

**Responses for the Record from Dr. Mark Jamison,
Responding to Questions from Sen. Charles E. Grassley (R-IA)
US Senate Committee on the Judiciary
“Cambridge Analytica and the Future of Data Privacy”
Questions Submitted on May 23, 2018**

1. Do you believe that Facebook has distorted the electoral process in the past by supporting one political party over another?

Yes, if the statements by former Obama campaign official Carol Davidsen and *MIT Technology Review* writers David Talbot and Sasha Issenberg are accurate. I understand the term “distorted” in this instance to mean that Facebook used its subscribers to change the shape of the electoral process to something more to Facebook’s liking without the subscribers’ knowledge and consent. I cannot say whether Facebook changed election outcomes.

On March 18, 2018, Davidsen, speaking about the 2012 Obama presidential campaign, said on Twitter,¹ “Facebook was surprised that we could suck out the whole social graph, but they didn’t stop us once they realized what we were doing.” The Facebook social graph at that time was a data analysis that drew connections among people, places, and things people do online.² In other words, the 2012 Obama campaign downloaded everything that connected people, including their friends, photos, events, internet pages visited, who they listened to, what music they listened to, their likes, and places they had been.

This information access was and will remain uniquely for the Obama campaign and Democrats. The access was special for the Obama campaign because Facebook favored it. As Davidsen further explained in her March 18, 2018, tweets, once Facebook learned that the 2012 Obama campaign could access the entire social graph, the company continued to allow access because the company was siding with the Obama campaign in its competition with Republicans. Davidsen said, “They came to office in the days following election recruiting & were very candid that they allowed us to do things they wouldn’t have allowed someone else to do because they were on our side.” In other words, Davidsen’s understanding was that Facebook gave the 2012 Obama campaign access to user information that it would not allow competing campaigns.

This access will remain unique to Democrats because Facebook has now closed the door on future access to this type of information. In 2015 Davidsen explained in her presentation at the Personal Democracy Forum³ that Republicans did not obtain this

¹ See tweets of Carol Davidsen on March 18, 2018, <https://twitter.com/cld276/status/975568473626742785>.

² Boonsri Dickinson, “So What The Heck Is The ‘Social Graph’ Facebook Keeps Talking About?” *Business Insider*, March 2, 2012, <http://www.businessinsider.com/explainer-what-exactly-is-the-social-graph-2012-3?IR=T>.

³ Carol Davidsen, “You Are Not a Target: What We Actually Do with Your Data” (presentation, 2015 Personal Democracy Forum, New York, NY, June 4, 2015), <https://personaldemocracy.com/media/you-are-not-target-what-we-actually-do-your-data>.

information and that Republicans will not. More specifically, she said that the Obama campaign was “able to ingest the entire social network—social network of the U.S. that’s on Facebook—which is most people. Where this gets complicated is, this freaks Facebook out. Right? So they shut off the feature. Well, the Republicans never built an app to do that. So the data’s out there. You can’t take it back. Right? So the Democrats have this information. Uh, so when they look at a voter file and someone comes to them – they can immediately like, ‘Oh, here are all the other people that they know and here are people they can help us persuade because they’re really good friends with with (sic) this person.’ The Republicans do not have that information and will not get that information.”

If Facebook had wanted to be true to its subscribers, it would have revealed its actions to subscribers once the company decided to use them to take sides in a political campaign of Facebook’s choosing. The company did not do that.

Is this favored treatment important? Yes, according to research by David Talbot and Sasha Issenberg of the *MIT Technology Review*.⁴ They explain that the campaign used its microtargeting system, which included the Facebook social graph, to (1) identify voters who might be persuadable on particular issues, (2) motivate Obama supporters to contact specific close friends whom the data said could be persuaded to vote for Obama, (3) target single issue ads to people who might not otherwise vote for Obama but that cared about the single issue in which their interests could be aligned with Obama’s, and (4) encourage Obama supporters during the voting period to contact specific close friends who, according to the campaign’s database, had not yet voted. These types of motivation activities are achievable with microtargeting.

2. There have been significant concerns that more and more data is being consolidated into the hands of just a few large tech companies. Is there a risk that regulation in the data privacy space could only exacerbate these concerns? How do we ensure transparency for consumers while protecting a competitive marketplace?

There are two parts to this question, and I will address them separately.

Regarding the part about concentration of data into the hands of a few companies, yes, there is a risk that regulation would exacerbate concentration of data in a few companies’ hands. Data appear concentrated in the hands of a few companies because these companies had a head start. This is a natural part of the evolution of any system, including competitive markets. Fortunately, the incentives that drove the leading companies to get a head start also incentivize new and existing companies to catch up or leap ahead. Existing edge providers such as Yelp and companies being built using

⁴ Sasha Issenberg, “How Obama’s Team Used Big Data to Rally Voters,” *MIT Technology Review*, December 19, 2012; and David Talbot, “Facebook: The Real Presidential Swing State,” *MIT Technology Review*, July 20, 2012. For an analysis of the 2008 Obama campaign, see David Talbot, “How Obama Really Did It,” *MIT Technology Review*, August 19, 2008.

blockchain-like technologies promise to amass their own big data sets and perhaps make the data widely available, subject to legal restrictions. More traditional companies, such as Walmart and public utilities, are also amassing data, as are governmental entities. Internet service providers, such as AT&T and Comcast, are also amassing data. The deployment of 5G networks will grow the amount and types of data collected.

Your sense is correct that regulatory fixes could exacerbate the concentration of data in a few hands.⁵ Facebook and other large tech companies have an advantage over upstart rivals with respect to regulations. These incumbents have millions of customers over which to spread regulatory costs. The opposite is true for their rivals. As I explained in my written testimony, economic research has clearly demonstrated that regulation protects incumbents.

The most appropriate way to address concerns about concentration of data in the hands of a few is to make it easier to compete with these companies. These existing and upstart companies will become more competitive in digital marketplaces if public policy removes barriers to the profitability of deploying information technologies and networks. One of the important issues is the deployment of 5G networks. Members of the Federal Communications Commission (FCC) have been speaking out on ways that federal, state, and local governments have stood in the way of these networks.⁶ Through its Restoring Internet Freedom efforts, the FCC has also been removing artificial regulatory distinctions between network providers and edge providers. Evidence indicates that this will accelerate investment and innovation.⁷

Regarding the second part of the question, which is about transparency and competition, the answer depends on whether the concerns are about effects on commercial markets or

⁵ The conventional wisdom is that the larger companies have more data than others, but the magnitude of the difference and its effects have not been carefully studied to my knowledge.

⁶ See, for example, Federal Communications Commission, "Remarks Of FCC Chairman Ajit Pai At The Wireless Infrastructure Association Connectivity Expo, Charlotte, NC," May 23, 2018, <https://www.fcc.gov/document/chairman-pais-wireless-infrastructure-assoc-connectivity-expo-speech>; Federal Communications Commission, "Chairman Ajit Pai Remarks at the Mobile World Congress in Barcelona, Spain," February 16, 2018, <https://www.fcc.gov/document/chairman-pai-remarks-mobile-world-congress>; Federal Communications Commission, "Remarks of FCC Commissioner Michael O'Rielly Before the Free State Foundation, Washington, DC, 'Next Generation 5G Wireless Networks: Seizing the Opportunities and Overcoming the Obstacles,'" July 25, 2017, <https://www.fcc.gov/document/commissioner-orielly-remarks-free-state-foundation-0>; Federal Communications Commission, "FCC Commissioner Mignon L. Clyburn Statement on 5G Deployment," January 29, 2018, <https://www.fcc.gov/document/commissioner-clyburn-statement-5g-deployment>; Federal Communications Commission, "Remarks of FCC Commissioner Brendan Carr at CTIA's Race to 5G Summit, 'Next Steps on the Path to 5G,'" April 20, 2018, <https://www.fcc.gov/document/commissioner-carr-remarks-race-5g-summit>; and Federal Communications Commission, "Remarks of Commissioner Jessica Rosenworcel at Mobile World Congress 2018, Barcelona, Spain," February 27, 2018, <https://www.fcc.gov/document/remarks-commissioner-rosenworcel-mobile-world-congress-2018>.

⁷ See the following summary of economic literature on this topic: Janice Hauge et al., "Economic Scholars' Summary of Economic Literature Regarding Title II Regulation of the Internet" (working paper, University of Florida, Warrington College of Business, 2017), https://bear.warrington.ufl.edu/centers/purc/docs/papers/1703_Jamison_Review_EconLit_TitleIIRegulationofInternet.pdf.

political markets. By commercial markets I mean the markets for goods and services, such as the online services that Facebook and other tech companies provide to their users and advertisers. By political markets I mean the competition among political parties, between persons running for office, and among rival political ideas.

With respect to commercial markets, existing competition laws and consumer protections should be rigorously enforced to maximize consumer benefit. Whenever a company obtains a competitive advantage through fraudulent or deceptive means, existing laws and regulations should be used to ensure that customers do not suffer as a result.⁸ This does not mean that regulation should try to eliminate competitive advantage because the potential profits from creating superior products (e.g., Facebook is strongly preferred over similar social media such as Myspace) are critical for a dynamic tech industry.⁹

My conclusions are different with respect to political markets. As I indicate in my response to the first question, I believe that Facebook distorted our political processes and was able to do so in part because it was not forthcoming with its subscribers about how it was using them for political purposes.¹⁰ In a sense, Facebook has operated like a real estate developer who creates a city and then serves as its domineering mayor, who monitors everything the citizens do, charges commercial entities that want to do business with the citizens, filters discussions among the citizens and content that comes into the city, and uses his or her unique knowledge and access to city resources to affect political processes, all without the citizens grasping the role the developer/mayor is playing in their lives.

It seems to me that in the political space a company should be held to a different level of transparency. In commercial markets customers can assess their economic experiences and make their decisions accordingly even if a company lacks transparency. Political markets have no such feedback mechanism, so a different regulatory standard would be appropriate.

There is a related issue that came up during the hearing that I should address. It was said several times that governments should regulate everything that is important. This is false.

⁸ I will not give an example because doing so could imply legal conclusions that I am unqualified to make. In this document and other writings, I describe my concerns with how Facebook is less than candid and clear with its subscribers. I believe this lack of transparency is problematic for well-functioning markets and from a corporate ethics perspective, but I have not investigated whether Facebook has violated federal laws.

⁹ Much of the economics literature that analyzes anticompetitive conduct by incumbents in network industries assumes that the incumbency is an arbitrary gift to the incumbent. See, for example, Jacques Cremer, Patrick Rey, and Jean Tirole, "Connectivity in the Commercial Internet," *Journal of Industrial Economics* 48, no. 4 (2000): 433–72, 2000; and Dennis W. Carlton and Michael Waldman, "The Strategic Use of Tying to Preserve and Create Market Power in Evolving Industries," *RAND Journal of Economic* 33, no. 2 (2002): 194–220. This literature overstates the benefits of regulatory actions against incumbents by ignoring the importance of incentives to create competitive advantage.

¹⁰ I am not qualified to address whether Facebook's actions violated election laws or violated subscribers' constitutional rights to freedom of speech.

Different regulations occur for different reasons. Food safety was an example used during the hearing. Food safety became regulated because consumers could not observe food safety themselves before consumption, increases in food processing years ago led to instances in which agribusinesses did not pay adequate attention to food safety, the consequences of unsafe food were large and negative, and the cost of enforcement was small compared to the benefits. Public utilities were also mentioned as an instance in which things are regulated because they are important. Regulation of public utilities by independent regulators occurred because utilities were considered natural monopolies at the time, the utilities exploited their economic positions to the harm of communities that were dependent on them, regulation by political bodies rather than expert agencies hindered performance, and the costs of regulating utilities were small compared to the benefits. Food safety and utility regulation are examples of regulation coming about for largely good reasons, and made possible because technologies were fairly stable. This has not been true in other instances: There is a large body of economic literature demonstrating that often regulations are advocated by special interests that personally benefit from the regulations.¹¹

¹¹ See Sam Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics* 19, no. 2 (1976): 211–40; Sam Peltzman, "Pricing in Public and Private Enterprises: Electric Utilities in the United States," *Journal of Law and Economics* 14, no. 1 (1971): 109–47; Richard Posner, "Taxation by Regulation," *Bell Journal of Economics* 2 (1971): 22–50; and Richard Posner, "Theories of Economic Regulation," *Bell Journal of Economics* 5 (1974): 335–58.