



House Committee on the Judiciary  
Hearing on “The Censorship Industrial Complex”  
February 12, 2025

Statement for the Record

Knight First Amendment Institute at Columbia University

The Knight Institute thanks Chairman Jordan, Ranking Member Raskin, and members of this honorable Committee for the opportunity to submit this statement for the record of the subject hearing.

The Knight Institute’s mission is to defend the freedoms of speech and the press in the digital age. The Institute’s work is concentrated on the intersection of First Amendment freedoms and new technology, and is dedicated to protecting and promoting a system of free expression that broadens and elevates public discourse.

The hallmark tools of the digital age—social media platforms that host and drive so much of our public discourse—have enjoyed unprecedented growth. This growth has condensed the platforms’ power, solidifying their role as privately owned entities that are a primary forum for speech and political expression, the vehicle through which millions of Americans engage in protected forms of expression each day.

The centralization of private power over public discourse is dangerous in part because of the size and influence of the platforms. Through their content-moderation policies and algorithms, they determine not just what can be said, and who can say it, but what ideas get heard. While accusations that platforms’ content moderation determinations and post removals amount to censorship are commonplace, a determination by a private entity to take down social media posts is not a violation of the First Amendment.

At the same time, these platforms are at risk of becoming targets for government suppression of protected speech—which would, of course, violate the First Amendment—on a mass scale. The Knight Institute has been at the [forefront](#) of efforts to raise awareness about and address the problem of government interference in social media platforms, a practice known as jawboning. Broadly speaking, jawboning is an act of government pressure to suppress constitutionally protected speech. In the social media platform context, jawboning involves informal government efforts to cajole or strong-arm private platforms to change their content-moderation practices.

The First Amendment strictly limits the government’s power to regulate speech. The Supreme Court has recognized the free speech implications of government actors pressuring speech intermediaries; in [Bantam Books, Inc. v. Sullivan](#), the Court held that the First Amendment bars the government from coercing private speech intermediaries into suppressing speech it disfavors. At the same time, the Court implied that the First Amendment permits the government to attempt to persuade private actors into embracing its views.

At what point government efforts to pressure social media platforms to take down speech run afoul of the First Amendment is a vitally important question. This is because some efforts by government actors to engage with online platforms are legitimate as an aspect of governance, including a manifestation of the public’s right to hear its government’s position. Efforts to coerce, however, are unconstitutional, because they leverage the power of the state to censor public discourse.

The line between persuasion and coercion is not an easy one to draw. And despite the guidance offered by the Court’s decision in *Bantam Books*, in the sixty-plus years since, its influence has been uneven; lower courts have not uniformly coalesced around or adhered to a consistent, principled interpretation of its holding.

The lack of clarity on this issue is cause for concern, due to the potential impact on the flow of information via government pressure on social media companies. These companies, which are dependent on the goodwill of regulators, are especially susceptible to coercion. Post removals will not necessarily affect the financial interests at the core of their businesses; the incredible scale of their operations means the removal of any particular post will not significantly change the product they offer their users. In other words, taking down speech at the behest of a government actor would not have an expansive effect on the companies’ business interests, but declining to do so could affect their relationship with the government that regulates them. For a government seeking to have a platform take down certain speech, then, coercing the platforms into doing so is relatively easy—far easier than cajoling a newspaper to take down a particular article, for example. Yet the resulting impact on how information reaches Americans can be far greater.

In fact, the operational scale and reach of the platforms—their immense power over public discourse—is also what makes them a particularly attractive target for government coercion. By pressuring these companies to carry what the government wants Americans to hear, or to suppress what the government wants to keep from, the public the government can usurp the platforms’

reach and influence for its own ends. Government officials know very well that by pressuring a small handful of technology companies they can reshape and control public discourse online.

Given the immense power over public discourse that coercing social media outlets to take down speech can create for the government, the outstanding question in terms of jawboning—when does legitimate, persuasive government communication cross the line into illegitimate coercion?—is one on which additional guidance is needed.

Last year, the issue of jawboning reached the Supreme Court for the first time since *Bantam Books*, with two cases, [NRA v. Vullo](#) and [Murthy v. Missouri](#), argued on the same day. The plaintiffs in *Murthy*—two states and five social media users—alleged that the Biden administration pressured social media companies to suppress users’ speech on their platforms online. Specifically, they claimed that government communications from Biden administration officials and several federal agencies to the major platforms regarding misinformation on COVID-19 and the 2020 election violated the First Amendment.

In an [amicus brief](#) filed in support of neither party to the case, the Institute argued that courts should consider the totality of the circumstances in deciding whether government conduct was coercive, rather than merely persuasive. The Institute pointed, in particular, to a non-exclusive four-factor test lower courts have derived from *Bantam Books*, which considers: (1) the government’s word choice and tone, recognizing that the government may express its views forcefully, but generally may not issue threats and commands; (2) how the recipient understood the communication, recognizing that a subjective perception of coercion can be evidence of objectively coercive conduct; (3) the presence or absence of regulatory authority, in recognition of the fact that government pressure is more likely to be coercive when it comes from an official in a position to retaliate through the exercise of official responsibility; and (4) whether the government referred—explicitly or implicitly—to adverse consequences for noncompliance, suggesting an attempt to coerce rather than persuade.

The Institute also argued that drawing the constitutional line between coercion and persuasion is the best means of accounting for three key First Amendment issues at stake in these cases: (1) the interest of intermediaries and their users in communicating and associating free from government coercion; (2) the interest of the public in having and in hearing from a government empowered to attempt to shape public opinion through persuasion; and (3) the interest of the public in preventing the government from circumventing constitutional limits by acting informally or surreptitiously. In light of these considerations, the Institute called upon the Court to confirm that the *Bantam Books* test is the proper test; to articulate the First Amendment interests at stake, as listed above, to guide courts in determining whether governmental conduct was coercive; and to resolve the case narrowly, without contorting jawboning doctrine in a prophylactic effort to address all of the many challenges created by the centralization of private power over public discourse.

Applying this framework, the Knight Institute argued that at least one set of communications between the White House and Facebook crossed the constitutional line. In those communications, an official sent Facebook a news article alleging that it had failed to control misinformation, accusing Facebook of “hiding the ball;” the next day, another official complained that the platform was not “trying to solve the problem” and warned that the White House was considering its options on the matter. As noted in the Institute’s brief:

Here, the factors suggest that this interaction may have been coercive. The officials’ word choice and tone were accusatory and demanding, and their statement that the White House was “considering [its] options” could be read as an implicit threat of regulatory retaliation. The constitutional interests suggest the same. The officials’ statements were private, meaning that they did not contribute to public discourse and that they risked allowing The officials to evade public, electoral, and judicial accountability. In addition, it does not appear that the officials attempted to inform the platform’s exercise of editorial judgment; rather, the officials expressed frustration paired with an ambiguous reference to other “options.” For these reasons, the interaction likely crossed the constitutional line.

While the Court did not reach the merits of the *Murthy* case, finding that the plaintiffs lacked standing, its ruling was consistent with the theory the Institute advanced. The Court noted that the plaintiffs had not established a “concrete link” between the platforms’ removal of the posts in question and the government’s communications. Unfortunately, the Court did not offer any further guidance as to the line between permissible attempts to persuade and impermissible attempts to coerce. (In *NRA v. Vullo*, the Court applied the coercion/persuasion framework in holding that the NRA had plausibly alleged that New York had unconstitutionally coerced insurance companies into dropping the NRA, in an effort to suppress the NRA’s advocacy. In doing so, the Court applied *Bantam*, but there, too, it failed to offer any specific guidance to the lower courts in distinguishing between coercion and persuasion.)

The facts underlying *Murthy* took place during the Biden administration, and the Institute continues to believe that Biden White House officials appear to have overstepped in some communications with platforms, such that those communications likely crossed the line into coercion. It would be a mistake, however, for the courts to allow the question of where to draw the line remain unanswered. If anything, having the guidance to evaluate the constitutionality of government communication to a private intermediary is even more critical now.

We seem to be entering a golden age of jawboning. For years, this Committee has directed its subpoena power toward [researchers](#) studying disinformation, even though those researchers have a First Amendment right to pursue that research, and even though the committee’s legitimate investigative interest is limited to the narrow question of whether the *government* has coerced the suppression of speech. Other committees have [browbeat](#) private universities into not just

investigating discrimination on their campuses, but into suppressing even constitutionally protected criticism of Israel's conduct in Gaza. Irrespective of one's position on the merits of disinformation research or of the viewpoints expressed during campus protests, that activity clearly [encompasses](#) expression protected by the First Amendment.

With the advent of the new administration, the pace and fervor of these efforts have accelerated as the administration promulgates a censorial agenda. One newly issued executive order, for example, [directs](#) the Attorney General to “investigate the activities of the Federal Government over the last 4 years” for the preparation of “a report to be submitted to the President ... with recommendations for appropriate remedial actions to be taken,” pursuant to a characterization of government efforts to combat misinformation online as a campaign to suppress speech. Another executive order [directs](#) the issuance of recommendations for universities as to when and how to remove immigrant students and staff for purported antisemitism, but goes beyond the legitimate and important enforcement of anti-discrimination laws and appears to contemplate the removal of students for engaging in certain constitutionally protected speech. A third [directs](#) agencies to issue a report on and craft a “strategic enforcement plan” regarding private sector DEI practices. The high likelihood that the vast majority of these practices do not violate anti-discrimination laws makes this effort to combat them appear to be directed at suppressing constitutionally protected expression. (The FCC has opened an [investigation](#) into Comcast's DEI programs.)

Even prior to being confirmed as the Chair of the FCC, then-Commissioner Brendan Carr engaged in several concerning communications to media and technology companies, including by:

- [Posting](#) on social media that “broadcast licenses are not sacred cows” and that media companies would be “held accountable” by the FCC should they fail to operate in the public interest;
- Sending a [letter](#) to the president of Disney/ABC accusing the company of “contribut[ing] to th[e] erosion in public trust” in media, and warning that the FCC would be “monitoring the outcome” of its negotiations with its local broadcast;
- Stating that the FCC should consider President Trump's deceptive editing allegations against 60 Minutes in the agency's ruling on the Skydance-Paramount merger; and
- [Writing](#) to the CEOs of Alphabet (Google), Apple, Meta, and Microsoft decrying their alleged participation in a “censorship cartel,” warning that the incoming administration and Congress would “take broad ranging actions to restore the First Amendment rights” of Americans, including “both a review of [the] companies’ activities as well as efforts by third-party organizations and groups that have acted to curtail those rights,” and invoking the FCC's administration of Section 230, “Big Tech's prized liability shield” by noting its benefits confer only to those who “operate, in the words of the statute, ‘in good faith.’”

Each of these communications is cause for concern. Threatening to revoke the broadcast licenses of media organizations, on the apparent theory that their coverage of the current administration is not in “the public interest,” appears to be straightforward government censorship. Warning media companies that their business practices will be “monitor[ed]” and their editorial decision-making will be factored into the consideration of a separate corporate venture is not in furtherance of free speech concerns. And pressuring social media companies—whose content moderation practices are, themselves, protected expression—with respect to those practices does nothing to “restore” Americans’ First Amendment rights. Unfortunately, Carr’s pressure campaign appears to have caused at least some of his targets to bow to his censorial threats: Within weeks of receiving Carr’s letter, Meta [abandoned](#) its internal and third-party fact-checking apparatuses. (Separately, President Trump acknowledged that his threatening of Facebook “[probably](#)” led to Mark Zuckerberg’s agreement to settle their lawsuit.)

Evaluated in light of the Knight Institute’s above-cited analysis of certain Biden White House communications with platforms at issue in *Murthy*, these missives may very well have been coercive by seeming to threaten regulatory reprisal in retaliation for constitutionally protected expressive decisions. In other words, they seem to be an effort by the government to suppress speech it disfavors.

What should be done about this ongoing issue? As a baseline matter, government officials should limit their communications to persuasive engagements, not coercive threats. The Supreme Court should look for another opportunity to provide lower courts with clear guidance on the line between coercion and persuasion. And Congress should consider legislation to ensure that genuine efforts at coercion—from any government official—do not evade public and judicial scrutiny.

The problem of government pushing private entities to revise their speech-related practices is extensive and continues to broaden, encompassing not only technology platforms but also media outlets, universities, and more. Irrespective of the entity targeted, clarity on when constitutionally permissible persuasive communication becomes unconstitutional and illegitimate coercive engagement is necessary to protect speech and Americans’ First Amendment rights more broadly.