



On Parler, The Right-Wing Social Media Site, Free Speech Isn't Free

Jessica Schulberg

June 26, 2020

Parler, a social media site marketing itself as an “unbiased” alternative to Twitter, promises users “the right to express your thoughts, opinions and ideals online.” But there’s a catch: If Parler gets sued over something you post online, the company could make you pay its legal fees.

In recent days, several prominent conservatives have proclaimed that they will join Parler, which has been actively recruiting right-wingers who are disgruntled with the supposed anti-conservative bias on Twitter — a baseless right-wing grievance that has been accelerated by Twitter’s new, albeit occasional, practice of noting that some of President Donald Trump’s tweets are “misleading” or threaten or glorify violence.

The Trump campaign is reportedly considering building up a presence on Parler’s platform, and Trump’s 2020 campaign manager, Brad Parscale, already has an account. White House Press Secretary Kayleigh McEnany announced on Thursday that she had created a Parler account, joining such Republican politicians and Trump allies as Reps. Devin Nunes, Thomas Massie, Jim Jordan, Elise Stefanik and Matt Gaetz, Sen. Ted Cruz, and former U.S. Ambassador to the United Nations Nikki Haley.

According to Parler, Twitter has become “a Tech Tyrant, stepping on our Freedoms to push their agenda driven narrative.” Parler claims that, by contrast, its platform offers “free speech social media focused on protecting user’s rights.”

In fact, Parler’s user agreement and community guidelines ban several forms of speech protected under the First Amendment. And it reserves the right to “remove any content and terminate your access” to the platform “at any time and for any reason or no reason.”

Unlike Twitter or Facebook, Parler requires users to “agree to defend and indemnify Parler, as well as any of its officers, directors, employees, and agents, from and against any and all claims, actions, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to all attorneys fees) arising from or relating to your access to and use of the Services.”

In order to use Parler, individuals must also forfeit their right to sue Parler in court or join a class-action claim and instead must settle disputes in arbitration, a secretive process that typically favors businesses over individuals bringing complaints. (Neither Twitter nor Facebook requires arbitration in their terms of service.)

Parler was founded in 2018 in Henderson, Nevada, by software engineers John Matze and Jared Thomson. The company’s website says they were “exhausted with a lack of transparency in big tech, ideological suppression [sic] and privacy abuse” so they created their own alternative.

But as Matze and Thomson apparently realized, running a minimally regulated social media platform that allows users to spread disinformation and violent threats is a risky endeavor.

“Every time anyone tries to say, ‘This is the platform that really protects free speech,’ they’re lying. I mean, they have the same rules and regulations as most other companies with a few more thrown in — and the indemnification clause on top of that,” Mary Anne Franks, a professor at the University of Miami School of Law, said in an interview. “It’s a false statement to begin with to say that there’s anything meaningfully different about this space.”

Parler did not respond to a list of questions about its user agreement.

If enforced as written, the platform’s indemnity clause could be financially devastating for the average American. Although [Section 230 of the federal Communications Decency Act](#) largely protects social media companies from legal responsibility for what people say and do on their platform, the companies can still be sued and it costs money to successfully fight cases in court.

Twitter, for example, [spent more than a year](#) defending itself in a lawsuit brought by Rep. Nunes over parody Twitter accounts that made fun of him before a judge ruled that the company was protected by Section 230. (The California lawmaker has [urged his followers](#) on Twitter to “[SAY NO TO SOCIALISM](#)” and join him on Parler.)

If Nunes decided to sue Parler for letting people make fun of him on its platform, Parler would probably win in court, just like Twitter did. But under its user agreement, the company could try to force the user who mocked the congressman to pay its legal fees.

“Parler gives users a false sense of safety that they can be controversial and less moderated than other platforms, but Parler in reality passes all costs of this unfettered speech onto the speakers,” Carrie Goldberg, a New York-based lawyer with expertise in online harassment, told HuffPost.

If Parler gets sued by someone outside the U.S., in a country without a law similar to Section 230, there’s a higher risk the company would lose the case and face a costly judgment — which it could try to pass on to the user whose post prompted litigation.

“Absolute free speech on a commercial platform is demonstrably harder than people think. Parler shows one way to plug the leak is with your users’ money,” wrote Twitter user [Wolf Lawyer](#), who first [flagged Parler’s indemnity clause](#).

Some free-speech warriors may be willing to risk going bankrupt paying for Parler’s lawyers in exchange for access to a social media platform that allows them to post whatever they want. But Parler doesn’t even offer that. Its [community guidelines](#) warn users to avoid spam, blackmail, bribery, plagiarism, support for terrorist organizations, spreading false rumors, suggesting people should die, describing “sexual organs or activity,” showing “female nipples,” and using language or visuals “that are offensive and offer no literary, artistic, political, or scientific value.” Parler also advises users against “any other speech federally illegal in USA,” which the platform incorrectly claims includes doxing and “content glorifying violence against animals.”

Subscribe to the Politics email.

From Washington to the campaign trail, get the latest politics news.

SUBSCRIBE

Parler's guidelines "appear to be written to make it misleadingly look like wholly discretionary aspects of their moderation policy are legally required," Julian Sanchez, a senior fellow at the Cato Institute, wrote on Twitter.

If it wanted, Parler could legally allow much of the content it restricts in its community guidelines. But like other private companies, it has made a business decision against providing a completely unregulated, unmoderated platform.

Perhaps the greatest irony of Parler positioning itself as a free-speech haven for people who are outraged by Twitter attaching a warning to a few of the president's most unhinged tweets is the fact that Parler grants itself the right to remove any post or ban any user from its platform for literally "no reason."

With terms of service at least as restrictive as mainstream tech platforms, the real allure of Parler appears to be the hope that in actively recruiting far-right individuals — including some who have been kicked off Twitter for being too racist — Parler is suggesting it won't enforce certain parts of its community guidelines. And so far, it hasn't. A quick search shows that Parler has become another space for white supremacist propaganda and conspiracy theories — including calls to "gas the kikes," start a "race war" and "red pill boomers on Jews and the anti-white agenda," as well as claims that the police killing of George Floyd was a "hoax."

But at least the president might finally find a safe space to post about deploying the military to shoot American citizens who are exercising their First Amendment right to protest.