.

### *4. Private companies do not have a right to suppress unalienable free speech.*

Big Tech frequently argues that free speech protections only apply to government. However, the Founding Fathers made clear in the Declaration of Independence that private actors are no more entitled to suppress our unalienable free-speech rights than government is. The fact that Facebook and other Big Tech entities are private companies that make money by conquering social media does not mean they can exercise their power to suppress Americans' unalienable free-speech rights. When Facebook and other Big Tech entities chose to conduct business and gain monopoly market share in the primary venue by which Americans exercise their free-speech rights, those entities knew or should have known that Americans' free-speech rights remain in force on social media, no matter who controls the market.

### *5. There is no 'free-speech right' to suppress other people's speech.*

Big Tech frequently argues they have a free-speech right to suppress other people's free speech. That is head-spinning, Orwellian logic. No American has a "free-speech right" to shut down another person's free speech. Similarly, Big Tech has no "free-speech right" to shut down free speech in the primary venue by which Americans share their political, cultural, and religious speech and ideas.

*6. There is no legitimate slippery slope argument.*

Big Tech frequently argues that state legislation to protect online free-speech rights would force newspaper editorial boards to post all submissions and points of view on an issue, require bakers to bake cakes with any message any customer wishes, no matter how offensive, etc. That is simply false. Legislation to protect online free speech can and should be crafted to apply narrowly to user-based social media platforms with dominant market share. The primary purpose of newspapers is for the news entity to report the news and share its editorial views. The primary purpose of cake-bakers is to make delicious desserts. By contrast, the primary purpose of social media platforms is for users themselves to share their views with each other. Those would be the only entities impacted by state legislation protecting online free speech.

*7. Social media platforms should still be permitted to censor sexual obscenity and excessive violence.*

Big Tech frequently argues that legislation protecting online free speech would mean social media would be inundated with pornography and calls for violence. However, Section 230 of the federal Communications Decency Act, which preempts state laws, explicitly allows social media platforms to censor sexual obscenity and excessive violence. Properly crafted state legislation could explicitly confirm social media platforms' ability to censor such material as well.

## **Conclusion**

The safeguarding of individual liberty requires government to secure our unalienable rights from all threats, including threats from non-government actors. Indeed, the Founding Fathers clearly explained that this is the primary reason governments are instituted among men.

Today, a small number of giant Big Tech corporations have secured monopoly power over the primary means by which Americans exercise their free-speech rights. Even worse, they have nefariously and dangerously used that power to suppress free speech, all while benefiting from special government rules, regulations, and tax codes that have allowed them to make billions of dollars.

State legislators not only can take immediate and powerful action to secure our free-speech rights from abusive Big Tech censorship, they must take such action if they are to properly fulfill their responsibility to protect the rights of the citizens of their respective states.

Thank you, again, for this opportunity to discuss this issue and I am happy to take any questions you may have.