

Subcommittee on Communications and Technology
Hearing on
“Fanning the Flames: Disinformation and Extremism in the Media”
February 24, 2021

Ms. Jonathan Turley, The George Washington University Law School

The Honorable Robert Latta (R-OH)

1. Professor Turley, I would like to submit the following questions on behalf of my colleague, Representative Lesko of Arizona:

In a recent opinion article dated February 14, 2021, you wrote that some members of Congress were, “fueling the politics of division” in the aftermath of President Trump’s impeachment trial. The Majority has suggested that expressing conservative views is the equivalent of engaging in disinformation.

- a. You wrote in your written testimony that we are living through a period similar to the Red Scare. Why do you think recent calls to take conservative-leaning news programs off the air are problematic for free speech in America?

RESPONSE:

The most dangerous aspect of the current anti-free speech movement is the coalition of corporate, media, and political powers. Censorship (or what Sen. Blumenthal euphemistically calls “robust content modification”) is now a celebrated cause among academics, reporters, and members of Congress. Even blacklisting has come into vogue with calls for the barring of books and authors alike due to their political views. As bad as the anti-free speech movement has become, systems of censorship are only truly effective if there are no alternatives to approved viewpoints or sources. If citizens are able to obtain uncensored news or viewpoints, the effort to control debate or frame public discourse is lost. Indeed, as evident in the [recent public spat between “PBS NewsHour” correspondent Yamiche Alcindor and Washington Post Jennifer Rubin](#), liberal journalists can be condemned if they stray even slightly from a common narrative.

What is most striking in comparison to the anti-free speech efforts of the 1950s is that the current movement is being propelled from the left, including voices in Hollywood where countless movies have been made (legitimately) demonizing the blacklisting of writers, actors, and artists. Now that conservative figures are being targeted, censoring and cancelling viewpoints has become a cause célèbre. Now, rather than being denounced as “communists” or threats to democracy by spreading “propaganda,” targeted individuals are denounced as “fascists” or threats to democracy by spreading “disinformation.” It is the same underlying impulse to control the speech of others – a scourge that rests like a dormant virus in our body politic and manifests itself like a fever in times of great social or political unrest.

- b. Do you think that a desire by some in Congress to engage in censorship of opposing views fuels mistrust in our institutions?

RESPONSE:

One of the greatest dangers arising out of this anti-free speech movement is the involvement of members of Congress. The success of the movement is due to the use of major corporations like Twitter, Facebook, and Google to achieve indirectly what the government cannot do directly. By pushing for greater censorship (or “robust content modification”), members send a not-so-subtle message to these corporations of their expectations. These comments and letters also serve as an implied threat that the failure to silence opposing political viewpoints could expose these companies or their executives to greater legislative or regulatory actions. The result can be a type of “commandeering” where companies are pressured to maintain a private system of censorship that shapes the accepted “truth” or facts by declaring opposing views as “misinformation” or “disinformation.”

Indeed, the [recent move by Facebook](#) offers a chilling example of the implications of this alliance of corporate and political power. Facebook removed an interview with Trump and his daughter-in-law Lara Trump, not for the content of the interview but the mere voice of Trump. Trump officials were sent an e-mail from a Facebook employee, warning that any content posted on Facebook and Instagram “in the voice of President Trump is not currently allowed on our platforms (including new posts with President Trump speaking).” The effort seems not to correct content but to eradicate figures who are declared persona non grata by corporate fiat.

The Honorable Michael C. Burgess, M.D. (R-TX)

1. Professor Turley, we talked a lot during our hearing about the importance of encouraging more speech in order to combat disinformation. In 1978, Alexander Solzhenitsyn gave the commencement speech at Harvard University where he opined on the moral shortcomings of a purely legalistic society. He specifically discussed the role of the media in such a society, stating:

“Enormous freedom exists for the press, but not for the readership because newspapers mostly develop stress and emphasis to those opinions which do not too openly contradict their own and the general trend.”

He goes on to describe the necessary posturing of the press based on what is fashionable.

“Because instant and credible information has to be given, it becomes necessary to resort to guesswork, rumors, and suppositions to fill in the voids, and none of them will ever be rectified...How many hasty, immature, superficial, and misleading judgments are expressed every day, confusing readers, without any verification.”

Finally, he summarizes the threat of an unrestrained press in a purely legalistic society.

“Hastiness and superficiality are the psychic disease of the 20th century and more than anywhere else is this disease reflected in the press. Such as it is, however, the press has become the greatest power within the Western countries, more powerful than the legislative power, the executive, and the judiciary. And one would then like to ask: By what law has it been elected and to whom is it responsible?”

We have seen over the last couple of years the power wielded by an unelected media. They have concentrated their focus on a few prominent positions, shutting out the voices and perspectives of the unfashionable – to borrow Mr. Solzhenitsyn’s term. The remedy is not to push government mandates and controls onto existing media, but to incentivize diversity of thought and prominence of disenfranchised contributors to the national dialogue. We should also encourage journalistic integrity by removing barriers to entry for local news and local broadcasters, which Republicans have tried to do for decades.

- a. Mr. Turley, can you talk about how promoting local journalism can help combat disinformation?

RESPONSE:

Local journalism offers a major counterbalance to increasing control of a few media and Internet companies over political discourse and speech in the United States. They represent an alternative source for news and viewpoints even if national media is quickly becoming a virtual echo chamber. These small stations and newspapers not only offer a needed outlet for local news but greater diversity in viewpoints on the news. Citizens are more likely to be heard in such local media outlets in expressing their own viewpoints. The failure of major media figures to fight bias and advocacy in news coverage only magnifies the importance of these local media outlets.

- b. What role do competition and anti-collusion laws play in protecting free speech on traditional media sources?

RESPONSE:

As noted earlier, members of Congress are seeking to achieve indirectly through these corporations what they could not achieve directly through legislation. Various members have threatened legislative or regulatory actions if these companies do not ramp up private censorship efforts. Conversely, banning or limiting viewpoints has been met with open approval and support from many in Congress. The result is a type of “commandeering,” an analogous problem to states being commandeered by Congress through spending conditions. In the federalism area, such commandeering has led to the constitutional scrutiny of legislative provisions in cases like

*New York v. United States*¹ and *Printz v. U.S.*². However, like speech limits by private companies, commandeering is generally treated as outside of the governance of the First Amendment. Yet, the purpose is the same. Congress can use the possibility of legislative benefits or penalties to exert indirect controls over private companies. The degree of coordination between government and corporate figures could force greater scrutiny of these legal and constitutional concerns. This private system of censorship is making a mockery of our constitutional system as political figures pressure corporate figures to silence their political opponents. If the Constitution is to be more than a Potemkin village, Congress will have to act to protect free speech from both governmental and corporate systems of censorship.

¹ [505 U.S. 144, 161 \(1992\)](#) (“Congress cannot “simply ‘commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.’”).

² [521 U.S. 898, 935\(1997\)](#) (“The Federal Government may neither issue directives requiring the States to address particular problems, not command the States' officers . . . to administer or enforce a federal regulatory program. It matters not whether policymaking is involved...”).