

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

August 11, 2020

Mr. Michael McConnell
Director
Constitutional Law Center
Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610

Dear Mr. McConnell:

We are writing regarding our ongoing concern that Facebook has taken little action to address voter suppression and racism on its platform and has failed to learn from its mistakes during the 2016 election. Recently, Facebook created the “Oversight Board” as part of an effort to shift responsibility for determining what constitutes appropriate content on its platform to a third party. However, based on testimony before our Committee in June we believe Facebook’s failure to promote a healthy online environment may be a direct result of the fundamental characteristics of its business model and ad hoc enforcement of its own guidelines.¹ We are concerned that Facebook’s Oversight Board—and its members—may be ill-equipped and ill-empowered to meaningfully improve the incredibly troubling behavior of the company and may simply act as a smokescreen behind which Facebook’s executives will maintain ultimate control over its content moderation decision-making process.

We believe Facebook has intentionally amplified divisive and conspiratorial content because such content attracts more customer usage and with it, advertising revenue. We are further troubled by recent reports that Facebook had an opportunity to retune its systems responsible for the amplification of divisive and conspiratorial content, but chose not to.² Instead, Facebook has leaned into its history of favoring and courting politicians and

¹ House Committee on Energy and Commerce, *Joint Hearing on A Country in Crisis: How Disinformation Online is Dividing the Nation*, 116th Cong. (June 24, 2020).

² *Facebook Executives Shut Down Efforts to Make the Site Less Divisive*, Wall Street Journal (May 26, 2020).

conservative outlets that promote conspiracy theories.³ It is disturbing that, to date, Facebook has not denied the allegations.⁴ Advertisers have taken notice and have pulled their ads from the platform.⁵

A recent survey provided troubling evidence of the extent to which Americans believe dangerous disinformation, particularly disinformation related to COVID-19. The survey showed that “[t]he number of false statements believed by those with social media as their main source of news is 1.41 times greater than those who cited another main news source.”⁶ Similarly, reports consistently demonstrate the extent to which Facebook allowed anti-Semitic and racist content to go viral.⁷

Facebook’s failure to quickly address this type of disinformation has likely led to Americans dying of COVID-19, and without further aggressive action, this type of disinformation may cause even more death and suffering.⁸

We understand that you have been appointed to Facebook’s Oversight Board. We worry, that your presence on the Board may help legitimize an entity that likely will have no ability to stop Facebook from amplifying conspiratorial and divisive content in search of advertising revenues.⁹ According to the Charter of the Oversight Board, the Board has the power to:

1. Request that Facebook provide information reasonably required for board deliberations in a timely and transparent manner;
2. Interpret Facebook’s Community Standards and other relevant policies (collectively referred to as “content policies”) in light of Facebook’s articulated values;

³ Zuckerberg once wanted to sanction Trump. Then Facebook wrote the rules that accommodated him, Washington Post (June 28, 2020).

⁴ Facebook, *Investments to Fight Polarization* (May 27, 2020) (about.fb.com/news/2020/05/investments-to-fight-polarization/).

⁵ Facebook Faces a Growing Advertising Boycott After Consumer Goods Giant Unilever Joins, Washington Post (June 26, 2020).

⁶ Testimony of Hany Farid, Ph. D, House Committee on Energy and Commerce, *Joint Hearing on A Country in Crisis: How Disinformation Online is Dividing the Nation*, 116th Cong. (June 24, 2020).

⁷ AVAAZ, *Investigative Reports* (secure.avaaz.org/campaign/en/disinfo_hub/) (accessed July 13, 2020).

⁸ New America, *Facebook* (www.newamerica.org/oti/reports/how-internet-platforms-are-combating-disinformation-and-misinformation-age-covid-19/facebook) (accessed July 13, 2020).

⁹ Oversight Board, *Meet the Board* (www.oversightboard.com/meet-the-board/) (accessed July 13, 2020).

3. Instruct Facebook to allow or remove content;
4. Instruct Facebook to uphold or reverse a designation that led to an enforcement outcome;
5. Issue prompt, written explanations of the Board's decisions.¹⁰

While the powers to “instruct Facebook to allow or remove content” and to “instruct Facebook to uphold or reverse a designation that led to an enforcement outcome” arguably may constrain Facebook, we have yet to see whether and how Facebook will comply in practice. Moreover, those powers are limited in that the Oversight Board will be limited to enforcing the content policies in light of Facebook's articulated values.¹¹

Ultimately, we are concerned that this limitation means the Oversight Board will be restrained by the content policies set by Mark Zuckerberg. His choices to maintain “articulated values” that permit the amplification of conspiracies and divisive content would render the Board toothless. We believe this is further clarified by the Oversight Board's charter, which permits the Board to offer non-binding “policy guidance,” but only concerning a specific case or decision or upon Facebook's request.¹²

The Oversight Board is intended only to apply the content policies Facebook has adopted, and we worry Facebook's business model disincentivizes the adoption of content policies that would promote a healthy online environment. For that reason, we believe the Oversight Board will be unable to address the damage Facebook is inflicting on society, unless Facebook itself amends its content policies or empowers a truly independent Oversight Board to render binding decisions that cannot be overruled by Mark Zuckerberg or his subordinates.

And while we understand Facebook recently announced that it will amend some of its policies to address voter suppression, we believe the modest steps outlined will not be enough.¹³ It is the amplification of conspiratorial, racist, and divisive content that is the root of the problem.

Finally, while members of the Oversight Board are highly respected individuals in their own right, we are concerned that its membership lacks a balance that includes critics from the private sector and former government officials who are well familiar with Facebook's content moderation challenges and technological deficiencies. In the final analysis, it is the public's

¹⁰ Oversight Board, *Governance* (www.oversightboard.com/governance/) (accessed July 13, 2020).

¹¹ *Id.*

¹² *Id.*

¹³ Facebook, *Meeting the Unique Challenges of the 2020 Elections* (June 26, 2020) (about.fb.com/news/2020/06/meeting-unique-elections-challenges/).

interest that should be the priority of the Oversight Board. It should not be influenced by nor prioritize the profit motives of Facebook executives.

If this Oversight Board is going to have any real power, Facebook itself is going to need to listen to and then act upon the Board's policy recommendations. To that end, we believe you have the duty to use your position on the Oversight Board to pressure Facebook to change policies that you believe are not working, and if Facebook refuses to address your concerns, to resign.

We, therefore, request that you provide answers to the following questions by August 25, 2020.

1. Will you commit to providing public, detailed policy guidance and recommendations to Facebook by September 22, 2020 that Facebook should implement, including changes to its content policies, to address the systemic amplification of divisive, racist, and conspiratorial content on the platform?
2. Will you commit to engaging with and represent the interests of civil rights, social justice organizations, and election experts, in producing the detailed policy guidance and recommendations referenced in commitment one to better protect civil rights, address dehumanizing speech on the platform, and protect against voter suppression and election manipulation?
3. Will you commit to engaging with and representing the interests of public health-focused organizations as you examine whether any policy changes are needed to better protect the physical and mental health of Americans?
4. Will you commit to engaging with your fellow board members who choose to make the same commitments to provide the detailed policy guidance and recommendations referenced in commitment one to Facebook jointly?
5. Will you commit to resigning from your post as a member of the Oversight Board if Facebook refuses to address the detailed public guidance referenced in commitment one by October 6, 2020?
6. What specific metrics can the public use at six months, one year and two years, to determine whether you and other members of the board are being effective and independent in your oversight role?
7. If those metrics are not being met, will you resign from the Oversight Board?
8. As you developed this response did you discuss your responses with employees or representatives of Facebook, and if so, with whom did you consult?

Mr. Michael McConnell

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We appreciate your attention to this critical matter. Should you have any questions about this request, please contact Gerald Leverich and Lisa Goldman of the Committee staff at (202) 225-2927.

Sincerely,

Handwritten signature of Frank Pallone, Jr. in blue ink.

Frank Pallone, Jr.
Chairman

Handwritten signature of Mike Doyle in black ink.

Mike Doyle
Chairman
Subcommittee on Communications
and Technology

Handwritten signature of Jan Schakowsky in black ink.

Jan Schakowsky
Chair
Subcommittee on Consumer Protection
and Commerce