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Coronavirus protests test Facebook's free speech pledges

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The right-wing anti-lockdown protests breaking out around the U.S. are presenting the latest no-win quandary for Facebook, as the world's largest social network tries to fulfill its pledge to remain politically impartial amid a pandemic that has killed more than 42,000 Americans.

The company has taken tentative steps so far — blocking protesters from using Facebook to organize in-person rallies in California, New Jersey and Nebraska — but not in other places, such as Michigan, Texas and Virginia, where people have rallied together outside state capitols in defiance of orders to self-isolate at home.

But Facebook's partial takedowns were still enough to bring a political brushback from some Republicans in Washington, where GOP lawmakers have repeatedly threatened to enact legal consequences for internet companies over what they consider to be a pattern of anti-conservative bias in Silicon Valley.

President Donald Trump's eldest son, Donald Trump Jr., accused Facebook of "colluding with state governments to quash peoples free speech," calling its actions "chilling & disturbing." Sen. Josh Hawley (R-Mo.) asked rhetorically of the company's decision: "Because free speech is now illegal America?"

"Given Big Tech's history of bias and censorship, I'm deeply concerned that they and government officials are partnering not to protect public health, but to shut down views with which they disagree," Sen. Ted Cruz (R-Texas) said in a statement Monday evening. "Now, more than ever, companies like Facebook should focus on connecting people, not shutting down communities because they hold different views."

But Connecticut Democratic Sen. Richard Blumenthal praised the company's move Monday night, tweeting: "Powerful special interests are using astroturfing & dangerous tactics to undermine the fight against COVID-19. Facebook is right to take a stand against harmful misinformation."

Facebook initially indicated that it had removed the protest information at the request of states whose authorities said they violated restrictions on large public gatherings. The company later

clarified that it sought guidance from states but ultimately made its own decision to take the posts down.

"We reached out to state officials to understand the scope of their orders, not about removing specific protests on Facebook," the spokesperson said. "We remove the posts when gatherings do not follow the health parameters established by the government and are therefore unlawful."

CEO Mark Zuckerberg offered a slightly different explanation in an interview with ABC News on Monday morning, suggesting that Facebook removes content that disputes social distancing practices and therefore poses a "risk of imminent physical harm."

"Certainly, someone saying that social distancing is not effective to help limit the spread of coronavirus, we do classify that as harmful misinformation and we take that down," Zuckerberg said after George Stephanopoulos asked him about Facebook's role in facilitating the protests. "At the same time, it's important that people can debate policies."

This is just the latest free-speech flap to hit Facebook, which has also faced blowback for its policies on removing content ranging from misleading political ads to vaccine misinformation. And once again, the company faced criticism that it offers few clear yardsticks for what speech it allows on a platform that reaches more than 2 billion people worldwide.

"Facebook, which controls a platform for the speech of billions, should not be censoring political speech online," said Vera Eidelman, a staff attorney at the American Civil Liberties Union's Speech, Privacy and Technology Project, despite the public-health stakes at play on mass gatherings held during a pandemic. "This is especially true now, when questions of when and how to reopen the country are among the central political questions, and online platforms are the main vehicle for expression."

David Greene, civil liberties director of the Electronic Frontier Foundation, argued that Facebook seemingly deciding to remove protests based on whether they violate state law provides an objective yardstick. Still, he said that without further clarity, "it can be very difficult to judge the fairness of something and to make sure that it actually is being implemented in a way that doesn't disadvantage certain groups or certain types of protests."

But preventing deaths during a pandemic offers Facebook a defensible rationale, contends Matthew Feeney, the director of the libertarian Cato Institute's project on emerging technologies.

Feeney said that while Facebook and other social networks aren't bound by the First Amendment, they face a "legitimacy issue" when they decide to block or moderate certain types of content. That often causes them to "punt" by looking to state laws or non-government groups for rules they can enforce.

"Content can be removed from these platforms for all sorts of reasons, and here we have a private company making a decision that they don't want information that could potentially lead to the death and illness of more people to spread," Feeney said. "I think that's an understandable position."

Facebook, Google, Twitter and other social media companies have long denied that politics is a factor in their complex, and sometimes opaque, decisions about what content they will and will not allow. The companies have sought to make their process more transparent, with Facebook in particular announcing the creation of an independent board to review content moderation judgments.

But when it comes to content or advertising that is explicitly political, Facebook has at times concluded that inaction is the best action. When Twitter and Google imposed new restrictions on political advertising last year, for example, Facebook stuck to its policy of not fact-checking political ads or limiting their reach — in effect, allowing politicians to lie with impunity.

Zuckerberg laid out an aggressive approach to “freedom of expression” in a speech at Georgetown University last fall, though he acknowledged that "free expression has never been absolute."

Zuckerberg cited social and civil rights activists over the centuries, from Frederick Douglass to Martin Luther King Jr. to the Iraq War opponents of the early 2000s, as examples that inspired his stance — saying free speech and protests have enabled progress no matter how disquieting they felt at the time. But in recent years, Zuckerberg said, people have expanded what they consider to be dangerous speech.

"Some hold the view that since the stakes are so high, they can no longer trust their fellow citizens with the power to communicate and decide what to believe for themselves," Zuckerberg said in October. "I personally believe this is more dangerous for democracy over the long term than almost any speech."

Still, he said the company would make exceptions when speech can cause adverse effects such as discrimination, harassment and — a standard that is relevant today — physical harm.

To be fair, the anti-lockdown protests became political before Facebook took action. For days, rallies across state capitals have brought together self-proclaimed dissidents — many carrying pro-Trump signs and forgoing protective equipment like masks — calling for an end to the health restrictions.