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February 11, 2021

Facebook Oversight Board
1209 North Orange Street,
Wilmington, DE 19801

[submitted electronically]

Re: Case 2021-001-FB-FBR

Dear Board Members:

Attached please find a submission from the Knight Institute in relation to the above-referenced case. Thank you for your consideration.

Best regards,



Jameel Jaffer
Katy Glenn Bass
Alex Abdo
Katie Fallow
Lyndsey Wajert

Encl.



In response to your call for public comment in case 2021-001-FB-FBR, we offer our perspective here about the circumstances in which Facebook should remove political leaders' speech or suspend political leaders from its platform. We don't address the question of whether Facebook was justified in suspending President Trump, because, for reasons explained below, we don't think it would serve the public interest for the Board to answer this question at this juncture. Rather than answer the question, the Board should advise Facebook to commission an independent study of how its platform may have contributed to the events of January 6th. The Board should answer the question Facebook has posed only after the company has provided it with the results of that study.

1. On the broader question of when Facebook should remove political leaders' speech or suspend political leaders from its platform, it's essential that Facebook's policies account for the unique role that Facebook currently plays as a gatekeeper to the digital public sphere. Because of Facebook's scale, Facebook's decisions about which speech and speakers to allow on its platform determine not just which voices and ideas get heard on the platform, but which voices and ideas get heard at all. Against this background, Facebook should adopt a heavy presumption in favor of leaving political speech up, in keeping with the principle that "debate on public issues should be uninhibited, robust, and wide-open." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). One way Facebook should give effect to this presumption is to adopt community standards that give broad latitude to political speech, and to respond in a measured way to violations of those standards. Where feasible, Facebook should label violative posts, disable engagement with them, or otherwise limit their reach, rather than remove them altogether. Similarly, when it has the choice, it should suspend users temporarily rather than ban them permanently.

The heavy presumption in favor of political speech is especially important with respect to political leaders, many of whom don't have access to the kinds of alternative media platforms that a U.S. president does. Facebook should remove political leaders' speech only as a last resort because access to that speech is vital to the public's ability to understand and evaluate government policy, and to the public's ability to hold political leaders accountable for their decisions. In assessing whether removal of a political leader's speech is appropriate, Facebook should take into account the extent to which counter-speech—whether by Facebook itself, or by Facebook's users—is likely to mitigate harms caused by the political leader's speech. Speech that incites violence falls into a rare category of speech that can't effectively be addressed by counter-speech. Accordingly, we believe Facebook should remove users' speech that incites others to violence; suspend users who use their accounts to post such speech; and permanently ban speakers who make a practice of using their accounts this way. This said, it's of course crucial that Facebook enforce its rules consistently, and that it not simply defer to claims by powerful actors that speech on the platform violates those rules.

2. The Board shouldn't immediately address the question of Trump's suspension. In our opinion, Facebook's referral of this question to the Board exposes a fundamental problem with the Board's role. Facebook established the Board in response to concerns—expressed by civil society organizations as well as regulators, among others—about the company's influence over public discourse online. But Facebook has given the Board jurisdiction only over content-moderation decisions, even though the company shapes public discourse even more profoundly through its decisions relating to the structure and design of the platform—including through its ranking algorithms, its decisions about which features to offer to its users, and its policies relating to political advertising.

The problem here is not simply that the Board's jurisdiction is too narrow. Nor is it merely that the elaborate quasi-judicial structure that Facebook has established for review of content-moderation decisions draws public attention away from the design decisions that matter more—though this is certainly the case. The fundamental problem is that the content-moderation decisions that the Board has been tasked with reviewing can't actually be separated from the design decisions that Facebook has placed off limits. Content moderation decisions are momentous, but they are as momentous as they are because of Facebook's decisions about design, which determine which speech proliferates on Facebook's platform, how quickly it spreads, who sees it, and in what context they see it. The Board has effectively been directed to take Facebook's design as a given, but it shouldn't be treated as one.

This case highlights the problem with the Board's jurisdiction especially starkly. Trump's statements on and off social media in the days leading up to January 6th were certainly inflammatory and dangerous, but part of what made them so dangerous is that, for months before that day, many Americans had been exposed to staggering amounts of sensational misinformation about the election on Facebook's platform, shunted into echo chambers by Facebook's algorithms, and insulated from counter-speech by Facebook's architecture. The question of whether Facebook should suspend Trump was so significant because of design decisions that Facebook had made earlier. For these reasons, we think it would be a mistake for the Board to address the question that Facebook has asked it to answer. Answering the question would draw public attention away from the design decisions that warrant the most scrutiny, and from the regulatory interventions needed to better align Facebook's practices with the public interest. It would also have the effect of absolving Facebook of responsibility for its part in creating the circumstances that made Trump's speech, online and offline, so dangerous.

While we know that the Board's members are working in good faith, we believe that in this case there is a real danger that the Board is being used as a fig leaf for Facebook's failures. Rather than answer the question that Facebook has posed, the Board should advise the company to commission an independent investigation into the ways in which its design decisions may have contributed to the events of January 6th. The investigation should be undertaken by a team that includes engineers capable of assessing how Facebook's design decisions affected what content users encountered on the platform and in what contexts they encountered it. We suggest the Board hold the question about Trump's suspension in abeyance until Facebook has commissioned that study and provided the Board with its findings.