



The political effort to limit free speech attacks our own values

BY JONATHAN TURLEY, OPINION CONTRIBUTOR — 02/24/21 11:00 AM EST

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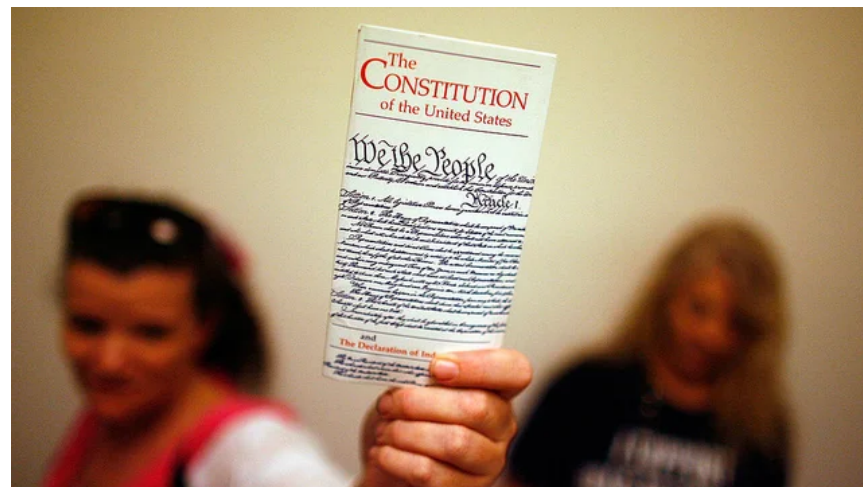
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English essayist Samuel Johnson wrote that “when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.” I thought of Johnson’s words in preparing to appear before a House committee exploring limitations on free speech, including a campaign by some Democratic members and activists to remove networks like Fox News from cable carriers. As someone who just came over to Fox News as a legal analyst from CBS and the BBC, the hearing concentrated my mind “wonderfully” on the future of free speech and the free press.

Increasingly, free speech in the United States is described as a danger that needs to be controlled, as opposed to the very value that defines us as a people. While I am viewed as a “free speech purist” by many, I maintain what once was a mainstream view of free speech. I believe free speech is the greatest protection against bad speech. That view is, admittedly, under fire and may even be a minority view today. But history has shown that public or private censorship does not produce better speech. It only produces more censorship and more controlled speech.

There is no disagreement that we face a torrent of false, hateful, extremist speech on social media and in other public forums. This speech is not without cost: It fuels those filled with rage, victimizes the gullible, and alienates the marginal in our society. It is a scourge, but not a new one.

The Constitution was written not only for times like these — it was written during times like these. Politics has always been something of a blood

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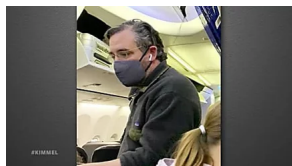


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sport, literally. At the start of our Republic, the Republicans and Federalists were not trying to “cancel” one another in the contemporary sense; they were trying to kill each other in the actual sense, through measures like the Alien and Sedition Acts. There also were rampant false conspiracy theories about alliances with Great Britain, France, Spain, and other foreign powers. Newspapers and pamphleteers were highly biased and partisan.

Members of Congress are now pushing for public and private censorship on the internet and in other forums. They are being joined by an unprecedented alliance of academics, writers and activists calling for everything from [censorship](#) to [incarceration](#) to [blacklists](#). For example, an article published in The Atlantic by Harvard law professor Jack Goldsmith and University of Arizona law professor Andrew Keane Woods [called for Chinese-style censorship](#) of the internet, stating that “in the great debate of the past two decades about freedom versus control of the network, China was largely right and the United States was largely wrong.”

Much of the effort by politicians and activists has been directed at using Big Tech to censor or bar opposing viewpoints, seeking to achieve indirectly what cannot be achieved directly in curtailing free speech. Congress could never engage in this type of raw content discrimination between news organizations under the First Amendment.

However, it can use its influence on private companies to limit free speech. The move makes obvious sense if the desire is to shape and control opinion — the essence of state-controlled media. Controlling speech on certain platforms is meaningless if citizens can still hear opposing views from other sources. You must not only control the narrative but also eliminate alternatives to it.

The most extreme effort was made plain this week as some in Congress sought to pressure companies like AT&T to reconsider whether viewers should be allowed to watch Fox News and other networks. In a recent letter to cable carriers like AT&T, House Democrats Anna Eshoo and Jerry McNerney of California appeared to mirror calls from activists to drop such networks from their lineups. The members stressed that “not all TV news sources are the same” and called these companies to account for their role in allowing such “dissemination.”

The letter solely targeted those networks that the members and their constituents do not like or likely watch, a list of every major television channel viewed as conservative leaning. If the cable carriers were to yield to such pressure, there would be no major television outlet offering a substantial alternative to the coverage of networks like CNN and MSNBC. Tens of millions of viewers would be forced to watch those channels, or watch nothing at all. The limitation or elimination of conservative networks clearly would work to the advantage of Democrats — an obvious conflict of interest laid bare not only by the demand but the inclusion of only networks with large conservative audiences.

Democrats are pushing for cable carriers to explain their “moral” criteria for allowing tens of millions of viewers access to Fox News and other targeted networks. The answer should begin with the obvious principles of free speech and a free press, which are not even referenced in the Eshoo-McNerney letter. Instead, the companies are asked if they will impose a morality judgment on news coverage and, ultimately, public access.

This country went through a long and troubling period of morality codes used to bar speakers or censor material that barred atheists, feminists, and others from espousing their viewpoints in newspapers, books, and movies. Indeed, there was a time when the Democratic Party fought such morality rules, in defense of free speech.

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Those seeking free-speech limits often speak of speech like it is a swimming pool that must be monitored and carefully controlled for purity and safety. I view speech more as a rolling ocean, dangerous but also majestic and inspiring, its immense size allowing for a natural balance. Free speech allows false ideas to be challenged in the open, rather than forcing dissenting viewpoints beneath the surface.

I do not believe today’s activists will succeed in removing the most-watched cable news channel in 2020 from the airways. But, then again, I did not think social media sites — given legal immunity in exchange for being content-neutral — would ever censor viewpoints. The measures being discussed in Congress have the potential to defeat us all. It is surprisingly easy to convince a free people to give up their freedoms, and exceedingly difficult to regain those freedoms once they are lost.

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