

GOOD GOLLY JOSH HAWLEY

By: Jack Greiner on January 8, 2021 on graydon.law

I saw this statement from Senator Josh Hawley on Twitter yesterday:

This could not be more Orwellian. Simon & Schuster is canceling my contract because I was representing my constituents, leading a debate on the Senate floor on voter integrity, which they have now decided to redefine as sedition. Let me be clear, this is not just a contract dispute. It's a direct assault on the First Amendment. Only approved speech can now be published. This is the Left looking to cancel everyone they don't approve of. I will fight this cancel culture with everything I have. We'll see you in court.

Separate and apart from the politics, (and I admit, maybe nothing is "separate and apart" from politics these days) this brings up a pet peeve of mine. This isn't a First Amendment issue.

Senator Hawley attended Yale Law School, and I only attended lowly Notre Dame, so I am surprised I need to point this out to him. But I am happy to help him out. The First Amendment applies to state action. And Simon & Schuster is a private enterprise, not a government agency. As a private actor, Simon & Schuster can choose not to do business with Senator Hawley. Their decision may be motivated by their distaste with the Senator's recent antics, or it may be motivated by a concern that the audience for Senator Hawley's book may have dried up in the last 72 hours.

But it doesn't matter. In fact, contrary to Senator Hawley's statement, this is very much "just a contract dispute." I haven't read the contract, so I can't weigh in on the merits of that claim. But I have read the First Amendment, and for him to even suggest that the First Amendment has anything to do with this dispute is frivolous.

I occasionally hear this kind of thing from people who are simply ignorant of what the First Amendment actually stands for. Josh Hawley, Yale Law School Class of 2006, can't use ignorance as an excuse.