



September 28, 2020

RE: Opposition to California League of Cities Resolution 2020 Resolution

Dear California League of Cities Representative,

I'm writing on behalf of the Electronic Frontier Foundation to strongly urge you to oppose a proposal to undermine a key federal law that enables free expression online. EFF is a nonprofit organization that works to protect privacy and free expression in the digital world. Founded in 1990, EFF represents more than 30,000 dues-paying members nationwide, including thousands in California.

We recently became aware of the California League of Cities proposal to undermine 47 U.S. Code § 230 ("Section 230"). If adopted by Congress, the proposal would compel owners of even the smallest Internet websites to assist police in surveilling and arresting residents of your cities, including persons protesting against police brutality.

Generally speaking, Section 230 immunizes online services from lawsuits based on content created by their users. The proposed resolution suggests Congress change the law so that Internet platforms can be sued or prosecuted based on other peoples' speech, unless they "implement a program to identify and take down content which solicits criminal activity." Further, those platforms would actually have to provide active assistance to police in the "identification and apprehension" of the alleged criminal solicitors.

At a time when there are widespread political demonstrations against police brutality, both online and in the streets, the League's proposal intrudes on protected First Amendment activity and would impose onerous burdens on smaller, community-focused websites throughout the state.

The proposal intrudes on protected online activism by vesting police with wide discretion to target dissenters and compel websites to produce information about their users. Allowing the police to decide when online speakers are "solicit[ing] criminal activity" is a straightforward program for shutting down anti-police protesters. If the vague allegation that a website was used to "solicit criminal activity" is enough to spur prosecutions and lawsuits, it will result in widespread Internet censorship. If Congress were to pass such a policy, it would provide a lever to government officials to eliminate protest and rally organizing via social media. Online platforms would be coerced into performing police surveillance of citizens in cities throughout California. Such a proposal is therefore not only out of step with the current political conversations about police brutality; it is antithetical to basic First Amendment principles.

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Moreover, the proposal to limit Section 230 as suggested wouldn't just affect large social media companies. Local newspapers and individual blogs run by concerned citizens would be compelled to monitor their user discussion forums and potentially help police perform surveillance and arrests. Such hobby blogs would inevitably censor their users' speech rather than risk prosecution or litigation based on the speech of others.

The sponsor, the City of Cerritos, claims the resolution was inspired by recent anonymous Internet postings on Instagram, a social media site, that invited followers to "work together to loot Cerritos [M]all." No mall was actually looted, or even apparently threatened, despite the sponsor's absurd claim that anonymous Internet postings are, in and of themselves, a "credible threat." To be clear: the post in question is protected speech under the First Amendment and far cry from being a true threat or an incitement to criminal activity.

Finally, there are already procedures in place for law enforcement to request user information from online platforms when it is needed and legally justified. Indeed, as the League's staff report points out, cities around California are aggressively using these techniques right now. Following the murder of George Floyd, police were able to use online tools like Facebook, Twitter, and Instagram to identify protesters who they believed stepped over the line and engaged in "riots, looting and street skirmishes." While there's precious little evidence that alleged looters or rioters need online tools to do damage, law enforcement already has plenty of legal tools it can use to identify individuals online or to obtain their information from online services.

The California League of Cities should not pass a resolution that urges Congress to change Internet regulations in a way that threatens Californians' right to assemble and protest. We strongly urge your "No" vote on this resolution.

Please feel free to reach out to me if you have additional questions about EFF's views on these matters. The link below contains additional materials regarding our views on Section 230: <https://www.eff.org/document/section-230-not-broken>

Best regards,

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Electronic Frontier Foundation