

ADDRESS POLITICAL BIAS IN SOCIAL MEDIA

In the era of social media, private companies like Facebook, Google, and Twitter face charges of censoring platform users and imposing political biases. The Constitution's First Amendment provides important protections against government censorship and control. Congress should ensure that corporate political engagement complies with applicable campaign finance law.

BACKGROUND

Twitter boasts about 330 million monthly active users (MAU).¹ Facebook dwarfs that number with 2.38 billion MAU.² Google receives approximately 63,000 searches per second.³ As a result, these companies and other similar platforms wield tremendous influence in American society.

Each of these companies make business decisions about the content they permit on their platforms, the prominence they assign it, and how to monitor user interactions. Recently, these platforms have sparked allegations of censorship, viewpoint discrimination, and political bias.

In April 2018, Facebook CEO Mark Zuckerberg testified in front of the House Energy and Commerce Committee, the Senate Judiciary, and the Senate Commerce Committee regarding Facebook's use of data. Google CEO Sundar Pichai likewise testified on the issue before the House Judiciary Committee in December 2018. During those proceedings, the executives faced numerous questions about political bias.⁴

While allegations of censorship of conservative and other political viewpoints are troubling, the Supreme Court has affirmed that "a private entity...who opens its property for speech by others is not transformed by that fact alone into a state actor[, and]...therefore is not subject to First Amendment constraints on its editorial discretion."⁵

Since its holding in *Jackson v. Metro. Edison Co.*,⁶ the Supreme Court has narrowly defined what constitutes state action deserving of constitutional regulation. Under the ruling, private companies are generally unrestrained by the First Amendment's limitations on government actors.

Republicans have historically opposed government efforts to combat political bias. In 1987, for example, President Ronald Reagan vetoed legislation to reestablish the FCC's Fairness Doctrine. "This type of content-based regulation by the Federal Government is, in my judgment, antagonistic to the freedom of expression guaranteed by the First Amendment," Reagan said in his veto message. "In any other medium besides broadcasting, such federal policing of the editorial judgment of journalists would be unthinkable."⁷

Quick Take

Combating political bias from private individuals or businesses through legislation or regulation could run afoul of the First Amendment.

Congress should ensure that online platforms that support or oppose candidates for public office adhere to campaign finance laws and contribution limitations.

CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution's First Amendment provides protections against government censorship.⁸ The government should not unconstitutionally infringe on the speech of private individuals and businesses.

POLICY SOLUTIONS

Combatting political bias from individuals or businesses through legislation or regulation sets a dangerous precedent that arguably violates the principles of the First Amendment. In *Mills v. Alabama*, the Supreme Court noted that "a major purpose of that Amendment was to protect the free discussion of governmental affairs."⁹ A private business that chooses to emphasize or prohibit certain perspectives on its online platform risks losing users who feel their views are limited. Moreover, Americans have no constitutional right of access to private online forums.

Even so, online businesses that use their platforms to support or oppose candidates for public office may be subject to campaign finance laws and contribution limitations. The Federal Election Commission must have sufficient authority and resources to confirm that social media companies do not contribute anything of value to candidates for office without complying with applicable laws and regulations.

Please contact Cameron Smith or Kelsey Wall with the Republican Policy Committee at (202) 225-4921 with any questions.

¹ Brandon Borrman, *Twitter Announces Third Quarter 2018 Results*, PR Newswire (Oct. 25, 2018), <https://www.prnewswire.com/news-releases/twitter-announces-third-quarter-2018-results-300737803.html>.

² Josh Constine, *Facebook reserves \$3B for FTC fine, but keeps growing with 2.38B users in Q1*, TechCrunch (April 2019), <https://techcrunch.com/2019/04/24/facebook-earnings-q1-2019/>.

³ Aleksandra, *63 Fascinating Google Search Statistics*, SEO Tribunal (Sept. 26, 2018), <https://seotribunal.com/blog/google-stats-and-facts/>.

⁴ Jessica Gwynn, *Ted Cruz threatens to regulate Facebook, Google and Twitter over charges of anti-conservative bias*, USA Today (April 10, 2019), <https://www.usatoday.com/story/news/2019/04/10/ted-cruz-threatens-regulate-facebook-twitter-over-alleged-bias/3423095002/>.

⁵ *Manhattan Community Access Corp. v. Halleck*, 139 S.Ct. 1921, 1926 (2019).

⁶ 419 U.S. 345 (1974).

⁷ Penny Pagano, *Reagan's Veto Kills Fairness Doctrine Bill*, Los Angeles Times (June 21, 1987), <https://www.latimes.com/archives/la-xpm-1987-06-21-mn-8908-story.html>.

⁸ U.S. Const., amend. I.

⁹ 384 U.S. 214 (1966).