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GUEST COLUMN

The quiet threat that could muzzle free speech

Sen. Ted Cruz plans bipartisan legislation to curb government “jawboning” – pressure on media or platforms to silence speech – arguing that protecting free expression requires applying First Amendment principles evenly, no matter the politics.

By Krista L. Baughman

Senator Ted Cruz has announced his intention to introduce bipartisan legislation targeting government-induced censorship, or “jawboning.” The goal is to make it easier for individuals to bring legal claims and win monetary damages when government actors pressure private platforms or media outlets to suppress protected speech — a move that comes amid controversy over FCC comments preceding the suspension of Jimmy Kimmel.

Senator Cruz is right about one thing: our collective freedom of expression will stand, or fall, based on the integrity with which we apply First Amendment principles, regardless of politics. Indeed, much of First Amendment jurisprudence could be summed up simply as: “what goes around, comes around.”

Jawboning is a good example: it’s not a new phenomenon, nor is it unique to a political party. In the McCarthy Era, both the Truman and Eisenhower Administrations exerted pressure on Hollywood studios to blacklist suspected communists. In the Nixon Administration, government agents pressured networks like CBS to soften anti-Vietnam war coverage, using license review threats. Jawboning has again reared its ugly head in recent years, but has been able to evade judicial redress — and will likely continue to do so following the Supreme Court’s decision last year in *Murthy v. Missouri*.



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Murthy was a COVID-era case alleging that the Biden Administration had used its position of power vis-à-vis Facebook and other social media companies to coerce platforms to suppress speech about vaccine hesitancy and related issues. The plaintiffs’ evidence indicated an ongoing pressure campaign by government officials, consisting of thinly veiled threats of consequences should the administration’s censorship “requests” not be met. One example was an email from the White House Director of Digital Strategy to Face-

book in early 2021 stating “removing bad information from search is one of the easy, low-bar things you guys do to make people like me think you’re taking action. If you’re not getting that right, it raises even more questions about the higher bar stuff.” Another example was the White House’s proclamation that platforms “should be held accountable” for publishing misinformation, in conjunction with a warning that the administration hadn’t “taken any options off the table” and was “reviewing” whether Com-

munications Decency Act Section 230 (the federal law that protects platforms from liability for user-posted content) should be amended.

Fast-forward to September 2025 when, in response to Jimmy Kimmel’s remarks about the Charlie Kirk assassination suspect, FCC Chairman Brendan Carr warned Disney and ABC “We can do this the easy way or the hard way...these companies can find ways to take action on Kimmel, or there is going to be additional work for the FCC ahead.” Within hours, major ABC affiliates — including Nextstar, which was awaiting FCC approval for a multi-billion-dollar merger — announced their decision to preempt Kimmel’s show “for the foreseeable future.” President Trump praised the suspension as “Great News for America” and called on NBC to cancel its own late-night shows featuring Jimmy Fallon and Seth Meyers. Carr further stated that “we’re not done yet” when discussing anticipated changes to the content offered by media companies.

In both cases, the government’s implication was clear: censor the speech we don’t like, or we will use our considerable powers against you.

Can this conduct be redressed in court? Unlikely. In *Murthy*, the Supreme Court rejected the jawboning allegations against the Biden Administration, finding that it was “no more than conjecture” that Facebook’s decision to censor vaccine-related viewpoints was caused by the government’s menacing conduct as

opposed to Facebook's own independent business judgment. The Murthy court also rejected Plaintiffs' request for injunctive relief to prevent future jawboning, reasoning that such relief was no longer necessary because the government had "wound down" its pandemic response measures years earlier and that any ongoing pressure had "slowed to a trickle."

Applied to today, Murthy's holding likely means that Carr's statements regarding Kimmel would not rise to the level of a constitutional violation. Under the Murthy logic, it would be mere "conjecture" that media outlets removed Kimmel's show because of government pressure rather than because of their independent business judgment (e.g. "his ratings were bad!"). Nor would

the broader context of Carr's threats or the President's subsequent commentary on the suspension be likely to meet the high bar for an injunction under Murthy.

Which brings us back to Senator Cruz's proposal. Clearly, jawboning is problematic: not only does it result in the chilling of speech by the government, but it often comes about in secretive ways that deprive a citizen of the ability to seek redress for their censorship. Against this backdrop, a bill that provides citizens with an avenue to address government jawboning would, in theory, be beneficial both for individual rights and free speech culture more broadly.

But as with any legislation, the devil is in the details. While the text of the bill is not yet available, some

threshold issues this legislation must address include grappling with qualified immunity principles that normally protect government actors from liability and creating carve-outs for things like legitimate law enforcement efforts and unprotected speech. Prosecuting a jawboning claim will also pose evidentiary challenges, as plaintiffs will undoubtedly need to prove that the true cause of censorship was government coercion, not the business judgment of the third party who silenced them — a potentially sticky widget.

Ultimately, however, we should applaud any legitimate effort at bipartisan legislation that aspires to protect the free speech rights of all Americans equally, regardless of politics. Because in the end, what goes around, comes around.

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