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Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

## **Comments of the Taxpayers Protection Alliance**

RE: Request for Public Comment Regarding Technology Platform Censorship

Document ID: FTC-2025-0023-0001

On behalf of the millions of taxpayers and consumers we represent, the Taxpayers Protection Alliance (TPA) is pleased to weigh in on the current social media landscape, competition in that sector, and free speech. TPA is a nonpartisan, nonprofit institution that works to educate policymakers and the public about the government’s effect on the economy.

On February 20, the Federal Trade Commission (FTC) began an inquiry regarding social media platforms’ treatment of online speech. To wit, the Commission is investigating whether platforms had violated some law in removing, suppressing, declining to promote, etc. user speech due to its content.<sup>1</sup> “Censorship by technology platforms is not just un-American,” the agency wrote, “it is potentially illegal.” FTC Chairman Andrew N. Ferguson commented, “Tech firms should not be bullying their users.” Perhaps, the agency believes, platforms have engaged in “unfair or deceptive acts or practices, or potentially unfair methods of competition.”

### **Social Media Platforms and Content Discrimination**

It is true that social media platforms discriminate between user content. It is also true that discriminatory content moderation choices often relate to posts’ factual claims, opinions expressed, implied worldview, tone, etc. However, this does not suggest that the FTC — or any government agency — should seek to make platforms neutral conduits of user speech. Besides being ill-advised and likely unconstitutional (see below), it ignores the very purpose of content moderation.

A social media platform’s core function is content discrimination.<sup>2</sup> Such discrimination is how platforms establish a distinct product, attract users, and compete with rivals.

First, many proprietors of social media want to remove content widely considered too objectionable for polite society — e.g., death threats, racially driven harassment, and hardcore pornography. Not many people would object to such standards — most would think them merely

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<sup>1</sup> <https://www.ftc.gov/news-events/news/press-releases/2025/02/federal-trade-commission-launches-inquiry-tech-censorship>

<sup>2</sup> <https://www.protectingtaxpayers.org/free-speech/content-moderation-at-the-supreme-court-free-speech-on-and-for-social-media-platforms/>

common sense. However, thinking about them nonetheless shows the basic necessity of content moderation that disadvantages some users and their viewpoints. The rest is ultimately a discussion over the degree to which a platform should pursue further content moderation/discrimination.

Platforms surely should have the right to fend off more than just racists and pornographers. Facebook does not moderate content like Instagram — its sister platform — nor does it moderate content like X, Reddit, or TikTok. Thus, the product offered by each one of these services is distinct from the others. Users may flock to the one — or ones — they like best. Elon Musk’s purchase of Twitter brought with it a change to the platform’s content moderation policies as well as a change of its name to X. The changes were received well by some users, but other disaffected users migrated to alternative platforms, such as BlueSky.

As trade group NetChoice wrote in a brief in 2023 (citations omitted):<sup>3</sup>

*Most online providers have adopted terms of service, content policies, and guidelines governing use of their services. These policies can vary significantly. For example, Reddit’s Content Policy states that Reddit “is a place for creating community and belonging, not for attacking marginalized or vulnerable groups of people” and so users who “promote hate based on identity of vulnerability will be banned.” Truth Social, in contrast, allows users to report certain types of content — such as “content that depicts violence or threat of violence” — but expresses a “preference” that “the removal of users or user-provided content be kept to the absolute minimum.” The New York Times requires the “use [of] respectful language” and tells users (among other things) to “debate, but don’t attack.” The Washington Post prohibits content that is “hateful,” “contains advertising,” is “in poor taste,” or “is otherwise objectionable.” Such private house rules enable providers to build communities and control their services through the exercise of discretion – and critically, virtually all extend far beyond permissible government regulation.*

In each case, these services (which range from traditional social media to other online hosts of content) provide to their users a very particular sort of online experience. The parameters of said experience are set by content moderation policies. If these platforms were to change their policies, they might attract new users — but they might also risk losing their old ones if the new policies create an environment too unlike the old.

These choices (i.e., this differentiation) is simply how platforms do business. There are very few platforms that do not moderate content. None number among the most popular services. The minority of users who prefer edgier content can go to such permissive platforms (such as 4chan).

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<sup>3</sup> <https://netchoice.org/wp-content/uploads/2023/02/Mot.-for-Prelim.-Inj.-NetChoice-v.-Bonta.pdf>

However, most users and advertisers prefer a more carefully cultivated online environment. The kinds of viewpoints that find purchase on platforms like 4chan are not what most Americans want to hear on a regular and voluntary basis. For example, if Facebook feeds were to be overrun by Ku Klux Klan members, users would depart the platform. It is imperative for Facebook to downrank such content and provide its (often older) user base with less offensive content.

Recognizing the inherency of discriminating between content — often based on viewpoint — to the content moderation process is an important baseline for all discussions of how government officials ought to view content moderation. Nazism is a viewpoint, and platforms clearly have an interest in suppressing that viewpoint. Sometimes, platforms downrank entire topics. When Meta’s Threads first appeared, it said it would downrank all political content to promote a more wholesome environment.<sup>4</sup> Sometimes, platforms prioritize certain media over others. For example, Instagram pivoted from photo to video content to keep pace with competition from TikTok.

It’s also important to note that only some moderation decisions are political — e.g., the pivot from photos to videos. Platforms discriminate between content for myriad reasons, trying at all times to refine a distinct product that will hold users’ attention. This involves not just removing some content but using algorithms to push or hold back various kinds of content, subtly or otherwise. Platforms are always testing and innovating new ideas, working to better fulfil the demands of their userbases. This means tweaking, boosting, filtering, downranking, etc. various kinds of content.

Each platform’s respective content moderation decisions make it unique. This does not mean, as some have suggested, that unique platforms don’t face competitive pressures. Nobody else offers a product quite like Instagram’s, but Instagram nonetheless faces significant competition from YouTube, TikTok, Snapchat, and many others.<sup>5</sup> By analogy, a singer–songwriter may have a unique sound, but he nonetheless competes with other musical acts within his genre and beyond. A talented web designer does not have a monopoly of one and cannot be forced to work on a project simply because nobody can quite duplicate her style.<sup>6</sup>

For regulators, the important point is that ideological neutrality in content moderation is simply impossible. The very act of content moderation — which means discriminating between content — will inevitably disadvantage somebody’s views. The question for a social media platform is how tightly to draw the circle of what is allowed and/or promoted. In other words, whether the platform should attempt to be tolerant of, and deliberately create space for, views that are held by

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<sup>4</sup> <https://www.protectingtaxpayers.org/free-speech/content-moderation-at-the-supreme-court-free-speech-on-and-for-social-media-platforms/>

<sup>5</sup> <https://townhall.com/columnists/david-b-mcgarry/2025/04/16/the-ftcs-case-misguided-case-against-meta-n2655581>

<sup>6</sup> [https://www.supremecourt.gov/opinions/22pdf/21-476\\_c185.pdf](https://www.supremecourt.gov/opinions/22pdf/21-476_c185.pdf)

some sort of society, or whether the platform should only tolerate certain views that generally fall within the Overton Window.

Unquestionably, as TPA has written before, social media platforms have moderated content far too censoriously — especially with respect to speech disfavored by the political left.<sup>7</sup> This was “un-American” (as the FTC put it) but also bad business, and corrections have been (and are being) made. The market is working. Platforms are responding to users’ dissatisfaction. The end of the Biden administration’s quest to influence content moderation has also, presumably, provided breathing room for platforms to become more tolerant of a wider variety of user speech.<sup>8</sup>

Ultimately, however, how social media platforms moderate content is not the FTC’s business. In fact, the Constitution and recent Supreme Court jurisprudence forbid the agency from involving itself in such matters.

### **The First Amendment Protects Content Moderation**

Whatever officials at the FTC (or any other agency) might think of private companies’ online content moderation, they have no business interfering. In fact, the First Amendment bars them from doing so.

Conservatives applauded the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo* (2024), which made clear that bureaucrats’ dubious interpretations of law will receive little deference in court.<sup>9</sup> The ruling was an act of civic hygiene, ensuring that those executing the laws do not also rewrite them. Judges, not bureaucrats, hold interpretive authority in legal disputes.

However, the FTC is overlooking another of the High Court’s 2024 rulings, handed down just three days after *Loper Bright*. In *Moody v. NetChoice*, the majority found that the First Amendment protects online content moderation as it protects the editorial discretion of a newspaper.<sup>10</sup> “When the platforms use their Standards and Guidelines to decide which third-party content those feeds will display, or how the display will be ordered and organized, they are making expressive choices,” Justice Elena Kagan wrote.

Given the Court’s speech precedents, this reasoning was profoundly unsurprising.<sup>11</sup> Yet, even for skeptics – such as the states of Texas and Florida, whose statutes brought about the *NetChoice*

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<sup>7</sup> <https://lawliberty.org/murthys-maddening-modesty/>

<sup>8</sup> <https://spectator.org/governments-attack-on-free-speech-can-only-be-stopped-by-congress/>

<sup>9</sup> [https://www.supremecourt.gov/opinions/23pdf/22-451\\_7m58.pdf](https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf)

<sup>10</sup> [https://www.supremecourt.gov/opinions/23pdf/22-277\\_d18f.pdf](https://www.supremecourt.gov/opinions/23pdf/22-277_d18f.pdf)

<sup>11</sup> <https://www.protectingtaxpayers.org/free-speech/content-moderation-at-the-supreme-court-free-speech-on-and-for-social-media-platforms/>

litigation – the majority’s opinion should leave no doubt regarding content moderation’s constitutional status. The interpretive question has been answered. By its own conservative logic, the Trump administration (including the FTC) must abide by Court’s ruling.

The FTC seems to suggest that perceived divergences between platforms’ stated moderation policies and their enforcement practices could constitute illegal deception. However, courts have looked skeptically at attempts to micromanage such practices. Such interference would necessarily inject the government into debates from which the Constitution bars it.

The FTC has faced such questions before. It arrived at a markedly different conclusion. Complaints were lodged in 2004 against Fox News, alleging that the network’s slogan, “Fair and Balanced,” misled the public. The agency declined to act. “There is no way to evaluate this petition without evaluating the content of the news at issue,” then-Chairman Timothy Muris said.<sup>12</sup> “That is a task the First Amendment leaves to the American people, not a government agency.”

### **The Case for a Conservative Application of Statutory Authority**

In view of the integral function content moderation serves in the online ecosystem and the clear jurisprudence, the FTC should be very careful about trying to extend its existing statutory authorities to cover matters of content moderation. In suggesting content moderation practices could be considered potential violations of the law either as “unfair or deceptive acts or practices, or potentially unfair methods of competition,” the agency forgets the warnings of now-Chairman Andrew Ferguson.

Last year, in Taiwan, Ferguson argued that “there is an impulse to use competition law to solve problems having little to do with competition.”<sup>13</sup> This impulse must be restrained. Even conservatives convinced of Big Tech’s animosity should be circumspect about uncaging the beast of a competition policy unbounded by any sense of mission focus. The Biden administration showed the dangers of bureaucratic mission creep.

Also in 2024, then-Commissioner Ferguson argued that enforcement flexibility with respect to consumer protection

*carries with it the temptation to treat consumer-protection law as a panacea for social ills. We must be mindful not to stretch the scope of consumer-protection laws beyond their rightful purpose. We must stay in our lane. Everyone is a consumer. But not every issue is a consumer-protection issue. Consumer protection should focus on safeguarding individuals in their capacity as consumers—not in every aspect of their lives. I think that*

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<sup>12</sup> <https://www.wsj.com/articles/SB109027556196467837>

<sup>13</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2024.06.26-Ferguson-TFTC-Remarks.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2024.06.26-Ferguson-TFTC-Remarks.pdf)

*means that our concern should be limited to deception and unfairness in the commercial context only.*<sup>14</sup>

The FTC must take care to keep its competition and consumer-protection activities strictly within the proper bounds. And even within those bounds, it must take care not to violate the First Amendment.

### **Conclusion**

TPA would like once again to thank the FTC for the opportunity to provide input on this crucial matter. While well-intended, the current proceeding raises deep constitutional concerns and, we believe, overlooks certain crucial facts about the social media ecosystem. We hope the FTC will choose a path that preserves the free and open internet and respects the free-speech rights of online platforms.

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<sup>14</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf)