

## White House social media bias tool: Promoting free speech or fuel for Trump 2020?

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The White House launched a new tool Wednesday to collect social media users' stories of political bias. It's the latest effort by the Trump administration to highlight concerns about institutions limiting free speech and take a swipe at the titans of Silicon Valley.

The newly launched Typeform survey provides a place for Americans to describe the actions taken against their accounts by Facebook, Instagram, Twitter and YouTube. Users are encouraged to include links and screenshots of their posts and the notifications they may have received from the platform moderators.

The first page of the form explains the purpose of the project.

Users are then asked a series of 16 questions. They must provide a name, email, ZIP code and confirm they're a U.S. citizen or legal resident over the age of 18. According to the terms everyone must agree to, the White House has the right to license, use, edit, display, publish and distribute any content users share.

In announcing the new forum, the White House tweeted, "The Trump Administration is fighting for free speech online. No matter your views, if you suspect political bias has caused you to be censored or silenced online, we want to hear about it!"

Social media platforms have been accused of censorship by some progressives, socialists, Black Lives Matter activists and others on the left, it has become a rallying cry among conservatives who argue they have been blocked, shadow-banned or deplatformed because of their political views.

Republicans on Capitol Hill have held multiple hearings over the past year to investigate anti-conservative bias at social media companies. They have heard from tech CEOs as well as YouTube personalities and other alleged victims of online censorship. One congressman, Rep. Devin Nunes, R-Calif., is currently fighting a \$250 million lawsuit against Twitter accusing them of defamation and anti-conservative bias.

Those conservatives who feel wronged by Silicon Valley have found an ally in President Trump who has threatened to take on social media platforms.

Earlier this month, Trump responded to Facebook's decision to purge several "dangerous" users from its platform, including right-wing personalities Alex Jones, Milo Yiannopoulos and Laura Loomer, as well the black nationalist Louis Farrakhan.

"I am continuing to monitor the censorship of AMERICAN CITIZENS on social media platforms. This is the United States of America — and we have what's known as FREEDOM OF SPEECH!" the president tweeted. "We are monitoring and watching, closely!!"

Last August, Trump claimed that Google was intentionally filtering searches for "Trump news" to show only negative press. The White House suggested the president was looking into regulation to address the issue. At the time, Trump said the situation was "very serious" and would be addressed. He warned that Google, Facebook and Twitter were "treading on very, very troubled territory and they have to be careful."

The fight got personal earlier this year after Facebook temporarily blocked Dan Scavino, the White House social media director, when some of his posts were reported as spam.

Trump pledged, "I will be looking into this! #StopTheBias."

So far, none of the president's veiled threats against Silicon Valley have materialized and it's not clear if they will. In part, because keeping the issue alive is politically advantageous but also because the administration could find itself on the wrong side of a First Amendment battle with the social media giants.

John Samples, the vice president at the Cato Institute explained that Trump has been testing the political viability fighting social media bias for over a year and ultimately concluded it's a winning issue for him among his base.

"I think this is really a preparation for the re-election campaign," he said. "The president and his team have decided this is a good target."

Voters should not be surprised if they see the stories of social media bias as part of a White House or Trump 2020 messaging campaign. The social media bias form published by the White House identifies as an information gathering tool. Users are reminded that they are turning over the rights to their screenshots and stories for the White House to use as they see fit.

"The crucial thing is this is about confirmation bias," Samples said of the project. "The job of this tool will be to provide more stories and anecdotes to confirm the belief that Facebook, Google and Twitter are biased against conservatives because that belief is useful to President Trump."

Efforts to prove that top social media companies have an anti-conservative bias have typically relied on anecdotes and proving systemic bias has been unsuccessful given the size and complexity of the companies. The heads of Facebook, Twitter and Google have repeatedly claimed that their policies for banning users are based on community standards and terms of use rather than users' ideologies.

Getting tough with Silicon Valley may help Trump boost enthusiasm among his base, but it raises another question about the government's role in telling companies what speech should be permitted or banned on their platforms.

Social media companies, like other private companies, are not obligated to uphold constitutional free speech rights. Even if they celebrate their sites as bastions of free expression, they are protected under the First Amendment to freely determine the type of content and dialogue that takes place on their platforms.

"Contrary to what people might believe, there is no First Amendment free speech right to participate in social media," explained Nadine Strossen, a constitutional law professor at New York Law School and former president of the American Civil Liberties Union. "They're completely free to publish or not publish any particular post to include or not include any particular participant."

A California superior court reached that conclusion last year when a right-wing activist sued Twitter for allegedly violating his right to free speech. The case was dismissed in favor of upholding Twitter's First Amendment right to establish platform rules and enforce them. In this case, it was against an activist asking the online community to help him "take out" a high profile figure in the Black Lives Matter movement.

Additionally, President Trump would likely run afoul of the First Amendment if he took action that threatened, chilled or deterred the tech firms from exercising their free speech rights. For example, threatening to damage a company if it didn't change its terms of use or block or reinstate a user, could be challenged as the government "abridging the freedom of speech."

Given the size and influence of social media companies, Strossen acknowledged it would take more than an online form posted by the White House or a tweet from the president to cross the line of abridgment.

A law recently approved by the Texas state Senate, however, may cross that line. KEYE in Austin reported that the legislation, Senate Bill 2373, would allow social media users to bring legal action against the platforms if they are banned for posting political or religious content. For every incident of censorship, users could be awarded up to \$75,000.

The bill's Republican sponsor Bryan Hughes argued, "Facebook, Twitter, some social media platforms, they will block an unoffensive post that looks like it's based on the viewpoint. They don't like the politics."

Despite the complexities of navigating free speech and social media, there's a growing recognition that Facebook, Twitter, YouTube and other sites are the dominant spaces for public discourse.

In a 2017 opinion overturning a law banning sex offenders from using social media, retired Supreme Court Justice Anthony Kennedy described social media platforms as a "modern public square." In the court's opinion, Kennedy wrote that to bar an individual from accessing social media "is to prevent the user from engaging in the legitimate exercise of First Amendment rights."

Strossen explained that even though social media companies are not bound by the First Amendment, it's important that they respect those values as much as possible.

"It is undeniable that they operate the most important platforms for the exchange of information and ideas in today's world," she emphasized. "If anybody does not have fair and equal access to the most dominate powerful media, that does great harm not only to the individuals and groups who are excluded but also to the rest of us and even the democracy itself."