

## Facebook's non-decision on banning Trump settles nothing

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Facebook founder Mark Zuckerberg may have hoped that his company's independent oversight board would spare him an agonizing decision on the fate of Donald Trump's Facebook account. If so, Wednesday's ruling came as a grim disappointment.

The oversight board, composed of luminaries from the worlds of law, journalism and politics, decided Facebook was right to shut down the former president's account after he posted messages that expressed support for insurrectionists who stormed the US Capitol Jan. 6.

But the board chastised Facebook management for imposing an indefinite suspension on the account, calling it an "indeterminate and standardless penalty." The board gave Facebook six months to make a final determination whether to lift the suspension or to make it permanent.

So Zuckerberg and his top managers will make the call. Whatever their decision, it's bound to spawn a massive backlash. Conservative Trump supporters will regard a permanent Facebook ban as the ultimate example of Silicon Valley censorship.

"Big Tech should not have the ability to suppress viewpoints it finds objectionable," Kay James, president of the Heritage Foundation, a conservative think tank, said in a statement.

Meanwhile, Trump's opponents fear that putting him back on Facebook risks the incitement of new violence. "I think it would be a terrible abdication of editorial responsibility," said an emeritus Harvard Law School professor, Laurence Tribe.

The dispute is forcing a hard rethink about free speech, about the secret algorithms used by social media companies to decide what millions of us see and read, and about a 25-year-old law that shields technology companies from liability for their users' irresponsible rants.

Tribe dismissed claims the crackdown on Trump amounts to illegal censorship. "It's not exactly a hard constitutional question," he said.

Social media companies like Facebook and Twitter "are private companies. The First Amendment does not impose any restrictions on what they can do."

But staunch Trump supporter and Republican Florida Governor Ron DeSantis wants to change this. He is expected to sign legislation that could impose stiff fines in Florida on social media

companies for blocking the accounts of politicians. But such a law would itself violate the First Amendment, Tribe said.

The Facebook furor has also stoked bipartisan calls to rewrite or abolish Section 230 of the Communications Decency Act. It allows Internet companies to delete materials they deem offensive, and prevents them from being sued over offensive or illegal content they fail to delete.

Enacted in 1996, it has been credited with enabling almost unlimited speech on the US Internet. In addition, the law lets companies such as Facebook delete material — pornography, for example, or hate speech — that would scare away advertisers, while still publishing highly controversial content.

But critics left and right see the ban on Trump as proof Section 230 no longer works. The Heritage Foundation's James says the law allows Facebook to selectively censor Trump and other conservatives. Liberals like Tribe say Section 230 lets Facebook get away with posting Trump's inflammatory screeds and other extreme content. He thinks Section 230 should be repealed. That way, Facebook could be sued if any of its nearly two billion users post something libelous.

"Section 230 gives Facebook and other social media platforms . . . a right to be absolutely unaccountable for the lies and violence that they are complicit in recklessly or deliberately creating," Tribe said.

But Will Duffield, a policy analyst at the Cato Institute, said eliminating Section 230 won't just affect the giants like Facebook. Online publishers of any size would face legal liability for a user's postings, and so fewer sites would welcome public comments, a shift that would chill speech online.

One Facebook critic, Harvard Business School emeritus professor Shoshana Zuboff, dismissed the Facebook oversight board as a "performative PR experiment" and regards the fight over Section 230 as a mere sideshow. "The bottom line is we're having the wrong conversation," said Zuboff, author of a book on social media, "The Age of Surveillance Capitalism."

The real issue, Zuboff argues, is the basic business model of Facebook and other social media companies. She says that as long as the companies profit by maximizing the time we spend online, they'll remain conduits for extremism. That's because social media algorithms keep users dialed in by providing a steady diet of provocative words and images.

"The way you maximize engagement is you end up amplifying the craziest content," Zuboff said. It will take regulation of the tech companies' business models to solve the problem, she said.

Cato's Duffield suspects that online extremism is here to stay, though, no matter what Facebook does about Trump. He thinks there was already a pent-up demand for hardcore political rants. "For a long time, the best you could do was cable news . . . or maybe you get the mimeographed zine from David Duke," Duffield said. But the Internet has opened up an unlimited supply. "If you want to, you can watch it 24/7," he said.

In Duffield's view, fringe politics is like pornography or cat videos: There's a ready market that doesn't need algorithms to get their attention.

And they can find all they want with a simple Google search. Which means that Facebook's final decision on Trump may not matter as much as we think.