

THE NEW CENTER

Policy Paper

June 2021



In America, You Get to Speak Your Mind

**THE 5-POINT PLAN TO COUNTER THE ATTACK ON
FREE SPEECH AND EXPRESSION IN AMERICA**

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ABOUT THE NEW CENTER

American politics is broken, with the far left and far right making it increasingly impossible to govern. This will not change until a vibrant center emerges with an agenda that appeals to the vast majority of the American people. This is the mission of The New Center, which aims to establish the ideas and the community to create a powerful political center in today's America.

THE NEW CENTER

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NEW CENTER SOLUTIONS



Teach the First Amendment from
The First Grade On



Make Colleges Champions of Free
Speech and Expression



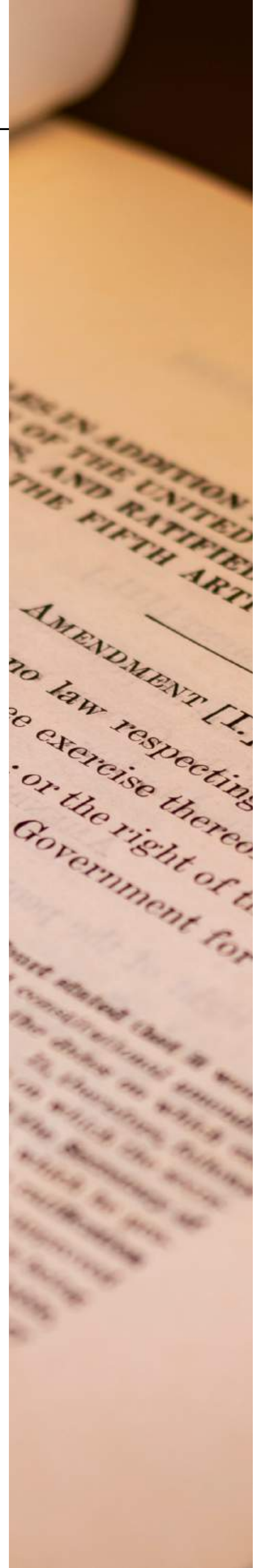
End Political Discrimination in the
Workplace



Protect Democracy by Protecting
Political Speech



Curb the Censorship Power of Big
Tech Companies and Billionaires



INTRODUCTION

It's the First Amendment to the U.S. Constitution for a reason. Freedom of assembly, religion, and speech is the foundation upon which this entire country is built. Without it, we don't have a democracy.

Although free speech is a fundamental component of a free and open society, the right to free speech in America has never been absolute. While the First Amendment provides a wide scope of protections for speech, including political, ideological, and commercial speech, there have always been limits of time, place, and manner. There is no right to hold a political rally or religious revival at 2AM in a residential area, for example.

Courts have also determined specific categories of speech that are unprotected by the First Amendment. These include obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography.

Still, we've been able to count on a strong legal and cultural consensus on the core liberty:

In America, you get to speak your mind. And the burden of proof lies with any individual or institutions that would prevent you from doing so.

Or so we thought. Although the legal protections preventing government from censoring speech are still strong, it's fair to wonder for how long given the broader cultural assault on free expression in America. In the name of fighting against hate speech, violence, and "misinformation," an increasingly powerful group of gatekeepers in corporate board rooms, academia, media, and government keeps expanding the definition of what is not O.K. for Americans to say and to think. It may have started with the best of intentions; eliminating terrorist videos and child pornography, protecting social media users from racism and misogyny, banning content that advocates for violence, and preventing the spread of lies that threaten our democracy. But now, it has gone too far.

Today, legions of Americans are being kicked off social platforms, losing their jobs, and having their reputations destroyed, not because they were spewing hate or inciting violence, but because they voiced an unpopular or unconventional opinion, used the wrong word or violated the ever-shifting and increasingly capricious rules—as dictated by our cultural gatekeepers—as to what constitutes acceptable speech. These gatekeepers—be it unaccountable human decision makers or AI algorithms—are censoring ideas that deserve to be discussed and burying stories that should be told.

In America, the First Amendment has a very specific legal connotation—the government can't censor what you say—but it is also rooted in the enduring American cultural norm of free expression.

Although the United States government at times has been overzealous in pursuing reporters it believes to be responsible for leaks, it is not conducting a broad assault on Americans' right to free speech. But we're moving down a road that should make Americans nervous.



Not long ago, an American—left, right, or center—who had their First Amendment rights infringed upon could turn to the American Civil Liberties Union (ACLU) to take up their cause. But today, according to a [recent piece](#) in The New York Times, the ACLU is “riven with internal tensions over whether it has stepped away from a founding principle—unwavering devotion to the First Amendment,” as “a belief in the centrality of free speech to American democracy contends with ever more forceful progressive arguments that hate speech is a form of psychological and even physical violence.”

As the traditional defenders of free speech have receded so too has the broader cultural consensus that being American means being comfortable with ideas that make you uncomfortable.

Though people and politicians on the right have lately been inveighing—and fundraising off—the evils of “cancel culture,” the growing hostility to free expression in America is one that should trouble anyone who cares about American democracy or the creation of a vibrant political center in America.

Throughout American history, the people we venerate as heroes—the nation’s founders, the suffragettes who expanded the right to vote to women, and the civil rights activists who fought for equality for Blacks and for all Americans—have all seen free speech and free expression as the essential means through which they can create change.

They understood that if Americans do not feel free to speak their mind—if we can’t honestly share our opinions and fully and freely debate our problems—then there is no way to solve them.

That’s why The New Center believes a recommitment to free speech and free expression is a precondition for the revival of American democracy and for uniting our terribly divided country.

AMERICANS UNEQUIVOCALLY SUPPORT FREE SPEECH

Poll after poll shows that Americans wholeheartedly support the First Amendment. According to a Pew Research Center [Spring 2019 Global Attitudes Survey](#), 77% of those surveyed in the United States believe that it is very important that people can say what they want without state or government censorship in their country. Polling from the Freedom Forum Institute's [First Amendment Center](#) demonstrates that this strong support permeates every facet of American life, including how we communicate online, worship, and hold institutions accountable:

- 81% believe that the freedom to worship protects all religious groups, even those that most people would consider extreme or fringe;
- 65% believe that banning users on social media for their posts violates users' First Amendment rights; and
- 64% believe that public school students should be allowed to report on controversial issues in their student newspapers without the approval of school authorities.

Despite these First Amendment protections and the strong support behind them, Americans are growing increasingly uncomfortable expressing themselves for fear of retaliation in their personal and public lives. According to a [July 2020 national survey](#) from the Cato Institute, 62% believe that “the political climate these days prevents [them] from saying things [they] believe because others might find them offensive.”

Although America's educational institutions are supposed to be grounds for intellectual competition, many students feel like they are being told what to think. According to a Gallup and Knight Foundation [2017 College Student Survey](#), even though 70% of students “favor having an open campus environment that allows all types of speech, even that which is offensive,” 61% “agree that the climate on their campus prevents some people from expressing their views because others might find them offensive.”

It shouldn't surprise anyone that students feel this way, given that universities have frequently caved to activist groups who aim to ban speakers from appearing on campuses. Some colleges and universities—as well as other institutions—have even attempted to regulate speech through the use of free speech zones, which are specially designated areas that allow for individuals to exercise their First Amendment rights.

Which begs the question: How did we arrive at a point in America where the entirety of a college campus isn't a free speech zone?

Americans are hesitant about speaking their minds at work too. According to a [July 2020 Cato survey](#), 32% of employed Americans worry they could miss out on job opportunities or get fired if their political views became known. This is despite 78% of U.S. adults believing that it is inappropriate for a corporation to fire employees based on their political views, according to a [Harvard CAPS/Harris Poll](#) from April 2021.



FIGHTING FREE SPEECH ZONES ON COLLEGE CAMPUSES

Over the years, organizations like the American Civil Liberties Union (ACLU) and the Foundation for Individual Rights in Education (FIRE) have filed lawsuits against campus policies that unconstitutionally restrict speech. And legislatures in Missouri, Arizona, Virginia, Utah, and other states have [passed laws](#) that either explicitly ban free speech zones or more broadly address speech policies on campuses. As a result, [research from FIRE](#) showed that in 2013, “roughly 1 in 6 surveyed institutions quarantined expression to a free speech zone; as of December 2018, that ratio was down to roughly 1 in 10.”

HATE SPEECH AND CRIMES ARE ON THE RISE

There is a reason why America is suddenly having such a roiling debate about the appropriate limits of free speech and free expression. Many are justifiably concerned about the increase in online harassment and hate speech, and the ease with which various radical and hate groups use online platforms to organize, spread racist or radical ideas, and launch attacks on both authorities and various ethnic and racial groups. Even before the onset of the pandemic, FBI data were showing a [significant increase](#) in hate crimes and bias-motivated killings, a trend that got even worse in 2020.

And many critics say online platforms share a significant portion of the blame. In Myanmar, Facebook was [used as a tool](#) to incite ethnic cleansing and genocide. And in 2020, an [internal investigation](#) from Facebook warned company executives that “our algorithms exploit the human brain’s attraction to divisiveness,” and if the problem was not addressed, it would feed users “more and more divisive content in an effort to gain user attention & increase time on the platform.”

This is a huge problem, made even more difficult to solve by the sheer volume of content that appears on platforms. To cite just one example, there are globally over [500 million tweets](#) every single day.

There is another massive problem—the use of all forms of media, including online platforms—to propagate a torrent of untruths that make it increasingly difficult to create a common foundation of facts for public discourse.

But the important fight against hate is, in so many ways, progressing down a dangerous and slippery slope toward a fight against free expression. And the fight against falsehood threatens to give well-placed individuals and businesses the power to censor speech that affronts their own beliefs about truth and morality.

The venerable proposition that the only cure for the evils of speech is more speech may seem glib and naïve in our current circumstances. But coming up with an alternative that doesn’t make things worse is very difficult.

2 WAYS FREE EXPRESSION IS IN RETREAT

Even though Americans wholeheartedly support the legal principle of the First Amendment and the cultural idea of free expression, many no longer feel empowered to speak their minds. And even those who don't feel this way are paying a price because we're being exposed to a narrower range of ideas and debates, and that weakens our democracy. Two pernicious trends in particular demonstrate just how far the United States is drifting from our free speech ideal.

#1. CONVENTIONAL WISDOM BECOMES THE ONLY ACCEPTABLE "TRUTH"

In dictatorships, there is an "official version" of events endorsed and conveyed by everyone in government, in the state media, or in any position of power. And anyone who challenges the official version is attacked, marginalized as a conspiracy theorist, or accused of doing the bidding of foreign or other nefarious interests. This is not the United States, and fortunately never has been. But there is a growing and troubling trend in America of groupthink taking over our debates on critical issues.

Think back to last year and how quickly and ruthlessly major U.S. media outlets, social media companies, and public health officials dismissed anyone who suggested the virus that causes COVID-19 escaped from a Chinese government research lab. Public health officials and academics dismissed dissent from other experts, such as former Centers for Disease Control (CDC) director Robert Redfield, [referring](#) to the lab-leak hypothesis as something that "would be in a movie ... or comic book," according to virologist Dr. Robert Garry of Tulane University.

Tech companies and publishers did their part to stifle those who questioned this conventional wisdom on COVID-19. Facebook flagged and prevented users from sharing a New York Post article which [suggested](#) that the coronavirus may have leaked from the Wuhan Institute of Virology, [claiming](#) that the article contained false information. The [Washington Post](#), [The New York Times](#), and [The Guardian](#) referred to the lab leak hypothesis as a "fringe theory" and characterized public officials who suggested its plausibility as conspiracy theorists. Several [elected officials](#) and [media outlets](#) even drew a causal connection between the lab-leak hypothesis and anti-Asian violence—as Maryland legislator Susan Lee said that the hypothesis created a "very toxic and dangerous climate that could subject [Asian-Americans] to violence and hate crimes."

Fast forward to today: President Biden [has ordered](#) U.S. intelligence agencies to further investigate the validity of the "lab leak" theory, and what was once considered a conspiracy theory is now a potential COVID-19 origin scenario. In the end, we may never know where exactly COVID-19 came from. But "Where did the virus come from?" is a question that you should be able to ask in our democracy. And the job of the media—properly understood—is to answer it.

#2. DEFINING WHAT IT MEANS TO “HURT” SOMEONE OR DO THEM “HARM”

Whenever a social media company takes down content or bans a user, a company fires someone for saying something unpopular or unusual, or a college shuts down a debate or cancels an appearance by an outside speaker, the explanation always sounds the same.

They say they want to protect their users from “harm.”

They say they want their students to “feel safe.”

It is an important and essential responsibility for colleges to keep their students safe and for institutions of all kinds to prevent their users, employees, and customers from being hurt or harmed. And if keeping students safe means preventing them from being physically attacked or verbally abused, and if preventing social media users from harm means ensuring child pornography doesn’t pop up in their news feed, no decent person would object.

But what happens when protecting students from harm starts to be defined as protecting them from hearing ideas they disagree with? What happens when protecting social media users from harm becomes protecting them from seeing “misinformation” that later turns out to be true? These are not rhetorical questions. Because this is happening in America, right now.

People are being fired, harassed, deplatformed, and denigrated for the “crime” of questioning conventional wisdom, for voicing controversial opinions, or asking uncomfortable questions.

ON COLLEGE CAMPUSES...

- An Evergreen State College biology professor faced [calls](#) for his firing after objecting to a proposed “Day of Absence,” in which white students and faculty were encouraged by various student groups to stay off campus in an effort to observe the role that minority students play on campus.
- Princeton African-American Studies professor [Keeanga-Yamahtta Taylor](#) faced [death](#) threats—and subsequently had to cancel several speaking events—after delivering a commencement speech in which she criticized President Trump’s policies and rhetoric.
- Professor [Lisa Durden](#) was fired from her position at Essex County College after an appearance on Tucker Carlson’s show in which she argued that protesters should be permitted to organize demonstrations with only black participants.

- A Stanford Law student was initially [barred from graduation](#) after circulating a satirical flyer criticizing the university's chapter of the Federalist Society.
- Claire Gastanaga, director of the ACLU in Virginia, was planning on speaking at College of William and Mary about the First Amendment when she was [shut down](#) by student groups who protested the chapter's stance on protecting all speech.
- An event at Whittier College hosting Xavier Becerra, California's Attorney General at the time, was [cut short](#) due to excessive heckling from audience members, who were protesting the state's impending lawsuit against the Trump administration over DACA.
- In 2017, a student group at Middlebury College invited conservative scholar Dr. Charles Murray to appear on campus. When he arrived, he was heckled by protesters so aggressively that his address was cancelled and he needed a protective escort to make it back to his car, where protesters then "pounded on it, rocked it back and forth, and jumped onto the hood," [according](#) to an account in The New York Times.

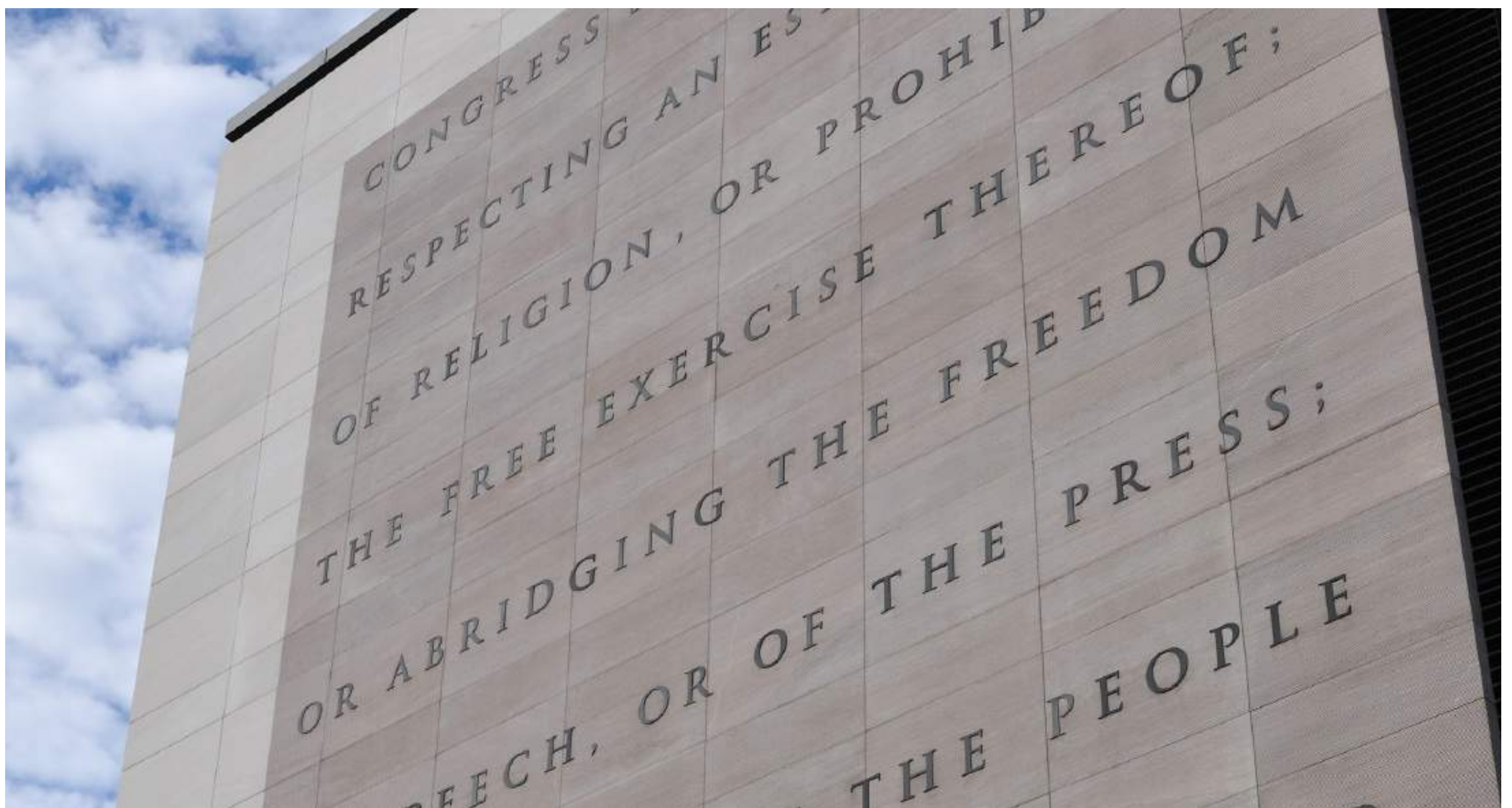
IN OUR COMPANIES AND INSTITUTIONS...

- A Google software engineer, James Damore, was [fired](#) for writing an internal memo suggesting the gender disparity within the company's workforce could be for reasons other than explicit gender bias.
- Amid the summer 2020 protests over the murder of George Floyd, data scientist David Shor was [fired](#) from his job at the liberal research firm Civis Analytics after posting academic research on Twitter which found that violent protests decrease voter turnout for Democrats (and that nonviolent protests increase turnout).
- [Gary Garrels](#), a former art curator at the San Francisco Museum of Modern Art, was pressured to resign when he disagreed with a suggestion that the museum could enhance the gender and racial diversity of its artists by stopping its collection of work by white male artists for a period of time (as the Baltimore Museum of Art announced it would do in 2020). Garrels said, 'I just don't agree with that. That's an alternative, different kind of profiling.'

IN THE MEDIA AND ON MAJOR ONLINE PLATFORMS...

- In April 2021, a documentary about the life of Supreme Court justice Clarence Thomas was [removed](#) from Amazon's streaming service with no explanation.
- Twitter [suspended](#) the account of the International Youth and Students for Social Equality—a group affiliated with international socialist parties—without justification. Similarly, Google limited its search engine traffic to an associated group, the World Socialist Website, in an effort to "promote more authoritative content."

- Glenn Greenwald, co-founder of The Intercept, [resigned](#) after an editor refused to publish an investigative article on President Joe Biden’s ties with China and Ukraine. According to Greenwald, editors also barred him from publishing the piece with other publications.
- The co-founder of Vox, Matthew Yglesias, was [pressured to leave](#) his own publication after writing pieces on the potential dangers of abolishing the police and other issues. He faced internal backlash for “challeng[ing] what he called the ‘dominant sensibility’ in the ‘young-college-graduate bubble,’” resulting in colleagues saying that they felt less safe at Vox.
- In June 2020, The New York Times took the unprecedented step of publicly apologizing for an op-ed it ran from Arkansas Senator Tom Cotton—and firing the editor who approved its publication—that argued then President Trump should deploy the U.S. military, if necessary, to quell rioting and looting that had broken out amid the otherwise peaceful George Floyd protests. Many staffers [signed a letter](#) saying the publication of the op-ed put them “in danger.” The Times had previously published op-eds from Russian President Vladimir Putin, the foreign minister of Iran, and the deputy leader of the Taliban without ever rebuking their views as they did with Senator Cotton.
- Ford Fischer, an independent journalist who captured raw footage of the January 6 Capitol insurrection and posted it to YouTube, later had his video [removed from the website](#) for violating the website's policy against posting “content that advances false claims” regarding the 2020 presidential election.



HISTORICAL CONTEXT

America's most iconic defenders of liberty, justice, and equality share a reverence for free speech. They saw it as the non-negotiable means to advance everything they hoped to achieve.



THE FOUNDERS

“Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.” —Benjamin Franklin

America's Founders, who explicitly established freedom of speech in the form of the First Amendment, understood that the country would be unable to prosper in the face of government-sponsored censorship. Moreover, they believed that the best ideas arise through the competition of ideas.

While now considered to be a prerequisite of functioning democratic systems, protections on speech and expression were not widely embraced before the founding of America.

Historian Forest MacDonald credits the authors of the 18th century book *Cato's Letters* with [pushing protections on speech](#) to the forefront of the political scene, writing, “It was John Trenchard and Thomas Gordon... who first gave unreserved endorsement to free speech as being indispensable... and who were willing to extend the privilege to all, including those who disagreed with them.” Only 50 years later, [George Washington](#), [James Madison](#), and [Ben Franklin](#) all affirmed the absolute, unwavering nature of these rights. The idea of unabridged protections on speech and expression were so pervasive among America's founders because they experienced the consequences of the alternative first-hand.

In 18th century England, any speech or written expression that was critical of the government was considered “seditious libel”—and maintaining the truth of the statements was not an adequate defense. Many colonists faced severe criminal penalties for publishing criticisms of government officials, and the Framers rightfully viewed this as a grave injustice.

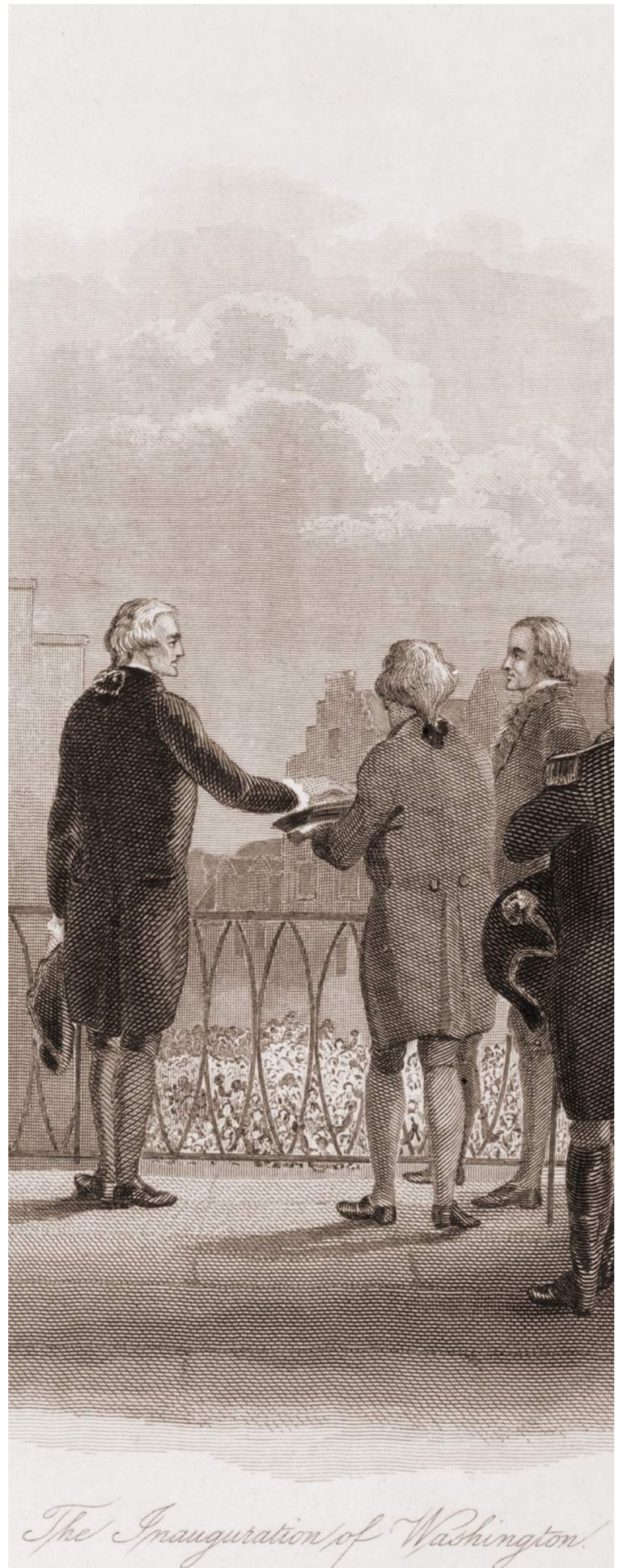
Indeed, it was Alexander Hamilton who [successfully defended](#) Peter Zenger, a New York journalist who faced criminal charges for criticizing the state’s governor in 1735. And it was Thomas Jefferson, later the motivating force of the First Amendment, who risked charges of seditious libel for [citing the failures](#) of British royalty in his authorship of the Declaration of Independence in 1776.

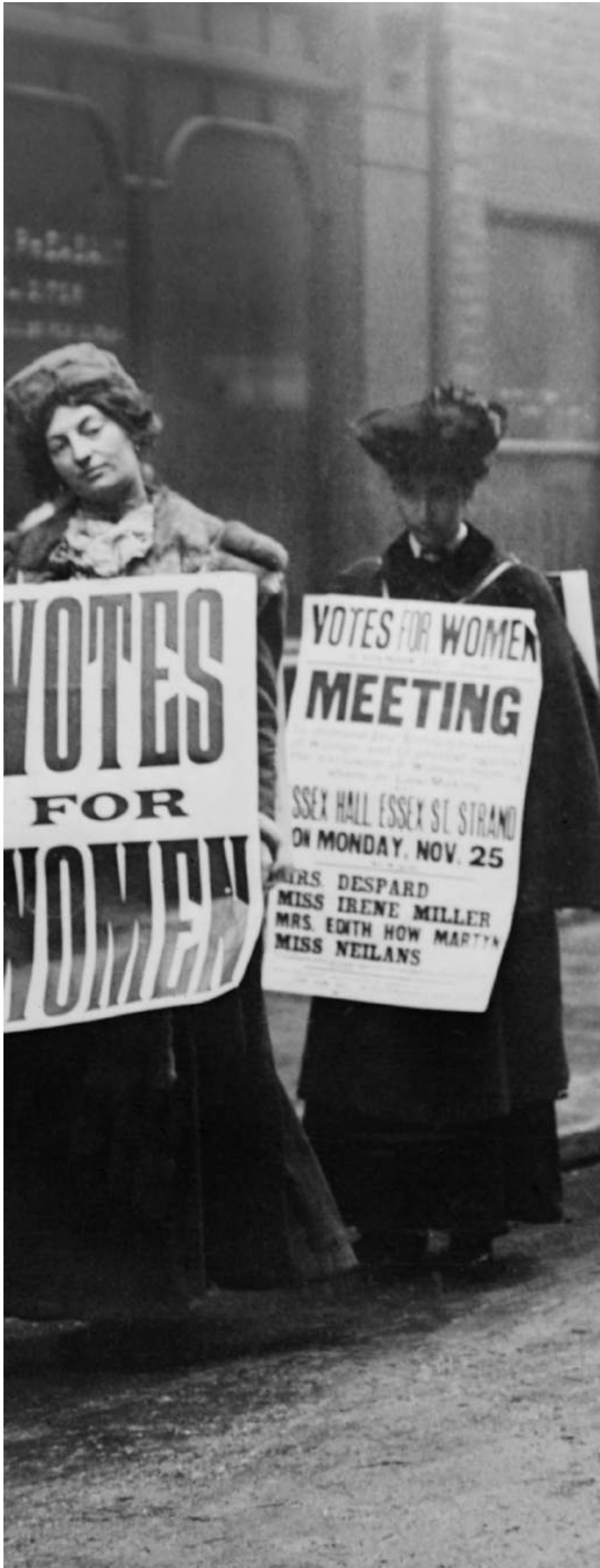
Certainly, the Founders were not unblemished in their support for freedom of expression—both in that they did not guarantee such rights to minority groups or women, and some later wavered on their stance of unabridged freedom of expression, evidenced by the passage of the Sedition Act in 1798.

This law prohibited publications from writing falsehoods that could harm the reputation of the government, but faced intense criticism from the Jefferson-led Democratic-Republicans. Understanding that the law infringed upon the single most important American right, Jefferson argued that the arbitrary determination of acceptable and unacceptable speech posed a dangerous precedent for future generations.

The backlash against the Sedition Act helped sweep the Federalists from power and reinforced freedom of speech as a core American principle. Almost 170 years later, the Supreme Court wrote in the landmark case of [The New York Times Co. v. Sullivan](#) (1964):

“Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history.”





More than a century later, in 1918, Congress enacted another Sedition Act restricting speech during wartime. Although the Supreme Court upheld the constitutionality of the Act in the *Abrams* case (1919), this case is best remembered for Justice Oliver Wendell Holmes stirring dissent, which laid the foundations for subsequent jurisprudence and public discussion. Few scholars believe that the Court would uphold another Sedition Act today.

WOMEN'S SUFFRAGE MOVEMENT

"The moment we begin to fear the opinions of others and hesitate to tell the truth that is in us, and from motives of policy are silent when we should speak, the divine floods of light and life no longer flow into our souls." —Elizabeth Cady Stanton

The women's suffrage movement worked to ensure that the Founders' promise of freedom of expression extended to more Americans. Not only did the suffragists employ methods that were reliant on the First Amendment, they publicly endorsed the importance of free speech, arguing that inconvenient speech is often necessary in motivating positive social change.

A [lengthy report](#) from the Library of Congress writes, the National Woman's Party—the main political organization of the suffragettes—"also established a legacy defending the exercise of free speech, free assembly, and the right to dissent." The movement employed political tactics protected by the First Amendment, such as "aggressive agitation, relentless lobbying, creative publicity stunts, repeated acts of nonviolent confrontation, and examples of civil disobedience." Without the protections offered by the First Amendment, none of these forms of protest would have been possible.

Beyond merely using tactics reliant on free speech, individual leaders of the suffrage movement, including Susan B. Anthony, Elizabeth Cady Stanton, and Matilda Gage, recognized the vital role it played in the advancement of their cause. In a [keynote address](#) delivered by Anthony, she exposed the hypocrisy of the federal government by granting women certain constitutional protections, such as the right to free expression, while denying them other rights—namely, the right to the ballot.

Similarly, all three aforementioned icons of the movement, in an [impromptu address](#) at an Independence Day celebration, championed the First Amendment. In their declaration they called upon the “great achievements [of the U.S.]: our free speech, free press... while all men of every race, and clime, and condition, have been invested with the full rights of citizenship under our hospitable flag, all women still suffer the degradation of disfranchisement.”

THE CIVIL RIGHTS MOVEMENT

“If I lived in China or even Russia, or any totalitarian country, maybe I could understand some of these illegal injunctions. Maybe I could understand the denial of certain basic First Amendment privileges, because they hadn’t committed themselves to that over there. But somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of press. Somewhere I read that the greatness of America is the right to protest for right.” —Martin Luther King Jr.

The leaders of the civil rights movement furthered the mission of the suffragists, this time in an effort to guarantee the Constitution’s protections for Black Americans and other minority groups.





Civil rights leaders used many similar strategies to the suffragists, once again relying on First Amendment protections.

According to the [Freedom Forum Institute](#), “The movement drew upon several First Amendment freedoms—primarily speech, assembly and petition—to protest racial injustice and promote racial equality.”

Several scholars concur, such as Robert Richards, who [writes](#), “Without the First Amendment and the protections breathed into it by the courts, the movement would not have flourished as much as it did.”

The American judicial system also underwent a significant shift, explicitly protecting various forms of speech throughout the 1960s in a number of [landmark cases](#). Such cases included *NAACP v. Alabama*, which unanimously supported the NAACP’s freedom of association—and *NAACP v. Button*, which established the constitutionality of public interest litigation.

In *Edwards v. South Carolina*, the Supreme Court reversed the convictions of 187 civil rights protestors, with the Court claiming that such demonstrations “reflect an exercise of these basic constitutional rights in their most classic and pristine form.”

Without these governmental protections of speech—which permitted the civil rights movement’s use of boycotts, sit-ins, and demonstrations, along with the judicial system’s sweeping defense of the First Amendment—much of what the civil rights movement achieved would not have been possible.

NEW CENTER SOLUTIONS

Here is The New Center's 5-point plan to restore free speech and free expression in America.

1. TEACH THE FIRST AMENDMENT FROM THE FIRST GRADE ON

Educating students about their civil liberties, as afforded by the Constitution, is essential to ensuring that future generations not only understand their rights, but also understand their value in a free and open society.

Right now, schools aren't preparing young people to understand or participate in democracy. According to the Center for American Progress, as of 2019, just [nine states and Washington, D.C.](#) require students to take at least one year of civics, while 30 require just one semester and 11 do not require civics at all.

As a result, polling from the Annenberg Public Policy Center found that [only 51% of Americans](#) could name all three branches of government, while 23% could not name any; and polling from the Woodrow Wilson National Fellowship Foundation found that [only 19% of Americans](#) under the age of 45 could pass an exam consisting of questions from the U.S. Citizenship Test.

To close this gap, The New Center's March 2021 policy paper, "[The Consequences of Ignoring Civics and Life Skills](#)," recommends requiring the completion of a civics course for high school graduation and adopting the six proven practices for effective civic education (classroom instruction, discussion of current events and controversial issues, service learning, extracurricular activities, student participation in school governance, and simulations of democratic processes) as part of school's standard civics curriculum framework.

For a civics curriculum specifically focused on the First Amendment, educators could model their curriculum on already-existing resources from organizations such as the Foundation for Individual Rights in Education (FIRE), which offers K-12 educators a [Free Speech Curriculum](#) covering topics such as the history of free speech, the legal landscape, censorship, how to handle offensive speech, and others. According to June 2021 polling from the Harvard CAPS Harris Poll, 81% believe that elementary school students should be taught about the First Amendment and the importance of free speech.



2. MAKE COLLEGES AND UNIVERSITIES CHAMPIONS OF SPEECH AND EXPRESSION

In July 2014, University of Chicago President Robert J. Zimmer and Provost Eric Isaacs [convened](#) a Committee on Freedom and Expression “to articulate the University’s overarching commitment to free, robust, and uninhibited debate.” The Committee’s work resulted in the publication of a [statement](#) that provided resounding and unwavering support for free expression and debate within America’s higher education institutions.

“It is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.” —Report of the Committee on Freedom of Expression

The statement from the Committee on Freedom and Expression, commonly referred to as the “Chicago Principles,” have since been [adopted or endorsed](#) by over 80 colleges and universities across the United States.

In the name of promoting tolerance, free expression, and civil discourse amongst young adults, other institutions should follow suit. Professors, students, and staff who have been intimidated by social pressure should band together to resist it and insist that their institutions adopt free speech protections along the lines of the Chicago principles.

There are also several mechanisms that can be employed at the federal and state government levels to incentivize colleges to embrace these principles.

- **Dear Colleague Letters:** The Department of Education's Office for Civil Rights has a long history of disseminating “Dear Colleague” letters, in which they implore administrators from universities who receive federal funding to alter institutional policies in order to be in compliance with federal law or regulation. These letters have ranged in content from responses to [sexual assault allegations](#) to the use of [affirmative action](#) in admissions policies. However, the Department of Education has [not issued](#) a letter regarding freedom of expression since 2003, and currently has a unique opportunity to uphold the Chicago Principles in new guidance.
- **Local Legislation:** At least [17 state legislatures](#) have enacted legislation that effectively requires public universities to uphold a First Amendment standard among students and faculty. These laws include provisions such as the abolishment of “free speech zones” and mandatory disciplinary action for students and faculty who interfere with others’ First Amendment rights. If these legal guardrails are implemented properly, they would promote good-faith freedom of expression on both sides of the aisle.

3. END POLITICAL DISCRIMINATION AT WORK

America's political polarization is invading our workplaces, so much so that employees now potentially face consequences not just for their public speech, but for their private political expressions as well. According to a [July 2020 poll](#) from the Cato Institute, 31% of those surveyed support firing business executives who privately donated to Trump and 22% support firing those who privately donated to Biden.

Some states have passed laws in an effort to shield employees from unjust termination or discrimination on the basis of political activity outside of work.

[California labor laws](#), for example, protect workers from being fired or discriminated against on the basis of their political views or political actions undertaken outside of the workplace; laws in [Colorado and North Dakota](#) explicitly protect workers' "lawful actions" undertaken outside of the workplace, which include speech; and in [Montana](#), employers cannot fire an employee without "reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reasons." Washington, D.C. takes a unique approach by [prohibiting discrimination](#) in employment on the basis of political affiliation (i.e., belonging to a political party).

No employee should have to fear being passed up for an employment opportunity, or worse, losing their job, because of what political party or candidate they support. To that end, states should look to Washington, D.C. as a model for political discrimination law, where discrimination is prohibited in housing, employment, public accommodations, and educational institutions on the basis of political affiliation (which refers to belonging to or supporting a political party).



4. PROTECT DEMOCRACY BY PROTECTING POLITICAL SPEECH

A vibrant and functioning democracy requires not only that political candidates have the freedom to speak, but that voters have the freedom to hear them. Freedom of speech is important for all Americans but especially for those running for public office.

Thus, political candidates should be afforded the widest latitude of freedom to speak.

Some states have taken initiative to fix what they perceive to be heavy-handed online platform censorship, particularly of political speech. In Florida, Governor Ron DeSantis signed [S.B. 7072](#) in May 2021, which requires big tech companies to be transparent about their content moderation policies and also imposes fines for de-platforming candidates for statewide and non-statewide office. But a solution in one state does not fix an issue that is pervasive across the country and the concern about the growing censorship of political speech isn't just shared by Republicans.

Earlier this year, in the wake of Twitter banning President Donald Trump from the platform, Vermont Senator Bernie Sanders [voiced his unease](#) with the move. Even as he denounced what Trump said and stood for, Sanders said, “Do I feel particularly comfortable that the President, the then-President of the United States could not express his views on Twitter? I don't feel comfortable about that....Tomorrow it could be somebody else who has a very different point of view.....So I don't like giving that much power to a handful of high tech people.”

That's why it's time for Congress to pass legislation that would increase protections for political candidates and political speech.



5. CURB THE CENSORSHIP POWER OF BIG TECH COMPANIES AND BILLIONAIRES

Free expression is being challenged across every facet of American life, but many of the debates surrounding this pillar of democracy all converge in one place: online social media platforms created and governed by big tech companies.

[One-third](#) of Americans rely on Facebook as their primary source of news and Twitter has [69.3 million active monthly users](#) in the United States. The reach and power of these companies has turned their platforms into a 21st-century version of America’s public square. Which is to say, if you or your content gets pulled off Facebook or Twitter today, it arguably has the same impact on your ability to freely share or hear ideas as a government official kicking you out of the town square 100 years ago.

And the American people do not support giving large private companies this kind of power:

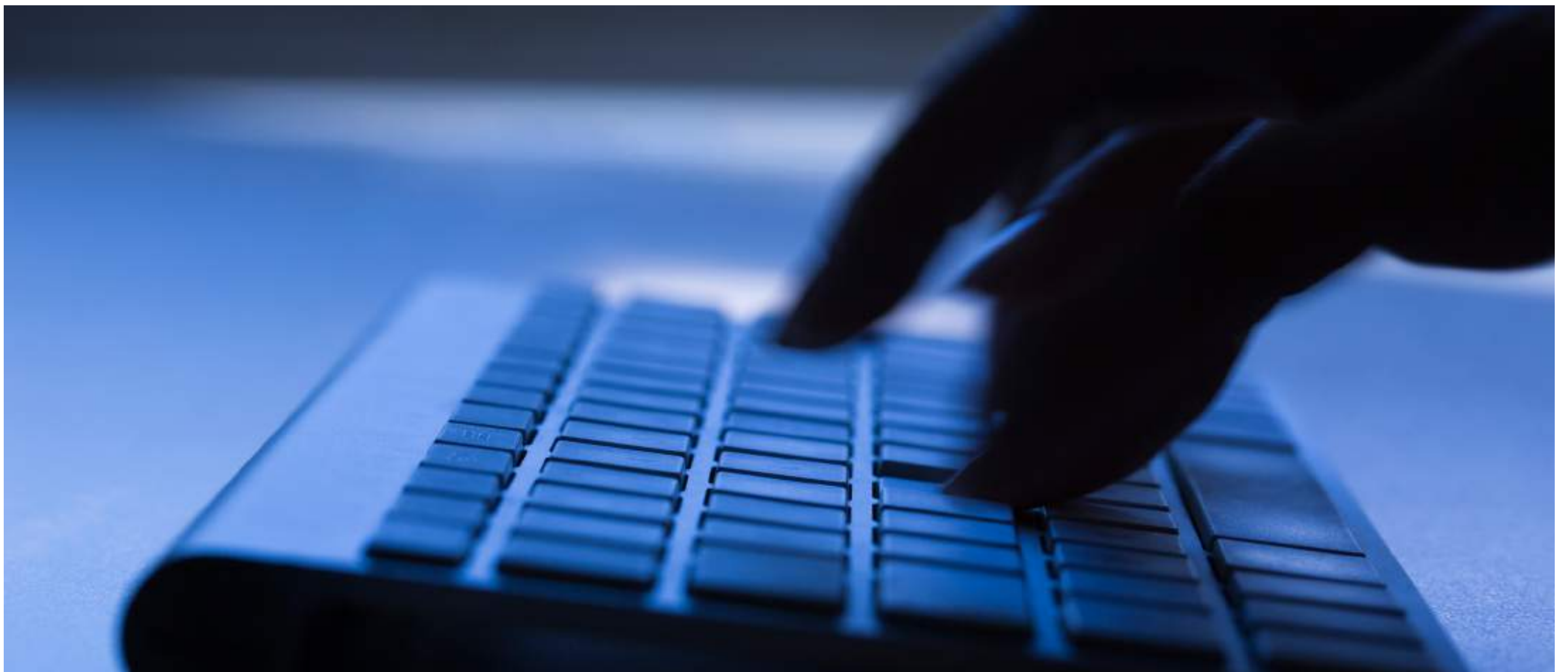
- “Nearly two-thirds of Americans (65%) favor allowing people to express their views on social media,” and 80% “don’t trust big tech to make the right decisions about what content appears on their sites, and what should be removed.” —[June 2020 Gallup Knight Foundation Poll](#)
- 68% believe that the “First Amendment should be applied to what people post online,” compared to only 32% who believe that “tech companies [should be] able to determine what can be posted online.” —[April 2021 Harvard CAPS/Harris Poll](#)

But America’s current legal and regulatory framework—which was created decades ago at a time when internet companies were smaller, decentralized, and driven by user content—simply isn’t meeting the moment. The entire modern Internet economy is arguably built on one sentence in one section of one bill: Section 230 of the Communications Decency Act of 1996, [which states](#):

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section 230 became law at least partly in response to the Long Island brokerage firm Stratton Oakmont—made infamous by the movie *Wolf of Wall Street*—winning a 1995 defamation suit against the internet service provider Prodigy after one of the site’s users accused Stratton of fraud on a Prodigy message board.

Congress realized early internet service providers would be buried under a pile of similar litigation if they were made liable for everything users said or did on their sites, so Section 230 was born. In passing Section 230, Congress was saying in effect that the United States government has a vested interest in promoting a vibrant and open internet economy where people are free to exchange ideas, products, and services, and that the government would therefore grant companies operating in this economy with special protections.



Today, America’s Internet Economy is plenty vibrant: Leading tech companies are the most profitable enterprises in history. But it is no longer open and it is no longer clear why tech companies that are exerting so much editorial control on their platforms—and constricting or censoring political speech and debate—should continue to benefit from such a broad liability shield.

Some—most notably former President Trump—have proposed a straightforward solution: repeal Section 230. But this could arguably make online speech and censorship worse as large platforms like Facebook would decide to moderate content even more to fend off potential lawsuits. Others, like Rick White (R-WA), the former congressman who authored Section 230, [have suggested](#) Congress using the stick of potential regulation to push tech companies to adopt an industry-wide framework to protect the First Amendment, “analogous to the Generally Accepted Accounting Principles, or the Motion Picture Association film-rating system.”

That could work, but if it doesn’t, Washington will simply need to create a new legal and regulatory framework that conditions any liability protections afforded to technology companies on their adhering to a uniform and ideologically neutral free speech standard for their decisions on moderating third-party content. No company would have to embrace this standard, but if they don’t, they will lose the liability protections for third-party content that appears on their platform.

The details of such a framework will be hard to work out. A new internet speech framework wouldn’t have to necessarily hew to the precise First Amendment standards that prevent government censorship. But it would have to eliminate the dangerous political and ideological censorship that now has tech companies censoring unconventional opinions on climate change much as they would child pornography.

It’s time for the U.S. government to restore free speech and free expression on the internet, America’s 21st-century public square.

CONCLUSION

There's no doubt some speech is harmful to individuals, and other speech to our political system, which is why there is a perennial temptation to use law to regulate it or even suppress it. But the problem with this strategy is equally enduring: giving government the right to regulate speech opens the door to the abuse of public power for political advantage.

Since the problems with speech today are mostly private and civil, many solutions lie mainly in the realm of norms, although the government certainly has carrots and sticks available to advance the priority of free speech and free expression. If citizens favor freedom of speech as much as they say, they should rally to its defense. So too should newspaper editors who deliver ringing defense of free speech and then cower before staff members who do not believe in it. So should university administrators who claim to uphold the tradition of liberal arts education but discipline professors who dare to question prevailing orthodoxies.

In the end, our institutions rest on our shared commitment to the principles they enshrine. As long as we continue to believe in freedom of speech, we can successfully resist efforts to constrain it, as generations of Americans have fought to do. But if we cease to believe in it or subordinate it to other considerations, we will lose it. It is up to us.



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