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Cardozo AELJ Author Interview Series: Caitlin Muraca

BY ONLINE EDITOR / ON APRIL 27, 2023



Cardozo AELJ **Author** Interview Series

Caitlin Muraca

Associate Editor, *Cardozo Arts & Entertainment Law Journal*

Interviewed by Isaac Gamboa, Staff Editor, Vol. 41

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Combating False Election Information in a Section 230 Protected World: to Moderate or Not to Moderate

CARDOZO AELJ
Arts & Entertainment Law Journal

The Cardozo AELJ Author Interview Series seeks to give our readers further insight into the Articles and Notes published in the Cardozo Arts & Entertainment Law Journal. In this interview, Caitlin Muraca discusses her Note, Combating False Election Information in a Section 230 Protected World: to Moderate or Not to Moderate, which was published in Volume 41, Issue 2.

Caitlin Muraca is a third-year law student at the Benjamin N. Cardozo School of Law and an Associate Editor of Volume 41 of the Cardozo Arts & Entertainment Law Journal. Prior to law school, Caitlin graduated from Hofstra University with a degree in Mass Media Studies with a concentration in Media, Law, and Policy. Caitlin's legal internship/externship experiences include Serling Rooks Hunter McKoy Worob & Averill LLP, Acker Law Group, Janine Small PLLC, David M. Ehrlich & Associates, Tuff City Records, The Shababb Firm, Spirit Music Group, and currently, TuneCore.

Our interview was conducted by Isaac Gamboa. Isaac is a second-year law student at the Benjamin N. Cardozo School of Law. As a sports fan and law student, he is interested in studying the ways in which sports influence international relations and domestic policy.

IG: Like you mention in your Note, misinformation on social media has been a big topic of conversation since 2016. Was there a significant moment or event in particular that inspired you to choose this as the topic for your note?

CM: The 2016 and 2020 United States Presidential Elections were both inspiration for my Note topic as social media was riddled with election misinformation during these election periods. Additionally, the Facebook whistleblower, Frances Haugen, made some very interesting points that served as inspiration for me in my research. The Facebook whistleblower claimed that the company failed to curb misinformation that incited the January 6, 2021, United States Capitol attack.

IG: The source for Section 230 of the Communications Decency Act's protection of Internet Service Providers (ISPs) was a case from the 1950's concerning a book seller. How do you think the development of this area of law has been impacted by having a case about books as its base?

CM: I think it has made Section 230 a difficult, yet interesting, area to regulate as the basis of the law was a bookstore owner and physical books, a stark contrast from what the law largely regulates today. As a bookstore owner cannot be expected to know the contents of all of its books, an ISP cannot be expected to regulate all of the posts of its users. The law was also originally enacted as a response to obscene material surfacing on the Internet. The internet has evolved vastly since 1996 and Congress may not have expected it to flourish to what it is today.

IG: Given the differences in malice between misinformation and disinformation, does it make more sense to provide separate regulations for the two?

CM: It may make sense to provide different regulations for misinformation and disinformation as the intent behind the poster is entirely different.

IG: It can be difficult to discern the motivations of a giant corporation, but do you have any thoughts on what Facebook's motivation would be to propose their own amendments to Section 230?

CM: As a social media giant themselves, it seems that Facebook would have an interest in self-regulation. Essentially, they want a role in what they can and can't do within their platform.

IG: There have been accusations of active politicians posting misinformation on their own social media pages, especially concerning the 2020 election.

Do you have any thoughts on holding politicians themselves accountable for misinformation on social media?

CM: I don't discuss this in particular in my Note but as a public official, the public generally looks to you as a reputable source of information.

IG: Do you have any predictions as to which of the proposed reforms/ repeal of Section 230 is most likely to pass through congress?

CM: A full repeal of Section 230 is highly unlikely. Legislation to reform Section 230 was recently reintroduced in the Senate called the Safeguarding Against Fraud, Exploitation, Threats, Extremism and Consumer Harms Act (SAFE TECH). It was originally introduced two years ago. Senator Mark Warner (D-VA) states that "[f]or too long, Section 230 has given cover to social media companies as they turn a blind eye to the harmful scams, harassment, and violent extremism that run rampant across their platforms."¹

Currently, *Gonzalez v. Google* is before the Supreme Court concerning Section 230 and the petitioner contends that "YouTube's recommendations actually constitute the company's own speech, which would fall outside the bounds of the liability shield."² Lower Courts have sided with Google and the Supreme Court seem likely to do the same.

IG: In your critique of current proposals for reform, you focus quite a bit on the willingness of ISPs to participate in any regulation. What are some of the advantages to having the ISPs be willing subjects of regulation as opposed to being compelled into action by law?

CM: I think it is extremely difficult to compel an ISP to be a willing subject of regulation without giving them any sort of real incentive to comply.

IG: You also advocate for continued liability protection for ISPs that take a hands-off approach for content moderation. Is there any concern that the naturally viral nature of misinformation will allow it to spread without any content moderation? Do you view that risk as less likely than misinformation spread through the algorithms on social media sites?

CM: There is definitely a real concern that the viral nature of misinformation will allow it to spread without any content moderation. But, my goal here with this hands-off approach is that the ISPs will not be liable for the spread of misinformation as they will be protected under Section 230 and the misinformation will be less likely to spread due to the discontinued use of algorithms.

IG: On the other hand, what are the risks associated with letting private ISPs set their own First Amendment standards by allowing them to engage in heavy content moderation?

CM: Content moderation can never be completely neutral. There is always some sort of bias inherently involved in fact-checking. By allowing private ISPs to create their own algorithms, there is a risk that any sort of misinformation posted may spread a lot faster.

IG: You mention the proposed Health Misinformation Act of 2021 as a good jumping off point for any proposal for reform. What is it about that act that makes it so promising as a start for broader misinformation protection?

CM: The Health Misinformation Act states that Section 230 shall not apply to an ISP that promotes health misinformation using an algorithm unless the algorithm uses a neutral mechanism for the promotion. Specifically, the health information must be promoted during a declared public health emergency. I think this is a great starting point for a proposal for election misinformation reform as it is essential the public is not being misinformed during crucial periods, such as United States Presidential Elections.

IG: A big problem with playing catch-up with the spread of misinformation that has already occurred online is that a lot of people already trust sources of misinformation as their regular news source. Do you have any ideas on ways we can begin to unwind some of the damage done by misinformation that's already been consumed?

CM: It is difficult to unwind some of the damage done by misinformation that's already been consumed as so many people trust ISPs as their regular source of news. It seems increasingly difficult to get these people to consume their news elsewhere. Thus, going forward, it seems wise to prevent misinformation from further spreading by holding ISPs liable for misinformation spread through the use of algorithms and by failure of adequate fact-checking.

IG: Finally, do you have any advice for readers on ways to spot misinformation and disinformation on their social media feeds?

CM: Check your sources. Do not rely on a single user for your source of election information. ".gov" websites are generally reliable. Check if a source is being "promoted" onto your feed or if it is a paid post.

1. Wayne Rash, Section 230 Reforms Introduced into U.S. Senate and House of Representatives, Forbes (Feb. 28, 2023, 10:00 AM),

<https://www.forbes.com/sites/waynerash/2023/02/28/section-230-reforms-introduced-into-us-senate-and-house-of-representatives/?sh=297612281d3e>.

2. Lauren Feiner, Supreme Court Justices in Google Case Hesitate to Upend Section 230, CNBC (Feb. 21, 2023), <https://www.cnbc.com/2023/02/21/supreme-court-justices-in-google-case-hesitate-to-upend-section-230.html>.