



# **The Censorship of Sexual Freedom**

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## Introduction

The First Amendment protects the right to free speech, religion, press, assembly, and the right to petition the government in the United States. All five of these avenues are integral for sexual freedom, providing spaces in which sexuality and bodily autonomy are discussed, regulated, and advocated for. Obstruction of the First Amendment would allow lawmakers to be able to pass policies that could silence ideologies and identities that they do not agree with. Most commonly, challenges to free speech and freedom of expression target identities, persons, and ideologies that exist outside heteronormative beliefs. As a result, the First Amendment is imperative for sexual freedom.

However, upholding the First Amendment inherently gives way for censorship in other mainstream arenas. This is because the First Amendment gives freedom for private companies to edit user content displayed on their platforms, including the ability to censor sexual expression.. Intended to mitigate the degree to which the government can control private citizens' expression, the First Amendment allows private companies to set their own standards for what speech and expression they permit. This is particularly relevant today, where private companies like Facebook, Twitter, or TikTok, have wide reaching power to spread information and impact people's livelihood. The freedom to censor is a key component of the First Amendment, but can also lead to the restriction, removal, and shadowbanning of content deemed inappropriate by the company. Historically, this has complexly included both hateful or violent speech and sexual, LGBTQ+, and reproductive health content. Herein lies a particularly fraught issue in the debate about First Amendment rights and sexual freedom- whether something *should* be censored is a separate issue from whether a company should be *allowed* to censor it. This tension is an important reminder to consider threats to both federal First Amendment issues and company-specific censorship policies.

Such threats are growing more persistent, seen in ongoing campaigns to censor sex work, education, finances, and online content. Examples of these efforts include country-wide initiatives to ban books, restrict the discussion about LGBTQ+ issues in schools, censor sexual content online, and limit financial resources for sex workers. Though impossible to be fully exhaustive, this report will provide an overview of how sexual freedom is challenged and censored within these four arenas- sex work, education, finance, and technology. Note that policy in these four areas often overlap and intersect with one another, further complicating the organization and understanding of First Amendment discourse.

## Sex Work

The constitutionality of the prohibition of sex work is not a new question and the last several decades have seen ongoing efforts to challenge the blanket prohibition of sex work. But as the courts have considered cases concerning sexual expression, funding, and sex work itself, policy change and advocacy efforts have given way for the future of sexual censorship in the United States, and commercial sex more specifically. Though no state in the US has decriminalized prostitution, many have passed laws promoting the rights and safety of sex workers and related communities, providing limited criminal immunity for sex workers who report crimes committed against themselves and others, expanding vacatur eligibility for survivors of trafficking, establishing a patient's bill of rights for sex workers, and creating commissions to study the impact of current criminalization policies. Currently, global and domestic advocates cite protection of public health, public safety, and human rights as key motivators for the decriminalization of consensual sex work. The criminalization of consensual sex work, and activities associated with it, often exists in opposition to the First Amendment because it challenges sex workers' right to free speech and their freedom of expression. Sex work is also present on and supported by a range of different platforms, including both financial and technology arenas. As such, both [financial censorship](#) and [technology censorship](#) similarly impact the freedom for sex workers and should be considered accordingly.

## Key Policies

### Banning Online Promotion of Sex Work

One of the most direct efforts to censor sex workers is the de-platforming of their content and advertising in online spaces. Sex workers have relied on platforms like Craigslist and Backpage to advertise services. Online spaces have allowed sex workers to maintain their income while increasing their safety, as these sites provide opportunity to screen clients, accept payment, and implement other protocols that enhance sex workers' agency. The absence of this online space increases risk of violence for sex workers. While censorship is often intended to target human trafficking, banning online promotion of sex work instead hurts consensual sex workers and sends sex traffickers further off mainstream spaces, where they are less likely to be tracked by law enforcement. Additionally, forcing censorship by private platforms contradicts Section 230 of the Communications Decency Act, which gives life to the First Amendment on the Internet. Section 230 protects online interactive platforms, including social media companies, as private companies. This statutory immunity stops private companies from being sued, or prosecuted in state court, based on content consumers post on the site and allows them to set their own terms and conditions for content. In the absence of Section 230 immunity, the liability facing online intermediaries would force them out of business and dramatically restrict the free flow of information on the Internet. Critics of Section 230 dispute whether social media companies that share false information to huge numbers of consumers, such as Facebook, should receive

Section 230 protections.<sup>1</sup> However, proponents of Section 230 call it among the most important policies in upholding First Amendment freedoms.

#### Bills to Watch

*(a green highlight indicates a bill has passed; red indicates it is not yet passed; orange indicates it is active but paused)*

- Federal (a green highlight indicates a bill has passed; red indicates it is not yet passed)
  - **Public Law No 115-164**: Fight Online Sex Trafficking Act/ Stop Enabling Sex Traffickers Act- AKA SESTA/FOSTA
    - Offers an exception to Section 230
    - Places liability on websites and online platforms for content related to the promotion or solicitation of prostitution and/or sex trafficking
    - Status: Passed, March 2018
  - **H. R. 5448**: SESTA/FOSTA Examination of Secondary Effects for Sex Workers Study Act - AKA SAFE SEX Workers Study Act
    - Would require research to investigate the consequences of SESTA/FOSTA on consensual sex work
    - Status: In committee, March 2022

#### Funding Restrictions

For nearly two decades, the federal government has restricted funding to grant-supported agencies that do not explicitly oppose, and/or support the legalization or practice, of prostitution and sex trafficking.<sup>2</sup> This stipulation was originally created in conjunction with HIV/AIDS funding in 2003. The Supreme Court eventually found this stipulation to be in direct conflict with the First Amendment and an obstruction of the freedom of speech of the individual US-based agencies.<sup>3</sup> However, other versions of this provision have remained and continue to be written into the requirements for grantees of federal funding. Not only does this continue to impede on the First Amendment rights of organizations, it also gives license to anti-trafficking agencies to stay silent on issues of sex workers' rights and continue to sideline the human rights issue at hand.<sup>4</sup>

#### Bills to Watch

*(a green highlight indicates a bill has passed; red indicates it is not yet passed; orange indicates it is active but paused)*

- Federal (a green highlight indicates a bill has passed; red indicates it is not yet passed)
  - **Anti-Prostitution Pledge**- Foreign Funding

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<sup>1</sup> [Kelly, 2020](#)

<sup>2</sup> [Public Law 108-25—May 27, 2003](#)

<sup>3</sup> [Masenior & Beyrer, 2007](#)

<sup>4</sup> [Baskin, 2021](#)

- Requires foreign NGOs to establish a policy opposing prostitution if they want to receive funding from the United States
- Exceptions to this exist for funding for the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and all United Nations agencies.
- Status: Upheld in 2020 by the United States Supreme Court

#### Some of Our Allies

- [American Civil Liberties Union \(ACLU\)](#)
- [Center for Constitutional Rights](#)
- [Decrim Now DC](#)
- [Decriminalize Sex Work \(DSW\)](#)
- [Floridians for Recovery](#)
- [Free Speech Coalition \(FSC\)](#)
- [G.L.I.T.S.](#)
- [Global Lab for Research In Action, UCLA](#)
- [HIPS](#)
- [LIPS Tampa](#)
- [Red Canary Song](#)
- [SWOP Behind Bars](#)
- [SWOP USA](#)
- [SWP-Urban Justice Center](#)
- [The Ishtar Collective](#)
- [Young Women's Empowerment Project](#)

## Education

Censorship in K-12 education is on the rise, with a recent influx of policies restricting sexual education, reading materials, and even mention of sexual and gender diversity in classrooms. However, the importance of comprehensive and inclusive discourse about sexuality is well documented. Research shows that early, inclusive comprehensive sex education can help disrupt harmful stereotypes about gender and sex and help kids develop more acceptance of sexual and gender diversity. Additionally, acknowledgement of all identities and sexual orientations in the classroom can foster improved psychological wellbeing for LGBTQ students, diminish bullying, and create a safer space for diverse students.<sup>5</sup> Sex education supports open-mindedness and exposes students to views outside their immediate familial or cultural frameworks. It allows students to pursue sexual pleasure, desire, and health with agency and informed awareness, mitigates the risk of trafficking and exploitation for LGBTQ youth<sup>6</sup>, and empowers students to understand emotional and bodily boundaries to protect themselves from exploitation and maintain personal safety.

Comprehensive and inclusive discussions about sexuality and gender are important for all ages. More and more, research suggests gendered behavior emerges as early as 10 months old<sup>7</sup>. Sexual subjectivity, which includes self-perception of sex such as feelings of attraction and sexual awareness, can develop as early as age 6<sup>8</sup>. Naturally, one's sexual self continues to develop with age but people under the age of 18 experience greater barriers to accessing information about sexuality, reproductive health, and gender identity. This is largely due to financial, parental, or logistical restraints in accessing content. Censoring information about sexuality in schools therefore only perpetuates the risks and challenges kids face.

The risks of legislation aimed to limit exposure to and discussion of sexuality in schools are lengthy and multi-faceted. Firstly, without comprehensive sex education, students lose the agency to engage in safe and pleasurable sex. Non-comprehensive sex education has been shown to fail at reducing sexual activity or risky sexual behaviors in teenagers, and moreover withholds medically accurate information and reinforces dangerous gender stereotypes.<sup>9</sup> Secondly, these bills risk ostracizing students who identify, or have family members that identify, as LGBTQ+. Children with queer parents, for example, may feel shame or isolation when discussing their families with other students. Some policies also limit the ability for teachers to discuss same-sex relationships in the classroom, thereby minimizing how and if a teacher could respond to students discussing their LGBTQ+ families. A similar ostracization could occur from bills that ban certain books deemed harmful, as seeing oneself represented in books, textbooks, and other media is important for social and mental health development. Banning books that mitigate this representation is harmful to the individual, and further fails to evoke open-mindedness and inclusive discourse in the greater community. In fact, just discussion of

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<sup>5</sup> [Goldfarb & Lieberman, 2021](#)

<sup>6</sup> [Oshiro-Brantly, J.L., Steele, F., Sontag Broudo, M., & DeBoise, S., 2021](#)

<sup>7</sup> [Fausto-Sterling, Coll & Lamarre, 2012](#)

<sup>8</sup> [Herdt & McClintock, 2000](#)

<sup>9</sup> [Columbia University Mailman School of Public Health, 2022](#)



these bills impacts community-wide conversations. Even if these bills are inevitably unsuccessful, they have created opportunity for anti-gay and anti-trans commentaries to be engaged in the public sector by politicians and interest groups supporting these bills. The simple introduction of these bills give way for anti-LGBTQ+ rhetoric to be mainstreamed and normalized.

## Key Policies

### Censorship of Language Used in Schools

Censoring language about sexuality and identity in schools is growing in popularity. Colloquially referred to as ‘Don’t Say Gay’, ‘anti-trans’ or ‘anti-Critical Race Theory’ bills, these policies prohibit discussion of a range of important issues inherent to children’s identities and family origins, including gender identity, sexual orientation, and the concept that people might be oppressed based on their race, gender, and/or sexual orientation. Some of these bills are being applied for younger students, while others range as high as 8th grade. A bill in Louisiana even prohibits teachers in K-12 from discussing their own gender or sexual orientation. Others, such as Iowa’s proposed bill, specifically target transgender identities and censor discussion of gender identity in schools.

These bills censor discussion on multiple levels. Firstly, they prohibit safe and comprehensive sex education, which studies continue to show reduces the rates of unprotected intercourse, sexually transmitted infections, and adolescent pregnancy.<sup>10</sup> Secondly, these policies could prohibit teachers and school employees from discussing personal LGBTQ+ issues. Teachers who identify as LGBTQ could be silenced from mentioning their partners or families, which would be both detrimental to the teachers and remove potentially helpful representation to queer kids. Similarly, school employees could be prohibited from offering safe space for LGBTQ+ kids. Moreover, some policies would require teachers to ‘out’ transgender students to their parents, potentially risking the children’s physical, mental, and emotional wellbeing if the parents are unsupportive. This is especially important because having a LGBTQ-affirming space has shown to reduce the chances of LGBTQ youth attempting suicide by 35%. More so, the setting with the highest impact on mitigating suicide attempts for LGBTQ youth is LGBTQ-affirming schools.<sup>11</sup> Policies that censor age-appropriate commentary about sex, gender, and identity position the school as unsupportive of LGBTQ+ identities and thereby expose the entire district to increased harm.

### Bills to Watch

*(a green highlight indicates a bill has passed; red indicates it is not yet passed)*

- Alabama
  - **HB 457**: Limit to School Counseling Standards

<sup>10</sup><https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2016/11/comprehensive-sexuality-education>

<sup>11</sup> [The Trevor Project. 2020](#)

- Bans the use of American School Counselor Association standards and competency indicators in public schools K-12
    - Argues ASCA standards indoctrinate students into a social development program, including ideas of diversity, marriage equality, and social equity, without consent from parents
    - Status: In Committee, March 2022
  - **HB 312**
    - Bans on teaching of “divisive concepts” in K-12
    - Such concepts include, but are not limited to: the idea that America is racist or sexist, that individuals are inherently racist or sexist based on their own race or sex, that members of one race should treat others different on the basis of race, and that students should take responsibility, feel complicit, experience guilt, or work harder based solely on their gender, race, or religion.
    - Status: Passed in House, in Senate March 2022
- Arizona
  - **HB 2161**: Parental Bill of Rights
    - Expands Arizona’s Parental Bill of Rights
    - Provides parents the right to “direct the upbringing, education, health care, and mental health of their children” and gives them freedom to sue schools that interfere with this right
    - Gives parents access to all written/electronic records of the school or school employee regarding their child, including but not limited to: counseling records, psychological records, club participation, health information, and counselor and teacher evaluations.
    - Status: Passed in April 2022
- Florida
  - **HB 1557**: The Parental Rights in Education Bill
    - Requires school employees to inform parents of changes to student’s mental, emotional physical health and to encourage students to discuss issues with their parent
    - Cannot prohibit parents from being notified about change in student’s well-being, unless that disclosure might result in abuse, abandonment or neglect
    - Prohibits classroom instruction in K-3 about sexual orientation or gender identity
    - Parents will receive notification about all school health services available and maintain the right to withhold consent for their child to utilize them
    - Passed in 2022
  - **HB 7**: Individual Freedom Act
    - Prohibit use of certain materials during training, instruction, or other required activities places of employment or in schools.
    - Requires training material/curriculum to be changed accordingly





- Would ban the teaching that any one race, sex, ethnicity, or nationality are inherently superior, privileged, or bear responsibility based on behaviors of other members of their identity marker
- Would ban instruction that maintains the American Revolution was fought to protect oppression and/or that American history is defined by oppression
- Would require library and media center material to be “age appropriate and grade appropriate”
- Student, school employees, or volunteers would not be required to engage in any gender or sexual diversity training or counseling, unless prescribed as part of a corrective action
- Would provide parents the right to review curriculums
- Status: In Committee, April 2022
- Tennessee
  - **HB 2670**
    - Prohibits students or employees at a public higher education institute from being required to endorse certain ideologies or political views in order to be hired, promoted, or graduate.
    - Prohibits penalization of students or employees at a public higher education institute for refusal to support, endorse, or believe divisive concepts
    - Divisive concepts include, but are not limited to, the idea that one sex or race is inherently inferior or superior, that an individual's race or sex is inherently privileged, racist, sexist or oppressive either consciously or unconsciously, the one should bear responsibility for actions committed by others of their race or sex, that the United States is inherently racist, or that meritocracy is inherently racist, sexist, or oppressive.
    - Status: Passed, April 2022

## Book Banning

In addition to censoring discussions in schools, policies are also aiming to censor content students can consume through literature. Several states are currently pursuing policies that would prohibit books representing LGBTQ+ identities, non-procreative sex, or suggestions of oppression. Books that have been called into question under these policies include a wide range of content, such as *I am Malala* by the Newtown (KS) school district and *Gender Queer* in Virginia.<sup>12</sup> In fact, common themes of books banned in the United States include themes of race and racism, LGBTQ+ identities, and novels or informational books about puberty, sex, or relationships. This extends beyond fictional books to include textbooks and other instructional material that<sup>13</sup> may be otherwise utilized in health or sex education classrooms. Many bills are undermining the authority of school boards and giving individual families the right to challenge the inclusion of materials in public school curricula or libraries. Justified by supporters as mitigating harm to children and giving agency to parents, these bills threaten the ability of public schools to expose students to a wide range of ideas, and undermine their ability to teach critical thinking skills. Additionally, by banning such content from the entire curriculum, students whose parents may support exposure to these issues are denied an equal degree of agency to make that choice for their children.

It is important to note that while this report looks at state and federal policies in schools, there are many more debates and decisions about book bans being made at individual school districts and public libraries throughout the country.

## Bills to Watch

*(a green highlight indicates a bill has passed; red indicates it is not yet passed)*

- Arizona
  - **HB 2495**
    - Bans sexually explicit material in K-12, including text, visual, or audio materials that reference sexual activity or conduct.
    - Conduct is defined as clothed or unclothed physical contact with genitals, pubic area, buttocks, or if female, breasts. (This definition previously included homosexuality but was since removed)
    - Parents are allowed to excuse classical and early American literature from this bill, but such works will be banned by default unless parents consent.
    - Status: In committee, March 2022
- Florida
  - **CS/HB 1467**
    - Meetings about decisions regarding instructional materials for school districts must include parents and be open to the public

<sup>12</sup><https://www.schoollibraryjournal.com/story/Organizations-respond-to-virginia-suit-against-barnes-and-noble-and-more-censorship-roundup>

<sup>13</sup> <https://pen.org/banned-in-the-usa/#types>

- All books made available to students via the library or assigned reading list must be approved by predetermined school district employees, and be made public on school website
    - Districts must implement procedures for transparency, justification for inclusion and removal of reading materials, based on objections from parents, county residents, or school board determination that material is not age-appropriate.
    - Status: Passed, March 2022
- Georgia
  - **SB 226**: Quality Basic Education Act
    - Requires each board of education to adopt and implement procedures to address complaints from legal guardians regarding material deemed harmful for minors, specifically related to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse
    - Requires Department of Education to create a model policy to be used by local school districts
    - Gives power of decision regarding materials subject to complaint to school principal, or someone designated by school principal.
    - Status: Passed, April 2022
- Oklahoma
  - **SB1142**
    - Prohibits public schools from holding books that primarily focus on sexuality, sexual relationships or activities, sexual lifestyles or are of “controversial nature”
    - Allows parents or guardian to submit request removal of certain books
    - If the school the denies the parent or guardian’s request, this bill would allow parent or guardian is allowed to bring action against the district for the court to decide
    - Status: In committee, March 2022
  - **SB 1654**
    - Prohibits surveys or questionnaires used in sex education to include topics related to gender or sexuality
    - Prohibits public schools, charter schools, and public school libraries from holding books, or using books in curriculums, that primarily focus on lesbian, gay, bisexual, or transgender sexualities, or that depict non-procreative sex
    - Education material related to AIDS are omitted from the parameters of this bill
    - Status: In committee, February 2022
- Tennessee
  - **HB 2154**: Age Appropriate Materials Act of 2022
    - Require public schools to maintain and publish a list of the materials held in the school library

- Requires public schools and charter schools to establish procedures for the review of school library collections
    - Status: Passed, March 2022
  - **HB 800**
    - Bans any instructional material, including text books, that “promote, normalize, support, or address” LGBTQ+ behaviors or lifestyles
    - Status: In Committee, March 2022
  - **HB 1723**
    - Requires schools to allow parents/guardians to check out instructional materials used in their child’s class to inspect the materials
    - Status: In committee, February 2022
  - **HB 2454**
    - Redefines “obscene” material to include that which may also have an instructional value
    - Changes current internet policy in public schools to prevent students from accessing obscene material
    - Status: Passed, May 2022
- Michigan
  - **HB 5722**
    - Publics must make certain materials available to the public at the start of the school year, including classroom curriculums, textbooks, literature, writing assignments, field trips, extracurricular activities, and a list of certified teachers or other employees in charge of implementing curriculum.
    - Status: In committee, February 2022

### Some of Our Allies

- [American Civil Liberties Union \(ACLU\)](#)
- [American Library Association \(ALA\)](#)
- [Center for Democracy in Technology \(CDT\)](#)
- [Electronic Frontier Foundation \(EFF\)](#)
- [Equality Florida](#)
- [EveryLibrary Institute](#)
- [Foundation for Individual Rights and Expression \(FIRE\)](#)
- [National Center for Lesbian Rights \(NCLR\)](#)
- [National Coalition Against Censorship \(NCAC\)](#)
- [SIECUS](#)



## Financial Censorship

Financial institutions have a surprising amount of power to expand or restrict our freedom of expression online. Many websites, and content creators on these websites, rely on financial institutions for accepting payments or donations. Historically, payment processors have attempted to ban payments to businesses whose ethics were not amenable to their own, such as WikiLeaks and fossil fuel industries.<sup>14</sup> This can impact how web sites and platforms are able to function and reach the general public, thus limiting the information to which we have access.. It is important to note the complex ways in which the First Amendment presents itself in financial censorship. On the one hand, private institutions reserve the right to set their own terms for how they will operate and this allowance for private businesses is a key component of the First Amendment. On the other, the power of these businesses is such that their freedom to determine what speech and content they will allow inherently censors those whose behavior or opinions they deem objectionable. Much of this censorship is directed at material related to sex and at those who create such material, and sex workers have been particularly affected. This power is concentrated in the limited number of financial companies who oversee payment processing in the United States, with Visa and Mastercard being the lead agents.<sup>15</sup> In fact, MasterCard maintains a list of blacklisted merchants who are unable to accept payments via MasterCard due to suspicion of violations, which can include illegal services or fraudulent behavior.<sup>16</sup> However, other major credit cards use the same list to decide who can utilize their services and it can be extremely difficult to be removed from this list and continue accepting payments if placed on it by mistake.<sup>17</sup>

### Key Policies

#### Financial Censorship & Sexual Expression

While private agencies are protected by First Amendment rights to regulate speech as they see fit within their customer base, they also directly impact the sexual freedom of those who depend on these financial agencies for livelihood. These intermediaries decide what types of workers they allow to use their platforms to receive payments. Financial institutions, in general, are fraught with complexity and impacted by a myriad of external factors that trickle down into the sexual freedom of average citizens.

Alternatively, some payment processors have attempted to ban sex workers because of their own moral standards. For example, agencies like MasterCard, Venmo, and PayPal have all

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<sup>14</sup> [McLaughlin, 2021](#)

<sup>15</sup> [McLaughlin, 2021](#)

<sup>16</sup> [Security Rules and Procedures, 2021](#)

<sup>17</sup> [McLaughlin, 2021](#)

made attempts to regulate sex workers from accepting payment by restricting the types of services that can utilize their platforms, freezing the accounts of sex workers, or charging them higher fees.<sup>1819</sup> In addition to inhibiting income for sex workers and mitigating the degree to which consumers can engage in sexual content, the financial censorship for sex workers can push them into unsafe spaces by taking away the safety of online sex work.

#### Financial Censorship & Freedom of Information:

Financial intermediaries hold explicit power over the ability for small businesses and self-employed people to maintain income, including organizations that share news and information. The PayPal accounts of two independent news outlets, Consortium News and MintPress News, were restricted, interfering with their ability to receive donations. Both of these sites present their mission as one to combat falsities in mainstream media outlets. In the case of Consortium News, PayPal also stated they would be keeping the money in the account while they conducted a review and then would decide if those funds would be returned to Consortium News or kept by PayPal. The Founder and editor-in-chief of MintPress tweeted that this PayPal restriction was "... targeting the bank accounts of dissenting journalists" and that "this is blatant censorship of dissenting journalists and outlets." While there have been multiple efforts to mitigate the spread of misinformation and hate speech, it is important to understand the power that private financial intermediaries have in making decisions about what content is suitable for public consumption.

#### Bills to Watch

*(a green highlight indicates a bill has passed; red indicates it is not yet passed; orange indicates it is active but paused)*

- Federal
  - [Fair Access to Banking Act](#)
    - Would amend the Federal Reserve Act to deny taxpayer funded discount window lending programs to banks that deny fair access to financial services for all
    - Introduced in Congress 2021. Currently paused by Biden Administration
  - [Secure And Fair Enforcement Banking Act of 2021 AKA SAFE Banking Act](#)
    - Would offer a 'safe harbor' for financial institutions who allow legal cannabis businesses to utilize their services
    - Would prohibit federal regulators from penalizing banks and financial processors who allow legal cannabis businesses to process payments with them
    - Status: Passed in house six times, most recently in February 2022 . Has not been taken up by the senate.

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<sup>18</sup> [Holston-Zannell, 2021](#)

<sup>19</sup> [Rial, 2021](#)

## Allies

- [Center for Democracy & Technology \(CDT\)](#)
- [Decriminalize Sex Work \(DSW\)](#)
- [Electronic Frontier Foundation \(EFF\)](#)
- [Electronic Privacy Information Center](#)
- [Free Press](#)
- [Free Speech Coalition \(FSC\)](#)
- [SWOP Behind Bars](#)
- [The Ishtar Collective](#)

## Social Media & Technology Censorship

Social media is a primary source of information, keeping people connected to current issues and exposing them to alternative ways of thinking. This is particularly true when it comes to sexuality, and social media is a key avenue through which people express, understand, and advocate for sexual freedom. However, sexuality-related content is among the first to be moderated by online platforms. Censorship of sexual freedom in social media and online communication occurs in a myriad of ways, including blocking social media accounts, use of content moderation algorithms, challenging end-to-end encryption, and editing the type of language that can be used about sex on different platforms. The reasoning behind the censorship is often linked to claims about limiting the spread of child sexual abuse material (CSAM), mitigating dangerous sexualization or harassment of users, protecting children from harmful content and ensuring sex is not being solicited on their platforms. However, these policies inevitably also threaten user privacy, censor healthy and empowering sexual expression, and make it harder for users to access content about safe sex or sex education.

When considering censorship online, it is important to understand the significant role Section 230 of the United States Communications Decency Act plays in moderating how platforms can and cannot exercise control over content. In short, Section 230 protects online interactive platforms as private companies. This stops them from being sued based on content consumers post on the site and allows them to set their own standards for what content they deem inappropriate. Any app, forum, blog, website, or business that has a digital space where others can post content relies on Section 230 for protection. This is especially important for small businesses, who can use Section 230 to dismiss lawsuits early without being overwhelmed by legal fees,<sup>20</sup> and allows consumers to freely share content without companies being required to regulate every post or comment. Critics of Section 230 dispute whether social media companies that share false information to huge numbers of consumers, such as Facebook, should receive Section 230 protections.<sup>21</sup> However, proponents of Section 230 call it among the most important policies in upholding the First Amendment online. Section 230, and similar protective policies, support free speech by taking the onus off companies to mediate postings but also allows these companies to make their own rules about the types of speech that are permissible on their platforms.<sup>22</sup>

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<sup>20</sup> [Banker, 2022](#)

<sup>21</sup> [Kelly, 2020](#)

<sup>22</sup> [Pinkus, 2021](#)

## Key Policies

### Social Media Language Censorship

Section 230 allows social media platforms to set their own rules regarding what content is permissible to be shared, and rely on their individual 'Terms & Conditions' to inform users as to what speech or images may be censored. As a result, social media companies have the freedom to censor, restrict, or ban certain language. In an effort to ban illegal solicitation of sex, social media companies like Instagram, Facebook and TikTok rely on algorithms that automatically remove content that is deemed too sexual. Not only does these sites' algorithms remove sex-positive or LGBTQ+ content creators, but they also often ban advertisements or posts targeting women's and non-binary people's health.<sup>23</sup> It's important to consider how this also impacts global health issues regarding safe sex practices. When agencies and NGOs working to elevate global understanding of reproductive health, sex education, and sexual agency are censored, their message is less likely to spread. This censorship is particularly dangerous in parts of the world where information about sex and sexuality is not easily accessible. As a result, access to content about sex becomes unequal across different regions and populations based on how social media is censored.

Those advocating for censorship of social media aim to challenge Section 230 because this is what protects social media, and other interactive online platforms, from having to abide by external regulations of their users' content. In essence, the First Amendment protects private companies' rights to edit, restrict, or censor user content, and the dilemma is that so much public discourse occurs in spaces governed by those companies. Though federal and state policy supporting freedom of speech are integral to sexual freedom, social media censorship specifically highlights the importance of individual companies' policies on censorship as well.

### Challenging Section 230

Policymakers and voters on both sides of the political aisle have advocated for the removal of Section 230. Opponents of Section 230 argue that many social media companies are a major source of information and have the ability to impact majority public opinions, and therefore should be treated as news organizations. Additionally, those wanting to amend Section 230 argue that waiving accountability for online platforms allows for the spread of harmful content, including child sexual abuse material (CSAM). Proponents of Section 230 note that this harmful content, such as CSAM, is already prohibited by numerous federal laws, and Section 230 does not prohibit enforcement of these laws. Instead, supporters of Section 230 argue that holding online platforms accountable for user's content would lead to overzealous restriction of legal content that includes sexual expression. Not only would this impede healthy and safe sexual content, but would push CSAM-users off mainstream platforms and into harder-to-track websites.

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<sup>23</sup> [Center for Intimacy Justice. 2021](#)

## Bills to Watch

*(a green highlight indicates a bill has passed; red indicates it is not yet passed; orange indicates it is active but paused)*

- Federal:
  - Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2022 **(EARN IT Act)**
    - Would remove Section 230 immunity for technology companies regarding child sexual abuse material (CSAM) and require they be held accountable if users post CSAM on their platforms.
    - Would establish a National Commission to develop voluntary best practices to avoid child sexual exploitation online.
    - Would offer survivors opportunity for civil recourse.
    - Status: Referred to committee, February 2022
  - Platform Accountability and Consumer Transparency Act **(PACT Act)**
    - Would require interactive online platforms to
    - Would amend Section 230 to require interactive online platforms to remove illegal content within 24 hours of learning about the content.
    - Status: Introduced, March 2021
  - **Kids Online Safety Act of 2022 (KOSA)**<sup>24</sup>
    - Requires social media platforms to allow minors, aged 16 or under, to protect their information, opt out of algorithms, and default to the strongest protective settings.
    - Would significantly increase the opportunity for parental controls and allow parents or guardians to identify and report posts they deem harmful to their children. This includes obtaining access to the minor's use of the platform.
    - Allows platforms to be sued if minors are exposed to harmful content, including promotion of self-harm, suicide, eating disorders, substance abuse, sexual exploitation, and activities illegal for minors such as gambling or alcohol.
    - KOSA would also increase accountability of these online platforms, requiring transparency about how minors engage in the platform and independent audits to track how minors are exposed to harm while using the platform.
    - The language in the policy is subjective, which leaves explanations of harmful content loosely defined and open to interpretation.
    - Status: Introduced February 2022

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<sup>24</sup> [Kids Online Safety Act, 2021](#)

## Prohibition of Social Media Censorship Policies

Several states are challenging censorship policies on social media and aiming to pass their own legislation that prohibits online platforms from censoring or restricting users. It is important to note that these legislators are not targeting censorship of sexual freedom, but rather aiming to cease censorship of content deemed hate speech or dangerous. These policies have increased following the January 6th insurrection, after which social media platforms have aimed to eliminate hate speech or posts that incite violence. However, many states are challenging these protocols and passing bills that would prohibit social media companies from censoring users' posts. These bills would restrict social media platforms from banning, blocking, or pausing the accounts of users due to hate speech, stating users cannot be disciplined by social media for exercising their First Amendment. Yet, such bills also inherently conflict with the First Amendment because they aim to restrict private companies from executing their own free speech rights to edit or ban user content.<sup>25</sup> While most of these bills have since failed due to their explicit conflict with the First Amendment, many legislators continue to advocate for them.

## Apple Inc. & Censorship

In an effort to maintain end-to-end encryption but increase oversight of Child Sexual Abuse Material (CASM), Apple has rolled out two programs that would allow for the device itself to scan for exploitative material. These internal company policies utilized a client-side scanning technology to track the owning or sharing of CASM.<sup>26</sup>

Unfortunately, these two technologies also inherently break end-to-end encryption, which is marked by the server having no ability to access an individual consumer's content<sup>27</sup>. This threatens the guarantee to privacy offered by end-to-end encryption and could open doors for exploitation of people's privacy. Journalists, physicians, and lawyers have argued in favor of encrypted communications to ensure the privacy of privileged communications. Additionally, it assumes parents or guardians to be keepers of children's safety. This is not true for all children and can even be the opposite, with some parents exerting rigid control over children or directly abusing them. Apple's new technology could therefore expose children to greater risk of danger or abuse. Lastly, it must be noted that censorship technologies such as these have often overly discriminated against LGBTQ+ content. Historically, technology has struggled to differentiate between art, educational content, and pornography, with some queer content being deemed explicit. It raises questions about how children and adolescents exploring their sexuality or gender may be blocked from accessing inclusive, safe, and educational content<sup>28</sup>. It also raises larger conversations about gatekeeping access to sexuality due to arbitrary markers, and whether this is inevitably productive or more harmful for young people.

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<sup>25</sup> [Eschete, 2021](#)

<sup>26</sup> [Apple Inc., 2021](#)

<sup>27</sup> [Portnoy, 2019](#)

<sup>28</sup> [York, 2021](#)

## Policies in Effect

- Internal Company Policies
  - Communication Safety in iMessage
    - Will analyze images sent via iMessage and blur out sexually explicit images on devices of people 17 years old and younger
    - Children can decide if they want to view the image
    - Parents of children age 12 or younger can opt to receive notifications if children look at blurred explicit images
  - CSAM detection in iCloud photos
    - Devices will be installed with software to track if iCloud images meet CSAM guidelines
    - If they do, a deeper investigation by Apple is conducted.

## Some of Our Allies

- [Asian Americans Advancing Justice](#)
- [Center for Democracy & Technology \(CDT\)](#)
- [Electronic Frontier Foundation \(EFF\)](#)
- [Electronic Privacy Information Center](#)
- [Fight for the Future](#)
- [Foundation for Individual Rights and Expression \(FIRE\)](#)
- [Free Press](#)
- [Free Speech Coalition \(FSC\)](#)
- [Human Rights First](#)
- [The Media Coalition](#)



## Conclusion

Almost two hundred years ago a religious zealot named Anthony Comstock launched a terrifyingly effective campaign to censor sexually explicit material. Known as the “censor in chief,” his war against pornography soon expanded to a battle for controlling people’s bodies through draconian laws about sex. This one man’s campaign to censor what we could read and to restrict our fundamental human right to personal autonomy still impacts us today.

Recently, we’ve seen a growing coordinated effort to censor expressions of sexuality and gender identity and strip away our right to privacy and bodily autonomy. Make no mistake. There’s nothing sudden about these attacks. They’re all part of a well-conceived decades-old strategy to erode our fundamental human right to sexual freedom.

Censorship is a tool, and our enemies are making good use of that tool. The only time the minority can control the majority is when the majority is silent, and we can’t afford to be silent - or silenced! The best tool to fight censorship is more speech.

Article 13 of the American Convention on Civil and Political Rights (a human rights treaty by which the United States is bound) protects our right to speak in these ways.

- 1. Everyone has the right to freedom of thought and expression. This right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.*
- 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputation of others; and b. the protection of national security, public order, or public health or morals.*
- 3. The right of expression may not be restricted by indirect methods or means, such as abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.*

No one piece of legislation or single court decision will provide a full picture of the strategic plan to suppress, censor, and/or punish any behavior that falls outside of the puritanical view of “moral behavior.” Rather, we must look at the whole picture. We must pay attention to both explicit censorship and subtle attempts by state and federal efforts to limit our personal autonomy.