

TESTIMONY

BEFORE THE SUBCOMMITTEE ON THE  
CONSTITUTION AND CIVIL JUSTICE FOR THE  
COMMITTEE ON THE JUDICIARY

ON

THE STATE OF INTELLECTUAL  
FREEDOM IN AMERICA

BY

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ALLIANCE DEFENDING FREEDOM

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Dear Chairman Goodlatte, Chairman King, and Members of the Committee:

Tech companies like Amazon, Google, Facebook, and Twitter exercise vast control over social media—the key place for the exchange of views in modern life—as well as the online market.<sup>1</sup> They have the power to ban users, delete content, block speech from being seen or heard, defund speech they dislike, and far more.<sup>2</sup> As private companies, they answer only to shareholders and have so far avoided government regulation as public utilities or First Amendment liability as quasi-governmental actors.

The major tech companies have committed themselves to protecting free expression and creating platforms where people can access and express the broadest range of views.<sup>3</sup> This is important because robust debate and free inquiry in the types of marketplaces over which they exercise immense control is critical. As the Supreme Court has said: “The vitality of civil and political institutions in our society depends on free discussion. .... [I]t is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is affected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.”<sup>4</sup> A commitment to the free exchange of ideas and respect for those with whom we disagree are essential to human flourishing and to fostering a diverse, pluralistic, and tolerant society.

Thus, Congress is right to question whether Silicon Valley is fulfilling its promise to provide ideologically neutral speech forums and promote free expression.<sup>5</sup> Experience has taught us that tech companies are not merely passive conduits for speech. They employ personnel and design

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<sup>1</sup> *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (“While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the ‘vast democratic forums of the Internet’ in general, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 (1997), and social media in particular.”).

<sup>2</sup> Cathy Young, *How Facebook, Twitter silence conservative voices online*, The Hill (Oct. 28, 2016), <https://bit.ly/2mDYuqA>.

<sup>3</sup> *The Twitter Rules*, <https://bit.ly/2j9xU9n> (“[E]veryone should have the power to create and share ideas and information instantly, without barriers.”); *YouTube Hate Speech Policy*, <https://goo.gl/3ZWKbu> (“We encourage free speech and try to defend your right to express unpopular points of view ....”), Statement of Marne Levine, VP of Facebook’s Global Public Policy, *Controversial, Harmful and Hateful Speech on Facebook*, <https://bit.ly/2uECO2o> (“We seek to provide a platform where people can share and surface content, messages and ideas freely ....”).

<sup>4</sup> *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

<sup>5</sup> Young, *supra*.

algorithms to sift through, monitor, and affect information on their sites. The result is tech companies skew public debate by increasingly suppressing religious or conservative views.<sup>6</sup>

When internet gatekeepers selectively police speech, they not only break their own promises to respect free speech, they also affect the broad swathe of Americans who get their information from Amazon, Google, Facebook, and Twitter. Four out of every ten dollars spent online is at Amazon.com and roughly 64% of U.S. households have Amazon Prime.<sup>7</sup> Over 70% of adults in the United States use Google's YouTube, nearly two-thirds of these adults are on Facebook, and Twitter attracts nearly half of 18-to-24-year-olds.<sup>8</sup> More specifically, two-thirds of Americans access some of their news on social media.<sup>9</sup> And that affects what they hear, how they think, who they like, and how they vote.

In regards to elections, researchers conducted five double-blind randomized controlled experiments using 4,556 undecided voters in the United States and India. The results showed that biased search rankings alone can shift undecided voters' preferences by 20% or more, the shift may be much higher in certain demographic groups, and tech companies can readily mask their biased search rankings so that voters are unaware of their influence. Evidence shows that tech companies have the ability to influence elections with impunity and their influence is particularly great when a single search engine like Google is dominant.<sup>10</sup> What makes this so-far unused capacity especially concerning is recent reports that Google employees actively discussed altering search results to, for example, "counter" the travel restrictions the Trump administration put in place.<sup>11</sup>

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<sup>6</sup> *Censored! How Online Media Companies are Suppressing Conservative Speech*, Media Research Center (2018), <https://bit.ly/2PQXjiI>.

<sup>7</sup> Shep Hyken, *Sixty-Four Percent of U.S. Households Have Amazon Prime*, Forbes (June 17, 2017), <https://bit.ly/2xwteGJ>.

<sup>8</sup> Aaron Smith & Monica Anderson, *Social Media Use in 2018*, Pew Research Center (Mar, 1, 2018), <https://pewrsr.ch/2FDfiFd>.

<sup>9</sup> Elisa Shearer & Jeffrey Gottfried, *News Use Across Social Media Platforms 2017*, Pew Research Center (Sept. 7, 2017), <https://pewrsr.ch/2vMCQWO>.

<sup>10</sup> Robert Epstein and Ronald E. Roberts, *The search engine manipulation effect (SEME) and its possible impact on the outcomes of elections*, Proceedings of Nat'l Academy of Sciences of the U.S.A. (Aug. 18, 2015), <https://bit.ly/2NTWbgJ>.

<sup>11</sup> Jessica Guynn, *Google employees discussed changing search results after Trump travel ban*, USA Today (Sept. 20, 2018), <https://usat.ly/2Nwf1Lx>.

It is no secret that Silicon Valley’s politics run left.<sup>12</sup> Apple’s Tim Cook was at the forefront of the campaign for same-sex marriage and recently donated \$1 million to the far-left and discredited Southern Poverty Law Center which demonizes its political enemies; Twitter CEO Jack Dorsey recently apologized after he tweeted about ordering food from Chick-fil-A saying he “forgot about” their support for man/woman marriage; PayPal abandoned a new North Carolina office over a law that affirmed the long-standing practice of people using the bathroom of their birth sex; and Google held a post-election meeting at which senior executives bemoaned President Trump’s election, stated they were deeply offended by his victory, and joked about employees moving to Canada—all while recognizing that conservative employees already felt uncomfortable expressing their views.<sup>13</sup> Yet Mozilla’s CEO, Brendan Eich, was forced to resign for giving \$1,000 to the Proposition 8 campaign, California’s ballot initiative to define marriage as a union between one man and one woman in its constitution.<sup>14</sup> This ideological tilt is not limited to internal decisions or political causes but affects how tech companies regulate speech.

Examples are legion. For a time, Google employed a “fact-check” feature that targeted conservative media and many of the “fact checks” were groundless.<sup>15</sup> Facebook’s trending news team (90% of whom identified as liberal) gave conservative content higher scrutiny.<sup>16</sup> YouTube places restrictions or defunds some PragerU videos even though they are not graphic and feature speakers like Pulitzer Prize winners, former prime ministers, and well-known professors.<sup>17</sup> Twitter often ignores harassment or threats by progressives but disciplines conservatives for their speech.<sup>18</sup> And its ad-sales team characterized the Center for Immigration Studies’ estimate of the relative

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<sup>12</sup> Issie Lapowsky, *Of Course Facebook is Biased. That’s How Tech Works Today*, Wired (May 11, 2016), <https://bit.ly/2NTFthx>.

<sup>13</sup> Lapowsky, *supra*; Ayaan Hirsi Ali, *Why Is the Southern Poverty Law Center Targeting Liberals?*, The New York Times (Aug. 24, 2017), <https://nyti.ms/2w7ID65>; David Carrig, *Twitter CEO slammed for Chick-fil-A tweet during Pride Month*, USA Today (June 11, 2018), <https://usat.ly/2lsOJta>; Jason Abbruzzese, *After Alex Jones, a murky and politicized future for tech companies and the news*, NBC News (Sept. 13, 2018), <https://nbcnews.to/2OxsCPc>.

<sup>14</sup> *Mozilla CEO resignation raises free-speech issues*, USA Today (Apr. 4, 2014), <https://usat.ly/2j2aIW9>.

<sup>15</sup> Eric Lieberman, *Google Suspends Fact Check Project*, Daily Caller (Jan. 19, 2018), <https://bit.ly/2EVI57z>.

<sup>16</sup> Tanya Dua, *Confessions of an ex-Facebook trending news curator*, Digiday (Aug. 30, 2016), <https://bit.ly/2DdZrzD>.

<sup>17</sup> *PragerU Takes Legal Action Against Google and YouTube for Discrimination*, PragerU Press Release, <https://bit.ly/2lhhTOI>.

<sup>18</sup> Young, *supra*.

cost of welcoming versus deporting illegal immigrants as “hate speech.”<sup>19</sup> Facebook initially banned part of the Declaration of Independence as “hate speech.”<sup>20</sup> It also regularly censors pro-life speech, although a group named “I will find [a pro-life advocate called] The Activist Mommy and burn whoever runs it alive” meets Facebook’s community standards.<sup>21</sup> Twitter likewise suppresses pro-life speech on a regular basis.<sup>22</sup> Google removed ads for pregnancy resource centers that seek to support pregnant women in choosing life for their children but allows abortion clinics to advertise freely.<sup>23</sup> It also banned ads from Concordia Publishing House because they referenced Jesus and the Bible.<sup>24</sup> Twitter recently limited the visibility of prominent Republicans’ tweets and conservative commentators have long experienced the same problem.<sup>25</sup> Even the ACLU has expressed concerns about tech giants’ banning of conspiracy theorist Alex Jones because the “hate speech” policies they cited can be easily misused to eliminate unpopular viewpoints.<sup>26</sup> Jones’ online audience was swiftly cut in half, which prompted the New York Times—no friend of Jones—to express concern about “the tremendous influence a few internet companies have over public discourse and the spread of information.”<sup>27</sup>

Tech companies’ recent push to restrict “hate speech” poses a threat to free speech, and especially to the expression of religious and conservative views. That is because, invariably, Silicon Valley

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<sup>19</sup> Timothy B. Lee, *Tech companies declare war on hate speech—and conservatives are worried*, Ars Technica (Aug. 31, 2017), <https://bit.ly/2xBj10l>.

<sup>20</sup> Annie Grayer, *Facebook apologizes after labeling part of Declaration of Independence ‘hate speech’*, CNN (July 5, 2018), <https://cnn.it/2NwVC9w>.

<sup>21</sup> Paul Bois, *Zuck Says Facebook Doesn’t Censor Pro-Life Views. Here Are Several Instances Of Them Censoring Pro-Life Views*, Daily Wire (Apr. 12, 2018), <https://bit.ly/2xqTsSw>; Megan Fox, *Group Threatening to Burn ‘Activist Mommy’ Alive Doesn’t Violate Standards, Facebook Says*, PJ Media (Jan. 16, 2018), <https://bit.ly/2DKpP0E>.

<sup>22</sup> Peter Hasson, *Twitter Keeps Censoring Pro-Lifers*, The Daily Caller (Mar. 6, 2018), <https://bit.ly/2NpMGGD>; Lila Rose, *Twitter feigns political neutrality, but my pro-life organization sees the bias firsthand*, USA Today (Sept. 16, 2018), <https://usat.ly/2OJtqQY>.

<sup>23</sup> Julian Hatter, *Google removes advertisements for crisis pregnancy centers*, The Hill (Apr. 28, 2014), <https://bit.ly/1m338c7>.

<sup>24</sup> *Concordia Publishing House Responds to Google Disabling of Faith-Based Advertising*, Concordia Publishing House Press Release (Apr. 24, 2018), <https://bit.ly/2poCShD>.

<sup>25</sup> Alex Thompson, *Twitter appears to have fixed ‘shadow ban’ of prominent Republicans like the RNC chair and Trump Jr.’s spokesman*, VICE News (July 25, 2018), <https://bit.ly/2uRGhJ0>; David Reaboi and Nick Short, *Despite Twitter’s Protests, The Stifling of Conservative Speech On The Platform Is Real*, The Federalist (Aug. 24, 2018), <https://bit.ly/2MLYWMK>.

<sup>26</sup> Megan Keller, *ACLU: Alex Jones ban could set dangerous social media precedent*, The Hill (Aug. 21, 2018), <https://bit.ly/2PKheQa>.

<sup>27</sup> Jack Nicas, *Alex Jones Said Bans Would Strengthen Him. He Was Wrong.*, The New York Times (Sept. 4, 2018), <https://nyti.ms/2NrETIr>.

and others apply the hate label to traditional views they disagree with on a wide range of important topics, like abortion, marriage, and sexuality. Tech companies do this even though they promise users an open marketplace of ideas and laud free speech, for example:

- The Twitter Rules state that “everyone should have the power to create and share ideas and information instantly, without barriers.”
- Google praises “[t]he flow of ideas and open access to information on the web” and affirms that “[a] free society depends on free expression”
- YouTube promises to “encourage free speech and try to defend your right to express unpopular points of view.”
- Facebook promotes itself as “a platform where people can share and surface content, messages and ideas freely.”<sup>28</sup>

Take Facebook as an example. Two-thirds of adults use Facebook and a majority of them get their news there.<sup>29</sup> Facebook declares that its “mission is all about embracing diverse views” and that it “err[s] on the side of allowing content, even when some find it objectionable.”<sup>30</sup> But Facebook’s “hate speech” policy casts serious doubt on its commitment to free expression. It bans any speech “that directly attacks people based on what are known as their ‘protected characteristics,’”<sup>31</sup> despite the fact that Facebook admits there is no objective way of figuring out “when something crosses the line.”<sup>32</sup>

Just as worrisome is the fact that Facebook takes its cues on hate speech from Europe. Along with other tech giants, it signed an agreement with the European Commission to suppress “hate speech”

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<sup>28</sup> *The Twitter Rules*, <https://bit.ly/2j9xU9n> (“[E]veryone should have the power to create and share ideas and information instantly, without barriers.”); Google, Free expression, <https://goo.gl/CjLpNn>; *YouTube Hate Speech Policy*, <https://goo.gl/3ZWKbu> (“We encourage free speech and try to defend your right to express unpopular points of view ...”), Statement of Marne Levine, VP of Facebook’s Global Public Policy, *Controversial, Harmful and Hateful Speech on Facebook*, <https://bit.ly/2uECO2o> (“We seek to provide a platform where people can share and surface content, messages and ideas freely ...”).

<sup>29</sup> Elisa Shearer and Jeffrey Gottfried, *News Use Across Social Media Platforms 2017*, Pew Research Center (Sept. 7, 2017), <https://pewrsr.ch/2vMCQWO>.

<sup>30</sup> Facebook Community Standards, Introduction, <https://bit.ly/1aiNCn3>.

<sup>31</sup> Facebook Community Standards, Hate Speech, <https://bit.ly/2NWOG8Q>.

<sup>32</sup> Richard Allan, Facebook VP EMEA Public Policy, *Hard Questions: Who Should Decide What Is Hate Speech in an Online Global Community?* (June 27, 2017), <https://bit.ly/2tgUoYq>.

online, including “all forms of intolerance.”<sup>33</sup> This phrase – “all forms of intolerance” – is deeply troubling, especially when coupled with the fact that Silicon Valley polices “hate speech” and “intolerance” by delegating their regulation to far-left advocacy groups like the Southern Poverty Law Center. This cripples the prospect for free speech and peaceful dialogue because SPLC has long been criticized for labelling its ideological opponents “haters” and “extremists” if “they deviate from its rigid political agenda, which embraces ... left-wing totems.”<sup>34</sup>

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### **Silicon Valley’s Impulse to Regulate “Hate Speech” Endangers Religious and Conservative Groups and Views**

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Many tech companies empower SPLC and similar groups to suppress religious or conservative speech as “hate speech.” YouTube allows SPLC and other leftist groups to police the video content that users upload.<sup>35</sup> Twitter works with SPLC as one of its “safety” partners in establishing policies and consults virtually no one of a conservative bent.<sup>36</sup> And Facebook acts on the SPLC’s advice to identify “hate speech,” which in the SPLC’s opinion includes mainstream religious or conservative views.<sup>37</sup>

Alliance Defending Freedom (“ADF”) experienced this discrimination first hand in April 2018 when Amazon barred it from the AmazonSmile program through which users direct a small percentage of the amounts they spend to the charities of their choice. Among other things, Amazon’s policies bar groups that promote “intolerance” or “hate.”<sup>38</sup> According to those policies, “Amazon relies on ... the Southern Poverty Law Center to determine which organizations fall into these groups.”<sup>39</sup> Amazon excluded ADF from the Smile program after five years of participation based solely on SPLC’s ideologically driven “hate group” designation.<sup>40</sup>

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<sup>33</sup> Jane Clark, *The Facebook Story You Didn’t Hear*, National Review (June 6, 2016), <https://bit.ly/2NrTa7U>.

<sup>34</sup> Mark Pulliam, *A Demagogic Bully*, City Journal (July 27, 2017), <https://bit.ly/2uF0ty4>.

<sup>35</sup> Peter Hasson, *YouTube Secretly Using SPLC to Police Videos*, Daily Caller (Feb. 28, 2018), <https://bit.ly/2ovWfpe>.

<sup>36</sup> Peter Hasson, *Facebook, Amazon, Google and Twitter All Work With Left-Wing SPLC*, Daily Caller (June 7, 2018), <https://bit.ly/2HoWRUc>.

<sup>37</sup> Hasson, *Facebook, Amazon, Google and Twitter All Work With Left-Wing SPLC*, *supra*.

<sup>38</sup> AmazonSmile Participation Agreement, <https://org.amazon.com/agreement>.

<sup>39</sup> About AmazonSmile, <https://amzn.to/2uKhdVs>.

<sup>40</sup> *Amazon relies on discredited SPLC to banish ADF from Smile program*, ADF Press Release, <https://bit.ly/2Qlb6Jy>.

SPLC's designation of ADF as a "hate group" is, frankly, preposterous. ADF is one of the nation's most respected legal organizations advocating for the freedom of every American to peacefully speak, live, and work according to one's convictions without fear of government punishment. Since 2011, ADF has won nine victories in the United States Supreme Court, including:

- *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) – preventing states from requiring pro-life pregnancy centers to advertise for abortion or otherwise undermine their pro-life message;
- *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018) – overturning a court order requiring a cake artist to create custom wedding cakes celebrating same-sex weddings based on religious hostility;
- *Trinity Lutheran v. Comer*, 137 S. Ct. 2012 (2017) – barring the government from excluding religious institutions from a grant program that enables qualifying applicants to purchase rubber playground surface to ensure children's safety;
- *Geneva College v. Burwell & Southern Nazarene University v. Burwell*, 136 S. Ct. 1557 (2016) (these two ADF cases were consolidated with *Zubik v. Burwell*, which vacated lower courts' rulings against the schools and remanded for further proceedings, stating that the government may not enforce the abortion-pill mandate until the issue is resolved);
- *Burwell v. Hobby Lobby Stores, Inc.* (consolidated with *Conestoga Wood Specialties*), 134 S. Ct. 2751 (2014) – striking down federal burdens on ADF's client's free-exercise rights;
- *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) – unanimous decision upholding a church's free speech right to place signs inviting people to its services on equal terms with other signs;
- *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) -- upholding a town's practice of opening its public meetings with prayer;
- *Arizona Christian School Tuition Organization v. Winn*, 131 S. Ct. 1436 (2011) – dismissing an Establishment Clause challenge to Arizona's tuition tax credit program, which allows residents to claim a tax credit for donations to private organizations that provide scholarships for children to attend private schools.



Recently, one expert ranked Alliance Defending Freedom first among “[t]he top performing firm[s]” in the nation because it “won all four of its decisions before the Court during the five-year period” spanning 2013-2017.<sup>41</sup>

In addition to its Supreme Court practice, ADF’s Center for Academic Freedom has won over 400 victories for free speech on campuses over the last 12 years, protecting and expanding free speech rights for over 8 million students. ADF also works to stop government discrimination against churches and religious institutions. For example, ADF frequently defends churches when the government bars them from using their facilities on equal terms with secular institutions simply because of their religious beliefs and status.

Despite ADF’s record of successfully and peacefully defending Constitutionally-protected free speech and free exercise rights for all Americans, Amazon excluded it from the Smile Program. It likewise bars many other conservative charities like ADF simply because the SPLC has labeled them “hate groups” for disagreeing with its far-left views.<sup>42</sup> The following are examples of some of the religious or conservative organizations that SPLC has branded “hate groups.”<sup>43</sup> ADF may disagree with some of these groups and some of the positions they take but they should not qualify as “hate groups” or be equated to the KKK and American Nazi Party. None of these groups is currently listed as an AmazonSmile participant:

- Alliance Defending Freedom
- American College of Pediatricians
- American Family Association
- American Freedom Alliance
- American Freedom Law Center
- Center for Family and Human Rights
- Center for Immigration Studies
- Center for Security Policy
- Christian Action Network
- Christians and Jews United for Israel
- D. James Kennedy Ministries
- Federation for American Immigration Reform
- Illinois Family Institute
- Liberty Counsel
- Pacific Justice Institute
- Proclaiming Justice to the Nations
- Public Advocate of the United States
- Religious Freedom Coalition
- Ruth Institute
- Tennessee Eagle Forum
- Traditional Values Coalition
- Virginia Christian Alliance

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<sup>41</sup> Dr. Adam Feldman, *Supreme Court All-Stars 2013-2017*, Empirical SCOTUS (Sept. 13, 2018), <https://bit.ly/2pm2NXn>.

<sup>42</sup> Brian Flood, *Silicon Valley giants such as Facebook, Amazon empower far-left Southern Poverty Law Center*, Fox News (June 8, 2018), <https://fxn.ws/2QINDYM>; Hasson, *Facebook, Amazon, Google and Twitter All Work With Left-Wing SPLC*, *supra*.

<sup>43</sup> *Hate Groups*, Southern Poverty Law Center, <https://bit.ly/2pndyIQ>.

- Family Research Council

Predictably, AmazonSmile is skewed heavily in favor of charities that work on the same issues as ADF – like marriage, church/state relations, and much more – but from a left-of-center perspective.

For example, among others, Amazon customers can choose to give to:

- Southern Poverty Law Center
- American Civil Liberties Union
- Military Religious Freedom Foundation Inc.
- Americans United for Separation of Church and State
- American Atheists
- Freedom From Religion Foundation, Inc.
- People for the American Way Foundation
- National LGBTQ Task Force
- National Center For Transgender Equality
- American Humanist Association
- Human Rights Campaign Foundation

ADF met with Amazon leadership in mid-May to explain that SPLC is not a credible source of information and to recommend ideologically neutral options for regulating access to AmazonSmile. Amazon’s officials agreed that relying on highly partisan SPLC was problematic and that they needed an unbiased approach. But ADF remains banned from the program, and Amazon still relies on the SPLC to vet which charities qualify for their program.<sup>44</sup> Amazon has continued to dialogue with ADF and we remain hopeful that it will ultimately adopt a neutral policy that respects ideological diversity and permits mainstream charities like ADF to participate in AmazonSmile.

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### **Tech Companies Should Immediately Sever Ties with Discredited and Partisan SPLC**

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The discrimination against conservative and religious viewpoints that ADF is experiencing in the AmazonSmile Program is also prevalent on other platforms – like Facebook, Twitter, YouTube, etc. – purportedly built to facilitate the free exchange of ideas. This discrimination will only get worse unless Silicon Valley makes good on its promises to value diversity and support free speech. That process can start by tech companies cutting ties with the SPLC.

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<sup>44</sup> Hasson, *Facebook, Amazon, Google and Twitter All Work With Left-Wing SPLC, supra.*

Commentators across the political spectrum agree that the SPLC is activist, partisan, and unreliable. Drawing from these criticisms and some of the SPLC's own statements, here are at least seven reasons tech companies should immediately end any relationship with the SPLC:

**1) SPLC only targets the political right.**

- SPLC's "Hatewatch" blog states that it "monitors and exposes the activities of the American radical right."<sup>45</sup>
- Cornell law professor William Jacobsen has said: "Time and again, I see the SPLC using the reputation it gained decades ago fighting the Klan as a tool to bludgeon mainstream politically conservative opponents."<sup>46</sup>
- Muslim reformer Ayaan Hirsi Ali, who SPLC tagged as an anti-Muslim extremist, penned an op-ed for *The NY Times* in which she asserted: "[T]he SPLC is an organization that has lost its way, smearing people who are fighting for liberty."<sup>47</sup>
- Kimberly Strassel has called SPLC an outfit that "exists to smear conservatives" and a "far-left activist group" that "tags you as a hater" if it "doesn't agree with your views."<sup>48</sup>
- Writing for *The Week*, Shikha Dalmia lamented that "the SPLC is not up to the task" of monitoring actual hate groups because "[i]t is too busy enforcing liberal orthodoxy against its intellectual opponents."<sup>49</sup>
- In a comprehensive piece on SPLC, Mark Pulliam wrote in *City Journal* that "the SPLC not only overlooks most of the real hate groups in operation today, ... but also labels moderates with whom it disagrees 'extremists' if they deviate from its rigid political agenda."<sup>50</sup>

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<sup>45</sup> See <https://www.splcenter.org/hatewatch>.

<sup>46</sup> Ben Schreckinger, *Has a Civil Rights Stalwart Lost Its Way?*, Politico, July/August 2017, <https://politi.co/2lsnOxw>.

<sup>47</sup> Ali, *supra*.

<sup>48</sup> Kimberly Strassel, *J.P. Morgan's Hate List*, The Wall Street Journal (Aug. 24, 2017), <https://on.wsj.com/2w3uU1S>.

<sup>49</sup> Shikha Dalmia, *The Sad Hysteria of the Southern Poverty Law Center*, The Week, (March 20, 2018), <https://bit.ly/2PJlIn6>.

<sup>50</sup> Pulliam, *supra*.

- Even left-of-center Politico in a recent article about the SPLC titled “Has a Civil Rights Stalwart Lost Its Way?” noted the longstanding criticism that SPLC is “becoming more of a partisan progressive hit operation than a civil rights watchdog.”<sup>51</sup>

**2) SPLC openly admits that its goal is to destroy its political enemies.**

SPLC’s Senior Fellow Mark Potok, former editor-in-chief of one of SPLC’s primary propaganda tools, the *Intelligence Report*, has said: “Sometimes the press will describe us as monitoring hate crimes and so on.... I want to say plainly that our aim in life is to destroy these groups, to completely destroy them.”<sup>52</sup> SPLC has never renounced this statement. This comes as no surprise, since the sentiment typifies SPLC’s scorched-earth tactics of imposing severe financial and reputational harm on ideological rivals.

**3) SPLC has been forced to publicly disavow its erroneous labelling of groups or persons as “haters” or “extremists,” the most recent example costing them a \$3.375 million settlement.**

- SPLC included Maajid Nawaz, a former Islamic extremist who has since devoted his life to opposing violence in the name of Islam, and Ayaan Hirsi Ali, a renowned human rights activist who suffered at the hands of Islamic extremists, in its “Field Guide to Anti-Muslim Extremists.”<sup>53</sup> Mr. Nawaz threatened suit, which resulted in SPLC pulling the Guide.<sup>54</sup> In June, SPLC publicly apologized for labelling Mr. Nawaz an extremist and agreed to pay a \$3.375 million settlement.<sup>55</sup>
- This is a likely portend of things to come. SPLC’s partisan tactics and slander of good groups and people will court more legal trouble for SPLC as well as the tech companies and other third parties that rely on it and repeat its widely discredited information.

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<sup>51</sup> Schreckinger, *supra*.

<sup>52</sup> See Mark Potok, 2007 MIAAHC Hate Crimes Conference, <https://bit.ly/2mitV81>.

<sup>53</sup> Jack Crowe, *Southern Poverty Law Center Quietly Deleted List of ‘Anti-Muslim’ Extremists After Legal Threat*, National Review (April 19, 2018), <https://bit.ly/2pnr6UY>.

<sup>54</sup> Crowe, *supra*.

<sup>55</sup> *Southern Poverty Law Center, Inc. Admits It Was Wrong, Apologizes to Quilliam and Maajid Nawaz for Field Guide to Anti-Muslim Extremists, and Agrees to Pay \$3.375 Million Settlement*, Quilliam Press Release (June 18, 2018), <https://bit.ly/2M2jd0w>.

**4) SPLC has long been discredited by investigative journalists<sup>56</sup> and charity watchdogs<sup>57</sup> as a direct mail scam<sup>58</sup> that has made its founder millions of dollars.<sup>59</sup>**

- Writing in *Harper's Magazine*, Ken Silverstein said: “[T]he SPLC spent much of its early years defending prisoners who faced the death penalty and suing to desegregate all-white institutions .... That was then. Today, the SPLC spends most of its time—and money—on a relentless fund-raising campaign, peddling memberships in the church of tolerance with all the zeal of a circuit rider passing the collection plate.”<sup>60</sup>
- Writing in *Philanthropy Roundtable*, Karl Zinsmeister observed: “Though it styles itself as a public-interest law firm, the Southern Poverty Law Center does shockingly little litigation, and only small amounts of that on behalf of any aggrieved individuals. Its two largest expenses are propaganda operations: creating its annual lists of ‘haters’ and ‘extremists,’ and running a big effort that pushes ‘tolerance education’ through more than 400,000 public-school teachers.”<sup>61</sup>

**5) SPLC stockpiles hundreds of millions in its endowment and off-shore accounts.**

- As of October 31, 2017, SPLC’s endowment grew “to more than \$432 million,” with over \$92.5 million in off-shore accounts in the Cayman Islands. Its total assets “topped \$477 million.”<sup>62</sup>
- Mark Pulliam, writing for *City Journal*, noted that “the nonprofit rating group CharityWatch ... gives SPLC an ‘F’ rating, its lowest grade, downgrading the group for having seven years’ worth of available assets in reserve.”<sup>63</sup>

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<sup>56</sup> Pulliam, *supra*.

<sup>57</sup> Karl Zinsmeister, *Some People Love to Call Names: The Southern Poverty Law Center's extremist list isn't a Consumer Reports guide. It's a political tool*, *Philanthropy Roundtable* (May 15, 2017), <https://archive.is/lpQ5k>.

<sup>58</sup> Ken Silverstein, *Hate, Immigration and the Southern Poverty Law Center*, *Harper's Magazine* (March 22, 2010), <https://bit.ly/2oqrfGO>.

<sup>59</sup> Ken Silverstein, *The Southern Poverty Business Model*, *Harper's Magazine* (November 2, 2007), <https://bit.ly/2NUgSsR>.

<sup>60</sup> Ken Silverstein, *The Church of Morris Dees: How the Southern Poverty Law Center profits from intolerance*, *Harper's Magazine* (November 2000), <https://bit.ly/2QKe2FM>.

<sup>61</sup> Zinsmeister, *supra*.

<sup>62</sup> Jeryl Bier, *The Southern Poverty Law Center Is Sitting on \$477 Million*, *The Weekly Standard* (April 24, 2017), <https://tws.io/2HpoWj5>.

<sup>63</sup> Pulliam, *supra*.

**6) SPLC’s “hate” label significantly harms the prospect for civil discourse.**

- SPLC’s hate label results in “dissent [being] de-legitimized, and political foes [being] demonized. All those who oppose the Left are, by definition, ‘fascists,’ ‘white nationalists,’ ‘Islamophobes,’ ‘hate groups,’ or ‘extremists.’”<sup>64</sup>
- “Taking people and groups with political views different from your own and lumping them with villains and gangsters is the mark of a bullying organization that aims to intimidate and even criminalize philosophical opponents.”<sup>65</sup>
- In an article decrying SPLC’s lumping of “principled conservatives” together with “bigots” under the “hate group” label, Megan McArdle observed: “Given the increasing tendency of powerful tech companies to flex their muscle against hate groups, we may see more and more institutions unwittingly turned into critics or censors, not just of Nazi propaganda, but also of fairly mainstream ideas.”<sup>66</sup>
- Even *Politico* questioned whether “[a]t a time when the line between ‘hate group’ and mainstream politics is getting thinner and the need for productive civil discourse is growing more serious, fanning liberal fears, while a great opportunity for the SPLC, might be a problem for the nation.”<sup>67</sup>

**7) SPLC’s propaganda has incited violence** – On a few occasions, SPLC’s targeting tactics have incited violence and other dangerous threats. The SPLC was cited as motivation for the attempted mass murder at the Family Research Council in 2012,<sup>68</sup> and as a reason students rioted and assaulted a female professor at Middlebury College in 2017.<sup>69</sup>

Tech companies’ continued relationship with SPLC belies their professed commitments to diversity of thought and the free exchange of ideas. Instead, it demonstrates a commitment to bias and hostility toward conservative and religious groups and content. Tech companies could take

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<sup>64</sup> Pulliam, *supra*.

<sup>65</sup> Zinsmeister, *supra*.

<sup>66</sup> Megan McArdle, *Southern Poverty Law Center Gets Creative to Label ‘Hate Groups’: Principled conservatives are lumped together with bigots*, Bloomberg (Sept 7, 2017), <https://bloom.bg/2xUrhdn>.

<sup>67</sup> Schreckinger, *supra*.

<sup>68</sup> Joel Gehrke, *FBI video: Domestic terrorist says he targeted conservative group for being ‘anti-gay’*, The Washington Examiner (April 24, 2013), <https://washex.am/2DnXWz1>.

<sup>69</sup> Ronald Radosh, *Liberal Intolerance Revives as Charles Murray Is Chased From Middlebury College*, The Daily Beast (March 6, 2017), <https://thebea.st/2NTqzYJ>.

an enormous step toward restoring civility and a true marketplace of ideas to their platforms by severing ties with SPLC and similar far-left advocacy organizations.

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## Conclusion

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Silicon Valley’s decision to heavily regulate—and in some instances ban—users’ expression puts the marketplace of ideas online at risk. Opening this Pandora’s box has resulted in mounting pressure for tech companies to treat mainstream religious or conservative ideas like “hate speech.”<sup>70</sup> Every indication is that they plan to regulate users’ speech more not less. Facebook, for instance, recently exposed an impending “hate speech” reporting function to users by accident.<sup>71</sup> More silencing of religious or conservative speakers is sure to come.

Discrimination against religious and conservative users will continue unless Silicon Valley stops relying on SPLC and other far-left activists as “neutral” watchdogs.<sup>72</sup> No one can trust tech companies whose policies are so obviously skewed. It is understandable that Amazon and other tech giants have concerns about violent and extremist groups benefitting from their services. But SPLC no longer focuses on identifying such groups. Rather, SPLC is a highly partisan organization that explicitly seeks to destroy conservative and religious groups.<sup>73</sup> Tech companies seeking to exclude violent and extremist organizations must find a better way.

Any system that seeks to identify true extremist groups should use a process that relies on independent data, that is not politically biased, and that is neither dramatically over nor under inclusive. There is no perfect solution, but the best available approach is for tech companies to exclude from the “hate group” or “extremist” categories any 501(c)(3) or 501(c)(4) organization that has demonstrated to the IRS that it has a charitable or social-welfare purpose. This approach will weed out nearly all groups that are truly extremist in character. But if tech companies have concerns about certain 501(c)(3)s or 501(c)(4) groups, they could institute advisory councils composed of respected conservative and liberal groups and allow these councils to resolve hard

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<sup>70</sup> Lee, *supra*.

<sup>71</sup> Eric Lieberman, *Facebook Says a Bug Accidentally Exposed Its Imminent Hate Speech Finder*, Daily Caller (May 1, 2018), <https://bit.ly/2xwE0Uo>.

<sup>72</sup> *Censored! How Online Media Companies are Suppressing Conservative Speech*, *supra*, at iii.

<sup>73</sup> SPLC’s Hatewatch Blog, <https://bit.ly/2fqGsW9>.

cases involving members of their own communities. Dialogue and working together with both conservatives and liberals can create a workable solution

What Silicon Valley should not do is to consult only far-left groups and empower them to make the rules and enforce the companies' policies. This has been the status quo for too long, and it has resulted in the suppression of religious or conservative speech.

Congress should hold additional hearings and use its considerable influence to encourage Silicon Valley to stop relying on far-left groups like the SPLC, set clear rules that treat everyone fairly, and stop pretending that ideological disagreement is hate.<sup>74</sup> Only then will the marketplace of ideas and America's democratic system flourish.

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<sup>74</sup> *Censored! How Online Media Companies are Suppressing Conservative Speech*, *supra*, at iii.





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Since joining ADF in 2004, Tedesco has litigated cases protecting religious liberty, free speech, and the sanctity of human life. He was co-counsel in *Reed v. Town of Gilbert* at the U.S. Supreme Court, where he successfully defended the free speech rights of a small church against government discrimination. From 2015 to 2017, Tedesco directed the ADF Center for Conscience Initiatives, where he specialized in protecting the freedom of conscience of individuals being unjustly forced to compromise their beliefs or else face heavy fines and punishment. Numerous media outlets have interviewed Tedesco or published his comments. They include *Fox News*, *CNN*, *The New York Times*, *USA Today*, *The Washington Times*, *PBS*, *NPR*, and *National Review*, among others.

Tedesco earned his Juris Doctor in 2004 from the Regent University School of Law, where he was a recipient of West's Academic Achievement Award. He is a member of the state bar of Arizona, admitted to the U.S. Supreme Court and the Supreme Court of Arizona, as well as multiple federal district and appellate courts.