Covington Interim Report
By Senator Jon Kyl

I. Background

Facebook strives to "give people the power to build community and bring the world closer together."[1] Consistent with that mission, over 2 billion people use Facebook's products and services to share ideas and news, organize events, and promote candidates for federal, state, and local office.

However, Facebook's ability to personalize the content that its users see and interact with each day—along with Facebook's ever-growing size and reach—has generated concerns about the platform's impacts on free expression. Although these concerns appear across the political and ideological spectrum, members of the conservative community in particular are concerned that the Silicon Valley-based company's admittedly liberal culture negatively influences the reach of conservative ideas and news. Political conservatives, religious traditionalists, and others are increasingly feeling marginalized by cultural "gatekeepers" such as social media, entertainment media, and academia.

During an April 2018 joint hearing before the Senate Judiciary and Commerce Committees, Facebook CEO Mark Zuckerberg emphasized that he is "very committed to making sure that Facebook is a platform for all ideas."[2] Shortly thereafter, Facebook engaged me and a team at Covington & Burling LLP ("Covington") to conduct a review of concerns regarding perceived bias by Facebook against conservative organizations, individuals, and lawmakers. In this initial report, we detail what we learned in those conversations with these stakeholders. It is up to Facebook to determine how it will respond to our findings. Facebook gave us total independence to interview persons and organizations of our choosing, and we were given complete freedom to reach any conclusions based on those conversations and offer suggestions for improvement of its platform without any interference.

II. Methodology

We cast a wide net, using a broad definition of "conservative" in order to capture for this report the concerns raised by all types of conservatives. "Conservative" is an imprecise term. For our purposes, it includes political conservatives, people of orthodox religious views, libertarians, pro-lifers, traditionalists, Republicans, and free speech advocates. As an initial step, we identified key conservative organizations, individuals, and lawmakers who either use, study, or have the potential to regulate Facebook. Since May 2018, we have interviewed approximately 133 of them, and we presented our preliminary findings to Facebook in early August 2018.

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[1] Facebook Mission Statement, https://www.facebook.com/pg/facebook/about/.
[2] "Facebook, Social Media Privacy, and the Use and Abuse of Data: Hearing Before the Senate Committee on the Judiciary, Senate Committee on Commerce, Science, and Transportation," 115th Cong. (2018).

Beginning in May 2019, we conducted various follow-up interviews and continued to provide our findings to Facebook.

We weighed the feedback we received based on a variety of factors, such as whether the interviewee provided specific examples substantiating his or her concerns, whether such examples were documented, and the consistency of the information provided with other feedback. Throughout the process, we provided Facebook with our assessment of the information we received, and Facebook considered our observations when discussing potential changes to its content-moderation practices.

III.   Summary of Findings

The concerns expressed by conservative interviewees generally fell into six categories:

Content Distribution and Algorithms: In order to sort through the thousands of posts that Facebook users could potentially encounter on a given day, Facebook deploys a variety of mechanisms to prioritize the content most relevant to each individual user. Conservatives fear that these mechanisms prioritize content in ways that suppress their viewpoints.[3]

Interviewees voiced three general concerns on this front:

1. January 2018 News Feed Algorithm Change: In January 2018, Facebook changed its content ranking algorithm to favor content that a given user's friends and family comment on and share, as well as news from broadly trusted sources. Several interviewees believed that this change disproportionately decreased the reach of conservative news content (as compared to liberal news content).

2. Clickbait and Spam: To make the platform more enjoyable for users, Facebook has made a concerted effort to de-prioritize clickbait and spam.[4] Interviewees generally supported this goal, but found Facebook's policies for doing so too opaque.

3. Fact-Checking and False News: Interviewees expressed significant concerns about Facebook's efforts to combat what the company refers to as "false news." In particular, interviewees pointed to examples of instances when some of the third-party fact-checkers utilized by Facebook at various times (*e.g.*, Snopes, PolitiFact, Factcheck.org, the Associated Press)—which are certified by the Poynter Institute, an entity that owns PolitiFact—have skewed to the ideological Left. We note that Facebook

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[3] *See, e.g.*, Adam Mosseri, *News Feed Ranking in Three Minutes Flat*, Facebook Newsroom (May 22, 2018), https://newsroom.fb.com/news/2018/05/inside-feed-news-feed-ranking/.

[4] Facebook describes "clickbait" as content with sensational headlines that "intentionally leave out crucial information or misleads people, forcing people to click to find out the answer." *See* Alex Peysakhovich and Kristin Hendrix, *Further Reducing Clickbait in Feed*, Facebook Newsroom (Aug. 4, 2016), https://newsroom.fb.com/news/2016/08/news-feed-fyi-further-reducing-clickbait-in-feed/.

has accepted fact-checkers affiliated with conservative publishers, including the Daily Caller's fact-checking unit once it was approved by Poynter (before that, the Weekly Standard had previously been accepted into the program, but it subsequently shut down).

Content Policies: Although Facebook values free expression, it also wants to ensure that users feel welcome and safe on the platform. To that end, Facebook has established "Community Standards" governing which types of content are prohibited from the platform. Conservative interviewees identified concerns in the following areas:

1. <u>Hate Speech Designations:</u> On this front, interviewees' concerns stemmed both from the notion of having a "hate speech" policy in the first place and from unfair labeling of certain speech as "hate speech." Interviewees often pointed out the highly subjective nature of determining what constitutes "hate"—an assessment that may be subject to the biases of content reviewers. The term "hate speech" is itself controversial, insofar as it may incorrectly ascribe motive in many cases.

2. <u>Hate Organization Designations:</u> Facebook prohibits use of the platform by "terrorist groups and hate organizations," and removes content that praises them, their actions, or their members. We note both the importance of distinguishing between the "hate speech" and "hate organization" designations, and the confusion the similarity of the two labels can cause. Interviewees frequently expressed concern over Facebook's perceived reliance on the Southern Poverty Law Center ("SPLC") and other left-leaning organizations to identify hate groups. Many conservatives view the SPLC as an extreme organization intent on defaming conservatives.

3. <u>Other Content Policies:</u> Interviewees believed that other aspects of Facebook's Community Standards also disproportionately affect conservative content— particularly pro-life, socially conservative, and religious content. Some interviewees gave specific examples of Facebook flagging such content as violating the Community Standards but later overturning those decisions upon review. In addition, interviewees opined that Facebook's Community Standards are too complex and difficult to navigate, making it hard to understand the rules of the road when using the platform.

Content Enforcement: Facebook follows a variety of internal policies and guidelines when enforcing its Community Standards and other policies. Interviewees were concerned that the guidelines themselves (and the employees enforcing them) may be impacted by biases against conservative-leaning content.

1. <u>Actions Taken Against Flagged Content:</u> Some interviewees provided specific examples of instances in which they believed Facebook unfairly removed or downgraded content or Pages because they were conservative. For example, some cited erroneous removals of language from the Bible, the Declaration of Independence, and the writings of St.

Augustine. Many said they believe that conservative content is affected by adverse content enforcement actions more frequently than liberal content.

2. Ability to Appeal Decisions: Interviewees—particularly mid-sized and grassroots organizations—were frustrated by Facebook's process for appealing content moderation decisions. In particular, interviewees opined that Facebook's current process lacks transparency with respect to how ultimate decisions are made, and that it is difficult to be heard without being a large, influential organization with contacts inside Facebook.

Ad Policies: Facebook has implemented several restrictions and transparency requirements for political and issue advertisements. In addition, the company has policies governing which types of advertisements are permitted on the platform.

1. New Political Ad Requirements: Many of our interviewees are 501(c)(3) organizations. These interviewees expressed concern about the inconsistency of registering as a "political" organization under Facebook's advertising policies with IRS definitions and election law. They also had concerns about the detailed, sensitive information that Facebook requires in order to verify advertisers' identities. Moreover, some wondered if established news publications, such as *The New York Times*, could promote content (such as an editorial endorsing a political candidate) that would constitute a "political" ad if published by a smaller, lesser known publication.

2. Ads in Violation of Facebook Policies: More generally, interviewees also were concerned that bans on ads for certain categories of products could result in disproportionate removal of conservative advertising content—particularly with respect to subjective and vague categories (*e.g.*, Facebook's ad policies prohibit "shocking or sensational content"). Removals of pro-life advertisements depicting premature babies were cited as evidence of the system's flaws.

Ad Enforcement: Interviewees also expressed concerns about Facebook's enforcement of advertising policies:

1. Speed of Ad Approval Process: Facebook approves all ads before they appear on the platform. Interviewees believed that Facebook's policies have slowed the ad approval process, which is particularly problematic for time-sensitive ad buys like those in political campaigns. The assertion was made that this change in Facebook's ad policies was intended specifically to disadvantage Republicans following the Trump campaign's effective use of social media in 2016.

2. Ad Removal and Rejection: Interviewees were concerned that conservative ad content is disproportionately removed or rejected as compared to liberal content and described a general lack of transparency with respect to why Facebook removes or rejects certain ads.

3. Appeals Process When Ad Content Is Denied: As with Facebook's appeals process for adverse content decisions, interviewees believed that the process for appealing decisions on ad content is slow and impersonal, disadvantaging smaller or regional organizations that lack contacts at Facebook.

Workforce Viewpoint Diversity: Many of our interviewees' concerns about Facebook's content policies stemmed from their belief that the employees writing and enforcing Facebook's policies are biased against conservative viewpoints.

1. General Viewpoint Diversity Issues: Many interviewees believed that Facebook is a liberal organization with liberal employees, making interviewees skeptical that the platform's policies are fairly written and enforced.

2. Lack of Conservatives on Facebook's Board of Directors: Some interviewees specifically complained that Facebook's Board of Directors lacks conservative members.

IV. Changes and Commitments from Facebook

As our discussions with Facebook progressed, Facebook identified some areas where it could make progress or commit to changes immediately. Although we will continue to work with Facebook to identify other areas in which we can make substantive recommendations, we can report now on several changes and commitments the company has made to date.

Transparency

- **Helping users understand why they see (or do not see) certain content in their News Feeds**:[5] Facebook introduced "Why am I seeing this post?" to help users understand why they see certain content and to enable them to more easily control what they see from friends, Pages, and Groups. Facebook is also improving "Why am I seeing this ad?" which launched in 2014.

- **Providing additional explanations of News Feed rankings:** Although Facebook has taken steps to provide additional clarity around its Community Standards and News Feed ranking, the company told us that it remains committed to providing additional transparency to help people and publishers better understand how content is ordered in personalized feeds. Similarly, Facebook noted that it would continue to work towards providing people with additional ways to control News Feed content while also continuing to make existing controls more user-friendly.

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[5] Ramya Sethuraman, *Why Am I Seeing This? We Have an Answer for You*, Facebook Newsroom (March 31, 2019), https://newsroom.fb.com/news/2019/03/why-am-i-seeing-this/.

- **Making enforcement actions against Pages more transparent**:[6] Page managers can now see when Facebook removes content that violates the Community Standards and when Facebook reduces distribution of posts rated "false" by a third-party fact-checker.

- **Sharing additional details about how the Community Standards evolve**:[7] Facebook released more information regarding how its policies are developed and debated, including by publishing notes from twice-monthly global meetings in which Facebook employees debate and discuss potential changes to the Community Standards.[8]

Oversight and Appeals

- **Creating an Oversight Board for content decisions:** In late 2018, Facebook announced its intention to create a board that would review the most difficult and nuanced content decisions with independent judgment. Although Facebook is still working out the structure and operational details of that board, Facebook's inclusion of conservative feedback in that process—as well as the public comment period the company has provided—gave conservatives an opportunity to let Facebook hear from them directly. We will continue to provide feedback and an honest assessment of the board's development as Facebook takes further concrete steps.

- **Ensuring Oversight Board viewpoint diversity:** A majority of our interviewees were concerned that Facebook employees—many of whom reside in Silicon Valley—hold left-of-center viewpoints that impact the creation and implementation of content policies and algorithms. Recognizing this, Facebook has said that it will ensure that its oversight board represents a diverse range of intellectual viewpoints, as one mechanism for providing an external check on any biases that may be present internally at Facebook.

- **Creating an appeals process:** Facebook launched an appeals process for posts removed for most types of Community Standards violations and is working to extend this process to other issues. If a photo, video or post has been removed because Facebook found that it violates its policy, the poster is now notified and afforded the ability to appeal. If the post was removed in error, Facebook will notify the poster, and the post will be restored.

- **Providing additional staffing:** During our interviews, we heard that smaller organizations do not believe they have the ability to remedy concerns directly with the

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[6] Facebook Newsroom, *Making Pages More Transparent and Accountable* (Jan. 23, 2019), https://newsroom.fb.com/news/2019/01/making-pages-more-transparent/.
[7] Facebook Newsroom, *Writing Facebook's Rulebook* (April 10, 2019), https://newsroom.fb.com/news/2019/04/insidefeed-community-standards-development-process/.
[8] Facebook Newsroom, *Product Policy Forum Minutes* (Nov. 15, 2018), https://newsroom.fb.com/news/2018/11/content-standards-forum-minutes/.

company. In the last six months, Facebook has further expanded its team by hiring staff dedicated to working with third-party groups in the United States—including staff dedicated to working with right-of-center organizations and leaders. Additionally, Facebook has launched a new website—"Facebook Government, Politics, and Advocacy"—to help groups learn best practices and troubleshoot other issues.

Advertising Policies:

- **Adjusting labels of political and issue ads:** Throughout our interviews, conservatives from 501(c)(3) charitable organizations expressed concerns about Facebook's policy of describing any advocacy or educational advertisement touching on an issue of national importance as "political." This policy designated posts of these organizations—which cannot engage in electoral speech—with a label that was inconsistent with their tax status. In June 2019, Facebook refined this policy by renaming the Facebook Ads Library and encouraging users to view ads "about social issues, elections, or politics."

- **Adjusting Facebook's "sensational" advertising policies:** Facebook's advertising policies prohibit shocking and sensational content. Under this policy, Facebook has historically prohibited advertisements showing medical tubes connected to the human body. This policy resulted in the rejection of pro-life ads focused on survival stories of infants born before full-term. Facebook has adjusted its enforcement of this policy to focus on prohibiting ads only when the ad shows someone in visible pain or distress or where blood and bruising is visible. This change expands the scope of advocacy available for groups seeking to use previously prohibited images. Facebook told us that it remains committed to reviewing its policies and updating them based on feedback received from external groups and advertisers.

V.   Conclusion

Freedom of expression undergirds the First Amendment of the U.S. Constitution. It is also recognized as a basic human right under article 19 of the United Nations' *Universal Declaration of Human Rights*. Further, it is integral to Facebook's stated mission and a core value that underpins its Community Standards.

Facebook's policies and their application have the potential to restrict free expression. Given the platform's popularity and ubiquity, this is a danger that must be taken very seriously. Facebook insists that it is committed to safety, equal treatment and building community. Although we recognize that this may involve some tradeoffs between safety and free expression, we do not believe there is any need to cut off robust diversity of thought. Indeed, conservatives consistently expressed the view that, while platform users should be protected from harm, no one has a right to not feel offended or to be immune from criticism. Facebook has recognized the importance of

our assessment and has taken some steps to address the concerns we uncovered. But there is still significant work to be done to satisfy the concerns we heard from conservatives.

As we move forward, we will continue to analyze the issues that conservatives are most concerned about. Throughout this process, we will be working with Facebook's Vice President for Global Policy and Communications, Nick Clegg, along with a team of leaders he is assembling from across the company to aid in this process and ensure the work continues.

The input we received has been and will continue to be fundamental to our assessment, and we would like to thank those who have graciously given their time and insights to this important work. We are committed to providing Facebook with a clear-eyed, fair, and unflinchingly candid assessment of how its policies and practices may disadvantage conservatives. We look forward to continuing to work with Facebook and the conservative community to ensure that free speech is protected for all Facebook users.