

Opening Statement of Glenn Greenwald
March 12, 2021

Before the House Subcommittee on Antitrust, Commercial and Administrative Law

Mr. Chairman and members of the Committee:

Thank you for the opportunity to testify.

I am a constitutional lawyer, a journalist, and the author of six books on civil liberties, media and politics. After graduating New York University School of Law in 1994, I worked as a constitutional and media law litigator for more than a decade, first at the firm of Wachtell, Lipton, Rosen & Katz, and then at a firm I co-founded in 2007. During my work as a lawyer, I represented numerous clients in First Amendment free speech and press freedom cases, including individuals with highly controversial views who were targeted for punishment by state and non-state actors alike, as well as media outlets subjected to repressive state limitations on their rights of expression and reporting.

Since 2005, I have worked primarily as a journalist and author, reporting extensively on civil liberties debates, assaults on free speech and a free press, the value of a free and open internet, the implications of growing Silicon Valley monopolistic power, and the complex relationship between corporate media outlets and social media companies. That reporting has received the 2014 Pulitzer Prize for Public Service and the George Polk Award for National Security Reporting. In 2013, I co-founded the online news outlet *The Intercept*, and in 2016 co-founded its Brazilian branch, *The Intercept Brazil*.

Over the last several years, my journalistic interest in and concern about the dangers of Silicon Valley's monopoly power has greatly intensified -- particularly as wielded by Facebook, Google, Amazon and Apple. The dangers posed by their growing power manifest in multiple ways. But I am principally alarmed by the repressive effect on free discourse, a free press, and a free internet, all culminating in increasingly intrusive effects on the flow of information and ideas and an increasingly intolerable strain on a healthy democracy.

Three specific incidents over the last four months represent a serious escalation in the willingness of tech monopolies to intrude into and exert control over our domestic politics through censorship and other forms of information manipulation:

1. In the weeks leading up to the 2020 presidential election, *The New York Post*, the nation's oldest newspaper, broke a major story based on documents and emails obtained from the laptop of Hunter Biden, son of the front-running presidential candidate Joe Biden. Those documents shed substantial light not only on the efforts of Hunter and other family members of President Biden to trade on his name and their influence on him for lucrative business deals around the world, but also raised serious questions about the extent to which President Biden himself was aware of and involved in those efforts.

But Americans were barred from discussing that reporting on Twitter, and were actively impeded from reading about it by Facebook.

That is because Twitter imposed a full ban on its users' ability to link to the story: not just on their public Twitter pages but even in private Twitter chats. Twitter even locked the account of *The New York Post*, preventing the newspaper from using that platform for almost two weeks unless they agreed to voluntarily delete any references to their reporting about the Hunter Biden materials (the paper, rightfully, refused).

Facebook's censorship of this reporting was more subtle and therefore more insidious: a life-long Democratic Party operative who is now a Facebook official, Andy Stone, announced (on Twitter) that Facebook would be "reducing [the article's] distribution on our platform" pending a review "by Facebook's third-party fact checking partners." In other words, Facebook tinkered with its algorithms to prevent the dissemination of this reporting about a long-time politician who was leading the political party for which this Facebook official spent years working (See *The Intercept*, "Facebook and Twitter Cross a Far More Dangerous Line Than What They Censor," Oct. 15, 2020).

This "fact-check" promised by Facebook never came. That is likely because it was not the *New York Post's* reporting which turned out to be false but rather the claims made by these two social media giants to justify its suppression. The censorship justification was that the documents on which the reporting was based constituted either "hacked materials" and/or "Russian disinformation."

Neither of those claims is true. Even the FBI has acknowledged that there is no evidence whatsoever of any involvement by the Russian government in the procurement of that laptop, and not even the Biden family, to this very day, has claimed that a single word contained in the published documents is fabricated or otherwise inauthentic. Ample evidence -- including the testimony of others involved in the original creation and circulation of those documents -- demonstrates that they were fully genuine.

This means that two of the largest and most powerful Silicon Valley giants suppressed crucial information about a leading presidential candidate -- the one which employees at their companies overwhelmingly supported -- shortly before voting commenced. While Twitter's CEO Jack Dorsey apologized for this banning and acknowledged that it may have been wrong, Facebook has never done so.

While we will never know whether this censorship altered the outcome of the election, it is clear that this was one of the most direct acts of information repression about an American presidential election in decades. That was possible only because of the vast power wielded by these platforms over our political discourse and our political lives.

2. In the wake of the January 6 riot at the Capitol, Facebook, Google, Twitter and numerous other Silicon Valley giants united to remove the democratically elected

sitting President of the United States from their platforms. While many defenders of this corporate censorship tried to minimize it by claiming the President could still be heard by giving speeches and holding press conferences, several leading news outlets followed suit by announcing that they would not carry his speeches live and would only allow to be heard the excerpts they deemed to be safe and responsible.

In response, numerous world leaders -- including several who had clashed in the past with President Trump -- expressed grave concerns about the dangers posed to democracy by the ability of tech monopolies to effectively remove even democratically elected leaders from the internet.

German Chancellor Angela Merkel argued through her spokesperson that "it is problematic that the president's accounts have been permanently suspended," adding that "the right to freedom of opinion is of fundamental importance." Attempts to regulate speech, the Chancellor said, "can be interfered with, but by law and within the framework defined by the legislature -- not according to a corporate decision."

The European Union's Commissioner for Internal Markets Thierry Breton warned: "The fact that a CEO can pull the plug on POTUS's loudspeaker without any checks and balances is perplexing." Commissioner Breton noted that this collective Silicon Valley ban "is not only confirmation of the power of these platforms, but it also displays deep weaknesses in the way our society is organized in the digital space." (CNBC, "Germany's Merkel hits out at Twitter over 'problematic' Trump ban," Jan. 21, 2021).

The Health Secretary for the United Kingdom, Matt Hancock, sounded similar alarms. Speaking to the BBC, he said "tech giants are 'taking editorial decisions' that raise a 'very big question' about how social media is regulated," adding: "That's clear because they're choosing who should and shouldn't have a voice on their platform" (CNBC, "Trump's social media bans are raising new questions on tech regulation," Jan. 11, 2021).

Objections to Silicon Valley's removal of President Trump from their platforms were even more severe from officials with the government of French President Emmanuel Macron. The French Minister for European Union Affairs Clement Beaune pronounced himself "shocked" by the news of President Trump's banning, arguing: "This should be decided by citizens, not by a CEO." And France's Finance Minister Bruno Le Maire said: "There needs to be public regulation of big online platforms," calling big tech "one of the threats" to democracy (*Bloomberg News*, "Germany and France Oppose Trump's Twitter Exile," Jan. 11, 2021).

Perhaps the most fervent and eloquent warnings about the dangers posed by this episode came from Mexican President Andrés Manuel López Obrador. In a press conference held the day after the announcement, he said:

It's a bad omen that private companies decide to silence, to censor. That is an attack on freedom. Let's not be creating a world government with the power to

control social networks, a world media power. And also a censorship court, like the Holy Inquisition, but in order to shape public opinion. This is really serious.

The Associated Press further quoted President López Obrador as asking: “How can a company act as if it was all powerful, omnipotent, as a sort of Spanish Inquisition on what is expressed?” And AP confirmed that “ Mexico’s president vowed to lead an international effort to combat what he considers censorship by social media companies that have blocked or suspended the accounts of U.S. President Donald Trump,” and is “reaching out to other governments to form a common front on the issue” (*Associated Press*, “Mexican President Mounts Campaign Against Social Media Bans,” Jan. 14, 2021).

These world leaders are expressing the same grave concern: that Silicon Valley giants wield power that is, in many instances, greater than that of any sovereign nation-state. But unlike the governments which govern those countries, tech monopolies apply these powers arbitrarily, without checks and without transparency. When doing so, they threaten not only American democracy but democracies around the world.

3. Critics of Silicon Valley power over political discourse for years have heard the same refrain: *if you don't like how they are moderating content and policing discourse, you can go start your own social media platform that is more permissive*. Leaving aside the centuries-old recognition that it is impossible, by definition, to effectively compete with monopolies, we now have an incident vividly proving how inadequate that alternative is.

Several individuals who primarily identify as libertarians heard this argument from Silicon Valley’s defenders and took it seriously. They set out to create a social media competitor to Twitter and Facebook -- one which would provide far border free expression rights for users and, more importantly, would offer greater privacy protections than other Silicon Valley giants by refusing to track those users and commoditize them for advertisers. They called it Parler, and in early January, 2021, it was the single most-downloaded app in the Apple Play Store. This success story seemed to be a vindication for the claim that it was possible to create competitors to existing social media monopolies.

But now, a mere two months after it ascended to the top of the charts, Parler barely exists. That is because several members of Congress with the largest and most influential social media platforms demanded that Apple and Google remove Parler from their stores and ban any further downloading of the app, and further demanded that Amazon, the dominant provider of web hosting services, cease hosting the site. Within forty-eight hours, those three Silicon Valley monopolies complied with those demands, rendering Parler inoperable and effectively removing it from the internet (See “How Silicon Valley, in a Show of Monopolistic Force, Destroyed Parler,” Glenn Greenwald, Jan. 12, 2021).

The justification of this collective banning was that Parler had hosted numerous advocates of and participants in the January 6 Capitol riot. But even if that were a justification for removing an entire platform from the internet, subsequent reporting demonstrated that far more planning and advocacy of that riot was done on other platforms, including Facebook, Google-owned YouTube, Instagram and Twitter (See *The Washington Post*, “Facebook’s Sandberg deflected blame for Capitol riot, but new evidence shows how platform played role,” Jan. 13, 2021; *Forbes*, “Sheryl Sandberg Downplayed Facebook’s Role In The Capitol Hill Siege—Justice Department Files Tell A Very Different Story,” Feb. 7, 2021).

Whatever else one might want to say about the destruction of Parler, it was a stark illustration of how these Silicon Valley giants could obliterate even a highly successful competitor overnight, with little effort, by uniting to do so. And it laid bare how inadequate is the claim that Silicon Valley’s monopolies can be challenged through competition.

How Congress sets out to address Silicon Valley’s immense and undemocratic power is a complicated question, posing complex challenges. The proposal to vest media companies with an antitrust exemption in order to allow them to negotiate as a consortium or cartel seeks to rectify a real and serious problem -- the vacuuming up of advertising revenue by Google and Facebook at the expense of the journalistic outlets which create the news content being monetized -- but empowering large media companies could easily end up creating more problems than it solves.

That is particularly so given that it is often media companies that are the cause of Silicon Valley censorship of and interference in political speech of the kind outlined above. When these social media companies were first created and in the years after, they wanted to avoid being in the business of content moderation and political censorship. This was an obligation foisted upon them, often by the most powerful media outlets using their large platforms to shame these companies and their executives for failing to censor robustly enough.

Sometimes this pressure was politically motivated -- demanding the banning of people whose ideologies sharply differs from those who own and control these media outlets -- but more often it was motivated by competitive objectives: a desire to prevent others from creating independent platforms and thus diluting the monopolistic stranglehold that corporate media outlets exert over our political discourse. Further empowering this already-powerful media industry -- which has demonstrated it will use its force to silence competitors under the guise of “quality control” -- runs the real risk of transferring the abusive monopoly power from Silicon Valley to corporate media companies or, even worse, encouraging some sort of *de facto* merger in which these two industries pool their power to the mutual benefit of each.

This Subcommittee produced one of the most impressive and comprehensive reports last October detailing the dangers of the classic monopoly power wielded by Google, Facebook, Amazon and Apple. That report set forth numerous legislative and regulatory solutions to comply with the law and a consensus of economic and political science experts about the need to break up monopolies wherever they arise.

Until that is done, none of these problems can be addressed in ways other than the most superficial, piecemeal and marginal. Virtually every concern that Americans across the political spectrum express about the dangers of Silicon Valley power emanates from the fact that they have been permitted to flout antitrust laws and acquire monopoly power. None of those problems -- including their ability to police and control our political discourse and the flow of information -- can be addressed until that core problem is resolved.