

LEGAL NEWS

Ex-Twitter execs deny pressure to block Hunter Biden story

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WASHINGTON — Former Twitter executives conceded Wednesday they made a mistake by blocking a story about Hunter Biden, the president's son, from the social media platform in the run-up to the 2020 election, but adamantly denied Republican assertions they were pressured by Democrats and law enforcement to suppress the story.

"The decisions here aren't straightforward, and hindsight is 20/20," Yoel Roth, Twitter's former head of trust and safety, testified to Congress. "It isn't obvious what the right response is to a suspected, but not confirmed, cyberattack by another government on a presidential election."

He added, "Twitter erred in this case because we wanted to avoid repeating the mistakes of 2016."

The three former executives appeared before the House Oversight and Accountability Committee to testify for the first time about the company's decision to initially block from Twitter a New York Post article in October 2020 about the contents of a laptop belonging to Hunter Biden.

Emboldened by Twitter's new leadership in billionaire Elon Musk — whom they see as more sympathetic to conservatives than the company's previous administration — Republicans used the hearing to push a long-standing



Rep. Marjorie Taylor Greene, R-Georgia, center, talks with House Oversight and Accountability Committee Chairman James Comer, R-Kentucky, and House Judiciary Committee Chair Jim Jordan, R-Ohio, during the Wednesday hearing.

and unproven theory that social media companies including Twitter are biased against them.

Committee Chairman Rep. James Comer said the hearing is the panel's "first step in examining the coordination between the federal government and Big Tech to restrict protected speech and interfere in the democratic process."

The hearing continues a years-long trend of GOP leaders calling tech com-

pany leaders to testify about alleged political bias. Democrats, meanwhile, have pressed the companies on the spread of hate speech and misinformation on their platforms.

The witnesses Republicans subpoenaed were Roth, Vijaya Gadde, Twitter's former chief legal officer, and James Baker, the company's former deputy general counsel.

Democrats brought a witness of their own, Anika Collier Navaroli, a

former employee with Twitter's content moderation team. She testified last year to the House committee that investigated the Jan. 6 Capitol riot about Twitter's preferential treatment of Donald Trump until it banned the then-president from the site two years ago.

The White House criticized congressional Republicans for staging "a bizarre political stunt," hours after Biden's State of the Union address where he detailed bipartisan progress in his first two years in office.

"This appears to be the latest effort by the House Republican majority's most extreme MAGA members to question and relitigate the outcome of the 2020 election," White House spokesperson Ian Sams said in a statement Wednesday. "This is not what the American people want their leaders to work on."

The New York Post reported weeks before the 2020 presidential election that it had received from Trump's personal lawyer, Rudy Giuliani, a copy of a hard drive from a laptop that Hunter Biden had dropped off 18 months earlier at a Delaware computer repair shop and never retrieved. Twitter blocked people from sharing links to the story for several days.

"You exercised an amazing amount of clout and power over the entire American electorate by even holding (this story) hostage for 24 hours and

SEE TWITTER 11A

FTC noncompete rule a long time coming

The internet exploded in 2014 when it was uncovered that Jimmy John's Sandwiches, a company with annual revenue in the billions, required the minimum wage "sandwich artists" at its franchises to sign restrictive noncompete agreements. Under the terms of those agreements, the workers promised that during their employment and for a period of two years after that they would not make sandwiches for any other business that derived 10 percent of its revenue from sandwiches.

After the backlash — and a class action — Jimmy John's franchises tactically settled many of their suits and dropped the noncompetes from their employment agreements.

Despite the public outcry over no-compete agreements, the Federal Trade Commission ("FTC") and the White House have estimated that approximately between 30 to 60 million American workers today are still subject to a noncompete agreement as part of their employment contracts.

These agreements, which are sometimes also known as restrictive covenants or covenants not to compete, are contractual agreements between employer and employee that limit the employee's future ability to start or enter into a similar trade or profession of their current employer and prevents the employee from using confidential information or trade secrets gleaned from their current job.

In some ways it's understandable

that an employer would want a high-level employee who has learned skills at the company and is privy to the company trade secrets to be prevented from taking those skills and secrets to a competitor. However, many low-wage employees, such as the Jimmy John's sandwich artists, are also subject to these agreements.

For years, worker's rights groups and others have advocated to ban or severely curtail noncompete agreements between employers and their employees. In spring 2016, the U.S. Treasury Department issued a report on the economic effects and pervasive misuse of noncompete agreements. In Fall 2016, President Obama issued his "State Call to Action on Non-Compete Agreements."

These pushes have gained traction. California and North Dakota have outright banned noncompete agreements. The ban on noncompetes is often credited for the success of Silicon Valley. Meanwhile, Delaware, Massachusetts and New York have severely restricted or called into question the enforceability of noncompete agreements. In all, more than 20 states and D.C. have enacted some worker protections on non-compete agreements.

In summer 2021, President Joe Biden, through his "Executive Order on Promoting Competition in the American Economy," among other things called on the FTC to ban or limit noncompete agreements, saying they stifled wages,



competition, innovation and limited worker mobility.

On Jan 5, 2023, the FTC announced a proposed new rule that could impose a nationwide prohibition on noncompete agreements for all workers and industries.

Under the FTC's proposed rule, it would be illegal for employers to: (i) enter into or attempt to enter into non-compete agreements with workers, (ii) maintain a non-compete with a worker, or (iii) represent to a worker that he or she is subject to a noncompete.

The proposed rule would also require employers to rescind existing noncompete agreements and to affirmatively advise those workers that they are no longer subject to a noncompete.

Notably, the prohibition on non-compete agreements would apply to all workers of an employer, including independent contractors.

The FTC estimates that by prohibiting noncompete agreements that wages could increase by as much as \$300 billion per year and expand career opportunities for the millions of workers currently subject to non-compete

agreements.

The FTC is soliciting written comment from the public on this proposed rule, as well as hosting a public forum on Feb. 16, 2023, to examine the rule and allow persons to testify as to the practical effects of noncompete agreements.

Whether the FTC proposed rule is passed, in whole or in part, it is clear that many states on their own initiative are prohibiting or limiting noncompete agreements.

Clients will wonder what they can do to protect their confidential information or to prevent their star employee from going to a competitor. In addition to offering competitive salary packages and a healthy work environment, employers can look to confidentiality clauses and other contractual protections that prevent the unauthorized disclosure of trade secrets.

In the meantime, clients should be counseled to scrutinize their current noncompete agreements to ensure that they are in compliance with local and federal regulations.

Elizabeth J. McInturff, Esq., a partner at JDKatz, PC, represents clients in complex civil and commercial matters, such as plaintiff's side litigation, contract disputes, employment litigation, construction litigation and actions arising under consumer protection acts and state wage laws.