This Essay explores how social media platforms have been catalysts for social and political change but have created numerous societal problems. The Essay traces the development of speech technologies and shows how these platforms have influenced the world. These changes are evident in the events of the Arab Spring in the Middle East and even in U.S. political elections (including those of President Obama and President Trump). At the same time, the internet and social media present immense challenges to the democratic process. They have enabled individuals to infect the public debate with so-called “fake news,” and have enabled foreign individuals and foreign governments to interfere in the U.S. election. In addition, as social media companies endeavor to exercise greater control over the public debate, there is a risk that they will censor or unduly restrict social and political discourse.
INTRODUCTION

Freedom of expression is an essential element of democratic government. In the U.S., where the Declaration of Independence proclaims that the power to govern “derives . . . from the consent of the governed,” the governmental system is structured on the assumption that “the people, not the government, possess the absolute sovereignty.” In such a system, freedom of speech and of the press are essential. As the United States Supreme Court has recognized, “[s]peech concerning public affairs is more than self-expression; it is the essence of self-government,” because it is designed to ensure the “unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”

In the internet era, social media platforms have come to play an increasingly important role in the communications process as well as in society. Such platforms provide an easy and effective way to facilitate social interactions such as keeping in touch with family and friends. Indeed, people use these platforms to post the minutiae of their lives and to communicate their likes and dislikes. Social media platforms

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2 U.S. DECLARATION OF INDEPENDENCE (July 4, 1776).


5 Sullivan, 376 U.S. at 269 (quoting Roth, 354 U.S. at 484); see also Citizens United v. Fed. Election Comm’n, 558 U.S. 310, 339 (2010) (“Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment ‘has its fullest and most urgent application to speech uttered during a campaign for political office.’” (internal citations omitted)). The Court went on to say that “[i]t is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes.” Id. at 341.
have also been used for political purposes. For example, individuals use their Facebook accounts to communicate their political views to their friends and others and even to organize and coordinate political movements.

There are benefits and disadvantages to social media platforms. While they can help further democratic discourse, they also come with drawbacks. Social media platforms have been used to disseminate child pornography, perpetrate fraud, and engage in other crimes. People have also used social media platforms to insert “fake news” (essentially, disinformation) into the political process and to try to influence the outcome of elections in the U.S. and elsewhere. Sometimes, individuals use social media to try to manipulate the outcome of elections in other countries.

This Essay examines the role of social media platforms and their relationship to democracy and the political process.

I. THE RISE AND INFLUENCE OF SOCIAL MEDIA PLATFORMS

Social media platforms are a new phenomenon. For most of human history, the ability of people to engage in mass communication was quite limited. Until the Middle Ages, people had limited communication technologies available to them, with most European books handwritten by monks in Latin and focused almost entirely on religion. That changed in the fifteenth century when Johannes Gutenberg came up with the idea for “movable type,” thereby inventing the printing press.

The Gutenberg press made it possible to relatively quickly create multiple copies of documents and books and led to a flowering of information and knowledge. It

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6 Weaver, From Gutenberg, supra note 1, at 3.
7 Id. at 4–5.
8 Id. at 6.
9 Id. at 9.
10 Rogelio Lasso, From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students, 43 SANTA CLARA L. REV. 1, 4–5 (2002) (“Printing changed every aspect of the human condition—from thinking, learning, and language, to science, religion, and government. The 17th century became known as ‘the century of genius’ in large part due to the explosion of creativity and new ideas fueled by printing. Creativity is often the result of a combination of intellectual activities. For example, reading two books on separate topics and combining their themes in one mind produces a creative interaction. Increased output of printed works led first to the combination of old ideas, and later to the creation of entirely new systems of thought.”); George L. Paul & Jason R. Baron, Information Inflation: Can the Legal System Adapt?, 13 RICHMOND J.L. & TECH. 1, 4–5 (2007) (“There has been only one transformative advance in the original writing technology. Circa 1450 Johannes Gutenberg invented the movable type printing press, which dramatically lowered the cost of producing written records. The printing press allowed mass production of information and thus contributed to the Renaissance, the Scientific Revolution, and the Protestant Reformation.”).
also led to the Protestant Reformation, the demise of (or at least significant restrictions on) European monarchies and a corresponding emphasis on democratic systems of government, and an explosion of information regarding science and technology.

Following Gutenberg’s invention, innovation in communication technologies stagnated until the nineteenth century when society was able to harness electricity. Electricity involved a major technological advance because it allowed information to move much more quickly than people could move and made it possible to send messages across the country in a matter of seconds. The telegraph led to the swift demise of the Pony Express relay system which had previously required ten days to transport a message from St. Joseph, Missouri, to California. Electricity also led to the creation of radio technology, which allowed sound to be broadcast across the country as demonstrated by President Franklin Delano Roosevelt’s Fireside Chats and around the world (e.g., journalists used radio to transmit the sounds of World War II, including the bombing of London, to audiences in the U.S.). Electricity also led to the development of television, which permitted transmission of visual images, in addition to sound, to be broadcasted.

Electricity also eventually led to the development of the internet. The communications possibilities of the internet were enhanced by the development of handheld devices (e.g., smartphones). These devices, such as Apple’s iPhone, allowed individuals to connect to the internet even though they were away from their desktop computers (and, indeed, almost no matter where they were located), and also allowed individuals to send emails and texts, access Facebook, and conduct a multitude of other internet-based activity. By 2010, market penetration for the various handheld devices had reached 96% of young people in the United States.
Internet communication possibilities were complimented by the development of a variety of new communication platforms, including e-mail, listservs, Google, blogs, YouTube, Flickr, Twitter, 3-D panorama, streaming, and other technologies. Although Twitter communications originally involved only 140 characters (now 280), there are in 2019, 126 million daily users and roughly 500 million tweets per day, a huge increase from the one-to-two billion tweets per month in 2010. In a modern 24-hour news cycle, in which electronic media can disseminate information quickly, Twitter is much faster, and tweets can be used by reporters to solicit information from possible sources. By mid-2010, Facebook had more than 500 million users worldwide.

These new platforms have had a dramatic impact on societies and on the political process. With some 60 million Russians connected to the internet by 2012 (approximately 40% of the population), the internet has been increasingly used to challenge the Russian establishment. Some Russians have used blogs (including LiveJournal, which was once described as Russia’s most popular blogging site), Twitter, Facebook, and the social media site Vkontakte. Using the internet, one Russian citizen launched a project entitled “A Country Without Stupidity,” and another launched a movement entitled “Blue Buckets” (established to challenge the use of blue sirens that allows drivers to ignore traffic laws). When a local mayor offered cash to veterans in exchange for votes, an individual recorded the offer on

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27 Id.


31 Id.
his smartphone and posted it on YouTube. The video led to the mayor’s conviction for violating Russian election rules. When a Russian police officer discussed police corruption in a YouTube video, it received some two million hits and sparked public anger.

The internet also played a major role in the uprising in the Middle East referred to as the “Arab Spring.” During the Tunisian uprising, social media helped people topple the Tunisian government. The initial impetus for the uprising may have been WikiLeaks’ internet disclosure of diplomatic cables, which revealed corruption in the Tunisian government. The WikiLeaks disclosure was apparently coordinated with a Tunisian leaks group, TuniLeak, which posted the cables online on the same day that WikiLeaks posted the documents. Although the WikiLeaks/TuniLeak disclosures may have laid the groundwork for the uprising, the spark came when a 26-year-old college graduate with dismal employment prospects committed suicide by setting himself on fire. The man’s death “unleashed the pent-up anger of Tunisia’s educated and unemployed youth.”

During the uprising, the internet, and in particular social media platforms, provided ordinary individuals with the means to organize, mobilize, and protest. Traditional media, particularly Al Jazeera, also played a role and complemented internet-based tools. For example, Tunisian protestors recorded the uprising on their cell phones and posted pictures and videos on the internet through various sites,

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33 Id.
35 Social Media Gets Credit for Tunisian Overthrow, NAT’L PUB. RADIO (Jan. 16, 2011), http://www.npr.org/2011/01/16/132975274/Social-Media-Gets-Credit-For-Tunisian-Overthrow (“Everyone in Tunisia was connected to the Internet, to the site of the bloggers, to the site of Facebook, to Twitter, to organize the revolution.”).
37 Id.
39 Id.
including Facebook, Twitter, and Frog\textsuperscript{43}—they also distributed video and pictures through their smartphones and other handheld devices.\textsuperscript{44} For example, a YouTube video depicting police corruption was viewed more than 500,000 times.\textsuperscript{45} As the protests continued, internet postings continued to drive political dissent through various social media platforms such as Facebook,\textsuperscript{46} and some of these postings explicitly called for the ouster of Tunisia’s president.\textsuperscript{47}

In an effort to suppress the revolt, the Tunisian government sought to restrict internet communications\textsuperscript{48} and even imprisoned bloggers.\textsuperscript{49} However, tech-savvy citizens found ways to evade governmental controls. As one commentator noted: “This is a generation that is educated, is well-informed, that will be more demanding of their rights to participate, to have a civic role in their state, and not to sit through gerrymandered elections and lack of participation in the economy.”\textsuperscript{50} Traditional media outside the country, which was given limited access in Tunisia, monitored internet postings as a way of tracking the uprising.\textsuperscript{51} Ultimately, Tunisia’s president was forced to step down.\textsuperscript{52}

The success of the Tunisian revolution sparked anti-government protests in Egypt.\textsuperscript{53} Although Egyptians had protested before the Tunisian revolt, the fall of the Tunisian government convinced many Egyptians that change was possible in their country as well.\textsuperscript{54} Tunisian protestors collaborated with Egyptian protestors by

\begin{flushleft}
\textsuperscript{43} Id.
\textsuperscript{44} See Social Media Gets Credit for Tunisian Overthrow, supra note 35.
\textsuperscript{45} Preston, supra note 40.
\textsuperscript{46} Id.
\textsuperscript{50} Social Media Gets Credit for Tunisian Overthrow, supra note 35.
\textsuperscript{54} Weekend Edition: Tunisians Watch Egypt, Tend Their Own Revolution, NAT’L PUB. RADIO
\end{flushleft}
using social media sites to discuss tactical issues, including how to evade surveillance, how to deal with rubber bullets, and how to counteract tear gas.\(^{55}\) As in Tunisia, social divisions between rich and poor inflamed the desire to protest,\(^{56}\) further aggravated by the beating and killing of a dissident (Khaled Said).\(^{57}\)

Even though a relatively small number of Egyptians had internet access at the time (roughly 20% of the population),\(^{58}\) social media platforms played a major role in the Egyptian revolution.\(^{59}\) Protestors took smartphone photos of Khaled Said lying in the morgue and posted these photos on Facebook and YouTube.\(^{60}\) In addition, protestors used the internet to disseminate a message of nonviolence.\(^{61}\) Bloggers and Twitter users also participated.\(^{62}\)

Since Egypt had some five million Facebook users at the time, it provided a particularly effective medium to inform Egyptians about the uprising and to organize protests.\(^{63}\) Egyptians used Google, YouTube, and smartphones to document the protest with video.\(^{64}\) By the time of the revolt, some 473,000 users had accessed the Facebook page of Said, and that page was being used to facilitate communication between the protestors.\(^{65}\) The site proposed a day of protests on January 14 (known in Egypt as “Police Day” because it commemorates a police fight against British colonialism), provided that 50,000 people would commit to participating.\(^{66}\) In fact, more than 100,000 people indicated an intent to participate.\(^{67}\) The Facebook post-
ings were supplemented by traditional print posters that also advertised the protests.\footnote{Id.} Tens of thousands of protestors ultimately turned out to protest, and many shouted slogans suggested on the Facebook page.\footnote{Id.}

Other social media sites also facilitated the protests, including Twitter. At one point, there were some 11,000 Twitter postings regarding Hosni Mubarak in a single hour (although, to put the quantity into perspective, a Twitter feed entitled “icantdateyou” generated 274,000 postings in the same hour).\footnote{Natasha Singer, Why Some Twitter Posts Catch On, and Some Don’t, N.Y. TIMES (Feb. 5, 2011), https://www.nytimes.com/2011/02/06/business/06stream.html.} Protesters responded by protesting in the streets.\footnote{Kareem Fahim & Mona El-Naggar, Violent Clashes Mark Protests Against Mubarak’s Rule, N.Y. TIMES (Jan. 25, 2011), https://www.nytimes.com/2011/01/26/world/middleeast/26egypt.html.} On one site, Bambuser, which provides a method for streaming video images, postings increased dramatically from 800 to 10,000 postings per day during the protests.\footnote{See Preston & Stelter, supra note 42.}

The April 6 Youth Movement facilitated the Egyptian protests by coordinating street protests on Facebook.\footnote{See David Kirkpatrick & Mona El-Naggar, Protest’s Old Guard Falls in Behind the Young, N.Y. TIMES (Jan. 30, 2011), https://www.nytimes.com/2011/01/31/world/middleeast/31opposition.html.} The group’s organizational efforts prompted more than 90,000 protestors to sign up on its Facebook page, and tens of thousands of protestors turned out to rally in Egypt’s streets.\footnote{Id.} After developing a plan for the protests (which involved gathering after Friday prayers to march on Liberation Square), the organizers distributed the plan through email, Twitter, and text messages.\footnote{See Kirkpatrick & El-Naggar, supra note 73.} In addition, one protestors used Facebook to disseminate information regarding Egyptian police brutality.\footnote{Id.} The protestors were able to coordinate the participation of Mohamed ElBaradei, a diplomat and Nobel Laureate who supported the protests by recommending the mosque that he should attend on the day of the protests.\footnote{Id.} As the protests grew in strength, the uprising began to be covered by the mainstream media and became a major news story in its own right.\footnote{Id.} Protestors streamed into Cairo and camped out in Tahrir Square and used traditional technologies (e.g., bullhorns) at the rallies themselves.\footnote{Lolita C. Baldor, U.S. Urges Democracy for Egypt, COURIER-J., Jan. 31, 2011, at A1; Kareem Fahim & Anthony Shadid, Quiet Acts of Protest on a Noisy Day, N.Y. TIMES (Feb. 1,
Once the Egyptian government realized that the internet was being used to coordinate the revolt, it moved to shut down Egyptian internet providers, cell phone service providers, Vodafone, for example, was ordered to shut down its service to selected areas in Egypt. Because of these governmental actions, Facebook saw a dramatic drop in activity. The government even jailed a Google official for assisting with online organizing.

Throughout the Middle East, social media played a prominent role in the Arab Spring uprisings. Protestors in Bahrain, who were calling for the establishment of a constitutional monarchy, used their smartphones to take pictures of governmental repression and posted their pictures on the internet. Even though Facebook was officially banned in Jordan, calls for protests spread in that country through both Facebook and Twitter. Syrians used Facebook to call for “a day of rage,” as well as to arrange protests, and relied on YouTube to depict their protests to the rest of the world and to attract other Syrians to the protests. As tensions mounted, hostilities in the country increased. In Yemen, some of the protests were arranged

82 Fahim & El-Naggar, supra note 71 (noting various restrictions, including the fact that Twitter had confirmed that its site had been blocked in Egypt).
84 Glanz & Markoff, supra note 84.
85 Wael Ghonim and Egypt’s New Age Revolution, supra note 75.
87 Preston & Stelter, supra note 42.
89 Id.
through text messaging, which was preferable to social networking sites like Facebook because of a lower level of internet access in that country. In Sudan, protests were organized through Facebook, Twitter, and other sites. In Saudi Arabia, online petitions were offered to the government, and some individuals called for a day of protest as well as for the establishment of a constitutional monarchy. In Morocco, the “February 20 Movement for Change” generated 10,000 protestors. In Iran, internet websites were used to report on events and protesters established a Facebook page for videos and eyewitness accounts—they also used Twitter.

Even in China, a country in which the government has engaged in aggressive internet censorship, the internet has begun to significantly reshape society. In 2009, China had some 298 million users as well as some 70 million bloggers, and those bloggers repeatedly found ways to avoid government-imposed internet restrictions. For example, some bloggers posted their writings under pseudonyms. In an effort to avoid the impact of internet filters, bloggers employed different names for the issues and things that they discussed; for example, instead of saying that military “tanks” were involved in an incident, a blogger might refer to the involvement of “tractors.” Using social media platforms, some called for protests and for a “Jasmine Revolution.” Within China, attempts to protest were met with what one newspaper referred to as “a mass show of force.” When a prominent dissident repeated threats that had been made against him by Chinese officials,

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100 China Appears to Tighten Internet Access Around Tiananmen Anniversary, PBS NEWS HOUR (June 1, 2009), https://www.pbs.org/newshour/science/asia-jan-june09-china_06-01.
101 Id.
102 Id.
104 See id.
the threats were quickly repeated on the Chinese microblogging website Sina Weibo.\textsuperscript{105}

Social media has also played a major role in the United States. One of the most interesting developments has involved the use of local social media sites to address local issues.\textsuperscript{106} These sites have developed even in areas that might be regarded as resistant to online communication (e.g., Amish communities).\textsuperscript{107} In New Jersey, student protests erupted when voters rejected school budgets, thereby forcing potential budget cuts that negatively affected class sizes and offerings.\textsuperscript{108} The protests were attributed to a Facebook posting that led to a gathering of some 18,000 student protestors.\textsuperscript{109}

In Louisville, Kentucky, a local organization, “8664.org,”\textsuperscript{110} sought to alter traffic routes in order to create a more livable city by rerouting an interstate highway around downtown Louisville so that downtown riverfront land could be used for scenic and recreational purposes.\textsuperscript{111} The group’s plan was to reroute I-64 through Indiana, reducing traffic congestion and saving money.\textsuperscript{112} The organization sought to accomplish its objectives through an aggressive web campaign\textsuperscript{113} as well as through traditional media.\textsuperscript{114} However, the group also maintained a strong presence on Facebook\textsuperscript{115} and YouTube,\textsuperscript{116} and it arranged public fora to promote its ideas.\textsuperscript{117} Although the effort failed, it garnered considerable local support (the organization

\textsuperscript{109} Id.
\textsuperscript{110} The term “86” means to “throw away” or “get rid of,” and in this case, the “64” refers to Interstate 64. About the 8664 Alternative, 8664.ORG, http://www.8664.org/about.html (last visited Oct. 27, 2019).
\textsuperscript{111} 8664.ORG, www.8664.org (last visited Oct. 27, 2019).
\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Marcus Green, $341 Million for Bridges OK’d, COURIER-J., Mar. 25, 2008, at B1.
\textsuperscript{116} James Walter Moore, 8664, YOUTUBE (May 14, 2006), http://www.youtube.com/watch?v=eMFkK419XIk.
\textsuperscript{117} Marcus Green, 8664 Organizers Push Proposal with the Public, COURIER-J. (Nov. 29, 2007), http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20071129/NEWS01/711290452.
Social media has also been used by individuals to affect the resolution of other public issues. During the debate about whether Judge Brett Kavanaugh should have been confirmed to the U.S. Supreme Court, many turned to the internet to discuss issues related to sexual abuse, especially the #MeToo movement. During the hearings, when questions were raised regarding Dr. Christine Blasey Ford’s failure to accuse Kavanaugh earlier, a new hashtag emerged: #WhyIDidntReport. As one commentator noted, “it may take a survivor a while to process that trauma, and even to identify what has happened,” and many women explained that they were also dissuaded from reporting by “fear, anger and shame.” Another hashtag, #BelieveWomen, also emerged. These hashtag movements encouraged other women to step forward and identify themselves as also being victims of sexual assault and harassment.

The internet has also been used to influence political campaigns. Take, for example, MoveOn.org, a group of liberal activists that has actively sought to influence political debate through the internet and that has tried to involve increasing numbers of liberal voters in the political process. In 2003, the group claimed 1.4 million members and even held a mock presidential primary to pick a challenger to President Bush. The movement has also utilized internet-based techniques to raise substantial funds within a matter of hours to support candidates who opposed the Iraq War. Following the nomination of then-Governor Sarah Palin for Vice

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118 Id.
120 Id.
121 Id.
123 Fortin, supra note 119.
127 Id.
President of the United States, MoveOn.org raised $1.2 million in a 24-hour period for a pro-Obama, pro-Biden advertising campaign.\textsuperscript{129}

Like MoveOn.org, a number of “liberal bloggers” have teamed up with democratic interest groups (e.g., labor unions and MoveOn.org) in an attempt to push the Democratic Party further to the left. One such group is Accountability Now.\textsuperscript{130} In addition to soliciting donations, this group of bloggers recruits leftist candidates to challenge centrist incumbent democrats.\textsuperscript{131} As one of the members stated: “We’re going to be about targeting incumbents to make space for Obama to be more progressive.”\textsuperscript{132}

Web-based political and social movements have also had a significant impact on political campaigns. For example, blog activity is widely credited with causing Senator Joseph Lieberman (a former democratic vice-presidential candidate) to lose his bid for re-nomination to the United States Senate in 2006.\textsuperscript{133} Lieberman, who, in the view of his critics, had failed to adequately oppose the war in Iraq, was challenged from the left in the primary.\textsuperscript{134} Although Lieberman lost the primary, he ultimately decided to run as an Independent.\textsuperscript{135} With support from Republicans, who realized that they could not defeat the Democratic candidate and who evidently felt that Lieberman was a preferable alternative to a more liberal Democrat, Lieberman prevailed in the general election.\textsuperscript{136} The net effect was that the internet-based challenge did not oust Lieberman, but did shift his political affiliation from Democrat to Independent. Lieberman, who was therefore less beholden to Democratic party interests, endorsed John McCain over Barack Obama in the 2008 presidential election.\textsuperscript{137} Lieberman thereafter decided not to run for reelection, acknowledging that he would face substantial opposition.\textsuperscript{138}

\begin{itemize}
  \item \textsuperscript{129} Weeks, \textit{supra} note 125.
  \item \textsuperscript{131} \textit{Id.}
  \item \textsuperscript{132} \textit{Id.}
  \item \textsuperscript{133} Michael Russo, \textit{Are Bloggers Representatives of the News Media Under the Freedom of Information Act?}, 40 COLUM. J.L. & SOC. PROBS. 225, 225 (2006); Rutenberg, \textit{supra} note 130.
  \item \textsuperscript{134} \textit{Id.}
\end{itemize}
The role of the internet in political campaigns expanded during the 2018 midterm election cycle. During that election, most political candidates began sending text messages to potential supporters asking for their votes.\textsuperscript{139} One advantage of social media advertising is that it allows candidates to collect the email addresses of potential supporters and interact with them through email. While candidates may still be sending campaign mailings and placing ads on television, they were increasingly sending personalized campaign text messages to the phones of potential voters for the 2018 election.\textsuperscript{140} Both Democrats and Republicans used these mass messaging apps.\textsuperscript{141} Of course, the use of text messages in political campaigns is not entirely new. Barrack Obama announced his vice-presidential candidate by text message, and both Hillary Clinton and Donald Trump used text messages “to raise money, promote local events and get voters to the polls.”\textsuperscript{142} What is new is that political candidates were aggressively using text messaging to avoid crowded social media platforms and crowded email inboxes.\textsuperscript{143}

II. THE PROBLEMS CREATED BY SOCIAL MEDIA

Even though social media has enabled greater participation in the democratic process, it has also caused numerous societal problems. For one thing, social media platforms are incubators for so-called “fake news,” i.e. false or disinformation. They have also enabled foreign governments and foreign individuals to more easily attempt to influence U.S. elections.

A. Fake News

While fake news has existed since the beginning of time, social media platforms have enabled the widespread dissemination of fake news. Facebook has nearly two billion users worldwide, “reaches approximately 67% of U.S. adults,” and 44% of U.S. adults have indicated that they receive their news from Facebook.\textsuperscript{144} Regarding the 2016 election, Twitter found some 50,000 Russia-linked accounts that were

\textsuperscript{140} \textit{Id.}
\textsuperscript{141} \textit{Id.}
\textsuperscript{142} \textit{Id.}
\textsuperscript{143} \textit{Id.}
spreading disinformation.”\textsuperscript{145} That disinformation was spread not only by Republican supporters, but also by Democratic partisans.\textsuperscript{146} As one commentator noted, “digging up large-scale misinformation on Facebook was as easy as finding baby photos or birthday greetings.”\textsuperscript{147} In 2018, there were “doctored photos . . . of Latin American migrants headed towards the United States border. There were easily disprovable lies about the women who accused Justice Brett M. Kavanaugh of sexual assault, cooked up by partisans with bad faith agendas.”\textsuperscript{148} Indeed, “every time major political events dominated the news cycle, Facebook was overrun by hoaxers and conspiracy theorists, who used the platform to sow discord, spin falsehoods and stir up tribal anger.”\textsuperscript{149}

Fake news is particularly disturbing in nations that are premised upon democratic principles because it can subvert and undermine the democratic process with disinformation. Indeed, some have argued that the very objective of fake news is to destabilize institutions.\textsuperscript{150}

\textbf{B. Interference in Electoral Campaigns}

The internet has also created special problems for democratic processes, particularly for democratic elections. Because of the worldwide nature of the internet, individuals located in one country can easily try to influence the outcome of elections in other countries. These attempts to influence can be undertaken by foreign governments, or by individuals, but the goal is to sway the electorate in favor of a preferred result.

Efforts to subvert elections can come in many different forms. Some attempts involve an effort to introduce “fake news” into democratic discussions, thereby misleading the electorate. Other attempts can involve using the internet to sow discord


\textsuperscript{146} Craig Timberg & Shane Harris, \textit{Russian Operatives Blasted 18,000 Tweets Ahead of a Huge News Day During the 2016 Presidential Campaign. Did They Know What Was Coming?}, WASH. POST (July 20, 2018), https://www.washingtonpost.com/technology/2018/07/20/russian-operatives-blasted-tweets-ahead-huge-news-day-during-presidential-campaign-did-they-know-what-was-coming/.


\textsuperscript{148} Id.

\textsuperscript{149} Id.

or division within the electorate and thereby to motivate (or perhaps discourage) portions of the electorate.

Claims of election interference were common after the U.S. 2016 presidential election, including allegations that the Russian government tried to help ensure Donald Trump’s election.\textsuperscript{151} There were also claims that Russian intervention was designed simply to destabilize the U.S. political system and “remove faith” in America.\textsuperscript{152} Indeed, special counsel Robert Mueller indicted 12 Russians for masterminding computer attacks designed to undermine the Democratic Party.\textsuperscript{153}

There were also allegations that the Russians specifically sought to undermine Democratic candidate Hillary Clinton.\textsuperscript{154} They did so using hash tags such as “#Trump2016,” “#TrumpTrain,” and “#Hillary4Prison.”\textsuperscript{155} One blog post referred to Hillary as “pure evil,” and one Russian operative claimed that he was reprimanded for not producing enough posts that were critical of Hillary.\textsuperscript{156} Russians also allegedly paid for online advertisements that encouraged voters to favor then-presidential candidate Donald Trump or perhaps to vote for then-presidential candidate Jill Stein.\textsuperscript{157} The assumption is that Stein voters would otherwise have voted for Hillary Clinton, thus harming Clinton’s electoral possibilities.

The vehicle for Russian interference with the U.S. election was the Internet Research Agency (IRA), which purportedly created hundreds of fake accounts and social media pages\textsuperscript{158} and spent large amounts of money to advertise on social media.\textsuperscript{159} The IRA allegedly used several social media platforms including Twitter,

\begin{itemize}
\item \textsuperscript{152} David V. Hawpe, Hacking America, COURIER-J., Apr. 1, 2018, at 11.
\item \textsuperscript{156} Id.
\item \textsuperscript{159} Kenneth Osgood, The C.I.A.’s Fake News Campaign, N.Y. TIMES (Oct. 13, 2017),
\end{itemize}
PayPal, and YouTube, but some election observers believe that Facebook and Facebook advertisements constituted the IRA’s favored platform and that it used Facebook to organize protest rallies beginning in 2015.  

The IRA employed so-called “trolls”—people who posed as Americans and weighed in on controversial issues. These trolls, purportedly numbering in the thousands, worked 12-hour shifts and were prepped regarding what to say on U.S. social media sites. Each troll was expected to produce at least 80 comments per day and to have posts shared at least 20 times per day. Once a troll created a post, he would forward it to one of a “countless” number of fake accounts in an effort to create a large number of page views. Although some Clinton supporters believe that the Russian efforts tipped the election, it is not clear how much impact these posts had on the U.S. electorate. There were many problems with the Clinton campaign, including Clinton’s general unpopularity. As one commentator observed, regarding the posts, “the audience seemed to grow more jaded and paid less attention to what they wrote.”

One of the tactics allegedly used by the Russians during the 2016 presidential election was to sow discord “among U.S. voters through social media—impersonating Americans, coordinating with unwitting U.S. activists and even planning rallies.” Russians also allegedly tried to intervene in debates regarding the Affordable Care Act (ACA). In a four-year period, the IRA sent out some 600 posts related...
to the ACA, and some of these accounts had more than 100,000 followers.\textsuperscript{170} Although there were tweets on both sides of the ACA issue, approximately 80% of the ACA-related tweets offered a conservative perspective on the issue.\textsuperscript{171}

Russians were also allegedly involved in using the internet to hack into the Democratic National Committee’s (DNC) email accounts, including Clinton’s campaign chairman John Podesta’s email account,\textsuperscript{172} and they were alleged to have stolen the usernames and passwords of volunteers in Clinton’s campaign for president.\textsuperscript{173} Of course, such hacking was possible only because of the nature of the internet. In an earlier day, such as during the Watergate era, thieves were forced to physically break into campaign offices in order to steal information. In an internet era, thieves could invade Podesta’s computer and steal campaign information remotely, even from outside the U.S. The stolen emails were slowly revealed to the electorate in the month leading up to the election and they showed that the DNC (although required to be neutral in regards to the Democratic candidates) was actually favoring Clinton over her rival presidential candidate Bernie Sanders.\textsuperscript{174}

Russian interference in the U.S. political system allegedly continued into the 2018 mid-term elections.\textsuperscript{175} Purportedly, Russia again used trolls, who were active on Twitter and who distributed “politically divisive messages” on “hot button issues” (e.g., race and politics) in an effort to “rile up the American electorate”\textsuperscript{176} and sow “division” and “discord.”\textsuperscript{177} For example, following the mass shootings at Marjory Stoneman Douglas High School in Parkland, Florida, bot-operated Twitter ac-

\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} See Martin & Haberman, supra note 157.
\textsuperscript{173} See Schoenberg & Farrell, supra note 153.
\textsuperscript{174} Id.
\textsuperscript{177} Goldman, supra note 175.
counts were initiated under the hashtags "#gunreformnow" and "#Parklandschooling." As another example, some Twitter accounts focused on the National Anthem controversy in the National Football League.

The total of troll-farm operated accounts was alleged to be as high as 3,800, resulting in as many as eight million tweets and retweets, with tens of thousands of followers. In addition, Facebook and Instagram advertisements were used. The alleged goal was "to create instability and doubt in governments, because [Russians] believe they benefit from the chaos and the loss of confidence in U.S. institutions." In response, Twitter has stepped up efforts to identify and suspend these troll accounts.

III. SOCIAL MEDIA AS THE "GATEKEEPER" OF INTERNET COMMUNICATION

While social media platforms have helped enable ordinary people to engage in mass communication and indeed have given them the potential to engage in worldwide communication, these platforms are subject to private control and have the ability to censor private speech.

Essentially, social media platforms have become the new "gatekeepers" of communication. Throughout history, speech technologies have been controlled by "gatekeepers"—individuals who are able to control the use of those technologies by other people. As noted, the Gutenberg printing press was a revolutionary communications advancement. However, it came with gatekeepers—those who owned or controlled the use of that technology such as newspaper editors. The gatekeepers had much greater freedom to use their printing presses to convey their own ideas. Most people could access print technology only if the gatekeepers of those technologies consented. If not, ordinary individuals might be limited to oral or handwritten techniques for conveying their ideas.

As extraordinary as radio, television, satellite, and cable communications were, all of those technologies came with gatekeepers and limitations as well. Because of

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179 Id.
180 Wells et al., supra note 176.
181 See Goldman, supra note 175.
182 Wells et al., supra note 176.
183 Id.
184 Weaver, From Gutenberg, supra note 1, at 21–38.
185 Id. at 36.
186 Id.
187 Id.
the nature of radio and television (involving a limited number of bandwidths and the probability of signal confusion if more than one person tried to use the same bandwidth at any one time), the U.S. government adopted a licensing system which required individuals to hold government-issued licenses in order to operate radio and television stations. Not uncommonly, those licenses were controlled by wealthy individuals or corporations who could afford the equipment and the licenses to operate these technologies. As with the printing press, those who operated and controlled radio and television licenses exercised significant control over who could access those systems. Ordinary individuals could not demand or require that the owners and operators air their views. Satellite and cable technologies were enormously expensive to establish and operate and therefore were commonly controlled by corporations.

The internet was a major advancement over prior technologies because it was a decidedly democratic technology. Personal computers (PCs) allowed individuals to quickly and easily create quality content at home using their own equipment. When coupled with a printer, the prices of which had dropped dramatically, the PC enabled ordinary people to print high-quality content and to make multiple copies, thereby allowing them to effectively engage in “desktop publishing.” The internet complimented the personal computer by providing ordinary individuals with the means for distributing documents that they had created on their PCs, and thereby allowed ordinary people to engage in mass communication. Individuals could gain access to the internet with nothing more than a desktop computer and internet access. Over time, smartphones were developed, making internet communication even easier. Those who could not afford a desktop or smartphone could gain free or inexpensive computer and internet access at places like internet and cyber cafes. Those who had a smartphone but could not afford internet access could use the internet for free at many businesses (e.g., McDonalds and Starbucks).

The internet solved the problem of how to mass distribute information and documents created with PCs. Historically, if someone created a printed work, they

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190 Id. at 778.
192 FANG, supra note 19, at 203–04.
193 Paul & Baron, supra note 10, at 5–6.
194 FANG, supra note 19, at 196.
195 David Crowley & Paul Heyer, Introduction to Part VIII New Media and Old in the Information Age, in COMMUNICATION IN HISTORY, supra note 14, at 298.
196 Janet Abbate, Popularizing the Internet, in COMMUNICATION IN HISTORY, supra note 14, at 327.
would either have to distribute it themselves in hard copy, pay someone else to distribute it (e.g., the postal service), post it in a public square, or try to disseminate it through existing newspapers, radio, or television networks. Unless the individual could get free distribution through an existing media outlet, distribution costs—either in terms of personal effort or monetary spending—could be daunting. With the internet, ordinary people could bypass traditional methods of communication for the first time in history and distribute content themselves directly to their readers. Indeed, individuals could instantaneously disseminate their ideas all over the world through the click of a computer mouse. Not only could individuals send e-mails and create websites, they could also communicate through chat rooms, Listservs, and blogs. They could also send text messages and communicate in many other (new) ways. In other words, PCs and the internet created completely new communication possibilities for ordinary individuals, enabling those individuals to mass communicate without having to go through the traditional gatekeepers of mass communication. As a result, the internet could be used by all age groups, and by people of all political persuasions, in almost every country, and it thereby transformed mass communication.

Social media platforms have begun to perform more of a gatekeeper role in internet communications. The overwhelming majority of social media platforms are privately owned, and the owners of those platforms have the right to control and limit speech on their platforms. Since the First Amendment to the U.S. Constitution prohibits governmentally-imposed restrictions on free speech and not privately-imposed restrictions, it frequently has no application to the actions of these private entities.

Of course, the fear is that social media platforms will limit speech on their platforms in an effort to control the dissemination of ideas and censor ideas that they do not like. Social media platforms exercise control over speech through their “acceptable use” or “terms of service” policies, which give them broad authority to exclude particular types of content and even to terminate or limit service to users. Facebook uses its terms of service policy to exclude various types of content and

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197 David Crowley & Paul Heyer, Introduction to Part VIII New Media and Old in the Information Age, supra note 14, at 298.
it employs a team that is authorized to take down content that it concludes is illegal or violates its policy.\footnote{Enforcing Our Community Standards, FACEBOOK (Aug. 6, 2018), https://newsroom.fb.com/news/2018/08/enforcing-our-community-standards/} Twitter has a terms of use policy and blocks Tweets from entering countries when the content would violate local law or when the government of that country requests the blocking.\footnote{Somini Sengupta, Censoring of Tweets Sets Off #Outrage, N.Y. TIMES (Jan. 27, 2012), https://www.nytimes.com/2012/01/28/technology/when-twitter-blocks-tweets-its-outrage.html} Under its policy, Twitter may block tweets that insult the Thai monarchy and preclude Nazi-related tweets from entering Germany.\footnote{Id.} In addition to retaining a right to exclude content, social media platforms need not guarantee due process to its users related to a take down or give them any right of redress or appeal.\footnote{Kaminski & Klonick, \textit{supra} note 199.}

Recently, Google removed some 41 social media accounts that were allegedly connected to the IRA.\footnote{Wells et al., \textit{supra} note 176.} These accounts contained content designed to discourage minorities from voting in the election.\footnote{Martin & Haberman, \textit{supra} note 157.} One of the Russian accounts was “Woke Blacks,” which urged African Americans to stay home from the polls rather than support “the lesser of two devils.”\footnote{Id.}

In addition, China, North Korea, and Iran also allegedly attempted to influence the outcome of the U.S. elections, or to at least sow division and discord within the United States.\footnote{David E. Sanger & Sheera Frenkel, New Russian Hacking Targeted Republican Groups, Microsoft Says, N.Y. TIMES (Aug. 21, 2018), https://www.nytimes.com/2018/08/21/us/politics/russia-cyber-hack.html.} Other posts suggested that U.S. military veterans were being disfavored vis-à-vis illegal immigrants and that African Americans were being unfairly harassed and beaten up by police officers, or they sought to create rifts between Christians and non-believers.\footnote{Scott Shane, Some of the Popular Images and Themes the Russians Posted on Social Media, N.Y. TIMES (Dec. 17, 2018), https://www.nytimes.com/2018/12/17/us/russian-social-media-posts.html.}

The ability of social media platforms to control content presents significant free speech concerns. There is always the risk that decisions to prohibit content will be swayed by public opinion. Thus, unlike the First Amendment, under which free speech rights are not determined by majority vote, public opinion may influence take-down decisions that social media platforms make. There is also a risk that governments will pressure social media companies to censor speech. For example, in 2018, Twitter shut down the account of Abu Mehdi al-Mohandis, a prominent
Iraqi militia leader, for inciting violence.\textsuperscript{212} Al-Mohandis had blamed the U.S. for involving itself in Basra, and shortly thereafter there was violence against U.S. diplomats.\textsuperscript{213} When he was criticized for inciting violence, Al-Mohandis’s account was shut down and his supporters complained about undue U.S. governmental influence.\textsuperscript{214} Twitter refused to comment on the ban for privacy and security reasons.\textsuperscript{215} There is also a risk that social media platforms will favor certain political perspectives over competing perspectives.

Whether social media platforms actually do discriminate against certain types of political content is unclear. Twitter, for one, claims that it does not discriminate against conservatives, and Facebook declares that free speech is “core to both who we are and why we exist,” and asserts that it only removes hate speech and violent threats.\textsuperscript{216} Facebook specifically denies that it discriminates against conservative views.\textsuperscript{217} Others challenge Facebook’s assertions. On Facebook’s internal messaging system, a senior Facebook engineer posted a statement titled, “We Have a Problem With Political Diversity,” noting that “We are a political monoculture that’s intolerant of different views.”\textsuperscript{218} The engineer went on to say that Facebook “claim[s] to welcome all perspectives, but [is] quick to attack – often in mobs – anyone who presents a view that appears to be in opposition to left-leaning ideology.”\textsuperscript{219} Regarding certain issues (e.g., diversity and immigration), the post noted that employees “can either keep quiet or sacrifice [their] reputation and career.”\textsuperscript{220} Following the Facebook post, more than 100 Facebook employees decided to form an online group titled “FB’ers for Political Diversity.”\textsuperscript{221} The Facebook controversy erupted after Facebook decided to ban Alex Jones and allegedly limited the speech of Senator Ted Cruz and President Trump.\textsuperscript{222} Of course, the perception of a liberal bias is reinforced by the fact that Facebook’s Chief Executive Officer, Mark Zuckerberg,

\textsuperscript{213} Id.
\textsuperscript{214} Id.
\textsuperscript{215} Id.
\textsuperscript{217} Id.
\textsuperscript{219} Id.
\textsuperscript{220} Id.
\textsuperscript{221} Id.
\textsuperscript{222} Id.
and its Chief Operating Officer, Sheryl Sandberg, donate money to Democratic politicians and liberal causes.\textsuperscript{223} Allegations of bias have also been leveled against other social media platforms. For example, congressional Republicans have alleged that Twitter is biased against conservative views—a claim that Twitter’s Chief Executive, Jack Dorsey, vigorously denies.\textsuperscript{224} Until relatively recently, social media platforms maintained secrecy regarding their moderation guidelines.\textsuperscript{225} Despite these efforts at secrecy, Facebook’s guidelines became public in early 2017.\textsuperscript{226} The guidelines suggest that Facebook will take action against posts involving such things as hate speech, terrorist propaganda, graphic violence, adult nudity, sexual activity, child sexual exploitation, revenge porn, credible violence, suicidal posts, bullying, harassment, breaches of privacy, and copyright infringement.\textsuperscript{227}

However, Facebook’s guidelines suffer from both vagueness and ambiguity. For example, some regard Facebook’s policies on sexual content as “complex and confusing.”\textsuperscript{228} Additionally, the guidelines suggest that a statement like “Someone shoot Trump” should be deleted because a head of state is in a protected category, but a statement like “To snap a bitch’s neck, make sure to apply your pressure to the middle of her throat” can remain.\textsuperscript{229} Facebook justifies leaving the latter post online by arguing that “people commonly express disdain or disagreement by threatening or calling for violence in generally facetious and unserious ways.”\textsuperscript{230} Likewise, the statement “fuck off and die” need not be removed because it would not be regarded as a credible threat.\textsuperscript{231} Photos of children being subjected to bullying or non-sexual physical abuse need not be deleted unless there is a sadistic or celebratory element.\textsuperscript{232} Videos of violent deaths are sometimes deleted, but attempts at self-

\textsuperscript{223} Id.
\textsuperscript{225} Kaminski & Klonick, supra note 199.
\textsuperscript{228} See Hopkins, supra note 226.
\textsuperscript{229} Id.
\textsuperscript{230} Id. ("[Such statements] are not regarded as credible threats.").
\textsuperscript{231} Id.
\textsuperscript{232} Id.
harm need not be deleted.\textsuperscript{233} Although photos of animal abuse or mutilation are permissible, they should be marked as “disturbing.”\textsuperscript{234} Such photos can be removed if they reveal “sadism,” which the guidelines define as “enjoyment of suffering.”\textsuperscript{235} Child nudity is sometimes permissible but not in the context of the Holocaust.\textsuperscript{236}

The decisions regarding particular content can be difficult. For example, Facebook was criticized when it failed to remove videos of a father killing his child in Thailand and of Robert Godwin being killed, but it won acclaim for “disseminating videos of police killings and other government abuses.”\textsuperscript{237} While the guidelines prohibit posts involving child exploitation, Facebook has not fully decided how to handle images involving cartoon images of exploitation.\textsuperscript{238}

The vagueness of the guidelines is aggravated by the fact that Facebook’s moderators are “overwhelmed” by the total volume of work.\textsuperscript{239} Purportedly, Facebook receives more than 6.5 million reports a week involving allegations of fake or improper accounts, and Facebook’s moderators are sometimes forced to make decisions regarding the permissibility of content in as little as 10 seconds.\textsuperscript{240}

Some worry that social media companies like Facebook exercise too much control over speech on their platforms and have suggested that these companies should adopt transparent governing procedures.\textsuperscript{241} For example, the Santa Clara Principles, a guidebook, suggests that social networks “should publish the number of posts they remove, provide detailed information for users whose content is deleted explaining why, and offer the chance to appeal against the decision.”\textsuperscript{242}

One thing is clear: a large amount of content has been excluded from social media platforms. In the first three months of 2018, Facebook closed 583 million accounts that it characterized as “fake,” and it took “moderation action” against some 1.5 billion accounts.\textsuperscript{243} Of these moderation actions, Facebook removed some 2.5 million instances of hate speech, 1.9 million instances of terrorist propaganda, 3.4 million instances of graphic violence, and 21 million instances of adult nudity

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\textsuperscript{233} Id.
\textsuperscript{234} Id.
\textsuperscript{235} Id.; Kaminski & Klonick, supra note 199.
\textsuperscript{236} Hopkins, supra note 226.
\textsuperscript{237} Id.
\textsuperscript{238} Hern & Solon, supra note 227.
\textsuperscript{239} See Hopkins, supra note 226.
\textsuperscript{240} Id.
\textsuperscript{241} See Hern & Solon, supra note 227.
\textsuperscript{242} Id.
\textsuperscript{243} Id.
\end{flushleft}
and sexual activity. YouTube deleted 8.3 million videos in a three-month period “for breaching its community guidelines.”

These moderation actions affect a large quantity of speech. For example, in response to WikiLeaks’s decision to release diplomatic communications that had been stolen from the U.S. government, some online companies decided (perhaps after prompting by governmental officials) to cut their ties to WikiLeaks and its supporters and to discontinue carrying WikiLeaks’s website. Amazon was one of the companies that excluded WikiLeaks, stating that it violated its terms of service to post documents online without taking steps to prevent injury to others. WikiLeaks managed to stay online only by switching servers. WikiLeaks also suffered setbacks regarding its ability to obtain funding. For example, MasterCard, Visa, and PayPal decided to stop processing payments to WikiLeaks. A MasterCard representative justified the decision on the basis that: “Given the serious nature of allegations and broad concerns raised by many regarding the activities of this organization, we believe it was prudent to suspend acceptance, and that’s what we’ve done.” PayPal justified its action on the basis that “WikiLeaks might be encouraging illegal behavior, and that violates PayPal’s acceptable-use policy.”

In excluding WikiLeaks content, Amazon relied on a terms of service agreement which stated that “you represent and warrant that you own or otherwise control all of the rights to the content.” Since WikiLeaks was trying to publish documents that had been stolen from the U.S. government, Amazon concluded that this restriction had been violated. In addition, the Amazon terms of service contract gives it the right to ban content that “could cause injury,” and Amazon expressed concern that “WikiLeaks was not exercising sufficient caution in redacting names from the documents before disclosing them.”

244 Id.
245 Id.
247 Id.
248 Id.
251 Id.
252 Id.
253 Savage, supra note 246.
254 See id.
255 Id.
The allegedly neo-Nazi website, The Daily Stormer, was first banned by GoDaddy after it mocked a young woman who was killed during protests that occurred in Charlottesville, Virginia in 2017. The site was then moved to Google, which banned it for violating its terms of service.

Likewise, three internet giants—Google, Apple, and Facebook—have moved aggressively to remove content produced by Alex Jones and his site Infowars as “hate speech.” The New York Times referred to Jones as someone “who became famous for his spittle-flecked rants and far-fetched conspiracies, including the idea that the Sandy Hook massacre was an elaborate hoax promoted by gun-control supporters.” He has also referred to the 9/11 attacks as an “inside job” and helped spread the “Pizzagate” controversy. In regard to the 9/11 attacks, he stated: “Now 9/11 was an inside job, but when I say inside job it means criminal elements in our government working with Saudi Arabia and others, wanting to frame Iraq for it.” Other sites—including YouTube, Pinterest, and MailChimp—also took action to ban Infowars.

For a while at least, Twitter chose to leave Mr. Jones’s posts alone. However, Twitter eventually changed course and banned both Jones and Infowars from its platforms for allegedly violating its terms of use policy. In particular, Twitter expressed concerns that Jones was harassing a CNN reporter. Jones responded that the reporter was a “public figure” and one who had been attempting to “bully” tech companies into banning Jones. Interestingly, 13 of Jones’s most popular tweets involved reposts of tweets by President Trump.

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257 Id.
259 Roose, supra note 216.
261 Id.
262 Id.
263 Id.
265 Id.
266 Id.
267 Id.
Leading social media companies have also banned other right-wing individuals, and fundraising sites, including PayPal, Patreon, and GoFundMe, have banned individuals on the right.\textsuperscript{268} Included in these bans are Hunter Wallace, described as a white nationalist blogger, and Kyle Chapman, also known as “Based Stickman,” described as an alt-right personality.\textsuperscript{269} In response, some right-wing groups have started their own funding websites.\textsuperscript{270} Airbnb cancelled bookings for far right individuals related to a rally in Charlottesville, Virginia (one that ultimately resulted in violence).\textsuperscript{271} YouTube, which is owned by Google, has placed special restrictions on “controversial religions or supremacist content.”\textsuperscript{272} Facebook banned “Britain First,” which has been described as a far right group in the UK.\textsuperscript{273} Twitter has also banned Milo Yiannopoulos, allegedly for an online harassment campaign against an actress, as well as Chuck Johnson, a Breitbart writer, for alleged threats toward a civil rights activist.\textsuperscript{274} Twitter has also banned organizations such as the American Nazi Party and Golden Dawn.\textsuperscript{275}

IV. THE INTERNET’S RESILIENCE

Because of the resilience of the internet, it is not clear that these social media bans have had a huge impact on the speech of banned individuals or organizations. There is a potential impact because they were banned from the most influential social media platforms (e.g., Facebook and Twitter) and therefore have been forced to resort to lesser platforms. Nevertheless, despite the fact that it was banned from certain websites, The Daily Stormer remains readily available on the internet.\textsuperscript{276} Indeed, The Daily Stormer has used the GoDaddy and Google bans to tout itself as the “most censored” publication.\textsuperscript{277}

The bans do not seem to have hurt Alex Jones or Infowars either. Like The Daily Stormer, Infowars played up its role as a “martyr” by slapping “censored”


\textsuperscript{269} Id.

\textsuperscript{270} Id.

\textsuperscript{271} Id.

\textsuperscript{272} Id.


\textsuperscript{274} See Conger & Nicas, supra note 264.

\textsuperscript{275} Id.

\textsuperscript{276} DAILY STORMER, https://dailystormer.name/ (last visited Dec. 8, 2019).

labels on a number of its videos and initiating a “forbidden information” marketing campaign.\textsuperscript{278} Moreover, like The Daily Stormer, Infowars remains readily available on the internet.\textsuperscript{279} Indeed, following some of the social media bans (but before the Twitter ban), Jones saw an eight percent bump in his Twitter followers (which translated to about 70,000 followers).\textsuperscript{280}

In addition, organizations like Infowars have sometimes found ways to circumvent social media bans. For example, when Facebook decided to ban Infowars, private Infowars groups and messaging apps continued to proliferate on Facebook.\textsuperscript{281} Through both “closed” and “secret” channels, groups like Infowars could function without much oversight or review.\textsuperscript{282} Thus, although Infowars videos and podcasts have been removed from various platforms, it has become one of the most popular apps, sometimes on those very platforms.\textsuperscript{283}

While individuals can still access the Infowars site directly, some believe that Jones and Infowars will have trouble attracting new followers because they cannot access the most popular sites such as Facebook.\textsuperscript{284} Of course, Jones responded (interestingly enough, through another Twitter account) by turning the ban into a public relations coup, claiming that “[t]hey’re scared of us. They’re scared of the populist movement.”\textsuperscript{285} Twitter responded that it would take action to prevent Jones and Infowars from circumventing its ban.\textsuperscript{286}

**CONCLUSION**

Freedom of speech has been influenced over the centuries by technological advances. The first such advance was the Gutenberg printing press, which made it possible to relatively quickly create multiple copies of books and documents, led to dramatic changes in society, including the Protestant Reformation, the Enlightenment, major changes in governmental philosophy, and industrial and technological innovation. In the British colonies in what would later become the United States, the press allowed American leaders to read the writings of the Enlightenment, and those writings ultimately influenced both the writing of the U.S. Declaration of

\textsuperscript{278} See Roose, supra note 216.

\textsuperscript{279} INFOWARS, https://www.infowars.com/ (last visited Dec. 8, 2019).

\textsuperscript{280} See Conger & Nicas, supra note 264.


\textsuperscript{282} Id.

\textsuperscript{283} See Yuan, supra note 258.

\textsuperscript{284} See Conger & Nicas, supra note 264.

\textsuperscript{285} Id.

\textsuperscript{286} Id.
Independence and the drafting of the U.S. Constitution—indeed, the entire structure of the U.S. governmental system.

As transformative as the printing press may have been, its benefits were not available to all. Those who owned or controlled printing presses, and later newspapers, had the power to publish what they chose to publish. Those who did not were subject to “gatekeepers” (the owners of printing presses and newspapers) who had the power to decide what could (and, more importantly, what could not) be published. If a writer could impress the owner of a printing press with the brilliance of his work, he might persuade the owner of the press to publish it. Likewise, if a writer had enough money, he might pay the owner of a printing press to publish it for a fee. Those who could not persuade or pay were left with only more primitive means of communication.

The invention of electricity led to a series of communications innovations that allowed information to be disseminated broadly at speeds far faster than people could move. The telegraph allowed individuals to harness electrical impulses to send messages at incredible speeds over long distances. Radio permitted the transmission of sound without the need for wires, and television enabled the communication of both sound and visual content. Satellites allowed communication signals to be beamed around the world, and cable permitted companies to disseminate large quantities of programming. However, as with the printing press, all of these technologies came with gatekeepers and barriers that it made it difficult for ordinary people to readily access these new technologies.

The internet is the first truly democratic means of mass communication because it is readily accessible by most people through devices (personal computers and smartphones) that can be purchased relatively inexpensively. Those who cannot afford even this modest investment can gain free access through public libraries or internet cafes. Moreover, compared to earlier technologies, the internet’s capabilities are staggering, offering people the capacity to reach others all around the world. Internet platforms (e.g., Facebook and Twitter) abound, as do internet communication systems (e.g., email, blogs). For the first time, ordinary people really do have the means to communicate on a mass scale.

Some gatekeepers have emerged on the internet in the sense that social media platforms use “terms of use” agreements to control access to (and use of) their platforms. This content moderation is potentially disturbing from a free speech perspective in that social media platforms can prefer certain political perspectives over others or can preclude or ban certain ideas. Indeed, certain platforms may choose to limit speech because they are pressured to do so by the public or by governmental officials.

Nevertheless, the internet has proven to be remarkably resilient. Even those who have been banished at one point or another (e.g., The Daily Stormer, WikiLeaks, Alex Jones, and Infowars) by various social media platforms remain accessible on the internet and retain the ability to contact the public through email, blogs,
and other internet devices. At most, the social media bans limit the authority of these groups to access certain platforms—unfortunately, some of the most influential platforms—thereby limiting their ability to reach a new and broader audience.