

January 6th and President Trump: A Study of Social Media in Today's America

Alex Sung¹, David Douglas Klein²

¹Student, USA, alexleesung@gmail.com

²Adjunct Instructor, New Jersey City University, USA, dougkleinteacher@gmail.com

ABSTRACT: In the wake of the January 6th mob insurrection at the US Capitol, does the Federal government need to implement protocols that flag insurrection and domestic terrorism on social media platforms such as Facebook and Twitter? The US Supreme Court protects Free Speech on privately owned media, but the most popular Internet sites have evolved by 2021 to become wide-spread spaces for public and private communication. Currently, these global platforms are permitted to selectively censor and regulate speech at their discretion without infringing upon First Amendment rights. The ubiquity of social media means that the publicly-available speech (e.g. posts) of Twitter and Facebook's billions of users is controlled by what's recently called by Congressional critics and commentators as "Big Tech". The most recent President of the United States Donald Trump was permanently banned from the largest social media platforms. On July 7, 2021 he filed class-action lawsuits targeting Facebook, Google (owner of YouTube) and Twitter. Many Americans with conservative views feel social media silence their voices, while those with liberal views argue that social media platforms do not eliminate hate speech. This paper will delve into whether increased government oversight and applying the rights of the First Amendment to individuals online can maintain peaceful public discourse, avoiding any future violence. The paper will also provide an overview of the essential legal hurdles the Trump lawsuit faces but will not analyze the strengths and weaknesses of the Trump case.

KEYWORDS: censorship, social media, January 6 riot, free speech rights, Trump ban, Facebook, Twitter, political bias

On January 6th, 2021, supporters of President Donald Trump violently stormed the Capitol to disrupt the counting of electoral votes that would seal Joe Biden's victory. Several protestors died during the event - one from a gunshot as she attempted to enter a barricaded door, and one woman was trampled to death at an outer entrance to the Capital. Three police officers died after the event (Healy 2021). Right-wing extremists planned the insurrection out in the open on mainstream and obscure social media sites (Lytvynenko, 2021).

Currently, global social media platforms are permitted to selectively censor and regulate speech at their discretion without infringing upon First Amendment rights in compliance with Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230. The ubiquitous nature of social media means that companies that Congressional critics, former President Trump and commentators label as "Big Tech" (Gabatt 2021) control public speech on mainstream online forums and websites. Trump was temporarily - and then permanently - banned from Facebook, Youtube, and Twitter in January 2021. Trump launched class-action lawsuits against these entities on July 7th, 2021, claiming censorship (Lange and Wolfe 2021).

January 6th was the day circled on the calendar by Trump supporters because of the vote in Congress to certify the 2020 Electoral College results, designating Joseph Biden as the winner of the Presidential election. It was also the date of the March to Save America Rally, organized by the Woman for America First, which brought thousands of Trump supporters to Washington, DC (Trumpmarch.com [now defunct] web.archive.org, 2021). Trump spoke to the Rally throng on the Mall from 12 noon to 1:10 pm and ended with words, "We are going to the Capitol," he said. "We are going to try and give them [Republicans] the kind of pride and boldness that they need to take back our country" (Naylor 2021).

On right-wing social media sites, such as Parler, and even mainstream ones such as Facebook, Trump supporters organized and planned to storm the Capitol before Trump spoke

on January 6th (Lytvynenko 2021). Government agencies such as the Department of Homeland Security and the FBI were fully aware of the planning online but did not issue any warnings (Temple-Raston 2021). Investigators and journalists have found many expressions (the evidence in cases will prove whether the number of violent posts was in the thousands, tens of thousands, hundreds of thousands, or millions). A video posted on news websites shows leaders talking about using violence. Protesters came with weapons, mace, military gear, battle attire, explosives, and even a noose. One allegedly tweeted that he wanted to “Assassinate AOC” (Lytvynenko 2021).

Inside the building, the mob called out for Vice President Pence, and if he was caught in the crowd, the outcome might have been disastrous. In a video posted on social media, the crowd inside the Capitol could be heard chanting “Hang Mike Pence” repeatedly (CNN 2021). Never in recent memory has there been such an outcry for the assassination of a high-ranking public official such as Pence. Whether Trump is implicit in instigating the riots on the Capitol and the threats on his vice president are still up to much debate in Congress (Ellis and Wong 2021). As of this writing, the House of Representatives is embroiled in tension along partisan lines over who will be selected onto the committee to investigate the insurrection (Hendrix 2021).

Let’s turn to how people use social media to post threats and to mobilize to fight. While individuals sometimes claim that Twitter and Facebook violate free speech rights by restricting posts, Federal courts have held that the First Amendment to the US Constitution, which protects against state action, cannot invoke non-governmental companies owned by stockholders (Brudney 1981). Second, courts have concluded that many non-constitutional claims are barred by Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230, which “provides immunity to providers of interactive computer services, including social media providers, both for certain decisions to host content created by others and for actions taken ‘voluntarily’ and ‘in good faith’ to restrict access to ‘objectionable’ material” (Brannon 2019). Moreover, while Section 230 gives a pathway for social media sites to remove harmful content, the onus is placed upon the individual private enterprises to regulate the speech. Since the Federal government cannot compel these companies to remove content, some social media sites that present themselves as “free-speech” social media platforms, such as Parler, did not take action (that’s publicly evident) to police insurrection chatter.

After Biden won the Presidential election in November, Trump repeatedly claimed widespread voter fraud, that the election was “stolen from him,” and Biden’s win was illegitimate (Yen 2021). This premise is laughable, and one can hardly believe that any rational person can say a Presidential election was stolen with a straight face - much less the Commander in Chief of the United States. From a legal point of view, one can say that Trump’s claims were without merit, baseless, fictional, even wacky - but were the messages Trump posted on social media violent, harassing, obscene, as the law stipulates for censorship? That is one element of the intellectual debate.

According to Twitter, Trump’s remarks regarding the election were violent as Twitter’s official statement reads, “President Trump’s statement that he will not be attending the Inauguration is being received by a number of his supporters as further confirmation that the election was not legitimate” and that it “may also serve as an encouragement to those potentially considering violent acts that the Inauguration would be a ‘safe’ target, as he will not be attending” (Permanent Suspension of @realDonaldTrump. Twitter Inc., 2021)

Parler, an alternative social media site started by conservative investors, quickly became popular with right-wing personalities Senator Ted Cruz, Eric Trump, and Sean Hannity after it was launched. Parler touted itself as a neutral social media platform focused on real user experiences and engagement (Bell 2021). However, Parler discovered that they did not control “its airwaves” - it was dependent on outside vendors to acquire users and for web hosting services (Parler used Amazon Web Services to host their servers) (Bazon 2021). In the days

after the Capitol assault, Apple and Google removed Parler from their respective app stores. Then Amazon Web Services stopped hosting Parler, effectively cutting off its plumbing. Parler sued, but it had agreed, in its contract, not to host content that “may be harmful to others.” In a court filing, Amazon provided samples of about 100 posts it had notified Parler violated its contract in the weeks before the Capitol assault. “Fry ’em up,” one said, with a list of targets that included Nancy Pelosi and Chuck Schumer. “We are coming for you, and you will know it.” On January 21st, 2021, a judge denied Parler’s demand to reinstate Amazon’s services (Bazelon 2021).

Parler was able to find another cloud host, LA-Based Skysilk, a month after the insurrection, ensuring their operation would continue running (Turton 2021). Even if Parler were permanently shut down, the violent and extremist speech would not have halted; in the month that Parler ceased services, Donald Trump supporters embraced Signal, Telegram, and other ‘free speech’ apps (Chau 2021). The user base Signal, Telegram, and privacy-focused search engine DuckDuckGo skyrocketed in the days following January 6th (Chau 2021). Even little-known apps such as MeWe, Rumble, CloutHub, and Gab have experienced substantial growth in downloaded users (Lonas 2021).

Gab is a social network that says it “champions free speech, individual liberty, and the free flow of information online” on its official website. Many of the posts on Gab, however, prompt violent ideas. For example, posts found on Gab included a user writing, “just so you know, I’m going to terrorize and burn some Democrats’ places. Come bail me out.” Another saying is, “if you ever want info on someone, let me know. I [can] hunt anyone down. I’m using my skip tracing skills to “give back” to the democratic community. It’s only fair” (Lee 2021). These posts were left upon Gab, helping right-wing extremists spread their ideology across the internet. Anti-Defamation League President Andrew Torblatt says that “Gab is not moderating this extremist content, and their CEO seems to be encouraging users to upload it” (Boigon 2021).

This paper is steering clear of political viewpoints and the broad subject of reviewing political polarization in the United States. However, the last five years have been terra nova in linking non-political concepts to a political leaning. Who imagined that getting a Covid shot would be correlated with one’s political stance? Were rubella and tuberculosis ever politicized? Well, that is where we are in America in 2021.

Where are the lines of division? Most U.S. adults believe that social media companies intentionally censor posts about politics, according to a Pew Research Center survey released in 2020 (Johnson 2020). Roughly three out of four people, or 73% of respondents, said they believe platforms like Facebook and Twitter practice censorship of political speech. That’s up slightly from 72% when Pew last asked that question in 2018 (Johnson 2020). Most people who identify as Democrat or Republican believe social media platforms censor users, but the belief is more common among Republicans. The idea that social media companies practice censorship jumps to 9 in 10 for Republicans, while only 19% of Democrats believe this to be very likely and 40% believe it to be somewhat likely. Roughly 7 in 10 Republicans or Republican-leaning respondents said social media favors liberals over conservatives, also up from 2018 figures.

So will this be proven true? Former President Trump, after all, has launched a class-action lawsuit against Facebook, Google, and Twitter based on “censorship” (Lange and Wolfe 2021). However, a study by data analytics firm Crowdtangle found that news on sites such as Facebook tends to lean conservative, and Facebook executives have not moderated conservative content out of the fear of losing their strong conservative American consumer base (Johnson, 2020). Another study conducted by the non-profit organization Media Matters for America found that right-leaning Facebook pages accounted for 45% of all interactions on the site. MMFA also found that right-wing pages earned around nine billion likes or comments compared with just five billion for liberal pages (Gabatt 2021). These metrics above indicate that the “free market” of political views shows a robust consumer demand for right-leaning

content in the US – as a for-profit company, Facebook will naturally want to continue to benefit from the most popular posts that keep customers returning. Regardless, at least 18 states have pending legislation protecting social media speech - mostly “red” or Republican leading states. (Khashtan 2021).

It finally begs the question of whether the federal government should play a more significant role, if a role at all, in regulating social media. The House Select Committee formed to investigate the insurrection is considering legislation that will strengthen ties between social media companies and law enforcement and look into whether actions could have been taken to prevent the planning of January 6th on social media (Hendrix 2021). In fact, as of this writing, President Biden’s administration has begun a campaign against misinformation on Facebook (Rodriguez 2021). The Biden administration is calling on Facebook to remove posts that encourage American citizens not to get vaccinated (Rodriguez 2021). The government can make life harder for Facebook if the request is not complied with. For example, the Federal Trade Commission could refile its antitrust lawsuit against Facebook (Sullum 2021). Increased scrutiny towards the way private enterprise has regulated free speech is not just shared by the Democratic Party. There is bipartisan opposition to the clause in Section 230 that shields social media platforms from liability for content posted by users (Sullum 2021). Government agencies could remove posts that spread misinformation (such as vaccines) and incite violence (January 6th).

The New York Times noted that Big Tech companies have more stringent guidelines than what is provided in the exceptions to the First Amendment (Bazelon 2021). Legal Scholar David Hudson, writing in the American Bar Association Journal, says that “when a private actor has control over online communications and online forums, these private actors are analogous to a governmental actor” (Hudson 2021). Social media companies’ immense power is shown in the widespread suspension/removal of former President Trump across various social media platforms. Trump has been banned from Twitter indefinitely (Permanent suspension of @realDonaldTrump. Twitter Inc. 2021), and Facebook for two years retroactive to January 7th (Wolfe and Lange 2021). These two social media companies were integral to the success of the Trump Presidential campaign in 2016, with campaign director Brad Pascale admitting that “Facebook and Twitter were the reason we won this thing” (Lapowsky 2016).

In a recent opinion piece written by Trump in the Wall Street Journal, the former president posits that “in recent years, we [the American people] have all watched Congress haul Big Tech CEOs before their committees and demand that they censor ‘false’ stories and ‘disinformation’—labels determined by an army of partisan fact-checkers loyal to the Democrat Party” and that “Big Tech has been illegally deputized as the censorship arm of the U.S. government...it is unacceptable, unlawful and un-American” (Trump 2021). While Trump’s first claim is debunked by the Pew Research and MMFA studies, his second point is a subject of much ongoing legal debate.

Big Tech removing posts is not illegal or unlawful. Still, reforms could be underway, starting with the House Committee on the insurrection, which will review the extent of government surveillance and intervention on social media (Hendrix 2021). Having tech companies regulate themselves may lead to the same companies controlling political narratives and news flow - because Social Media companies – as we showed with metrics earlier in this paper - have an incentive to sell advertising viewed by hundreds of millions of users (Brannon 2019). Legal scholar David Hudson proposes that the U.S. Supreme Court interpret the First Amendment to limit the “unreasonably restrictive and oppressive conduct” by certain powerful, private entities—such as social media entities—that flagrantly censor freedom of expression. (Hudson 2021).

By simply deeming social media platforms as public spaces, will we see in the future that the Federal government will regulate speech based on the exceptions to the First Amendment? The alternative could be placing more onus on the social media companies themselves. An

opinion piece in the Washington Post says that while Trump’s removal from social media was warranted, it was done through arbitrary rules. “Making the rules clearer will provide users with set guidelines that they must adhere to, rather than having their posts removed at the companies’ discretion” (The Washington Post Editorial Board 2021).

As of this writing, the Department of Justice has reported that 535 defendants have been arrested for various charges, from misdemeanors to felonies, while about 300 suspects have remained unidentified. Grand juries indicted at least 204 of the individuals arrested, 21 have pled guilty to their charges, but only six have been charged with felonies (Hymes, McDonald, and Watson 2021). Trump’s ongoing lawsuits against Big Tech are unlikely to succeed according to multiple legal scholars; Eric Goldman, a law professor at Santa Clara University, says Trump’s legal team has “argued everything under the sun, including the first amendment, and they get nowhere,” and Vera Eidelman, an attorney with the ACLU says Trump’s lawsuits are “meritless” (Paul 2021). January 6th provides a precedent that when someone threatens a government building or elected official, they must be believed - no matter how crazy it appears.

References

- Bazelon, Emily. 2021. “Why Is Big Tech Policing Speech? Because the Government Isn’t.” *The New York Times*, January 26, 2021.
- Brannon, Valerie C. 2021. “Free Speech and the Regulation of Social Media Content.” *Congressional Research Service*, March 27, 2021.
- Brudney, Victor. 1981. “Business Corporations and Stockholders’ Rights under the First Amendment.” *The Yale Law Journal* 91(2): 235.
- Chau, David. 2021. “Dangerous New Phase: Trump SUPPORTERS Rush to Join New ‘Free Speech’ Apps.” *ABC News*, January 20, 2021. <https://www.abc.net.au/news/2021-01-20/donald-trump-social-media-apps-free-speech-privacy/13071206>.
- “Department of Justice’s Review of Section 230 of the Communications Decency Act of 1996.” The United States Department of Justice, January 20, 2021.
- Gabbatt, Adam. 2021. “Republicans Cry Big Tech Bias – on the Very Platforms They Have Dominated.” *The Guardian*. Guardian News and Media, May 9, 2021.
- Hendrix, Justin. 2021. “Jan 6 Select Committee and Social Media Companies: 10 Key Pieces of Information to Subpoena.” *Just Security*, July 25, 2021. <https://www.justsecurity.org/77571/jan-6-select-committee-and-social-media-companies-10-key-pieces-of-information-to-subpoena/>.
- Hudson, David L. 2021. “In the Age of Social Media, Expand the Reach of the First Amendment.” *American Bar Association*. Accessed July 26, 2021.
- Hymes, Claire, Cassidy McDonald, and Eleanor Watson. 2021. “More than 535 Arrested so Far in Capitol Riot Case, While More than 300 Suspects Remain Unidentified.” *CBS News*. CBS Interactive, July 21, 2021. <https://www.cbsnews.com/news/capitol-riot-arrests-latest-2021-07-22/>.
- Johnson, Khari. 2020. “Pew: 73% of Americans Believe Social Media Platforms Censor Political Speech.” *VentureBeat*, August 19, 2020. <https://venturebeat.com/2020/08/19/pew-73-of-americans-believe-social-media-platforms-censor-political-speech/>.
- Lapowsky, Iessie. 2016. “This Is How Facebook Actually Won Trump the Presidency.” *Wired*. Conde Nast, November 15, 2016. <https://www.wired.com/2016/11/facebook-won-trump-election-not-just-fake-news/>.
- Lee, Micah. 2021. “Inside Gab, the Online Safe Space for Far-Right Extremists.” *The Intercept*, March 15, 2021. <https://theintercept.com/2021/03/15/gab-hack-donald-trump-parler-extremists/>.
- Lonas, Lexi. 2021. “Social Media Platform Gab Gains Traffic, Users Following Capitol Riot Fallout.” *The Hill*, January 10, 2021. <https://thehill.com/policy/technology/533502-far-right-social-media-platform-gaining-traction-captiol-riots>.
- Lytvynenko, Jane. 2021. “The Rioters Who Took Over the Capitol Have Been Planning Online in the Open for Weeks.” *BuzzFeed News*, January 8, 2021. <https://www.buzzfeednews.com/article/janeltyvynenko/trump-rioters-planned-online?scrolla=5eb6d68b7fedc32c19ef33b4>.
- “Permanent Suspension of @realDonaldTrump.” 2021. *Twitter*. Accessed July 26, 2021. https://blog.twitter.com/en_us/topics/company/2020/suspension.
- “Rioters Chanted ‘Hang Mike Pence’ at Capitol as Pence Fled with Family Seconds before - CNN Video.” *CNN Cable News Network*, January 15, 2021. <https://www.cnn.com/videos/politics/2021/01/15/mike-pence-close-call-capitol-riot-foreman-vpx.cnn>.

- Rodriguez, Salvador. 2021. "Biden on Facebook: 'They're Killing People' with Vaccine Misinformation." *CNBC*, July 18, 2021. <https://www.cnbc.com/2021/07/16/white-house-says-facebook-needs-to-do-more-to-fight-vaccine-misinformation.html>.
- Sullum, Jacob. 2021. "Biden's Campaign against Facebook and Vaccine Misinformation Is Censorship by Proxy." *Chicago Sun-Times*, July 21, 2021.
- Temple-Raston, Dina. 2021. "Why Didn't the FBI And DHS Produce A Threat Report Ahead of The Capitol Insurrection?" *NPR*, January 14, 2021. <https://www.npr.org/2021/01/13/956359496/why-didnt-the-fbi-and-dhs-produce-a-threat-report-ahead-of-the-capitol-insurrect>.
- Trump, Donald J. 2021. "Opinion | Donald J. Trump: Why I'm Suing Big Tech." *The Wall Street Journal*. Dow Jones & Company, July 8, 2021.
- Turton, William. 2021. "Parler Is Back Online, Running on Cloud Hosting Provider SkySilk." *Bloomberg*, February 16, 2021.
- Vogels, Emily A., Andrew Perrin, and Monica Anderson. 2020. "Most Americans Think Social Media Sites Censor Political Viewpoints." *Pew Research Center: Internet, Science & Tech*. Pew Research Center, September 18, 2020.
- The Washington Post Editorial Board. 2021. "Opinion | Trump's Removal from Social Media Was Warranted - but Arbitrary. It's Time for Clearer Rules." *The Washington Post*. WP Company, February 1, 2021.
- Wolfe, Jan, and Jason Lange. 2021. "Trump Sues Facebook, Twitter and Google, Claiming Censorship." *Thomson Reuters*, July 7, 2021. <https://www.reuters.com/world/us/trump-says-he-is-suing-facebook-twitter-google-claiming-bias-2021-07-07/>.
- Yen, Hope. 2021. "AP Fact Check: Yes, Trump Lost Election despite What He Says." *AP News*. Associated Press, May 6, 2021. <https://apnews.com/article/donald-trump-michael-pence-electoral-college-elections-health-2d9bd47a8bd3561682ac46c6b3873a10>.