



The JAWBONE Act

Introduced by Senators Ted Cruz (R-Texas) and Ron Wyden (D-Ore.)

The Problem

The United States government is prohibited from doing indirectly what it cannot do directly. This includes censoring Americans' speech in violation of the First Amendment.

Government actors have evaded this prohibition by threatening private companies, like social media platforms, with adverse consequences to coerce them into censoring Americans for lawful expression.

Though “**jawboning**”—the practice where the government pressures private companies into censoring speech protected by the First Amendment—is illegal under the First Amendment, Americans face at least three significant challenges in obtaining justice when the federal government infringes on their rights.

- 1. Proving Successful Government Jawboning.** Under current legal precedent, a plaintiff must show that the government caused a removal or a change to the expression at issue. That can be difficult because companies are reluctant to accuse the government. Instead, companies claim they acted independently. This also makes the judicial inquiry about whether the government *succeeded* in its coercion, not whether the government attempted it in the first place.
- 2. No Recourse After Officials Leave Office.** By the time a case works its way through the courts, the issue may be moot. Since Congress has not authorized money damages, the only available remedy is an injunction. But injunctions only prevent ongoing or future conduct. Once an offending official leaves office, the court may be powerless to remedy even if the official engaged in unlawful censorship.
- 3. Government Secrecy.** Plaintiffs may struggle to prove jawboning because the government has secretly communicated with the private companies it is coercing. Americans may not even know they were censored by their government.

The Solution

The Justice Against Weaponized Bureaucratic Overreach to Networked Expression (JAWBONE) Act solves each of these issues to hold government officials accountable for censorship.

- 1. Provides Americans with Recourse from Jawboning.** The JAWBONE Act creates a cause of action against any government agency or employee that jawbones companies involved in social media, AI, or broadcasting, *regardless* of whether the jawboning *succeeds*. The JAWBONE Act allows the plaintiffs to obtain money damages and reasonable attorney fees, keeping meritorious claims alive.
- 2. Protects Lawful Enforcement of Federal Law.** The JAWBONE Act provides critical exceptions for lawful government communications related to criminal and civil law enforcement activities.
- 3. Transparency for Certain Government Communications.** To ensure greater accountability and transparency within the federal government, the JAWBONE Act requires agencies to submit certain communications with social media companies, AI companies, and broadcasters to a portal with detailed public summaries and full access for Congress, helping ensure jawboning does not occur in secret and the American people can hold their government accountable.