

The New NAFTA Trade Deal Lets Big Tech Squelch Conservative Speech

[Jeremy Carl](#)

The Federealist, December 13, 2018

Big Tech lobbyists orchestrated the quiet insertion of a seemingly innocuous provision into the deal that will allow them to silence conservative voices.

Less than two weeks ago, President Trump signed the U.S.-Mexico-Canada Agreement intended to be the successor to the North American Free Trade Agreement, which Trump has attacked for decades. The White House [says](#) the agreement will “better serve the interests of American workers and businesses” and “includes the strongest digital trade ... provisions of any United States trade agreement.”

Unfortunately, an obscure article in one provision of the agreement only serves the interests of the largest tech monopolies by granting them special privilege to censor conservatives. Congress should demand the removal or amendment of this article before giving consent to confirm section 230.

How did this happen? Big Tech lobbyists orchestrated the quiet insertion of a seemingly innocuous provision (Article 19.17) into the deal that is based on Section 230 of the Communications Decency Act. Section 230, much beloved by big tech, and an essential building block of their monopolistic dominance, holds that platforms like Facebook cannot be held liable as a “publisher or speaker” of their users’ content.

Under the right circumstances, there’s good reason for tech companies to have this type of immunity. If Facebook were legally responsible for everything its more than 2 billion users post, then it would enforce overly restrictive rules and restrictions and block lawful posts. Because Congress explicitly acknowledged that these platforms served as a “forum for a true diversity of political discourse,” it granted this important privilege.

However, as Senator-elect Josh Hawley — who was an active leader on challenging the power of big tech when he served as Missouri attorney general, and shows every sign of leading this fight in the Senate — [pointed out](#), these platforms no longer support the political diversity that the law was premised on. Instead, big tech relentlessly censors conservatives. They take all of the benefit of the provision, while accepting none of the costs.

Similarly, Sen. Ted Cruz has [argued](#) that dominant tech platforms aren’t acting neutrally, so they “should be considered to be a ‘publisher or speaker’ of user content if they pick and choose what gets published or spoken.”

Neither Hawley nor Cruz are arguing that social media should be a free-for-all, but simply that they should be politically neutral. Section 230 also grants immunity for

removing content a platform finds to be “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.”

Adam Candeub, an internet and telecommunications law professor at Michigan State and former Federal Communications Commission attorney, noted in an [article](#) for RealClearPolitics that this language was not meant to enable Facebook, Twitter, or Google to censor whatever they arbitrarily find “objectionable.” He points to several federal court cases that held “otherwise objectionable” must be interpreted as being similar to the obscenity, violence, and harassment, which doesn’t allow viewpoint discrimination.

However, the agreement changes the law to let tech companies remove whatever they find “harmful or objectionable.” According to Candeub, these changes will “likely lead courts to interpret it to mean whatever the platforms object to — which has thus far included the word ‘illegal alien,’ pro-life advertisements, videos defending ‘Israel’s Legal Founding,’ and President Trump’s own immigration advertisements.”

This means courts would likely throw out any action to stop censorship under state law or an executive order, which Trump reportedly wants to issue. He has also spoken out [against](#) Twitter’s shadow-banning of conservatives and Google’s political [manipulation](#) of its search results. However, as is too often the case, establishment elements in the administration have thwarted Trump’s agenda, and it is unclear how much focus this issue has in the White House.

But we haven’t lost the battle yet. Even though Trump signed the agreement, both houses of Congress must ratify it. If enough Republicans hold out, they can demand the White House remove Article 19.17. Doing so will not serve as a poison pill for the entire treaty. U.S. negotiators proposed and advocated Article 19.17, so Mexico and Canada will not pull out over any changes to it.

At a bare minimum, Congress should change the treaty language so it mirrors existing federal law, and note that they do not intend for the treaty to change any legal precedents already established in this area.

Far better, though, would be for Congress to just remove the entire article. While in theory granting these platforms immunity is a good idea, Silicon Valley giants have abused their privileges by acting like publishers and editors. Congress should have a serious debate about changing the law and imposing it on our trading partners.

Conservatives are finally beginning to wake up to the threat Silicon Valley monopolies pose to the marketplace of ideas. Those of us who argued that the bans of “offensive” speakers on the “extreme right” would eventually lead to the censorship of more mainstream figures have been vindicated. If Republicans have any hope of getting their message out in 2020 and beyond, they need to stop providing grist to these left-wing monopolies’ mills.

Jeremy Carl, who began his tech career the earliest days of the Web, is a research fellow at the Hoover Institution, Stanford University.