



Trump is Facebook's problem, again

Shirin Ghaffary

May 5, 2021

Donald Trump will stay off Facebook for now, Facebook's new oversight board decided on Wednesday. But will he eventually come back?

In an unexpected decision, the oversight board insisted that it is not its job to decide, but Facebook's.

“In applying a vague, standardless penalty and then referring this case to the Board to resolve, Facebook seeks to avoid its responsibilities,” reads the ruling. “The Board declines Facebook's request and insists that Facebook apply and justify a defined penalty.”

While the board did rule that Facebook was justified to suspend Trump in the wake of the January 6 Capitol riot, it said Facebook should have clearer standards for why it did this, and it must determine how long the suspension will last. The board gave the company six months to go back to the drawing board and clarify the length of Trump's suspension, or decide to delete his account altogether.

Essentially, the board put the long-term problem of what to do about Trump back in the hands of the person who seems to want it least: CEO Mark Zuckerberg.

Facebook has “shirked its responsibilities”

Facebook's oversight board — which has been likened to its “Supreme Court” — is a quasi-judicial body that Facebook tasked with handling some of its toughest content moderation decisions. The board is currently made up of 20 international human rights lawyers, activists, journalists, and former government officials. Facebook says it has granted the board full autonomy to make its own decisions separate from the company, and funded it with \$130 million.

The biggest criticism of Facebook's new oversight board has been that it is a way for Facebook — specifically Zuckerberg — to punt the responsibility of making difficult decisions.

With its decision today, the board punted back. In fact, the board has said that it was wrong for Facebook to refer the case to them at all. Facebook didn't follow its own rules in not setting a

time limit for Trump's suspension, in the board's view, and failed to follow a "clear procedure." That's a startling rebuke of how Facebook operates.

"Facebook's decision to impose an indefinite suspension wasn't supported by their own rules. And then to request the oversight board to endorse this move was actually wrong," said the board's co-chair Helle Thorning-Schmidt at a press conference on Wednesday morning. Thorning-Schmidt repeatedly said that the company had "shirked its responsibilities" in its handling of the Trump suspension.

When asked what she thought Facebook's reaction would be to the board's decision, Thorning-Schmidt said that the company should appreciate it — but it's hard to imagine Zuckerberg as completely thrilled with this outcome.

In a statement, Facebook said, "We will now consider the board's decision and determine an action that is clear and proportionate." It said Trump's accounts would remain suspended in the meantime.

"What Facebook, Twitter, and Google have done is a total disgrace and an embarrassment to our Country," Trump wrote in a statement shortly after the board's decision. "These corrupt social media companies must pay a political price, and must never again be allowed to destroy and decimate our Electoral Process."

Facebook is under intense political scrutiny from lawmakers on both sides of the aisle who claim Zuckerberg and his stewards cave to partisan pressure in how they apply company rules about what people can and can't say on Facebook. Republicans have long accused Facebook of censoring conservative viewpoints, while many Democrats say the company isn't doing enough to remove misinformation that's spread by some Republican politicians.

Facebook has insisted since its start that it is a neutral platform and that it is not its job to regulate political speech; in some ways, it created the oversight board to handle that thorny problem. Wednesday's decision — which could be read as a rebuke of the company — makes it clear the board won't do that job for Facebook.

A decision that opens more questions than it answers

The Trump case is by far the most high-profile and consequential decision the board has made to date — even though it isn't quite as declarative as many expected.

The decision has momentous implications for what world leaders are allowed to say on social media, and for free speech on the internet as a whole. It confirms that Facebook was right to block Trump for inciting violence in January, but it leaves open the question of whether or not a social media platform should ban a world leader entirely.

During his four years in office, Trump repeatedly spread misleading and inflammatory statements on Facebook and Twitter — from denying the threat of Covid-19 to saber-rattling about a potential nuclear conflict — and he did so largely without consequences. World leaders

are shielded by social media companies' "newsworthiness" exception, which said rules for regular people, that ban them from saying blatantly harmful or threatening speech, don't apply in the same way to world leaders.

But in the months surrounding the US election, Trump finally crossed a line even Facebook could not justify: After months of sharing baseless claims about the election being "stolen" from him, he encouraged his some 90 million social media followers to protest the results — leading to the January 6 insurrection at the US Capitol building, which resulted in five deaths. Virtually every major social media platform, beginning with Twitter, responded by either suspending or permanently banning Trump's access to his accounts. Facebook and other companies said this was in the public interest of preventing further violence and preserving democratic order.

While many have supported Facebook and other social media companies' decisions to ban Trump indefinitely or permanently, others have argued that it was an overreach and amounts to unwarranted suppression of the speech of a world leader — no matter how dangerous his posts may be.

More than 9,000 people submitted public comments to the board about Trump's case, including Trump himself. A group of Republican members of Congress, including Reps. Ken Buck (CO) and Jim Jordan (OH), argued in a public statement to Facebook that it demonstrated a bias against conservatives in banning Trump. Republicans like Jordan have long accused the Silicon Valley tech giants of anti-conservative bias for enforcing rules around harmful speech on politicians like Trump, while Democrats have accused the company of caving to political pressure from the right and allowing politicians like Trump to spread lies and encourage violence.

"[W]e remain concerned that the de-platforming standards are not applied in a fair and neutral manner," stated the Republican congressional letter. It said Facebook applied "overaggressive" restrictions on sharing a controversial New York Post article about Hunter Biden in the runup to the election and that this action showed the company "had a clear preference for the Biden-Harris campaign."

Other critics of Facebook, YouTube, and Twitter, including Sen. Lindsay Graham (R-SC), have asked why Facebook and Twitter haven't banned other world leaders such as Iran's Ayatollah Khamenei or North Korea's Kim Jong Un for their controversial tweets and undemocratic offline actions.

And it's not just Republicans. Even nonpartisan organizations like the ACLU and progressives like Sen. Bernie Sanders (I-VT) who typically denounce Trump have raised concerns about Big Tech's unilateral power to effectively revoke people's ability to participate in the online public sphere.

"You have a former president in Trump, who is a racist, a sexist, a homophobe, a xenophobe, a pathological liar, an authoritarian, somebody who doesn't believe in the rule of law," Sanders told Vox co-founder and New York Times columnist Ezra Klein in March. "But if you're asking me, do I feel particularly comfortable that the president, the then-president of the United States

could not express his views on Twitter? I don't feel comfortable about it. ... Yesterday it was Donald Trump who was banned and tomorrow it could be somebody else who has a very different point of view."

Still, leading free speech advocates, including the libertarian think tank the Cato Institute, submitted comments saying that Facebook was in the right for banning Trump.

"The oversight board examines not just the rights of Donald Trump to have an account, but also the rights of others to be free from incitement to violence as we saw on January 6," said David Kaye, the former UN special rapporteur on freedom of expression and current law professor at UC Irvine, a few weeks before the oversight board issued its decision. "It's not just about speech, per se, of the speaker — it's also about the audience."

Deciding what to do about Trump is just one of Facebook's many challenges

Aside from its immediate decision on Trump, the board also made a series of broader policy recommendations to Facebook. One key recommendation called for Facebook to run a comprehensive review of its "potential contribution to the narrative of electoral fraud" and the "exacerbated tensions" that led to the Capitol riot, and to reflect on Facebook's "design and policy choices" that "may allow its platform to be abused."

While that policy recommendation isn't binding, it's an important acknowledgment that the Trump ban is just one problem. Facebook has deeper, foundational issues to solve. And it puts forward the idea — which Facebook has steadily denied — that its platform may be contributing to and perpetuating political polarization in the world.

Overall, today's decision means Facebook is still deep in hot water. While the oversight board may have been designed as a way to neatly solve tough problems for Facebook, for now, it has posed more questions than it has answered.

The oversight board has given Facebook six months to decide what to do with Trump's account.

Trump, meanwhile, has said that he plans to build his own social media network where he can speak freely without moderation — although so far, all he has is essentially a blog, which he announced just a day before the board's decision.

It's up to Facebook now to decide how much it will — or won't — actually listen to its board's recommendations.