[US] Facebook’s Oversight Board decision on former President Trump’s suspension

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On 6 January 2021, a mob stormed the Capitol Building in Washington, D.C. while a joint session of Congress was assembled to count electoral votes. During these events, then-President Donald Trump posted two pieces of content which, according to Facebook, violated its Community Standard on Dangerous Individuals and Organizations. Accordingly, Facebook removed both posts and blocked Mr Trump from posting on Facebook or Instagram for 24 hours. On 7 January 2021, after further reviewing Mr Trump’s posts, his recent communications off Facebook, and additional information about the severity of the violence at the Capitol, Facebook extended the block “indefinitely and for at least the next two weeks until the peaceful transition of power is complete.” On 21 January 2021, Facebook referred this case to its Oversight Board (FOB), which reached a decision on 5 May 2021.

FOB’s purpose is “to promote free expression by making principled, independent decisions regarding content on Facebook and Instagram and by issuing recommendations on the relevant Facebook company content policy”. According to FOB, Facebook was justified in suspending Mr Trump’s accounts extending that suspension for the following reasons:

- “We love you. You’re very special” in the first post and “great patriots” and “remember this day forever” in the second post violated Facebook’s rules prohibiting praise or support of people engaged in violence;

- In maintaining an unfounded narrative of electoral fraud and persistent calls to action, Mr Trump created an environment where a serious risk of violence was possible. There was a clear, immediate risk of harm and his words of support for those involved in the riots legitimized their violent actions. As president, Mr Trump had a high level of influence and the reach of his posts was large (35 million followers on Facebook and 24 million on Instagram).

Furthermore, FOB stated that Facebook’s imposition of an ‘indefinite’ suspension, with no criteria for when or whether the account will be restored, did not follow a clear, published procedure, as ‘indefinite’ suspensions are not described in the company’s content policies (removing the violating content, imposing a time-bound period of suspension, or permanently disabling the page and account).

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Within six months of FOB's decision, Facebook must re-examine the penalty imposed on Mr Trump and decide the appropriate penalty, which must be based on the gravity of the violation and the prospect of future harm. It must also be consistent with Facebook's rules for severe violations, which must, in turn, be clear, necessary and proportionate. Should Facebook decide to restore Mr Trump's accounts, the company must apply its rules to that decision, including any changes made in response to the Board's policy recommendations. In this scenario, Facebook must address any further violations promptly and in accordance with its established content policies.

In its decision, FOB also provided a policy advisory statement, in which it made a number of recommendations to guide Facebook's policies in regard to serious risks of harm posed by political leaders and other influential figures.

Press release of Facebook's Oversight Board, "Oversight Board upholds former President Trump's suspension, finds Facebook failed to impose proper penalty", May 2021

https://oversightboard.com/news/226612455899839-oversight-board-upholds-former-president-trump-s-suspension-finds-facebook-failed-to-impose-proper-penalty/

Facebook's Oversight Board, Case decision 2021-001-FB-FBR

https://www.oversightboard.com/decision/FB-691QAMHJ

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