

WHO IS “Q?” A GLIMPSE INTO QANON AND SOCIAL MEDIA’S USE OF CENSORSHIP AS A MEANS TO COMBAT THEM

Marissa Pembroke¹

ABSTRACT

Censorship on social media platforms has been a constant topic of debate, especially in light of the Capitol riots that occurred on January 6, 2021² and Twitter’s subsequent ban of former President Donald Trump.³ In the aftermath of the riots, we learned that many involved were known members of QAnon, a far-right radical group intent on dismantling the “deep state.”⁴ More frightening than the group’s views is the ease in which they gained support, mostly due to their accessibility on many social media platforms. These platforms have drastically changed the way in which we communicate and subsequently the way in which we politically mobilize. As a result, many social media platforms regulate their content via “content policies.” Media coverage of the enforcement of content policies framed the issue as a means of censoring speech.⁵ This was especially apparent during coverage of Trump’s Twitter ban.⁶ The recent use of content policies to censor speech online deserves discussion about the role social media platforms should play in the censorship of speech. Proponents of censorship by social media platforms believe content policies are useful. Others disagree with their utility and lean towards

¹ Staff Editor, Rutgers Journal of Law and Religion: J.D. Candidate May 2021, Rutgers School of Law.

² George Petras et al., *Timeline: How the storming of the U.S. Capitol unfolded on Jan. 6*, USA TODAY (Feb. 9, 2021, 11:19 PM), <https://www.usatoday.com/in-depth/news/2021/01/06/dc-protests-capitol-riot-trump-supporters-electoral-college-stolen-election/6568305002/>.

³ TWITTER, *Permanent Suspension of @realDonaldTrump* (Feb. 8, 2021), https://blog.twitter.com/en_us/topics/company/2020/suspension.html.

⁴ Kevin Roose, *What is QAnon, the Viral Pro-Trump Conspiracy Theory?*, THE NEW YORK TIMES, (Sept. 3, 2021), <https://www.nytimes.com/article/what-is-qanon.html>.

⁵ See Svea Windwehr et al., *Facebook’s Most Recent Transparency Report Demonstrates the Pitfalls of Automated Content Moderation*, ELECTRONIC FRONTIER FOUNDATION, (Oct. 8, 2020), <https://www.eff.org/deeplinks/2020/10/facebooks-most-recent-transparency-report-demonstrates-pitfalls-automated-content>.

⁶ See generally Naomi Nix, *Facebook Supreme Court Weighs Trump’s Social Media Fate*, (Apr. 15, 2021), <https://www.bloomberg.com/news/articles/2021-04-15/facebook-supreme-court-weighs-trump-s-social-media-fate>.

governmental regulation. Those who have experienced censorship while using social media argue the First Amendment should provide recourse. This article will explore these arguments in depth. Part I introduces QAnon and the role religion and social media has played in their rise. Part I also discusses the censorship of QAnon. Part II explores the various arguments over how censorship on social media platforms should be enforced. Part III will explore any common ground in the debate that could be used to achieve practical solutions to combatting groups like QAnon.

I. WHO IS “Q?”

John has the typical suburban family: neighborly, religious, and ready for a Friday night happy hour. They are the type of family that is willing to lend a helping hand to those in need. Yet John grew concerned as tensions were high and his family began to unravel during 2020’s political turmoil.

John was at work when he received the Twitter alert that the nation’s Capitol building had been breached. In hindsight, the country avoided insurrection, but the damage done that day has undeniably threatened American democracy and left John and his family broken.

During the chaotic aftermath of the riots, John received incessant texts from his mother. The texts were eccentric, demanding that he and his siblings get off of “mainstream media.” She insisted they listen only to the man in the links she sent. According to this man, the Democrats were going to enforce a “blackout” on social media in an attempt to maintain control. Contradictorily, the man also claimed that Nancy Pelosi was to be arrested and Donald Trump would come out victorious after a fraudulent election. As time went on, nothing the man said came true. Yet John noticed his mother’s behavior continued to escalate, noting that she had bought a large amount of gold and silver to prepare for an economic collapse.

A born-again Christian herself, John’s mother has always been drawn to those who share her love of God. It made sense to John that she would trust the influencer in the links, who made many references to “God.” However, through John’s own due diligence, he found that the influencer is a high-ranking member of the far-right group QAnon. QAnon proved to be instrumental during the Capitol riots. As John learned more about QAnon, he recognized that his mother’s behavior was in response to the many conspiracy theories QAnon spread.

Just shy of thirty, John did not know how to feel. He had never witnessed this type of behavior from his mother. Initially he laughed it off, but found the situation overwhelming as he read more about QAnon. He figured he could try to reason with his mother through discourse since his family typically enjoyed a political debate. Yet John soon found this was uncharted territory. His mother was overly combative during their conversations, which triggered John to react. John's mother became offended that he challenged her and continued to send questionable links in their family's group chat. At one point, John had enough and instructed his mother to stop for the sake of his impressionable teenage sister. John's mother also had enough, but chose more drastic measures. She cut all communications with John and even removed him from their family group chat.

The situation with John's family is becoming something of a common occurrence across the country. Many others have shared similar experiences of family members believing in QAnon's conspiracies and causing familial strife. It seems abnormal for radical groups like QAnon to gain such popularity in American politics. Even more difficult to grasp is the ease in which they continuously accrue support notwithstanding their bizarre belief system.

QAnon is a group that believes in a host of conspiracy theories and is mildly popular among the political right in America.⁷ QAnon got its start on the social media platform, "4chan," which is known for its extreme posts.⁸ Followers became entrenched with an anonymous poster's claim that he or she was a high-ranking military official.⁹ The poster was dubbed with the name "Q."¹⁰ "Q" boasted that they had information that the "deep state" had an anti-Trump agenda.¹¹ "Q" further claimed that Donald Trump is the leader of a war against the deep state.¹² According to "Q", this war was to end with "The Storm," whereby the deep state will be unveiled and brought to justice.¹³ "Q's" main belief is that the deep state is a cabal of high-ranking Democrats that are also Satan-worshipping pedophiles.¹⁴ During a recent

⁷ Roose, *supra* note 4.

⁸ See Brandy Zadrozny et al., *How Three Conspiracy Theorists Took "Q" and Sparked Qanon*, NBC NEWS (Aug. 14, 2018), <https://www.nbcnews.com/tech/tech-news/how-three-conspiracy-theorists-took-q-sparked-qanon-n900531>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Roose, *supra* note 4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

interview, Ron Watkins, a known conspiracy theorist, may have inadvertently revealed himself as “Q”.¹⁵ The effects of this revelation on QAnon’s followers will be interesting to follow as some already disclaim its veracity.¹⁶ The delusion of QAnon’s followers can be attributed to the idea that many are drawn to it not because of its logic, but rather common interests, such as religion.

QAnon is particularly popular amongst Christians¹⁷ because the group often mentions religious scripture in its posts.¹⁸ The world witnessed QAnon supporter, Jacob Chansley, the man in horns pictured inside the U.S. Capitol, deliver a prayer-like address from the Vice-President’s chair.¹⁹ Moreover, Evangelical Christians are especially drawn to QAnon due to their strong distrust of mainstream media.²⁰ From a more socio-political perspective, majority of Christians identify as Republicans, who are more likely to identify with a QAnon belief.²¹ Perhaps the biggest connection to Christians is the requirement of faith.²² “Q” suggests a sort of “divine plan” for America. Furthermore, “Q” acts as a prophet-like figure. Considering many of QAnon’s “prophecies” have failed, it makes sense that those with faith in God would continue to support the group.²³ Thus, it is understandable why so many Christians make up followers of QAnon. Other followers of QAnon likely came across the group on social media and were intrigued.

QAnon’s presence started in the dark corners of the Internet and was able to spread to Christian communities and into mainstream politics. To understand how embedded this group has become in America, more than 25% of Republicans believe Donald Trump’s presidency was an attempt to fight the pedophilic deep

¹⁵ Samantha Putterman, *What the HBO QAnon documentary series revealed about the identity of “Q”*, POLITIFACT, (Apr. 9, 2021), <https://www.politifact.com/article/2021/apr/09/what-hbo-qanon-documentary-series-revealed-about-i/>.

¹⁶ *Id.*

¹⁷ Jillian Cheney, *An Evangelical’s Guide to QAnon: Inside One Of The Most Talked About Internet Groups*, RELIGION UNPLUGGED (Oct. 13, 2020), <https://religionunplugged.com/news/2020/10/13/an-evangelicals-guide-to-qanon>.

¹⁸ Kaleigh Rogers, *Why QAnon Has Attracted So Many White Evangelicals*, FIVETHIRTYEIGHT (Mar. 4, 2021), <https://fivethirtyeight.com/features/why-qanon-has-attracted-so-many-white-evangelicals/>.

¹⁹ Luke Mogelson, *Among the Insurrectionists*, THE NEW YORKER (Jan. 15, 2021), <https://www.newyorker.com/magazine/2021/01/25/among-the-insurrectionists>.

²⁰ Rogers, *supra* note 18.

²¹ *Id.*

²² *Id.*

²³ *Id.*

state.²⁴ An NPR poll found that 17% of all Americans hold that same belief.²⁵ A reason for its recent transcendence into the United States' political discourse may have to do with the increased political divide in America. Additionally, the COVID-19 pandemic brought about a host of conspiracy theories itself, which QAnon was quick to capitalize on.²⁶ Alarming, QAnon is no longer primarily an Internet phenomenon, rather they are becoming more aggressive by forming on the ground and taking action. It is known that followers of QAnon participated in the Capitol riots, leading the Department of Homeland Security to issue an alert, which warned of the potential for more violence from the group.²⁷ There are possible explanations for the group's recent aggressiveness. One reason may be due to public support for the group stemming from members of the federal government and the White House. After all, the nation is trying to recover from a President who nonchalantly re-tweeted QAnon's phrases and beliefs.²⁸ Moreover, members of Congress and state governments have expressed support for the group.²⁹ Another explanation is that QAnon is angry about the attempts to censor them on various social media platforms, long before the Capitol riots.³⁰ After originally forming on the platform "4chan," the group moved to "8chan" and is now making a presence on "8kun."³¹ QAnon historically organized on social media platforms that are known for controversy. Interestingly, "8chan" had to resort to strict censorship measures to deter groups like QAnon from communicating on its platform, due to the revelation that mass shooters drew support on

²⁴ Jack Jenkins, *QAnon Conspiracies Sway Faith Groups, Including 1 in 4 White Evangelicals*, CHRISTIANITY TODAY (Feb. 11, 2021), <https://www.christianitytoday.com/news/2021/february/white-evangelicals-qanon-election-conspiracy-trump-aei.html>.

²⁵ Roose, *supra* note 4.

²⁶ *Id.*

²⁷ Cohen, *infra* note 91.

²⁸ Richard Wolfe, *Donald Trump is the QAnon President and he's proud of it*, THE GUARDIAN (Oct. 17, 2020), <https://www.theguardian.com/commentisfree/2020/oct/17/donald-trump-is-the-qanon-president-and-hes-proud-of-it>.

²⁹ Katherine Tully-McManus, *QAnon Goes to Washington: Two Supporters Win Seats in Congress*, ROLL CALL, (Nov. 5, 2020), <https://www.rollcall.com/2020/11/05/qanon-goes-to-washington-two-supporters-win-seats-in-congress/>.

³⁰ Roose, *supra* note 4.

³¹ *Id.*

the site.³² Despite experiencing censorship, it remains probable that QAnon mobilizes on other social media platforms across the Internet. John recalled the moment when his mother instructed him to delete his Twitter account and to instead rely on Parler for news in the wake of the Capitol riots. QAnon followers are likely drawn to Parler since it prides itself on being a “free speech platform.” However, after the Capitol riots, Parler faced a temporary shut down when serious threats to safety were made.³³ Notwithstanding another attempt to censor them, QAnon resumed spreading their conspiracies through alternative methods to social media platforms, such as text chains.³⁴ John remembered receiving a text thread from his mother, which urged him to remove software from his phone to avoid measures by the deep state to prevent QAnon from communicating. In hindsight, it seems as if the “black out” QAnon referred to was the decision to censor QAnon by shutting Parler down due to the widespread threats on the site after the Capitol riots. Fanning the flames was Twitter’s decision to ban President Trump’s account,³⁵ QAnon’s supposed prophet.³⁶ Trump supporters reacted harshly to the former President’s ban.³⁷ The censorship that occurred in the aftermath of the Capitol riots demands a discussion over the role that social media platforms should have in the censorship of speech as a means to prevent violence in the United States.

II. THE ROLE OF SOCIAL MEDIA IN THE CENSORSHIP OF SPEECH

A. SOCIAL MEDIA PLATFORMS AND THE IMPLEMENTATION OF CONTENT POLICIES

³² Kevin Roose, ‘*Shut the Site Down,*’ Says the Creator of *Schan*, a Megaphone for Gunmen, THE NEW YORK TIMES (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/technology/schan-shooting-manifesto.html>.

³³ Jeff Horwitz et al., *Google Pulls Parler as Apple Threatens the Same in Wake of Capitol Riot*, THE WALL STREET JOURNAL (Jan. 8, 2021), <https://www.wsj.com/articles/apple-threatens-to-ban-parler-from-app-store-11610148297>.

³⁴ Ben Collins, *QAnon falsehoods move to text message chains*, NBC NEWS (Jan. 12, 2021), <https://www.nbcnews.com/tech/internet/qanon-falsehoods-move-text-message-chains-n1253962>.

³⁵ *Supra* note 3.

³⁶ Roose, *supra* note 4.

³⁷ Michael Ruiz, *Trump supporters, lawmakers react to Twitter ban*, FOX NEWS, (Jan. 8, 2021), <https://www.foxnews.com/politics/trump-supporters-lawmakers-twitter-ban>.

The rise of QAnon is an example that the creation, dissemination, and consumption of disinformation and violent content on social media platforms are a growing concern. This is especially due in part of the ease of access to such content. A considerable number of Americans look to social media as a news source.³⁸ Couple that fact with the ease in which information is broadcasted on social media, and it becomes the prime candidate for the dissemination of false information over short periods of time. Social media platforms are not ignorant of the activities that occur on their respective sites. As a result, many have enacted content policies. These policies are central to the discussion about censorship on social media platforms because they are the primary means of how the platforms enforce censorship. For example, Twitter relied on its content policy when it banned President Trump.³⁹

The scope of Twitter's content policy is broad, which enabled their ultimate decision to permanently ban President Trump from the platform. The policy contains a list of subsets, which are divided into "types of speech."⁴⁰ Important to the goal of combatting groups like QAnon are Twitter's "hateful content" policy, "sensitive media" policy, the "glorification of violence" policy and the "terrorism and violent extremism" policy. Notably, those terms are inherently broad, but Twitter does attempt to define them. For example, Twitter cited the violation of its "glorification of violence" policy as justification for its ban of President Trump.⁴¹ The "glorification of violence" policy states:

"Glorifying violent acts could inspire others to take part in similar acts of violence. Additionally, glorifying violent events where people were targeted on the basis of their protected characteristics (including: race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease) could incite or lead to further violence motivated by hatred and intolerance. For these reasons, we have a policy

³⁸ Amy Mitchell et al., *Americans Who Mainly Get Their News on Social Media Are Less Engaged, LESS KNOWLEDGEABLE* (July 30 2020), <https://www.journalism.org/2020/07/30/americans-who-mainly-get-their-news-on-social-media-are-less-engaged-less-knowledgeable/>.

³⁹ *Supra* note 3.

⁴⁰ Twitter, *Glorification of Violence Policy*, GENERAL GUIDELINES AND POLICIES (Apr. 16, 2021), <https://help.twitter.com/en/rules-and-policies>.

⁴¹ *Supra* note 3.

against content that glorifies acts of violence in a way that may inspire others to replicate those violent acts and cause real offline harm, or events where members of a protected group were the primary targets or victims.”⁴²

Twitter provides that language such as “I hope this inspires others to act” constitutes a violation of the policy.⁴³ In its statement announcing the ban of President Trump, Twitter analyzed two tweets by the President to arrive at the conclusion that the policy had been violated.⁴⁴ Specifically Twitter was concerned that the President’s tweet announcing he would not attend the inauguration of then President-elect Biden bolstered the narrative that the 2020 election was stolen.⁴⁵ Moreover, another of Trump’s tweets referred to his supporters as “American Patriots” and suggested they would have a “GIANT VOICE” in the future.⁴⁶ Twitter interpreted the use of the phrase “American Patriots” as encouragement for those who committed acts of violence against the Capitol.⁴⁷ As was seen, the crowd that participated in the Capitol riots were primarily supporters of President Trump.⁴⁸ The description that his supporters will have a “GIANT VOICE” was interpreted as a display of Trump’s intention to refuse an orderly transition of power and a continuation to support those who refute the results of the election.⁴⁹ Due to President Trump’s failure to present evidence that would support the argument that the election was stolen from him,⁵⁰ his tweets were inherently dangerous to our democracy and increased the potential for more violence.

Putting into perspective President Trump’s use of Twitter, many favor the implementation of content policies. The argument for

⁴² Twitter, *Glorification of Violence Policy*, GENERAL GUIDELINES AND POLICIES (Apr. 16, 2021), <https://help.twitter.com/en/rules-and-policies/glorification-of-violence>.

⁴³ *Id.*

⁴⁴ *Supra* note 3.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Mogelson, *supra* note 19.

⁴⁹ *Supra* note 3.

⁵⁰ See generally Reuters Staff, *Fact check: Courts have dismissed multiple lawsuits of alleged electoral fraud presented by Trump campaign*, REUTERS (Feb. 15, 2021), <https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1>.

the use of content policies seems less about silencing differing opinions and more focused on the fact that disinformation should be combatted to prevent violence. Moreover, in light of the revelation that QAnon was instrumental in the Capitol riots, proponents of the use of content policies have an emotional appeal. Proponents may shed light on the fact that without content policies, violent groups like QAnon will plan future acts of violence online. In the case of QAnon, social media platforms are the host of their messages and plans.⁵¹ However the idea that social media platforms are equipped to handle this issue may be misguided, for it seems there may always be someone to capitalize off of radical views.⁵² For example, the same tech company that has supported an online database for neo-Nazis helped keep QAnon online after the attempts to shut them down.⁵³ Thus it is worth questioning the utility of content policies if tech companies that operate social media platforms view extremism or controversy as a market. As an alternative, some favor governmental regulation of social media platforms.

B. Governmental Regulation of Social Media Platforms as an Alternative to Content Policies

As an alternative to content policies, government regulation may be an answer to what social media platforms themselves cannot solve. However, it is important to note that currently the United States government does regulate at least some aspects of social media platforms.⁵⁴ Congress' power to regulate the Internet stems from the broadly construed Commerce Clause.⁵⁵ According to *Heart of Atlanta Motel*, so long as Congress has the authority to regulate a channel of interstate commerce via the Commerce Clause, it can keep that channel free from immoral and injurious uses.⁵⁶ Arguably, this would extend to Congress' use of the clause to regulate social media platforms to eradicate extremism. Additionally, the Patriot Act may authorize this power. Notably, the Patriot Act authorized the government to perform extensive surveillance of the public's online

⁵¹ See *supra* notes 6-15.

⁵² William Turton et al., *A 23-Year-Old Coder Kept QAnon Online When No One Else Would*, BLOOMBERG, (Apr. 14, 2021), <https://www.bloomberg.com/news/features/2021-04-14/qanon-daily-stormer-far-right-have-been-kept-online-by-nick-lim-s-vanwatech>.

⁵³ *Id.*

⁵⁴ Nina Brown et al., *Say This, Not That: Government Regulation and Control of Social Media*, 68 SYRACUSE L. REV. 521, 523 (2018).

⁵⁵ *Id.* at 531.

⁵⁶ *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 256 (1964).

communications in response to the terrorist attacks on September 11, 2001.⁵⁷ It is unclear if the government can obtain data derived from the use of social media platforms under the Patriot Act.⁵⁸ However, plaintiffs have possibly paved the way under the Patriot Act's "Material Support" statute.⁵⁹ Consequently, the Patriot Act is often thought of as the primary vehicle for diminishing the privacy rights of Americans.⁶⁰ Thus, if the Act is to also be used as a vehicle to censor speech on social media platforms, it should be considered if it is worth relinquishing more of Americans' rights in the name of terrorism. While many argue over the best way to censor speech, others contend that more protections should be afforded to those that have experienced some form of censorship online.

C. Application of the First Amendment to Curtail Political Bias

The First Amendment may provide protection to those that contend they were unfairly censored. It should not be ignored that an overwhelming number of Republicans believe that social media platforms censor political views.⁶¹ In their view, content policies are applied arbitrarily and inconsistently and act as a means to censor certain political views. Lawmakers have suggested that Facebook has censored conservative voices on the site.⁶² More generally, 72% of Americans believe that platforms like Facebook and Twitter "actively censor political views."⁶³ Censorship of liberal views has also occurred. For example, Instagram deleted a post of a 1992 poem that advocated for LGBT rights because the poem violated community standards, as it contained words such as "dyke" and "fag."⁶⁴ In protest, various users reposted the poem; some of the reposts were removed, but others were not, even though the content was identical.⁶⁵ The allegations of political bias may have to do with the use of proprietary

⁵⁷ Michelle Roter, *With Great Power Comes Great Responsibility: Imposing a "Duty to Take Down" Terrorism Incitement on Social Media*, 45 HOFSTRA L. REV. 1379, 1393 (Summer 2017).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Emily Vogels et al, *Most Americans Think Social Media Sites Censor Political Viewpoints*, Pew Research Center, (Aug. 2020), <https://www.pewresearch.org/internet/2020/08/19/most-americans-think-social-media-sites-censor-political-viewpoints/>.

⁶² Matthew P. Hooker, *Article: Censorship, Free Speech & Facebook: Applying the First Amendment to Social Media Platforms Via the Public Function Exception*, 15 WASH. J.L. TECH. & ARTS 36, (2019).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

algorithms. It is said that these algorithms favor certain news organizations and political viewpoints over others.⁶⁶ However, the extent and impact of the implementation of these algorithms are unclear.⁶⁷ Thus, the argument against allowing social media platforms to censor through their content policies recognizes their use may stifle forms of speech that make the platforms so appealing to users. Social media platforms act as digital public squares, but their content policies impose far more rules than traditional public squares. To ensure there is equal access to the platforms, many argue that the First Amendment should provide recourse.

The First Amendment protects rights regarding freedom of speech and expression.⁶⁸ Yet the protections it affords are not of a sweeping nature.⁶⁹ For example, the First Amendment does not protect three categories of speech: incitement of violence, true threats, and fighting words.⁷⁰ Moreover, the First Amendment does not protect Americans from actions taken by private actors.⁷¹ This is due to the state action doctrine, which holds that if censorship or other limitations on speech occur, the First Amendment applies only if the government is the one taking the action.⁷² The doctrine limits the censorship debate in this context because social media platforms are undeniably private actors. This means that a private entity such as Twitter reserves the right to control the speech on its site and there is no recourse for an individual if Twitter decides to ban an account. Yet, the role social media platforms have in society is receiving increasing attention, particularly by Congress.⁷³ Their ever-evolving role in American society becomes critically important to the First Amendment analysis, as there are instances in which a private actor will be subjected to constitutional restraints.⁷⁴ The state action

⁶⁶ *Id.*

⁶⁷ *Id.* at 45.

⁶⁸ “Congress shall make no law . . . or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” U.S. Const. amend. I.

⁶⁹ Hooker, *supra* note 62.

⁷⁰ Lauren Beausoleil, *Note: Free, Hateful, and Posted: Rethinking First Amendment Protection of Hate Speech in a Social Media World*, 60 B.C. L. REV. 2101, 2112, (2019).

⁷¹ *Id.*

⁷² See generally *The Civil Rights Cases*, 109 U.S. 3, 11 (1883).

⁷³ Gerrit De Vynck et al., *Big tech CEOs face lawmakers in House hearing on social media’s role in extremism, misinformation*, WASHINGTON POST, Mar. 25, 2021, <https://www.washingtonpost.com/technology/2021/03/25/facebook-google-twitter-house-hearing-live-updates/>.

⁷⁴ Hooker, *supra* note 62.

doctrine has carved out an exception to the state action doctrine that social media platforms may fall within.⁷⁵ It is known as the public function exception.⁷⁶

The public function exception is triggered when private actors take on the role of government or otherwise perform some sort of public function.⁷⁷ The origins of the exception are found in *Marsh v. Alabama*.⁷⁸ In *Marsh*, the Supreme Court held that a private, company-owned town was a state actor because the town's operation was "essentially a public function."⁷⁹ Significant to the Court's rationale was the principle that "the more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."⁸⁰ While it has been argued that social media platforms fall within this exception,⁸¹ there is precedent at the federal level that suggests otherwise.⁸² Significantly, in *Manhattan Community Access Corp. v. Halleck*, the Supreme Court held that the operation of public access cable channels was not a "traditional, exclusive public function."⁸³ Important to the Court's analysis was the fact that since cable companies were historically operated by both private and public entities, it was not an exclusive public function.⁸⁴ The Court went further to clarify that very "few functions fall into" the public function category.⁸⁵ *Manhattan Community* was a narrow application of the exception, yet it poses a risk to the possibility of recourse via the First Amendment. The fact that private companies have historically operated social media platforms is damning to the argument that they provide a public function. Thus, it is unlikely that a court would find that the functions

⁷⁵ *Id.* at 47.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Marsh v. Alabama*, 326 U.S. 501, 506 (1946).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Hooker, *supra* note 62.

⁸² *E.g.*, *Green v. America Online (AOL)*, 318 F.3d 465, 472 (3d Cir. 2003) (holding that AOL does not fall within the public function exception because it offered services not traditionally offered by the state); *see also Estavillo v. Sony Comput. Entm't Am.*, No. C-09-03007 RMW, 2009 WL 3072887 (N.D. Cal. Sept. 22, 2009); *Noah v. AOL Time Warner Inc.*, 261 F. Supp. 2d 532, 546 (E.D. Va. 2003); *Island Online, Inc. v. Network Solutions, Inc.*, 119 F. Supp. 2d 289, 307 (E.D.N.Y. 2000); *Cyber Promotions, Inc. v. America Online, Inc.*, 948 F. Supp. 436, 445 (E.D. Pa. 1996).

⁸³ *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1926 (2019).

⁸⁴ *Id.* at 1929-30.

⁸⁵ *Id.* at 1929.

provided by social media platforms are a traditional, exclusive public function. Moreover, courts that choose to rely on *Green v. America Online (AOL)* may consistently refuse to extend the exception to companies that provide similar functions to AOL. It is probable that a court would perceive social media platforms today as similar to AOL. Fortunately, earlier precedent can be distinguished in a way that could subject social media platforms to the exception. *Manhattan Community* involved cable companies, which are distinguishable from social media platforms. Cable companies do not readily provide Americans with a medium to interact akin to a “public forum,” whereas social media platforms undeniably present a public forum where users engage in a digital public square. Public forums enjoy First Amendment protections under the public forum doctrine.⁸⁶ However, unlike the public function exception, it seems that this doctrine is reserved exclusively to public spaces.⁸⁷ Yet again, the fact that social media platforms are historically privately operated is detrimental to recourse under the public forum doctrine. Some commentators remain hopeful that there is room for regulation via the public forum doctrine.⁸⁸ Another way to distinguish previous precedent involving the public function exception is simply that times have changed. Many years have passed since *Green v. America Online* was decided. Today, there is much more reason to extend the exception to social media platforms. Amidst the political turmoil and a global pandemic, we have learned that social media plays a larger role in society than the Supreme Court and various federal courts originally thought. Much of the aforementioned precedent was decided before social media platforms began to evolve into what they are today. It is plausible that social media platforms are providing a public function and thus should be subject to First Amendment constraints. Their sites provide the American public with a means to organize, debate and socialize. Many grass roots organizations have drawn support on social media. Businesses, whether small or corporate, have caught onto the importance social media plays in

⁸⁶ *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939); *Schneider v. Irvington*, 308 U.S. 496 (1939). Both cases are instrumental in establishing the public forum doctrine.

⁸⁷ See generally *Perry v. Education Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983).

⁸⁸ See Lyriisa Lidsky, *Public Forum 2.0*, 91 B.U. L. REV. 1975, 1976-77 (2011) (discussing the possibility that Facebook may be perceived as some type of public forum).

profit gaining.⁸⁹ Of course, there will always be participants on social media platforms that will make a point to be explicit or offensive. They may annoy or anger some, but realistically they are expressing opinion, which is vital to America's democratic republic. Faced with today's cancel culture, America must be reminded that most of our country's history depended upon debating ideas that may have seemed radical at their conception. The exposure to varying viewpoints is central to the American way. Yet, that is not to say that *all* viewpoints should receive the same amount of attention. It is concerning that radical groups such as QAnon can easily organize on social media platforms. Perhaps the most convincing argument social media platforms provide a public function is that protests are coordinated through them. The right to protest is an essential public function in the United States and a fundamental part of the right to free speech. The argument that social media platforms provide a public function can be stretched even farther. Social media is the new way of communication. It has taken over our social and professional lives. Without it, the majority of Americans would be left in the dark. Enhancing this notion, social media has had a significant impact during the COVID-19 pandemic. When most were forced indoor, social media not only allowed us to see our families and friends, but also to attend school and work. Considering its monumental role during the pandemic, social media is arguably becoming more of a public function than in the past. Most expect it to play an even larger role post-pandemic.⁹⁰ As social media continues to grow in popularity and scope, the arguments that they are providing some sort of public function in our society will strengthen and it will become more difficult for the federal government and the Supreme Court to ignore.

III. IDENTIFICATION OF COMMON GROUND AND PRACTICAL SOLUTIONS

It is clear that the arguments for and against censorship through the use of content policies on social media platforms share a

⁸⁹ Ashish Kumar et al., *The Effect of Customer's Social Media Participation on Customer Visit Frequency and Profitability: An Empirical Investigation*, INFORMATION SYSTEMS RESEARCH, Vol. 24, No. 1, (Dec. 20, 2012), <https://pubsonline.informs.org/doi/abs/10.1287/isre.1120.0460>.

⁹⁰ Rani Molla, *Posting less, posting more, and tired of it all: How the pandemic has changed social media*, VOX, (Mar. 1 2021), <https://www.vox.com/recode/22295131/social-media-use-pandemic-covid-19-instagram-tiktok>.

common theme. Identifying any commonalities could prove useful in discussing solutions to the issues that are present on social media platforms. As a quick synopsis of the debate, proponents argue that social media can be a dark medium where radicals like QAnon can thrive, thus taking an emotional approach in favor of censorship. To the contrary, opponents take a slippery slope approach and fear censorship could lead to more speech being censored, especially if political bias is involved. Looked at from afar, it seems both sides agree that social media platforms and big tech in general have become too powerful. Additionally, both likely agree that social media platforms will continue to play an important role in American society. Differing ideas a workable approach in a politically overcharged environment have caused disagreements to arise. Such a toxic environment hinders healthy discussion and the compromise needed to move forward. Instead of politicizing the issue, a viable approach may be to band together and simply demand better content-policies.

Better content policies, including better enforcement of those policies will serve the concerns of both sides. Content policies can continue to combat extremism that spreads online and can also provide recourse to enhance equal enforcement. There are areas of content policies that can be improved. One improvement that can be made is to administer an appeals process if a user feels they were unfairly censored. An appeals process opens up communication between a platform and its users. Moreover, if an appeals process is administered, it could necessarily increase the transparency of a platform over how it interprets speech. In the example of Twitter's ban of Donald Trump, it seems that transparency was only afforded due to the fact that the President of the United States was being banned. There does not seem to be nearly as much transparency with an average user. Another improvement involves the algorithms used. The algorithms' effects on speech are unclear. It seems unlikely that automated processes would understand complex human communications or the political, social or interpersonal context of speech. To address this, some have already begun to advocate for less reliance on these algorithms.⁹¹The alternative would likely be more involvement of humans to identify and interpret content online. Due to the massive amounts of content that occurs on social media platforms, it may not be feasible to involve human workers that are incapable of analyzing data as quick as computers. Lastly, it could be useful for social media platforms to develop a function in which a user

⁹¹ Windwehr, *supra* note 5.

is notified their post may violate a content policy before the user posts it. This informs users of the content policy and could lead to self-regulation amongst users on the platforms. Implementation of any one of these solutions would have a positive impact on how censorship is enforced by social media platforms. These solutions enable platforms to control content while appeasing users' concerns that their policies are arbitrary and biased.

CONCLUSION

While everyone likely agrees that *something* needs to be done to address censorship on social media platforms, the First Amendment currently provides no recourse. Still it is important to ensure social media platforms are safe if Americans are to continuously rely on them in the future. A mid-March intelligence assessment concluded that far-right extremists and militia-like organizations pose a threat to America for the foreseeable future.⁹² The report also noted that the militia-extremist-group threat increased last year and is expected to continue throughout 2021.⁹³ Interestingly, the report found the increased threat due to "sociopolitical factors" motivating such groups, "such as narratives of fraud in the recent general election, the emboldening impact of the violent breach of the US Capitol, conditions related to the COVID-19 pandemic, and conspiracy theories promoting violence."⁹⁴ Considering QAnon's involvement in the Capitol riots, it is disconcerting to wonder if the group enjoyed a morale boost. As previously mentioned, QAnon thrives through its use of conspiracy theories and it should not be forgotten that many of its followers are drawn in by religious messaging.⁹⁵ Considering the real possibility that the First Amendment will not be a source of relief, and the likelihood of increased domestic terrorism, it becomes necessary to advocate and place pressure upon social media platforms to address the issue. Yet as solutions are discussed, it is important to be reminded of the fundamental principles of the United States, a country born out of debate. Thus, it is an expectation that Americans are provided freedom of expression. Americans should not be censored simply

⁹² Zachary Cohen, *US intelligence report says election fraud claims 'will almost certainly' spur more violence by domestic extremists*, CNN, (Mar. 17, 2021), <https://www.cnn.com/2021/03/17/politics/domestic-violent-extremism-threat-assessment/index.html>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *See supra* notes 7-37.

because an idea is offensive, unpopular or disagreeable. However, domestic terrorists pose a security threat and should be handled accordingly. Thus, it is imperative to find an appropriate balance between freedom of expression and national security moving forward. Yet, before resorting to governmental regulation, it is worth considering alternatives. Placing pressure upon social media platforms to rethink their business practices and revise their content policies may adequately prevent QAnon and other radical groups from inciting further violence.