



## Facebook, Past and Present: Part II

*I understand the concerns about how tech platforms have centralized power, but I actually believe the much bigger story is how much these platforms have decentralized power by putting it directly into people's hands.*

— Mark Zuckerberg

In the intervening ten years since Ta's tenure, Facebook now finds itself in a far different place. Technologies like Exchange and Connect have given Facebook the ability to reach targeted individuals with resonant messages, giving it tremendous influence on issues from George Floyd to Donald Trump.

Much of the controversy surrounding the company revolves around the power that a social platform with 3+ billion users has and how it should be exercised – especially when this platform has spent over 15 years collecting the most detailed information on these billions of people. That argument comes to a head most particularly in questions of political discourse and freedom of expression – a use of personal data that the early team at Facebook could not have imagined.

We will examine two recent Facebook decisions with ethical dimensions:

1. In May 2020, Facebook decided to leave up former U.S. President Donald Trump's comments on the increasingly violent protests around the killing of George Floyd. These comments included the phrase "when the looting starts, the shooting starts." (Twitter had placed an interstitial label before users could see the tweet.)
2. Then, in January 2021, Facebook decided to remove Mr. Trump from Facebook indefinitely. Because this decision has been referred by Facebook to its independent [Oversight Board](#), we will look at arguments presented there on whether the action was justified.

**Exhibit 1: Mark Zuckerberg at Georgetown (October 17, 2019)**

Please watch <https://www.youtube.com/watch?v=2MTpd7YOnyU&t=1229s>  
(From 16:30 to 45:14)

OR

please read the transcript via the Washington Post:  
(<https://www.washingtonpost.com/technology/2019/10/17/zuckerberg-standing-voice-free-expression/>, begin at “People having the power to express themselves at scale” through to the end)

**Exhibit 2: The decision to keep up “Looting and shooting” (May 29, 2020)**

**Mark Zuckerberg** ✓

May 29, 2020 · 🌐

This has been an incredibly tough week after a string of tough weeks. The killing of George Floyd showed yet again that for Black people in America, just existing means risking your life. This comes weeks after the killing of Ahmaud Arbery and Breonna Taylor, and in the midst of Covid having a disproportionate impact on the Black community in the US. It continues a long and devastating history of human loss going back centuries. I know the conversations happening amongst our Black friends, colleagues and neighbors are incredibly painful. As Americans, this affects all of us and we all have an obligation to help address the inequality in how justice is served. This is something I care deeply about.

I've been struggling with how to respond to the President's tweets and posts all day. Personally, I have a visceral negative reaction to this kind of divisive and inflammatory rhetoric. This moment calls for unity and calmness, and we need empathy for the people and communities who are hurting. We need to come together as a country to pursue justice and break this cycle.

But I'm responsible for reacting not just in my personal capacity but as the leader of an institution committed to free expression. I know many people are upset that we've left the President's posts up, but our position is that we should enable as much expression as possible unless it will cause imminent risk of specific harms or dangers spelled out in clear policies. We looked very closely at the post that discussed the protests in Minnesota to evaluate whether it violated our policies. Although the post had a troubling historical reference, we decided to leave it up because the National Guard references meant we read it as a warning about state action, and we think people need to know if the government is planning to deploy force. Our policy around incitement of violence allows discussion around state use of force, although I think today's situation raises important questions about what potential limits of that discussion should be. The President later posted again, saying that the original post was warning about the possibility that looting could lead to violence. We decided that this post, which explicitly discouraged violence, also does not violate our policies and is important for people to see. Unlike Twitter, we do not have a policy of putting a warning in front of posts that

may incite violence because we believe that if a post incites violence, it should be removed regardless of whether it is newsworthy, even if it comes from a politician. We have been in touch with the White House today to explain these policies as well.

There are heated debates about how we apply our policies during moments like this. I know people are frustrated when we take a long time to make these decisions. These are difficult decisions and, just like today, the content we leave up I often find deeply offensive. We try to think through all the consequences, and we keep our policies under constant review because the context is always evolving. People can agree or disagree on where we should draw the line, but I hope they understand our overall philosophy is that it is better to have this discussion out in the open, especially when the stakes are so high. I disagree strongly with how the President spoke about this, but I believe people should be able to see this for themselves, because ultimately accountability for those in positions of power can only happen when their speech is scrutinized out in the open.

### **Exhibit 3: The decision to remove President Trump from Facebook (January 7, 2021)**



**Mark Zuckerberg** ✓

January 7 · 🌐

The shocking events of the last 24 hours clearly demonstrate that President Donald Trump intends to use his remaining time in office to undermine the peaceful and lawful transition of power to his elected successor, Joe Biden.

His decision to use his platform to condone rather than condemn the actions of his supporters at the Capitol building has rightly disturbed people in the US and around the world. We removed these statements yesterday because we judged that their effect -- and likely their intent -- would be to provoke further violence.

Following the certification of the election results by Congress, the priority for the whole country must now be to ensure that the remaining 13 days and the days after inauguration pass peacefully and in accordance with established democratic norms.

Over the last several years, we have allowed President Trump to use our platform consistent with our own rules, at times removing content or labeling his posts when they violate our policies. We did this because we believe that the public has a right to the broadest possible access to political speech, even controversial speech. But the current context is now fundamentally different, involving use of our platform to incite violent insurrection against a democratically elected government.

We believe the risks of allowing the President to continue to use our service during this period are simply too great. Therefore, we are extending the block we have placed on his Facebook and Instagram accounts indefinitely and for at least the next two weeks until the peaceful transition of power is complete.

## WIRED OPINION

### Facebook's Oversight Board Must Uphold the Ban on Trump

It's not just about penalizing the former president.

It's about protecting democracy—in the US and around the world.

[DANIEL KREISS](#) [SHANNON MCGREGOR](#)

**IN THE COMING** weeks, the Facebook Oversight Board will rule on Donald Trump's indefinite suspension from the platform. This will surely be the board's most important ruling to date. The board's specific decisions are binding for Facebook, and in this case the ruling will likely go far beyond Trump and set a global precedent for the policies and enforcement actions the company makes going forward. The stakes could not be higher—not only for American democracy, but for countries around the world that have and will come under threat from undemocratic political leaders. Like it or not, Facebook has a crucial role to play in safeguarding democracy. And the board's decision will help determine whether the company can fulfill this responsibility, or will wash its hands of its democratic obligations.

Our decade of research on how politicians use social media has made it clear that there's only one correct way forward. Together with researchers at UNC's Center for Information, Technology, and Public Life, we believe the board should uphold Facebook's ban on Trump's account. The former president clearly, repeatedly, and flagrantly violated Facebook's Community Standards in his attempt to deny the American public's right to vote him out of office. Banning Trump from the platform permanently would follow the company's history of suspending users who repeatedly violate policies. More importantly, it would affirm Facebook's responsibility to protect democracies around the world by taking a strong stance against expression that undermines democratic accountability, especially free and fair elections.

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There is perhaps no more flagrant attempt in recent US history to silence the people than former President Trump's months-long campaign of lies about mail-in ballots, illegal voting, and voter fraud and his statements that the election was "fraudulent" and "stolen." Facebook's Community Standards require evaluating both accounts and content, as well as the broader "circumstances" that provide context for what appears on the platform. In this case, the president's election disinformation came in the context of his anti-democratic recognition of hate groups, failure to condemn extrajudicial violence, and work to have federal agencies downplay the threats of armed paramilitary groups.

Based on these facts alone, Facebook's permanent suspension of Trump is more than justified. In fact, Facebook's *lack* of enforcement—until January 7th—of its existing policies in the face of Trump's repeated violations has been deeply problematic. For too long, the company erred on the side of allowing Trump's electoral disinformation to stand because it argued the public should be able to hear from its leaders—the company's "newsworthiness" exemption. But Facebook should have been more consistent in its enforcement of its policies, or developed innovative solutions to proactively ward off the threats the president posed to the election, such as putting his account on a delay to screen for violations.

That said, it is crucial for the Oversight Board to honor the fact that the company eventually did enforce its policies in order to protect democracy. And while Facebook finally acted in the U.S., the failure to enforce its stated policies extend far beyond our borders. President Trump is not the only example of a world leader that has used Facebook to undermine electoral accountability, delegitimize political opposition, and subvert democratic institutions designed to act as a check on their power. Facebook must draw a bright red line at the attempts of any political leader, or those vying to become one, to undermine democratic processes, including those institutions that represent the people's voice, like elections. We see it as promising that this week Facebook took (overdue) action in Myanmar, banning the military from its platforms in the wake of a military coup that overthrew the democratically elected government.

Threats to democracies across the world are growing, and rejecting anti-democratic behavior will require strong institutions. While the public has a stake in hearing from those representing it (or seeking to), democracies across the globe also face clear and present dangers when disinformation and hateful or inciting speech undermines the accountability of leaders. Preserving democratic accountability, especially free and fair elections, should be the standard by which Facebook judges the expression of the politicians that use its platform.

In this way, the Oversight Board upholding the ban on Trump would endorse Facebook's recent, though long deferred, effort to safeguard democracy in the US. It would set a clear precedent that can be applied around the world. It might prod other social media companies to make safeguarding democracy a central pillar of their content policies as well. Facebook is sure to face even more difficult cases in the future, and it should have the flexibility to

interpret them against the standard of preserving democratic accountability, especially in consultation with other institutions that operate in the public's interest, such as journalists, academics, and non-governmental organizations. And, when it is a matter of policy enforcement, Facebook should focus its efforts on those holding or running for office and leaders in their parties, rather than exempting them —what elites in particular say and do matters most for peaceful democratic transitions and the preservation of democratic institutions. Platform companies are shaped by the politics of the societies in which they operate—societies which are in turn shaped by platform policies. In this way, the Oversight Board's decision is not just about Facebook, but about whether the company will honor the obligations it has to democratic societies.

To those who worry about the private power of companies to regulate political speech, we hear you. But it's important to remember all it took to get to this point. As Facebook's Civil Rights Audit demonstrated, the company often failed to fulfill its obligations to protect the democratic voices of its most vulnerable users, favoring instead the anti-democratic speech of the powerful such as Trump. Indeed, Facebook has not only long erred on the side of valuing freedom of expression, especially for world leaders, it took *a months long* campaign by a sitting president to undermine the legitimacy of the election, subvert ballot accountability, and create the context where his supporters attacked the US Capitol for the company to take decisive action to enforce its own policies.

The danger here is that if the Oversight Board does not uphold Trump's ban, it will set a precedent of valuing political elites' expression over the right of the public to self-govern in countries across the world.

#### ABOUT

**Daniel Kreiss** is the Edgar Thomas Cato Distinguished Associate Professor in the Hussman School of Journalism and Media and a principal researcher of the Center for Information, Technology, and Public Life at UNC Chapel Hill.

**Shannon C. McGregor** is an assistant professor in the Hussman School of Journalism and Media, and a senior researcher with the Center for Information, Technology, and Public Life at UNC Chapel Hill.

## Exhibit 5: Consortium of Civil Rights Groups' brief to the Facebook Oversight Board

February 12, 2021

Comments of Anti-Defamation League, Asian American Organizing Project (AAOP), Common Sense, Free Press, Guns Down America, MediaJustice, National Hispanic Media Coalition, Parsons School of Design and Voto Latino

Re: Facebook's Suspension of Donald J. Trump

2021-001-FB-FBR

We, the undersigned, represent nine human-rights, racial-justice and digital-rights groups, predominantly led by people of color, women and religious minorities. We are writing to urge the Oversight Board to uphold Facebook's long-overdue suspension of Donald J. Trump. The former president has repeatedly and flagrantly violated Facebook's community standards and terms of service. These violations include posts inciting racial hatred, violence and insurrection, as well as posts proliferating deadly disinformation about the pandemic and the election.<sup>1</sup> Given the gravity of these violations, Trump should not enjoy the privilege of amplification on Facebook's platforms. We urge the Oversight Board to **permanently** ban Trump.

In its first set of decisions, the Oversight Board reiterated what we have [said for years](#): Facebook's content moderation and enforcement practices are broken. For those reasons, the Board recently reinstated some content — including a blatantly anti-Muslim post — that it had reviewed from another user. While the Board is correct that Facebook's practices are deeply flawed, restoring hateful content is the wrong remedy.

The Oversight Board must act in the public interest and prioritize the health and safety of our communities. If the Board believes that Facebook's insufficient protocols prevent it from affirming Trump's suspension, then the Board should decline to resolve this matter until Facebook's house is in order. But the Board shouldn't reinstate Trump simply because the company's rules are unclear and arbitrarily enforced. The Board must acknowledge that Trump's social-media presence has made not just Facebook users but the world less safe.

We also urge the Board to extend the scope of review. This decision should not rest on just [two pieces of content](#) or the immediate events surrounding the insurrection. We encourage the Oversight Board to examine the totality of the circumstances — and the full context of how Trump has long used Facebook to sow hate and division, foment violence toward marginalized communities, and undermine democratic processes.

Trump's online rhetoric does not live in isolation from the real world and his speech should not get preferential treatment. If anything, politicians should be held to the [same standards](#) — if not higher standards — as everyone else.

To be sure, Facebook must tighten its content moderation policies and procedures. The company's repeated failures to enforce its own policies — and its use of twisted logic and loopholes for Trump — is an intentional decision to profit from hate and threats of violence directed at Black and Brown people, Muslims and other religious minorities. Further, the company's lack of meaningful transparency, its [patchwork of policies](#), its limited and constrained appeals process, and the erratic enforcement of its own policies are not flaws. Rather, they are by design.

In October 2018, [Change the Terms](#), a coalition led by women and people of color, released a set of [model corporate policies and recommendations](#). These were crafted to curb hateful activities by addressing known failures in the lack of transparency and equitable enforcement of online content. These recommendations were shaped by decades of research on the rise of hate groups and hate crimes — and by data showing how online rhetoric has repeatedly resulted in real-world violence against our communities.

Over the last several years, we have urged companies like Facebook to protect our safety by [deplatforming hate](#). The Change the Terms coalition warned in 2018 that: “[w]hite supremacist and other organizations engaging in hateful activities are using online platforms to organize, raise funds, recruit supporters, and normalize racism, sexism, xenophobia, religious bigotry, and anti-LGBTQIA animus. Online tools have been used to coordinate attacks, including violence, against people of color, immigrants, religious minorities, LGBTQIA people, women, and people with disabilities. This chills the online speech of the targeted groups, curbs democratic participation, and threatens people's safety and freedom in real life.”<sup>2</sup> The events that took place on Jan. 6, 2021, were not surprising: They were the logical outcome of Facebook's refusal to meaningfully address hate — and its use of erratic and illogical systems for enforcing its own content-moderation policies.

We expect you to center the real lives at stake in this decision — and refuse this prolific inciter of violence and insurrection the privilege of amplifying hate on Facebook's platforms.

Respectfully submitted,

Anti-Defamation League  
Asian American Organizing Project (AAOP)  
Common Sense  
Free Press  
Guns Down America  
MediaJustice  
National Hispanic Media Coalition  
Parsons School of Design  
Voto Latino



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<sup>1</sup> This endnote contains just a small sample of Trump’s Facebook policy violations, illustrating that the events and Trump posts of Jan. 6, 2021, were far from isolated occurrences. Here are some other examples: His May 29, 2020 post read “...These THUGS are dishonoring the memory of George Floyd, and I won’t let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!” <https://www.facebook.com/153080620724/posts/10164767134275725>; Facebook’s Final Civil Rights Audit wrote about this particular piece of content when noting that Facebook’s decision “ignores how such statements, especially when made by those in power and targeted toward an identifiable, minority community, condone vigilantism and legitimize violence against that community” at 54 (July 8, 2020), <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>; Trump’s Feb. 4, 2019 post, which featured a video, read: “This is an invasion of our country. WE NEED A WALL!” <https://www.facebook.com/153080620724/posts/10162117339785725>; Facebook let Trump’s campaign run more than 2,000 ads referring to immigration as an “invasion,” Media Matters for America (Sept. 5, 2020): <https://www.mediamatters.org/facebook/facebook-let-trumps-campaign-run-over-2000-ads-referring-immigration-invasion> Those ads were in heavy rotation in Texas ahead of the El Paso massacre, which left 22 people dead. The shooter’s manifesto echoed the “invasion” language.

<sup>2</sup> Change the Terms, “Recommended Internet Company Corporate Policies and Terms of Service to Reduce Hateful Activities” at 2, [tinyurl.com/19wmodjk](http://tinyurl.com/19wmodjk)(Oct. 25, 2018).

**Exhibit 6: Oversight Board Comment on Facebook’s Suspension of Donald Trump, by Will Duffield, Policy Analyst, Cato Institute (March 19, 2021)**

This public comment addresses deficiencies in Facebook’s initial justification for its suspension of President Trump and examines how the current broad application of the newsworthiness principle to politicians undermines the legitimacy of Facebook’s Community Standards.

Facebook had ample justification to suspend President Trump after the Capitol riot under its prohibition on the incitement of violence. Rioters said their actions were justified by claims that the election results were illegitimate, the product of an elite conspiracy to deny President Trump a second term. President Trump continued to endorse claims of a stolen election even while condemning the day’s violence. Given the demonstrated capacity of these claims to inspire violence (indeed, how else should one respond to the usurpation of democracy), Trump’s persistence in echoing them in his capacity as president would have justified suspending him under policies against speech that incites violence.

While Facebook’s incitement policy is narrowly tailored to calls for violence, when Facebook [expanded](#) its election integrity measures in the weeks after the riot, it did so to “stop misinformation and content that could incite further violence.” While new prohibitions on “stop the steal” content were justified by Facebook’s policy against Coordinated Harm, these restrictions limited a particular sort of claim that Biden’s election was illegitimate, on the grounds that it could incite further violence. A similar judgement about the likely effects of President Trump’s stolen election claims would therefore seem best justified by Facebook’s prohibition on the incitement of violence.

Instead, Facebook relied on its Dangerous Individuals and Organizations [policy](#) to justify Trump’s indefinite suspension. While the Capitol Riot fits within Facebook’s definition of a violating event, the president’s posts did not explicitly praise the riot or rioters. Crucially, any ongoing risk associated with Trump’s Facebook account was rooted in his claim that his loss in the 2020 election was illegitimate. It was this claim, not alleged praise or support of the widely condemned riot, that risked inciting further attempts to prevent President-elect Biden from taking office.

Does this mean Facebook should maintain Trump’s suspension, or make it permanent, now that he has left office? Trump’s status as president mattered. The president’s speech carries unique authority, and public statements may be made in concert with official orders. After January 6<sup>th</sup>, while Donald Trump still occupied the Oval Office, many feared he would use social media to organize an extralegal attempt to remain president. Now that he has left office, and Joe Biden is president, this eventuality has been foreclosed. While Donald Trump still maintains a prominent position in Republican politics and the minds of his voters, he lacks the ability to credibly contest the presidency.

Thus, while exigency and Facebook’s prohibition on speech that incites violence may have justified the initial ban, its maintenance would be punitive rather than preventative. Given that Facebook did not previously bar claims of a rigged or stolen election as incitement, it would seem procedurally deficient to render Trump’s current suspension permanent. This is not to say that Donald Trump has not broken Facebook’s rules. He has, repeatedly. However, Facebook has long tolerated his violations under its newsworthiness policy.

Since 2016, Facebook has allowed content it subjectively deems newsworthy to remain on the platform, even if it would otherwise violate Facebook’s rules. There are instances in which

this policy makes a great deal of sense. Images such as “Napalm Girl,” a photo of a nude, burned child from the Vietnam war, are moving illustrations of the horrors of war precisely because of their disturbing content. However, when this policy is applied to the violative speech of public figures or elected officials, it amounts to making some users more equal than others. In a 2019 Newsroom post, Facebook VP of Global Affairs Nick Clegg [writes](#), “we generally allow [politicians’ speech] on the platform even when it would otherwise breach our normal content rules.” If a speaker’s status as a government official or celebrity makes their every utterance newsworthy, the newsworthiness exception serves as a formalization of Donald Trump’s [claim](#) that “when you’re a star, they let you do it.” It is important that public access to information not become a fig leaf for power.

Indeed, the fact that this privilege has been balanced against the risk of incitement provides one more reason to treat Facebook’s initial suspension of President Trump as an attempt to prevent the incitement of further violence. In the 2019 post, Clegg states that “content that has the potential to incite violence, for example, may pose a safety risk that outweighs the public interest value.”

However, this two-tiered system creates problems not easily ameliorated by sudden suspensions down the line, particularly when these problems stem from deeply held beliefs [cultivated](#) over months or years. Allowing some subset of Facebook users to systemically ignore Facebook’s rules undermines the legitimacy of the rules. If the violation of Facebook’s rules by private users with small followings may lead to harm, breaches by public figures with large followings will likely lead to greater harm. Subjectively violable rules are incredibly hard to justify.

Furthermore, while there is a public interest in hearing what our elected representatives have to say, that interest does not extend to affording politicians greater speech rights than others vis a vis Facebook’s rules. The Senate has [sanctioned](#) “disorderly language” in debates since America’s founding. So long as the rules are applied fairly, limiting the sort of language that politicians may employ on Facebook does no harm to the public interest. Unfortunately, the current subjectively applied newsworthiness exception makes it impossible to establish that any set of rules are being uniformly applied to politicians or heads of state. A content-based, rather than speaker-based, model of newsworthiness would improve this situation. A more explicit rubric for making newsworthiness determinations would improve it further.

Finally, Facebook, and the Oversight Board, must avoid adopting the mistaken belief that the world can or should be controlled through content moderation. While the intention behind these efforts is noble, in attempting to ameliorate state failures to physically secure the capitol, moderators adopted duties that requiring traditionally unacceptable tradeoffs between safety and voice. While the state cannot respond to budding insurrection by prohibiting provocative speech, mass gatherings, travel, hotel bookings, and the advertising of arms, moderators across a host of major social media platforms did so.

It is one thing to attempt to prevent the misuse of a social media platform. It is another to attempt to foreclose real-world harms through denial of access to a social media platform. To the extent that platforms, or their overseers, attempt to do so, they will adopt unrealistic duties that mask unpleasant tradeoffs.

**Exhibit 7: Republican Members of Congress's brief to the Facebook Oversight Board**

**Congress of the United States**

**Washington, DC 20515**

February 12, 2021

Dear Members of the Facebook Oversight Board,

We write in response to a request for public comment on Case 2021-001-FB-FBR, in which then-President Donald J. Trump's Facebook account was indefinitely suspended. Our comments are in response to the third issue identified: "*How Facebook should treat the expression of political candidates, office holders, and former office holders, considering their varying positions of power, the importance of political opposition, and the public's right to information*".

As a threshold matter, we reiterate our denunciation of political violence of all forms. Online speech that directly incites real-world harm must be condemned and has no place in a civilized society. Unfortunately, we see violent speech emanating from all parts of the political spectrum and being published on various social media platforms, including Facebook. For example, members of the radical leftist group Antifa called for the murder of police officers, the Ayatollah of Iran promised violence and bloodshed against the United States, and conspiracy theorist Lin Wood summoned his followers to execute Vice President Mike Pence.

The debate about how to effectively deal with these and other individuals is necessary and important. However, we remain concerned that the de-platforming standards are not applied in a fair and neutral manner. For example, Facebook's own investigation into bias against conservatives, led by former Senator Jon Kyl, found numerous issues that resulted in a clear political bias against conservative viewpoints. Additionally, in the final days before the 2020 Presidential election, Facebook prevented a damaging *New York Post* story regarding Hunter Biden from being shared, claiming it was disinformation. The article was completely factual, however, and Facebook's overaggressive actions demonstrated that it had a clear preference for the Biden-Harris campaign.

Instances where conservative viewpoints have been censored, blocked, or diminished harm the free exchange of ideas and irreparably damage conservative Americans' faith in the fundamental fairness of purportedly neutral actors like Facebook. To effectively enforce content moderation rules in the public domain, Facebook must act in an impartial manner or risk delegitimizing its efforts to prevent violence and hate. Several Minority members of the House Committee on the Judiciary issued the attached report last October. We attach it to this letter for your review and consideration.

We appreciate your attention to this pressing issue and remain committed to engaging in productive conversations with the Oversight Board to ensure that your process is applied fairly to all Americans.


Sincerely,



Ken Buck  
Member of Congress

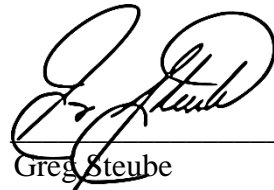


Jim Jordan  
Member of Congress



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Chip Roy  
Member of Congress



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Greg Steube  
Member of Congress



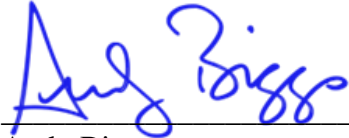
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Dan Bishop  
Member of Congress



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Darrell Issa  
Member of Congress



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Andy Biggs  
Member of Congress



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Tom McClintock  
Member of Congress



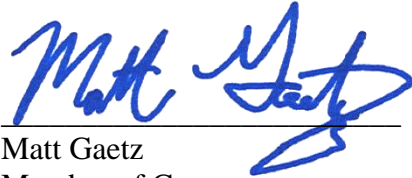
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Burgess Owens  
Member of Congress



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Mike Johnson  
Member of Congress



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Matt Gaetz  
Member of Congress