

# Trump's social media order expected to have agencies review whether Twitter, Facebook can be sued for content

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President Donald Trump plans to sign an executive order Thursday designed—in theory—to make it easier to sue social media companies such as Twitter, days after the site placed a fact check label on two of his tweets.

While the order is expected to call for changes in regulations that shield [social media companies](#) from legal liability, the Trump administration cannot do that on its own—changes can only be made by independent agencies and, ultimately, the courts.

The order is Trump's latest effort to undermine an online landscape he says stifles conservative voices.

"This will be a Big Day for Social Media and FAIRNESS!" Trump tweeted Thursday.

Legal analysts described a draft order reviewed by U.S. TODAY as election year politics.

"It is a mix of political bluster, very-likely unenforceable provisions that would call for changes to [federal legislation](#)—and not an executive order—and a few areas where there might be some real questions," said Kate Klonick, assistant professor at St. John's Law School.

The executive order will also likely be challenged in court. ACLU attorney Kate Ruane described the president's remarks as a "blatant and unconstitutional threat."

Administration officials declined to discuss details of the order Thursday, and initial drafts of such orders often change significantly before they are released by the White House.

Trump threatened Wednesday to "strongly regulate" social media platforms or "close them down." Those threats followed a decision by Twitter this week to apply a fact check label to the president's tweets about mail-in balloting.

But the draft of Trump's order fell far short of a "strong" regulation.

Instead, it calls on [federal agencies](#) to review whether it should become easier to sue social media companies over their content.

In theory, it would make it easier for federal regulators to hold companies such as Twitter and Facebook liable for restricting the speech of users, either by suspending their accounts, deleting their posts, or subjecting them to fact checking—the issue that raised Trump's ire earlier this week.

But the Trump administration cannot change the regulations unilaterally. It requires action by independent agencies like the Federal Communications Commission, the Federal Trade Commission, and, ultimately, the legal system.

Trump has threatened to somehow punish social media companies for years, claiming they are seeking to suppress conservative views and even trying to influence the 2020 elections.

The draft order calls on the Commerce Department to petition the Federal Communications Commission to open a proceeding on Section 230, which gives online companies broad immunity from liability. It also calls on the Federal Trade Commission to "consider taking action" to prohibit "unfair or deceptive acts or practices" by social media companies.

The goal, it says, is to "clarify" the regulations under Section 230, which currently exempts online platforms like Facebook, Google, YouTube and Twitter from [legal liability](#) for the material their users post.

The order does not appear to address Twitter's fact-checking procedures. That decision triggered Trump's attacks on the social media giant, including the executive order.

Barb McQuade, a former federal prosecutor and a law professor at the University of Michigan, said the protections of Section 230 allow "forums like Twitter and YouTube to operate without reviewing every post" and forcing them to do so "would grind them to a halt."

At the same time, these companies have rules about flagging false or misleading content, McQuade said: "If you don't want a platform to label your content as false, don't post false content or use a different platform."

Twitter, Trump's favorite online platform to post unfiltered views to his 80 million plus followers, added a warning phrase underneath two of his tweets Tuesday in which he reiterated unsubstantiated claims about mail-in ballots, calling them "fraudulent."

The Twitter warning phrase reads: "Get the facts about mail-in ballots." The link directs users to a Twitter "moments" page that includes news stories and fact checks. Trump began pushing back on the new labels soon after conservative supporters—many of them posting on Twitter—slammed the [company](#) as censoring their views.

Twitter spokeswoman Katie Rosborough said the president's tweets contained "potentially misleading information about voting processes and have been labeled to provide additional context around mail-in ballots." The decision, she said, was in line with a policy announced by the company this month.

While Twitter added the fact check label to the mail-in ballot tweets, the company did not alter or remove another series of posts from the president that have drawn controversy this week: Unfounded claims about the death of MSNBC host Joe Scarborough's former congressional staffer.

Trump has made similar ultimatums to social media before. Two years ago, aides said Trump was considering new regulations for Google and other companies because, Trump said at the time, the search engine turned up many stories that are critical of him.

The companies argue the algorithms used in their software are politically agnostic.

"I think that Google and Twitter and Facebook, they are really treading on very, very troubled territory and they have to be careful," Trump said in 2018.

The White House circulated drafts of a proposed order last year it said would address allegations of anti-conservative bias, Politico reported. While the attacks set up Silicon Valley as convenient political foil, Trump never followed through on new regulations.

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