



1050 17th Street, N.W.
Suite 1150
Washington, DC 20036
202.525.5717

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www.rstreet.org

Vote Alert

R Street Institute to Congress: Vote YES on H.R. 5111, the Consumer Review Fairness Act

The R Street Institute encourages all members to support passage of H.R. 5111, the Consumer Review Fairness Act. This bill is expected to be considered under suspension of the rules the evening of Sept. 12, 2016.

Nearly [70 percent](#) of customers consult online reviews before making a purchase. Indeed, these reviews and ratings are essential to reduce information asymmetries between buyers and sellers, and to facilitate commerce both online and with brick-and-mortar retailers. Because of these ratings systems, you can confidently buy something from someone you've never met on eBay, discover an amazing new restaurant on Yelp or book a night's stay in someone's house with Airbnb.

Therefore, it's important that we protect the freedom to write honest reviews. If that eBay seller sent you defective goods, or that restaurant was infested with cockroaches, it's important to let others know. Without that freedom, online commerce wouldn't work as well and in some cases, might not work at all. The trust mechanism on which millions rely to do business would break down.

That's why the [R Street Institute has supported](#) the Consumer Review Fairness Act ([H.R. 5111](#)) and its companion the Consumer Review Freedom Act ([S.2044](#)), which [passed by unanimous consent](#) in the Senate. We are encouraged to see the House legislation move to the floor.

Introduced by a bipartisan coalition of members – including Reps. Leonard Lance, R-N.J.; Joseph Kennedy, D-Mass.; Darrell Issa, R-Calif.; Eric Swalwell, D-Calif.; Michael Burgess, R-Texas; Gregg Harper, R-Miss.; Mike Pompeo, R-Kan.; Markwayne Mullin, R-Okla.; and Pete Olson, R-Texas – this bill strengthens free-speech protections by prohibiting businesses from using certain clauses in form contracts that are designed to restrict consumers' ability to leave honest feedback about their purchases.

Specifically, it would render void any contract provision that either prohibits customers from being able to write, speak or otherwise communicate honest reviews, or that imposes penalties on those who do. This includes any provision that:

1. Prohibits or restricts the ability of a person who is a party to the form contract to engage in a covered communication;

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2. Imposes a penalty or fee against a person who is a party to the form contract for engaging in a covered communication; or
3. Transfers or requires the individual to transfer to any person or business any intellectual property rights that the individual may have in any otherwise lawful covered communication about the person or the goods or services provided by the person or business;

Vendors typically use two routes to silence customers: [non-disparagement clauses](#) and [copyright](#). The non-disparagement clause works exactly how it sounds – a customer cannot speak out against a company. Copyright is more complicated; the vendor typically adds a clause stating the copyright for any review the customer writes will belong to the vendor. When a customer writes a review the company doesn't like, the company may file a takedown notice under the [Digital Millennium Copyright Act](#) for the offending content.

This legislation also is structured to avoid unintended consequences or impede legitimate grounds for removing content. For instance, it does not apply to non-form contracts, such as between an employer and employee or a business and independent contractor. It also does not alter vendors' ability to remove reviews that are unlawful, false, misleading or confidential – such as [trade secrets](#) (e.g., if a disgruntled KFC employee posts Colonel Sanders' [11 herbs and spices](#)). Similarly, it does not apply to any civil cause of action, such as defamation, libel or slander.

Currently, Americans rely on a patchwork of [state laws](#) covering non-disparagement clauses in form contracts. Enacting federal legislation will clarify the law surrounding [reputation information](#), promote efficient commerce and preserve the rights of American consumers. R Street encourages all members to support H.R. 5111.

Sincerely,

R Street Institute