
AUSTIN KNUDSEN



STATE OF MONTANA

November 2, 2022

Ms. Susan Wojcicki
Chief Executive Officer
YouTube, Inc.
901 Cherry Avenue
San Bruno, CA 94066

Re: Removal of Legal Firearm Videos

Dear Ms. Wojcicki:

I write to express concern over YouTube's decision to remove legal videos containing speech disfavored by the platform. YouTube recently removed a video from The Rogue Banshee's channel, which provided instructions on how to finish construction of an 80% lower.¹ The removal occurred after five Democratic United States Senators wrote a letter to YouTube, asking the platform to do so.² To be clear, both the speech and underlying conduct in this video are lawful expressions of a Montanan's First and Second Amendment rights. The reason these senators pressured your company to remove the video, instead of asking law enforcement to investigate the conduct, is because it violated no laws. Instead, these senators circumvented the democratic process and pressured a private corporation to do what the federal government will not. So long as YouTube acts hand-in-glove with federal politicians to repress constitutional rights, States will continue finding ways to reign in the power of Big Tech. It is past time that you considered the consequences of those actions for your company's bottom line and withdrew your complicity from the trampling of rights disfavored by D.C. Democrats.

¹ The term "80% lower" refers to an incomplete lower receiver for a firearm. The ATF does not currently regulate 80% lowers as firearms and the sale and home manufacture of these products remains legal. *Are "80%" or "Unfinished" Receivers Illegal?*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (Apr. 6, 2020), <https://www.atf.gov/firearms/qa/are-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished%E2%80%9D-receivers-illegal>.

² Letter from Five Democratic Senators (Feb. 14, 2022), available at <https://www.blumenthal.senate.gov/imo/media/doc/0215.22youtubeghostguns.pdf>.

DEPARTMENT OF JUSTICE

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I. The videos are legal and cannot be censored by the federal government.

YouTube removed a range of videos for no other reason than their lawful content. While your company may have understandably recoiled at the heated language in the senators' letter, the facts are less dramatic. The truth is that Congress has never taken action to regulate the home manufacture of firearms for personal use and the ATF has long regarded the sale, possession, and home manufacture of 80% lowers as completely legal.

That bipartisan and decades-long consensus stems from a respect for both the rule of law and the constitutional rights of American citizens. While early American colonists were subjected to the whims of a royal prerogative, we rejected that arbitrary rule in 1776.³ In its place, we established a deliberative process for making laws that govern ourselves. Congress passed the Gun Control Act pursuant to that process but chose to not regulate the home manufacture of firearms. Presidents from Lyndon Johnson to Barrack Obama recognized that fact—despite their personal beliefs on its wisdom.

If Senators Blumenthal, Menendez, Murphy, Booker, and Markey are troubled by the existence of 80% lowers, they are free to introduce amendments to the Gun Control Act to regulate those items.⁴ The fact that they haven't shows that such actions are unpopular even when Congress and the Presidency are controlled by their own party. Perhaps more cynically, one might also conclude that the senators wouldn't waste their time proposing such an amendment, when they know that multi-billion-dollar media conglomerates like YouTube will bend the knee to the anti-Second Amendment lobby at their beckoning call.

This is deeply troubling. YouTube's actions make it increasingly clear that it wishes to step outside of its purported role as a value-neutral platform and into the domain of politics. By continuing to travel down this path, YouTube makes clear that Americans' rights are under attack not by elected majorities, but by a political minority's insular allies in Silicon Valley. That state of affairs is undemocratic, anti-constitutional, and unacceptable.

II. YouTube repeatedly removes political speech it disfavors.

This latest removal comes after a long string of similar censorship of conservative content creators on your platform. The United States Supreme Court has long recognized that “[i]f there is any fixed star in our constitutional constellation, it is that

³ With guns.

⁴ See *Schoolhouse Rock!: I'm Just a Bill*, ABC (1976), <https://www.youtube.com/watch?v=Otblm6WIQP0> (providing instructions on how to make a law).

no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion”⁵ But high and petty tyrants at YouTube seek to do exactly that. To name a few examples, YouTube recently removed a speech by former President Trump at the Heritage Foundation for its political message.⁶ The site also took down another Heritage Foundation video featuring Walt Heyer, a former transgender individual, who warned about the dangers of gender ideology.⁷ YouTube took an increasingly aggressive role in shutting down dissent over the draconian COVID-19 lockdown measures as well.⁸ Of course, YouTube’s current efforts to prescribe the contours of acceptable political speech exist in a backdrop of general anti-conservative animus.⁹

These actions, taken as a whole, demonstrate a deep and abiding bias against conservative political views and a distrust of the marketplace of ideas. YouTube must start acting like the platform it claims to be, instead of the publisher that it wishes it was.

III. If YouTube continues exercising quasi-sovereign control over political speech, States will regulate the service as a common carrier.

YouTube’s decisions to remove speech it dislikes, combined with its monopolistic

⁵ *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

⁶ *Heritage Foundation Blasts YouTube’s Censorship of President Trump Speech*, HERITAGE.ORG (May 9, 2022), <https://www.heritage.org/press/heritage-foundation-blasts-youtubes-censorship-president-trump-speech>.

⁷ *YouTube Censors Heritage Foundation Video on Gender Dysphoria*, HERITAGE.ORG (Jun. 19, 2020), <https://www.heritage.org/press/youtube-censors-heritage-foundation-video-gender-dysphoria>.

⁸ See, e.g., Sharon Pruitt-Young, *YouTube is Banning all Content that Spreads Vaccine Misinformation* (Sept. 29, 2021, 3:11 PM), <https://www.npr.org/2021/09/29/1041493544/youtube-vaccine-misinformation-ban> (detailing YouTube’s policy to “ban[] videos that claim vaccines aren’t safe or effective”); *Big Tech Censors Mom Holding School Board Accountable, Removes Daily Signal Video*, HERITAGE.ORG (Feb. 18, 2022), <https://www.heritage.org/press/big-tech-censors-mom-holding-school-board-accountable-removes-daily-signal-video> (reporting on YouTube’s decision to ban a video of a mom who questioned a school’s mask policy); Corky Siemaszko, *YouTube Pulls Florida Governor’s Video, Says His Panel Spread COVID19 Misinformation*, NBCNEWS (Apr. 9, 2021), <https://www.nbcnews.com/news/us-news/youtube-pulls-florida-governor-s-video-says-his-panel-spread-n1263635> (removing the video because some scientists questioned the efficacy of masking children).

⁹ See, e.g., Gregg Re, *YouTube ends Monetization of Conservative Commentator Steven Crowder’s Channel, Several Others after Left-wing Outrage*, FOX NEWS (Jun. 6, 2019, 12:40 PM), <https://www.foxnews.com/tech/youtube-steven-crowder-carlos-maza-vox-adpocalypse> (detailing YouTube’s disparate treatment of conservative comedian Steven Crowder compared to liberal comedians on the platform).

power, inappropriately flirts with the boundaries of the First Amendment.¹⁰ Increasingly, legal scholars are recognizing that social media sites may not both serve as a town square and exclude disfavored political speech. Scholars on both sides of the political aisle are growing increasingly uneasy about the monopolistic power of Big Tech and are signaling the need for legal reform.¹¹ So long as YouTube flaunts its protected status as a platform and openly discriminates against conservative views, these calls will grow increasingly difficult to ignore.

Many States have taken action to end Big Tech's tyranny over our political discourse, and perhaps it is time that Montana did the same. Florida and Texas recently passed laws, which limited the ability of Big Tech to silence disfavored speech on its platforms. While the Eleventh Circuit affirmed an injunction against Florida's law,¹² the Fifth Circuit upheld the Texas law in a thorough analysis of historical common carrier regulation.¹³ That ruling is now on appeal to the Supreme Court but, if it stands, it will give States a blueprint for enacting similar laws that reign in Big Tech censorship.

CONCLUSION

For the reasons stated above, YouTube should restore the lawful videos it removed from its site at the behest of five liberal, out-of-touch United States Senators. It should stop discriminating against conservative views or prepare itself for the consequences of regulation.

Sincerely,



Austin Knudsen

ATTORNEY GENERAL OF MONTANA

¹⁰ Inappropriate, to be sure. But hypocritical, too—especially when YouTube, to date, has been unwilling to censor Joe Biden's nose as an assault weapon.

¹¹ See, e.g., Eugene Volokh, *Treating Social Media Platforms like Common Carriers?*, 1 J. FREE SPEECH L. ____ (2022), available online at <https://www2.law.ucla.edu/volokh/carrier.pdf>; K. Sabeel Rahman, *Regulating Informational Infrastructure: Internet Platforms as the New Public Utilities*, 2 GEO. L. TECH. REV. 234 (2018); Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*, 22 YALE J. L. & TECH. 391, 433 (2020); Hiram S. Sasser, III & Lea E. Patterson, *The Religious Liberty Solution to Big Tech Censorship: How the Religious Freedom Restoration Act Limits Section 230*, 26 TEX. REV. L. & POL. 607 (2022).

¹² *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1231 (11th Cir. 2022).

¹³ *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 494 (5th Cir. 2022).