

REMEDIES FOR DISINFORMATION IN THE BRAVE NEW SOCIAL MEDIA ENVIRONMENT

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INTRODUCTION

There has been much controversy regarding the level of disinformation on social media platforms¹ and energetic

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¹ See Nick Corasaniti & Jim Rutenberg, *Despite Bomb Threats and Disinformation, a Fairly Smooth Election*, N.Y. TIMES (Nov. 5, 2024), <https://www.nytimes.com/2024/11/05/us/politics/election-voter-fraud.html?searchResultPosition=1> [<https://perma.cc/4D7U-ZP9F>]; Tiffany Hsu & Stuart A. Thompson, *Bizarre Falsehoods About Hurricanes Helene and Milton Disrupt Recovery Efforts*, N.Y. TIMES (Oct. 10, 2024), <https://www.nytimes.com/2024/10/10/business/media/hurricane-milton-helene-conspiracy-theories.html> [<https://perma.cc/3S3E-YG7Y>]; Steven Lee Myers, *As Election Looms, Disinformation 'Has Never Been Worse,'* N.Y. TIMES (Oct. 23, 2024), <https://www.nytimes.com/2024/10/23/business/media/election-disinformation.html> [<https://perma.cc/RMK6-9X7N>]; Steven Lee Myers & Stuart A. Thompson, *Disinformation Watchdogs Are Under Pressure. This Group Refuses to Stop.*, N.Y. TIMES (Nov. 1, 2024), <https://www.nytimes.com/2024/11/01/technology/election-disinformation.html> [<https://perma.cc/QU4Y-NHSN>].

discussions about how to regulate and control it.² In an effort to pressure social media platforms to be more aggressive about content moderation,³ Congress sometimes pressures the heads of social media platforms regarding their handling of disinformation.⁴ During the Biden Administration, the White House tried to establish a Disinformation Board,⁵ which would have been charged with creating a set of standardized practices that could be used by federal agencies to respond to threats against the nation.⁶ When that effort failed, the Biden Administration surreptitiously pressured and threatened social media platforms in an effort to coerce them into greater censorship of speech.⁷ In addition, social media platforms themselves engaged in aggressive content moderation.⁸

² See Steven Lee Myers, *State Dept.'s Fight Against Disinformation Comes Under Attack*, N.Y. TIMES (Dec. 14, 2023), <https://www.nytimes.com/2023/12/14/technology/state-department-disinformation-criticism.html> [<https://perma.cc/3QH4-P4VA>]; Stuart A. Thompson & Kate Conger, *Meet the Next Fact-Checker, Debunker & Moderator: You*, N.Y. TIMES (Jan. 7, 2025) (quoting individuals criticizing Facebook's move away from content moderation), <https://www.nytimes.com/2025/01/07/technology/meta-facebook-content-moderation.html> [<https://perma.cc/CW72-H3FV>].

³ See Amy Chozick, *This Is the Guy Who's Taking Away the Likes*, N.Y. TIMES (Jan. 21, 2020), <https://www.nytimes.com/2020/01/17/business/instagram-likes.html> [<https://perma.cc/7CGH-FJM3>] (“[Mark] Zuckerberg . . . was grilled by Congress about Facebook's handling of user data, political advertising, disinformation and child pornography . . .”).

⁴ See, e.g., *Twitter: Transparency and Accountability: Hearing Before the H. Comm. on Energy & Com.*, 115th Cong. (2018) (statement of Jack Dorsey, Chief Executive Officer of Twitter, Inc.).

⁵ See Deepa Shivaram, *DHS Pauses a Board Created to Combat Disinformation Amid a Campaign to Discredit It*, NPR (May 18, 2022, at 17:11 ET), <https://www.npr.org/2022/05/18/1099848240/dhs-disinformation-group-pause> [<https://perma.cc/2B6Y-P526>].

⁶ See Nicole Sganga, *What Is DHS' Disinformation Governance Board and Why Is Everyone So Mad About It?*, CBS NEWS (May 6, 2022, at 13:33 ET), <https://www.cbsnews.com/news/what-is-dhs-disinformation-governance-board-and-why-is-everyone-so-mad-about-it/> [<https://perma.cc/E62S-AAUW>].

⁷ See *Missouri v. Biden*, 680 F. Supp. 3d 630, 695-98 (W.D. La.), *aff'd in part, rev'd in part*, 80 F.4th 641 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *aff'd in part, rev'd in part*, 83 F.4th 350 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *vacated and remanded*, 114 F.4th 406 (5th Cir. 2024).

⁸ See RUSSELL L. WEAVER, *FROM GUTENBERG TO THE INTERNET: FREE SPEECH, ADVANCING TECHNOLOGY, AND THE IMPLICATIONS FOR DEMOCRACY* 315-99 (3rd ed. 2025).

Their efforts to control social media content ran contrary to fundamental free speech principles, which recognize that freedom of expression is the cornerstone of democracy,⁹ and they had a profound impact on the scope of social and political discourse. Freedom of expression was censored and limited on topics ranging from Covid-19,¹⁰ Covid vaccines,¹¹ and Covid lockdowns¹² to climate change,¹³ abortion,¹⁴ gender,¹⁵ health,¹⁶ economic policy,¹⁷ and the Hunter Biden laptop story (which involved alleged corruption on the part of Joe Biden).¹⁸

In the last couple of years, U.S. attitudes towards content moderation have undergone dramatic change. The first major change came when Elon Musk purchased Twitter,¹⁹ which he promptly renamed X,²⁰ and altered Twitter/X's handling of disinformation.²¹ Then, following his inauguration, President Donald Trump issued an executive order prohibiting the government from engaging in Biden Administration-style interference with social media platform content moderation.²² Shortly thereafter, Mark Zuckerberg decided to alter Facebook/Meta's content moderation policies, jettisoning Meta's previously aggressive approach toward content moderation.²³ As a

⁹ See RUSSELL L. WEAVER & CATHERINE HANCOCK, *THE FIRST AMENDMENT: CASES, PROBLEMS & MATERIALS* 8-10 (7th ed. 2023).

¹⁰ See *Biden*, 680 F. Supp. at 728.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 722-23.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 699.

¹⁷ *Id.* at 655.

¹⁸ *Id.* at 728.

¹⁹ See Kate Conger et al., *Two Weeks of Chaos: Inside Elon Musk's Takeover of Twitter*, N.Y. TIMES (Nov. 11, 2022), <https://www.nytimes.com/2022/11/11/technology/elon-musk-twitter-takeover.html> [<https://perma.cc/ED9D-DUSY>].

²⁰ See Ryan Mac et al., *Slash First, Fix Later: How Elon Musk Cuts Costs*, N.Y. TIMES (Nov. 16, 2024), <https://www.nytimes.com/2024/11/16/technology/elon-musk-cost-cuts.html> [<https://perma.cc/EH79-FP3C>].

²¹ See Megan McArdle, *Elon Musk's Twitter Purchase Has Left and Right Switching Sides*, WASH. POST, Apr. 30, 2022, at A19.

²² Exec. Order No. 14149, 90 Fed. Reg. 8243 (Jan. 20, 2025).

²³ See Thompson & Conger, *supra* note 2.

result, the U.S. has moved to a more laissez-faire approach to content moderation of disinformation.

This Article examines the changes at X and Meta, as well as President Trump's Executive Order. It begins by examining the history and content of those actions and their impact on content moderation and control of disinformation. It concludes by evaluating the efficacy of these and other remedies for disinformation.

I. THE SOCIAL MEDIA PLATFORM REVOLUTION

Elon Musk's purchase of Twitter was the first earthquake to hit the social media platform environment. In Twitter's early days, Twitter officials tended to be very pro-free-speech and were generally opposed to content moderation as a remedy for disinformation. This attitude was so ingrained that one high level Twitter executive referred to Twitter as the "free speech wing of the free speech party."²⁴

Over time, Twitter's attitude changed and the platform began to aggressively moderate content.²⁵ Pressured at times by their employees, Twitter and Facebook would label posts as false information, and they created "computer systems [designed] to suppress viral lies from spreading far and fast."²⁶ Twitter also established a team that was charged with ferreting out suspicious content, and the team coordinated closely with the U.S. Department of Homeland Security ("DHS") and the FBI.²⁷ As part of that process, Twitter created a portal that allowed individual users to report misleading tweets,²⁸ and it developed pages of rules prohibiting various types of content.²⁹ These efforts led Twitter's then head of "trust and safety" to declare that "we are more prepared than we have ever been" to deal with suspicious

²⁴ McArdle, *supra* note 21; Shira Ovide, *Buying Twitter, Elon Musk Will Face Reality of His Free-Speech Talk*, N.Y. TIMES (Apr. 26, 2022), <https://www.nytimes.com/2022/04/26/technology/twitter-elon-musk-free-speech.html> [<https://perma.cc/U58W-44HB>].

²⁵ See Kate Conger & Adam Satariano, *Twitter Clamps Down, But Rogue Accounts Turn the Pressure Up*, N.Y. TIMES, Nov. 6, 2018, at A15.

²⁶ Ovide, *supra* note 24.

²⁷ Conger & Satariano, *supra* note 25.

²⁸ *Id.*

²⁹ Ovide, *supra* note 24.

content.³⁰ Twitter also created a “data science team” that utilized technology to identify “oddities,” including identifying clusters of accounts that were using the same email address or phone number or constantly tweeting at high-profile accounts.³¹ In addition, it took steps to demote the prominence of certain material (a step that it took with regard to some 70,000 comments that had been posted over ten million times).³² At one point, Twitter also placed “caution labels” on alleged disinformation.³³ Facebook, Twitter, and YouTube also kicked President Trump off their platforms following the January 6th, 2021, Capitol riot.³⁴ January 6th was “a crossing-the-Rubicon moment when the ‘tweets must flow’ crowd acknowledged that it could and should do more to prevent people from using its internet properties to blare information that could mislead or harm others.”³⁵ During the 2016 election, the team found that disinformation was being spread, not only by Republican supporters, but also by Democratic partisans.³⁶

Prior to his purchase of Twitter, Musk had “bristled when the company . . . removed posts and barred users,” and he forcefully argued that “Twitter should be a haven for unfettered expression within the bounds of the law.”³⁷ After Musk purchased Twitter, he made clear that he wanted to reduce content moderation on the platform,³⁸ and emphasized that his goal was to create a haven for free speech, a “global town square.”³⁹ Indeed, Musk declared that “[f]ree speech is the bedrock of a functioning democracy” and stated that he regards Twitter as “the digital town square where

³⁰ Conger & Satariano, *supra* note 25.

³¹ *Id.*

³² See Sam Schechner, Jeff Horwitz & Emily Glazer, *How Facebook Hobbled Mark Zuckerberg’s Bid to Get America Vaccinated*, WALL ST. J. (Sep. 17, 2021), <https://www.wsj.com/tech/facebook-mark-zuckerberg-vaccinated-11631880296> [<https://perma.cc/5PYJ-LMWJ>].

³³ Sheera Frenkel, *Disinformation Is Big Business for One Doctor*, N.Y. TIMES, July 25, 2021, at A1.

³⁴ Ovide, *supra* note 24.

³⁵ *Id.*

³⁶ See Philip Bump, *The Demise of the ‘Public Square’ Argument for X*, WASH. POST (Nov. 27, 2024), <https://www.washingtonpost.com/politics/2024/11/27/musk-twitter-bluesky-trump/> [<https://perma.cc/2DML-3Y66>].

³⁷ Ovide, *supra* note 24.

³⁸ See McArdle, *supra* note 21.

³⁹ Bump, *supra* note 36.

matters vital to the future of humanity are debated.”⁴⁰ Musk also hoped to make X into an “everything app” that would allow people to do a range of things, including banking and watching movies.⁴¹

After his purchase of Twitter, Musk fired 75% of the company’s employees⁴² and rebranded the site as X.⁴³ Musk also altered Twitter’s approach to disinformation.⁴⁴ X reduced the number of staff devoted to managing information by 50%,⁴⁵ and also reduced the number of staff allocated to election integrity issues.⁴⁶ In response, many Twitter employees resigned.⁴⁷ X also stopped policing Covid misinformation in the sense of providing corrective information, removing inaccurate information, or banning offending accounts (previously, 97,000 pieces of misleading content had been banned and 11,000 accounts had been suspended). X was warned by EU regulators regarding its more relaxed approach to content-moderation.⁴⁸ In response, in 2024, X indicated that it was hiring more “safety staffers, including some 100 content moderators.”⁴⁹

As part of the transition, Musk “gutted” Twitter’s “trust and safety teams and introduced Community Notes, a crowd-sourced moderation tool that the platform has promoted as the way for

⁴⁰ Ovide, *supra* note 24.

⁴¹ Kate Conger, *So What Do We Call Twitter Now Anyway?*, N.Y. TIMES (Aug. 3, 2023), <https://www.nytimes.com/2023/08/03/technology/twitter-x-tweets-elon-musk.html> [https://perma.cc/XTX6-ZBUY].

⁴² See Kate Conger, Ryan Mac & Mike Isaac, *What’s Gone at Twitter? A Data Center, Janitors, Some Toilet Paper*, N.Y. TIMES (Dec. 29, 2022), <https://www.nytimes.com/2022/12/29/technology/twitter-elon-musk.html> [https://perma.cc/7BQN-SSG2].

⁴³ See Anuj Chopra, *Meta’s ‘Musk Playbook’ Fans Misinformation Concerns*, BARRON’S (Jan. 8, 2025, at 13:40 ET), <https://www.barrons.com/news/meta-s-musk-playbook-fans-misinformation-concerns-1014097a?> [https://perma.cc/7F34-TW25].

⁴⁴ See Tiffany Hsu, Stuart A. Thompson & Steven Lee Myers, *Elections and Disinformation Collide in Year Ripe for Chaos*, N.Y. TIMES, Jan. 23, 2024, at A1.

⁴⁵ See Ryan Mac, Mike Isaac & Kellen Browning, *Twitter’s Cuts to Work Force Put It on Brink*, N.Y. TIMES, Nov. 19, 2022, at A1.

⁴⁶ See Tiffany Hsu & Stuart A. Thompson, *Campaigns to Root Out Falsehoods are Fading*, N.Y. TIMES, Oct. 9, 2023, at B1.

⁴⁷ See Mac, Isaac & Browning, *supra* note 45.

⁴⁸ See Deepa Seetharaman & Meghan Bobrowsky, *Hands-Off Approach to Twitter Draws EU Regulator’s Warning*, WALL ST. J., Apr. 27, 2022, at A1.

⁴⁹ See Robert McMillan, Alexa Corse & Dustin Volz, *New AI Deepfakes Complicate 2024 Votes*, WALL ST. J., Feb. 16, 2024, at A4.

users to add context to posts.”⁵⁰ “Community Notes” allows X users to post “corrections”:⁵¹

X now asks everyday users to spot falsehoods and write corrections or add extra information to social media posts. . . . [N]otes are at first visible only to users who register for the Community Notes program. Once a note receives enough votes deeming it valuable, it is appended to the social media post for everyone to see.⁵²

Users can respond by indicating whether the notes are “helpful.”⁵³

Similar changes were adopted at Meta/Facebook. Facebook originally viewed itself as a platform, rather than as a publisher, and it was reticent about editing content posted on its platform.⁵⁴ Indeed, at one point, Facebook’s Chief Executive Mark Zuckerberg declared that he did not view Facebook as an arbiter of free speech and believed that his mission was to “give people a voice.”⁵⁵ In taking that position, Zuckerberg emphasized that many prominent political individuals, including Frederick Douglass, the Rev. Dr. Martin Luther King, Jr., and protestors during the Vietnam War, had relied on the First Amendment in the face of governmental attempts to control and censor their speech.⁵⁶ He went on to note that “[p]eople having the power to express themselves at scale is a new kind of force in the world” and “the long journey toward greater progress requires confronting ideas that challenge us.”⁵⁷ He emphasized that “we must continue to stand for free expression,” and he argued that the public could reach its own conclusions regarding false statements.⁵⁸

Over time, Facebook drew criticism for its failure to more actively regulate speech on its platform, with one commentator

⁵⁰ Chopra, *supra* note 43.

⁵¹ Hsu & Thompson, *supra* note 46.

⁵² Thompson & Conger, *supra* note 2.

⁵³ *Id.*

⁵⁴ *See id.*

⁵⁵ Cecilia Kang & Mike Isaac, *Zuckerberg Says Facebook Won’t Police Political Speech*, N.Y. TIMES, Oct. 18, 2019, at B1.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

denouncing Facebook's response as "agonizingly slow,"⁵⁹ and Facebook's own employees were critical of its response.⁶⁰ As a result, Facebook came under pressure to deal with disinformation and election interference.⁶¹ Facebook responded by establishing a panel of academics to study social media's impact on elections, which published research showing how many fake accounts had been removed from Facebook.⁶² Over time, Facebook took steps to limit who could buy advertisements on its platform, hired monitors to review posted content, and established a "war room" to root out false information.⁶³ These measures prompted Mark Zuckerberg, Facebook's chief executive, to declare that Facebook is getting "better and better" at dealing with false information.⁶⁴ But, even if Facebook was determined to control disinformation, it faced a daunting task given that Facebook operates throughout the world in a multitude of languages.⁶⁵ Regarding a doctor who allegedly made false Covid claims, Meta banned advertising on his main Facebook page and removed his content that violated Meta terms of use policies.⁶⁶

By 2025, Zuckerberg had returned to his original position on content moderation.⁶⁷ "[I]n a mea culpa for the ages" Zuckerberg "clearly and unmistakably 'walked back most of the platform's speech controls.'"⁶⁸ He flatly recognized that we have "reached a point where it's just too many mistakes and too much censorship."⁶⁹ As a result, Meta, which owns Facebook, Instagram,

⁵⁹ Max Fisher, *Facebook's Worst Demons Have Come Home to Roost*, N.Y. TIMES, Aug. 8, 2018, at B1.

⁶⁰ See Mike Isaac, Cecilia Kang & Sheera Frenkel, *Facing Furor, Zuckerberg Defends Call on Trump*, N.Y. TIMES, June 3, 2020, at B1.

⁶¹ See Sheera Frenkel & Mike Isaac, *Mark Zuckerberg's Political Evolution, From Apologies to No More Apologies*, N.Y. TIMES (Jan. 7, 2025), <https://www.nytimes.com/2025/01/07/technology/mark-zuckerberg-meta-free-speech.html> [<https://perma.cc/U65R-3NEZ>].

⁶² See *id.*

⁶³ Conger & Satariano, *supra* note 25.

⁶⁴ *Id.*

⁶⁵ Amanda Taub & Max Fisher, *Where Facebook Rumors Fuel Thirst for Revenge*, N.Y. TIMES, Apr. 22, 2018, at A1.

⁶⁶ See Frenkel, *supra* note 33.

⁶⁷ See Frenkel & Isaac, *supra* note 61.

⁶⁸ Royal Alexander, *Zuckerberg Promises to End the Censorship He Denied Was Occurring*, MINDEN-PRESS HERALD, Jan. 13, 2025, at A1.

⁶⁹ *Id.*

WhatsApp, and Threads, announced that it was ending its fact-checking program.⁷⁰ At the same time, Meta eliminated its CrowdTangle transparency tool, which was designed to allow “researchers, academics, and journalists to monitor conspiracy theories and misinformation on Facebook.”⁷¹ The company also integrated its election integrity team into a general integrity team, and the platform began promoting technology, including investments in artificial intelligence.⁷² Regarding disinformation, Meta moved to a system that is similar to the one being used by X, Community Notes, under which users could “leave a fact-check or correction on a social media post.”⁷³ As part of that process, Meta ended “its third-party fact-checking program in the United States and [turned] over the task of debunking falsehoods to ordinary users under” the “Community Notes” approach.⁷⁴

The actions of Musk and Zuckerberg run parallel to an executive order issued by President Trump.⁷⁵ That order began by emphasizing that the First Amendment “enshrines the right of the American people to speak freely in the public square without Government interference” and expressed concern regarding the fact that the Biden Administration had purportedly “trampled free speech rights by censoring Americans’ speech on online platforms, often by exerting substantial coercive pressure on third parties, such as social media companies, to moderate, deplatform, or otherwise suppress speech that the Federal Government did not approve.”⁷⁶ While the order recognized that the Biden Administration may have had the goal of combatting “‘misinformation,’ ‘disinformation,’ and ‘malinformation,’” the order concludes that Biden’s actions “infringed on the constitutionally protected speech rights of American citizens across the United States in a manner that advanced the Government’s preferred narrative about significant matters of public debate.”⁷⁷ The order flatly stated that “Government

⁷⁰ *Id.*

⁷¹ Frenkel & Isaac, *supra* note 61.

⁷² *Id.*

⁷³ Thompson & Conger, *supra* note 2.

⁷⁴ See Chopra, *supra* note 43.

⁷⁵ See Exec. Order No. 14149, 90 Fed. Reg. 8243 (Jan. 20, 2025).

⁷⁶ *Id.*

⁷⁷ *Id.*

censorship of speech is intolerable in a free society.”⁷⁸ The order then declared:

It is the policy of the United States to: (a) secure the right of the American people to engage in constitutionally protected speech; (b) ensure that no Federal Government officer, employee, or agent engages in or facilitates any conduct that would unconstitutionally abridge the free speech of any American citizen; (c) ensure that no taxpayer resources are used to engage in or facilitate any conduct that would unconstitutionally abridge the free speech of any American citizen; and (d) identify and take appropriate action to correct past misconduct by the Federal Government related to censorship of protected speech.⁷⁹

The order then set forth two action items. First, it provided that “No Federal department, agency, entity, officer, employee, or agent may act or use any Federal resources in a manner contrary to section 2 of this order.”⁸⁰ Second, the order requires:

The Attorney General, in consultation with the heads of executive departments and agencies, shall investigate the activities of the Federal Government over the last [four] years that are inconsistent with the purposes and policies of this order and prepare a report to be submitted to the President, through the Deputy Chief of Staff for Policy, with recommendations for appropriate remedial actions to be taken based on the findings of the report.⁸¹

II. EVALUATING THE REVOLUTION

The actions of Musk and Zuckerberg raise important questions regarding the role of speech in society and whether disinformation needs to be controlled in order to ensure that democracy functions properly. Unquestionably, there are good reasons to be concerned about disinformation. As Thomas Jefferson famously declared in the U.S. Declaration of

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

Independence, the power to govern derives “from the consent of the governed.”⁸² In democratic systems, as the U.S. Supreme Court recognized in *Garrison v. Louisiana*, “speech concerning public affairs is more than self-expression; it is the essence of self-government.”⁸³ Or, as the Court stated in *Citizens United v. Federal Election Commission*, “The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”⁸⁴ Unquestionably, disinformation has the potential to pollute the public debate and mislead the public on important issues, thereby undercutting the democratic process. As one commentator stated, “We need to protect freedom of speech in order to make our democracy works.”⁸⁵

Of course, disinformation has existed since the beginning of time,⁸⁶ and goes well beyond social media platforms.⁸⁷ Politicians lie⁸⁸ and the media is often biased.⁸⁹ Even though some might argue for the regulation or control of disinformation on social media platforms, few would call for the government (or others) to regulate the speech of politicians or the traditional media. There is a strong tradition of protecting the press⁹⁰ and political speech in the United States.⁹¹ There should be similar protections for speech on social media platforms. Those platforms provide the mechanism by which ordinary people communicate and convey their ideas. Indeed, as new mass communications technologies were developed over the centuries, ordinary people were generally unable to access them.⁹² That was true of the printing press,⁹³ as well as of later technologies such as radio, television, cable and

⁸² THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁸³ 379 U.S. 64, 74-75 (1964).

⁸⁴ 558 U.S. 310, 339 (2010).

⁸⁵ Ovide, *supra* note 24 (quoting Jameel Jaffer, Executive Director of the Knight First Amendment Institute at Columbia University).

⁸⁶ See WEAVER, *supra* note 8, ch. 9.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See WEAVER & HANCOCK, *supra* note 9, at 623-79.

⁹¹ See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014).

⁹² See WEAVER, *supra* note 8, ch. 3.

⁹³ *Id.*

satellite.⁹⁴ In a democracy, where social media platforms provide ordinary people with the most effective means for them to express their opinions,⁹⁵ it seems inappropriate to censor speech on those platforms, and thereby cut ordinary people off from mass communication, but allow politicians and the media to communicate freely. In addition, as we shall see, the cure for disinformation may actually be worse than the disease.⁹⁶

Unquestionably, the actions of Musk, Zuckerberg, and Trump have ushered in a new and quite different approach to social media platform content regulation. Some believe that these changes are negative. One commentator viewed Musk's purchase of Twitter as a disaster and argued that Musk "broke nearly everything."⁹⁷ Another commentator argued that, before Musk, Twitter was "the most consequential place online," but he argued that it is no longer.⁹⁸ Other commentators lament the actions of both X and Meta, which they believe will lead to the dissemination of more disinformation.⁹⁹ For example, one newspaper referred to Facebook's change as marking the "the end of an era in content moderation and an embrace of looser guidelines that even Mr. Zuckerberg acknowledged would increase the amount of false and misleading content on the world's largest social network."¹⁰⁰ One commentator concluded that Meta's new approach would be a "a spectacular failure" because the "platform now has no responsibility for really anything that's said. They can offload responsibility onto the users themselves."¹⁰¹

Some observers believe that Musk will ultimately be forced to engage in greater content regulation. Before Zuckerberg adopted the same approach, one commentator described Musk as a "relative dilettante" on the topic of disinformation, and suggested that he "hasn't yet tackled the difficult trade-offs in which giving

⁹⁴ *Id.*

⁹⁵ *Id.* ch. 7.

⁹⁶ *Id.* ch. 9.

⁹⁷ Farhad Manjoo, Opinion, *Twitter Is Broken. Thanks, Elon.*, N.Y. TIMES (Apr. 14, 2023), <https://www.nytimes.com/2023/04/14/opinion/elon-musk-twitter.html> [https://perma.cc/W965-HFLQ].

⁹⁸ *Id.*

⁹⁹ See Chopra, *supra* note 43.

¹⁰⁰ Thompson & Conger, *supra* note 2.

¹⁰¹ *Id.* (quoting Alex Mahadevan, director of a media literacy program, MediaWise).

one person a voice may silence the expression of others, and in which an almost-everything-goes space for expression might be overrun with spam, nudity, propaganda from autocrats, the bullying of children[,] and violent incitements.”¹⁰² The same commentator concluded that “[s]oon, Mr. Musk will be the one confronting the gap between an idealized view of free speech and the zillion tough decisions that must be made to let everyone have a say.”¹⁰³ Of course, that argument seems less persuasive when one realizes that Mark Zuckerberg, who has had to deal with millions of these decisions, ultimately decided to adopt the same approach.

With their movement towards Community Notes, X and Meta have largely removed themselves from the content moderation business. Will the Community Notes approach be sufficient or adequate? Some commentators question whether Community Notes have had a beneficial impact on reducing disinformation. One study found that “the presence of a Community Note did not keep [false information] from spreading widely” and “users who created misleading posts saw no change in the engagement for subsequent posts, suggesting that they paid no penalty for sharing falsehoods.”¹⁰⁴ Moreover, since most posts received a “surge in attention” immediately after they were posted, Community Notes may come too late to counteract the disinformation.¹⁰⁵

Community Notes can “dispel some falsehoods such as vaccine misinformation, but researchers caution that it works best for topics where there is broad consensus.”¹⁰⁶ Although research supports the idea that crowdsourcing fact-checking can be effective when done correctly,” some believe that it should be used to “supplement fact-checking from professionals,” not as a replacement.¹⁰⁷ A study published in the journal *Nature Human Behavior* showed that warning labels from professional fact-checkers reduced belief in—and the sharing of—misinformation,

¹⁰² Ovide, *supra* note 24.

¹⁰³ *Id.*

¹⁰⁴ Tiffany Hsu & Stuart Thompson, *Campaigns to Root Out Falsehoods Are Fading*, N.Y. TIMES, Oct. 9, 2023, at B1.

¹⁰⁵ *Id.*

¹⁰⁶ Chopra, *supra* note 43.

¹⁰⁷ *Id.* (quoting Gordon Pennycook, a professor from Cornell University).

even among those “most distrusting of fact-checkers.”¹⁰⁸ But there is a risk that “crowdsourced fact-checking will simply reflect the mistaken beliefs of the majority.”¹⁰⁹ In addition, there is a risk that those who participate in Community Notes may be “motivated by partisan motives and tend to over-target their political opponents.”¹¹⁰

The movement towards Community Notes is somewhat similar to the outside fact-checking approaches that some organizations previously used. In 2016, Meta began working with and paying fact-checking organizations.¹¹¹ These organizations used a variety of techniques ranging from “context labels, accuracy flags, warning screens, content removal policies,” and “media literacy trainings.”¹¹² For example, an assertion might be labeled as “disputed” or “false.”¹¹³ In the first six months of 2023, more than forty million posts received fact-checking labels.¹¹⁴ Such labels were attached to statements made by Donald Trump, claiming that mail-in ballots could lead to a “rigged election,”¹¹⁵ as well as to other statements that he made,¹¹⁶ including a Trump statement that mail-in ballot boxes are not sanitized against Covid-19.¹¹⁷ Facebook claimed that the statements violated its Civic Integrity Policy by discouraging people from voting.¹¹⁸ In other countries (e.g., India), a website (*Alt News*) attempted to

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See Hsu & Thompson, *supra* note 46.

¹¹² *Id.*

¹¹³ Brendan Nyhan, *Is Facebook’s Fact-Checking Effective? Researchers Offer Warnings*, N.Y. TIMES, Oct. 24, 2017, at B2.

¹¹⁴ Hsu & Thompson, *supra* note 46.

¹¹⁵ See Jim Rutenberg & Kate Conger, *His Fact Checkers Long Gone, Musk Echoes Voting Lies on X*, N.Y. TIMES, Jan. 27, 2024, at A1. The labels stated: “Get the facts about mail-in voting. . . . Experts say mail-in ballots are very rarely linked to voter fraud . . .” *Id.*

¹¹⁶ See Cecilia Kang, *A Campaign Prepares to Go Public in Its Attack on Facebook’s Speech Policies*, N.Y. TIMES, June 12, 2020, at A15.

¹¹⁷ See Kate Conger, *Twitter Flags a Tweet by Trump on Voting*, N.Y. TIMES, Aug. 24, 2020, at B3.

¹¹⁸ *Id.*

debunk disinformation regarding a variety of issues (e.g., gangs, Covid-19).¹¹⁹

Despite their potential efficacy, there is a concern that fact-checking labels might not be accurate. Essentially, someone (the social media platform or an independent group) sets themselves up as an “arbiter of truth,” but there is no assurance that they will get it right. In addition, the fact-checking label might itself involve disinformation and point the reader to inaccurate information. In the case of the Hunter Biden laptop story, the media got it wrong.¹²⁰ So, any attempt to link the laptop story to articles questioning its validity would itself constitute disinformation. Likewise, if the Nunes intelligence report were linked to the Schiff denunciation of that report, the responsive speech might again promote disinformation.¹²¹

III. EVALUATING THE ALTERNATIVES

So, if Community Notes is not a perfect solution to the problem of disinformation, the question remains whether there is an alternate system that would be preferable. It is not clear that there is. One approach is for the government to be more involved in trying to regulate or control disinformation. Another approach is for social media platforms to impose more aggressive content moderation themselves. But both of those approaches come with their own problems and are not necessarily better than a Community Notes approach.

A. Governmental Regulation and Control of Disinformation

One possible solution is to establish governmental systems designed to regulate and control disinformation.¹²² For example, during the Biden Administration, the Department of Homeland Security, decided to create a Disinformation Board to respond to

¹¹⁹ See Suhasini Raj, *In India, One Website Battles Rampant Online Misinformation*, N.Y. TIMES, Sep. 27, 2022, at B1.

¹²⁰ See Bret Stephens, Opinion, *An Ethically Challenged Presidency*, N.Y. TIMES, Oct. 6, 2021, at A21.

¹²¹ See Adam Schiff, Opinion, *Disinformation Man*, WALL ST. J., Jan. 20, 2023, at A12.

¹²² See Myers, *supra* note 2.

false information.¹²³ The Disinformation Board was asked to create a set of standardized practices that could be used by federal agencies to respond to violent threats against the nation.¹²⁴ But what if, instead of focusing only on violent threats against the nation, the Disinformation Board were asked to regulate and control disinformation generally? It is not clear that the American people are prepared to accept a Disinformation Board with that kind of power. Indeed, the Biden Administration's proposal was met with a firestorm of criticism that led the administration to abandon the idea.¹²⁵ It is doubtful that the American people would be any more willing to accept the idea of an expanded Disinformation Board.

There are good reasons for the public's adverse reaction to the idea of a proposed Disinformation Board. Implicit in the democratic process is the idea that government should have limited authority to regulate or censor beliefs, ideas, and thoughts.¹²⁶ Indeed, if the legitimacy of government depends on the consent of the governed, it is dangerous to allow government to control, limit, or suppress the ideas that the people can hear or consider.¹²⁷ In *Cohen v. California*,¹²⁸ the Court declared:

The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us
¹²⁹

The *Cohen* Court went on to state that it would not "indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process."¹³⁰ Likewise, in *Ashcroft v. American Civil Liberties*

¹²³ See Shivaram, *supra* note 5.

¹²⁴ See Sganga, *supra* note 6.

¹²⁵ See Shivaram, *supra* note 5.

¹²⁶ See *WEAVER & HANCOCK*, *supra* note 9, at 60.

¹²⁷ *Id.*

¹²⁸ 403 U.S. 15 (1971).

¹²⁹ *Id.* at 24.

¹³⁰ 403 U.S. at 26.

Union,¹³¹ the Court stated that “[a]s a general matter, ‘the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’”¹³² James Madison denounced a congressional resolution criticizing “self-created societies” that some believed had “misrepresent[ed] the conduct of the Government.”¹³³ Madison’s view was that, in a Republic, “the censorial power is in the people over the Government, and not in the Government over the people.”¹³⁴

Of course, the government is not completely deprived of the right to prohibit speech. There are a few discrete categories of speech that are not constitutionally protected and that therefore can be prohibited.¹³⁵ But those categories are very limited, including such things as child pornography,¹³⁶ obscenity,¹³⁷ fighting words,¹³⁸ and true threats.¹³⁹ In any event, the government’s power to control speech does not necessarily extend to disinformation or false speech. *United States v. Alvarez* involved an individual who was prosecuted under the Stolen Valor Act for falsely asserting that he had won the Congressional Medal of Honor.¹⁴⁰ While the *Alvarez* Court recognized that individuals can be prosecuted for false speech in limited and defined circumstances (e.g., perjury in a judicial proceeding or making false statements to a governmental official or agency),¹⁴¹ the Court held that *Alvarez* could not be convicted for making a false statement regarding winning the medal. The Court concluded that the government had less restrictive means for protecting the medal than criminally prosecuting the speech (e.g., it could

¹³¹ 535 U.S. 564 (2002).

¹³² *Id.* at 573 (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 65 (1983)).

¹³³ *Hou. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 480 (2022) (quoting 4 ANNALS OF CONG. 899 (1794)).

¹³⁴ *Id.* at 480 (quoting 4 ANNALS OF CONG. 899, 934 (1794)).

¹³⁵ See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (“There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.”).

¹³⁶ See *Ferber v. New York*, 458 U.S. 747 (1982).

¹³⁷ See *Miller v. California*, 413 U.S. 15 (1973).

¹³⁸ See *Chaplinsky*, 315 U.S. at 571-72.

¹³⁹ See *Virginia v. Black*, 538 U.S. 343 (2003).

¹⁴⁰ 567 U.S. 709, 713 (2012).

¹⁴¹ *Id.*

publish a list of prior winners so that someone's claim to have won the medal could be verified or disputed).¹⁴²

The U.S. experience with governmental attempts to serve as the arbiter of truth has not been positive. In the early 2020s, when the Biden Administration tried to censor social media content by exerting pressure on social media platforms, as well as by threatening the platforms, the White House was not a fair and neutral censor of disinformation.¹⁴³ On the contrary, the White House used its power to further its political agenda. Instead of limiting its censorship to the public health issues presented by the Covid-19 pandemic, including questions related to Covid-19,¹⁴⁴ Covid-19 vaccines,¹⁴⁵ and Covid-19 lockdowns,¹⁴⁶ the Biden Administration sought to censor speech and impose its views on a wide swath of other issues, ranging from climate change¹⁴⁷ to abortion,¹⁴⁸ gender discussions,¹⁴⁹ health,¹⁵⁰ and economic policy.¹⁵¹ In many instances, the Biden Administration was not trying to censor disinformation at all but was instead trying to impose its views on a range of issues and squash opposing viewpoints. For example, it sought to control the public narrative regarding the Hunter Biden laptop story, which was a prominent political story that presented potential issues of governmental corruption.¹⁵² In some instances, including the example of the Hunter Biden story, the information being suppressed was not disinformation at all, but instead was truthful.¹⁵³

The Trump Executive Order was positive because it prohibited the government from engaging in Biden-style efforts to

¹⁴² *Id.* at 729.

¹⁴³ *See* *Missouri v. Biden*, 680 F. Supp. 3d 630 (W.D. La.), *aff'd in part, rev'd in part*, 80 F.4th 641 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *aff'd in part, rev'd in part*, 83 F.4th 350 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *vacated and remanded*, 114 F.4th 406 (5th Cir. 2024).

¹⁴⁴ *Id.* at 642.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 655.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 661.

¹⁵¹ *Id.* at 655.

¹⁵² *Id.* at 642.

¹⁵³ *See* *Stephens*, *supra* note 120.

pressure social media platforms regarding their social media platform content decisions. Whether the Trump Administration will honor and comply with that order remains to be seen.

B. Social Media Platform Control of Disinformation

Another alternative is for social media platforms to moderate and control disinformation themselves. Of course, the creation of social media platforms involved a major democratization of communication. At one point, only a few (billionaires, politicians, and columnists at papers) had access to the means of communication, and they “enjoyed virtually one-sided communication—they put out their ideas, and few people had much of a public platform to respond or disagree with them.”¹⁵⁴ The internet and social media platforms altered that equation.¹⁵⁵ Twitter allowed people to “disagree or sharply criticize a powerful person to an audience of millions. And if enough people see it your way, that feedback loop becomes a lever of accountability.”¹⁵⁶ As a result, Twitter became “a hugely important forum for challenging the rich and powerful. Twitter is a gathering place for news junkies, where anyone can post and any post can go viral, and its existence has shifted power in a fundamental way.”¹⁵⁷

After all, our deepest political divides can’t be moderated away; they have to be argued through, no matter how unpleasant the prospect, or how much we’d prefer to listen only to our own side. And where can we hash out the hard problems, if not on Twitter, the digital water cooler where the global political class gathers?¹⁵⁸

Given that Twitter gave ordinary people the ability to mass communicate for the first time in history, it seems somewhat inappropriate for the platforms themselves to censor speech.

In addition, it is not clear that social media platforms have (or have ever had) the capacity to do effective content moderation.

¹⁵⁴ Perry Bacon Jr., *We’re Going to Need an Alternative to Twitter*, GAZETTE (Iowa), Oct. 25, 2022, at 6A.

¹⁵⁵ See WEAVER, *supra* note 8, at 111-227.

¹⁵⁶ Bacon, *supra* note 154.

¹⁵⁷ *Id.*

¹⁵⁸ McArdle, *supra* note 21.

Even though Facebook had some 35,000 content moderators at one point,¹⁵⁹ there was so much information posted on its platform that Facebook's moderators were sometimes forced to make decisions regarding the permissibility of content very quickly.¹⁶⁰ The time pressures imposed on content moderation inevitably resulted in bad decisions. As one commentator noted, referring to the way that social media companies handled disinformation: "These decisions get made quickly, in the heat of the moment, and it's possible that more contemplation and debate would produce more satisfying choices."¹⁶¹

There are lots of examples of mistakes by social media platforms in their content moderation. Even though there was (and remains) uncertainty regarding the origins of the Covid-19 virus,¹⁶² Facebook banned all claims that the virus was man-made¹⁶³ or that it leaked from a lab in Wuhan, China.¹⁶⁴ That ban was interesting given that the CIA now suggests that the virus originated in the Wuhan lab.¹⁶⁵ Facebook eventually changed course and decided to allow statements on that issue.¹⁶⁶ In addition, Facebook purportedly banned references to certain Bible

¹⁵⁹ See Hannah Murphy & Madhumita Murgia, *Facebook Delayed at 'Frontier' of AI Policing*, FT WEEKEND, Nov. 9, 2019, at 14.

¹⁶⁰ See Claire Wilmot & Rachel Hall, *Suicide Attempts, Sackings and a Vow of Silence: Meta's New Moderators Face Worst Conditions Yet*, BUREAU OF INVESTIGATIVE JOURNALISM (Apr. 27, 2025), <https://www.thebureauinvestigates.com/stories/2025-04-27/suicide-attempts-sackings-and-a-vow-of-silence-metas-new-moderators-face-worst-conditions-yet> [<https://perma.cc/RDE2-WLST>].

¹⁶¹ Kevin Roose, *Eyes on 2016, Social Media Tackles 2020*, N.Y. TIMES, Oct. 16, 2020, at A27.

¹⁶² See Alina Chan, Opinion, *Why Covid Probably Started in a Lab*, N.Y. TIMES, June 9, 2024, at SR6.

¹⁶³ See Thomas Barrabi, *Facebook Ends Ban on Posts Claiming COVID-19 Is Man-Made*, FOX BUS. (May 26, 2021, at 19:32 ET), <https://www.foxbusiness.com/technology/facebook-ends-ban-posts-claiming-covid-19-man-made> [<https://perma.cc/8672-YTX4>].

¹⁶⁴ See *Missouri v. Biden*, 680 F. Supp. 3d 630 (W.D. La.), *aff'd in part, rev'd in part*, 80 F.4th 641 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *aff'd in part, rev'd in part*, 83 F.4th 350 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *vacated and remanded*, 114 F.4th 406 (5th Cir. 2024).

¹⁶⁵ See Sadie Whitelocks, *Vanderbilt Professor: Why I'm Terrified About New Coronavirus Strain Found in China*, DAILY MAIL (Feb. 24, 2025, at 13:07 ET), <https://www.dailymail.co.uk/health/article-14430601/doctors-react-new-coronavirus-strain-pandemic-china.html> [<https://perma.cc/KSQ8-DMNL>].

¹⁶⁶ See Barrabi, *supra* note 163.

passages, as well as links to Biblehub.com,¹⁶⁷ even though it later admitted that it had made a mistake.¹⁶⁸ Facebook even went so far as to ban academics who were doing research on ad transparency and the spread of misinformation on Facebook.¹⁶⁹

Moreover, there is always the risk that social media platforms will engage in overreach by squelching protected speech.¹⁷⁰ For example, in addition to banning the Hunter Biden laptop story, which one commentator believed would have likely given the Electoral College and the election to Trump had voters known of the contents of the laptop before they voted, social media platforms banned fundraising efforts for the legal defense of Kyle Rittenhouse, a young man who was accused of, and then acquitted of, killing several Antifa rioters in 2020.¹⁷¹ Perhaps the most egregious example of this suppression was the labeling of any Covid-related speech or content as “disinformation” that did not completely adhere to the Dr. Anthony Fauci-CDC view of Covid.¹⁷² “This included everything from the mandatory masking and vaccination of children in schools to the forced closing of churches—while the big box stores and casinos were allowed to continue operating—to denying people the final opportunity to see their loved ones in nursing homes and hospitals before they died.”¹⁷³

There is also the risk that the government will exercise undue influence on social media platform content moderators.¹⁷⁴ The trial court decision in *Murthy v. Missouri*,¹⁷⁵ which was titled

¹⁶⁷ See Julia Marnin, *Fact Check: Is Facebook Banning Bible Passages?*, NEWSWEEK (Jan. 28, 2021, at 13:00 ET), <https://www.newsweek.com/fact-check-facebook-banning-bible-passages-1565190> [<https://perma.cc/A3UT-RS6J>].

¹⁶⁸ *Id.*

¹⁶⁹ See James Vincent, *Facebook Bans Academics Who Researched Ad Transparency and Misinformation on Facebook*, THE VERGE (Aug. 4, 2021, at 06:08 CT) <https://www.theverge.com/2021/8/4/22609020/facebook-bans-academic-researchers-ad-transparency-misinformation-nyu-ad-observatory-plugin-in> [<https://perma.cc/JE2F-5VES>].

¹⁷⁰ See McArdle, *supra* note 21.

¹⁷¹ See Alexander, *supra* note 68.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ 603 U.S. 43 (2024).

Missouri v. Biden,¹⁷⁶ reveals an extraordinary effort by the Biden Administration to pressure social media companies to censor content on their platforms. In an effort to achieve its objectives, the Biden Administration threatened and coerced social media platforms regarding their content moderation decisions.¹⁷⁷ The pressure extended to a wide swath of issues, dealing with such things as Covid-19,¹⁷⁸ Covid vaccines,¹⁷⁹ Covid lockdowns,¹⁸⁰ climate change,¹⁸¹ abortion,¹⁸² gender discussions,¹⁸³ health,¹⁸⁴ economic policy,¹⁸⁵ and the Hunter Biden laptop story.¹⁸⁶ Although all of these issues were politically important, the Biden Administration attempted to force social media platforms to censor views that were inconsistent with the administration's position.¹⁸⁷ In a democracy, the government should not be suppressing speech in this manner. Hopefully, Trump's Executive Order will end that type of suppression.

CONCLUSION

There has been much controversy regarding whether and how society should attempt to regulate or control disinformation, but it is not clear that there are any good or viable solutions to the problem. There was an attempt to have the government regulate social media content through a governmental agency (e.g., a disinformation board), but that approach was ultimately rejected because of a strong adverse public reaction, as well as because it was inconsistent with the U.S. free speech tradition. Moreover, it is doubtful whether, even if was given the power, the government

¹⁷⁶ 680 F. Supp. 3d 630 (W.D. La.), *aff'd in part, rev'd in part*, 80 F.4th 641 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *aff'd in part, rev'd in part*, 83 F.4th 350 (5th Cir. 2023), *rev'd and remanded sub nom.*, *Murthy v. Missouri*, 603 U.S. 43 (2024), *vacated and remanded*, 114 F.4th 406 (5th Cir. 2024).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 642.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 642-43.

¹⁸¹ *Id.* at 655.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *See id.*

¹⁸⁵ *Id.* at 655.

¹⁸⁶ *Id.* at 675-76.

¹⁸⁷ *Id.* at 715.

would exercise such power in a neutral, non-partisan way. Although it is possible for social media platforms to regulate social media disinformation, under the authority granted to them by Section 230 of the Communications Decency Act, it is not clear that such an approach is a good solution either. There is so much disinformation on social media that content moderators are overwhelmed, and it is not clear that they have made sound decisions in the past. In addition, as in the *Biden* case, the government may try to influence the content moderation.

Two social media giants (X and Meta) have gravitated away from fact checking in favor of solutions like “Community Notes.” While the Community Notes solution may not be perfect, it is probably no worse than the alternatives. Some have argued that, as Musk eliminates content moderation in favor of Community Notes, people may “be less willing to hang out where they might be harassed by those who disagree with them and swamped by pitches for cryptocurrency, fake Gucci handbags or pornography?”¹⁸⁸ The reality is that the social media environment is very dynamic. Following the 2024 presidential election, more than 116,000 people in the United States deactivated their X accounts.¹⁸⁹ That kind of movement is fine, given that there is a range of options on the internet, and there are other competing platforms such as Bluesky.¹⁹⁰ Indeed, many liberals have moved to Bluesky,¹⁹¹ and that platform grew in popularity after the election.¹⁹² Threads also added more than fifteen million new users.

In assessing the impact of Musk’s changes to X, a survey by Rasmussen Reports suggests that 64% of Republicans said the site improved after Musk purchased it, compared to only 29% of

¹⁸⁸ Ovide, *supra* note 24.

¹⁸⁹ Mike Isaac, *How Bluesky, Alternative to X and Facebook, Is Handling Explosive Growth*, N.Y. TIMES (Nov. 17, 2024), <https://www.nytimes.com/2024/11/17/technology/bluesky-growing-pains.html> [https://perma.cc/9NX5-YJB8].

¹⁹⁰ See Bump, *supra* note 36.

¹⁹¹ See Paul Bedard & Washington Examiner, *More Are Using X and Liking X Since Musk Bought It*, THE DENV. GAZETTE (Dec. 4, 2024), <https://www.denvergazette.com/2024/12/04/more-are-using-and-liking-x-since-musk-bought-it-481192a6-f693-5acc-88e3-299eadff4da8/> [https://perma.cc/5VPR-HNHP].

¹⁹² See Isaac, *supra* note 189.

Democrats.¹⁹³ That same survey showed that “X regulars are using the social media site more, and they’re liking it better since his purchase and bid to tear down barriers to free speech” is attractive to conservatives.¹⁹⁴ But there is a clear political divide with 55% of Republicans indicating that they use X more as opposed to 34% of Democrats.¹⁹⁵ Overall, “by a margin of 42%-24%, those polled said that they are using it more.”¹⁹⁶

¹⁹³ Bedard, *supra* note 191.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*