



The Daily Dish

Trump, Twitter, and the Structure of Executive Action

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Eakinomics: Trump, Twitter, and the Structure of Executive Action

As is now well-known, when Twitter added “fact check tags” to President Trump’s tweets regarding mail-in voting, the president responded by signing an executive order (EO) directing tighter regulation of social media companies. As noted in an [earlier Eakinomics](#), this is a bad idea for [reasons](#) carefully laid out by AAF’s Jennifer Huddleston. AAF’s Dan Bosch took [another angle](#), and used the episode to discern how the administration views its ability to use the independent agencies to take executive action.

Recall that agencies come in two flavors: (1) executive agencies, whose heads serve at the pleasure of the president, and (2) independent agencies, whose heads can only be removed for cause. Independent agencies are harder to control because of the higher level of protection.

As Bosch notes, the social media executive order (EO) reveals how the administration thinks about its ability to control the independent agencies. For example, one “goal of the EO is for the Federal Communications Commission (FCC) to issue a regulation that spells out under what conditions a social media platform would violate the ‘in good faith’ provision of section 230 of the Communications Decency Act. The EO does not specifically direct the FCC to issue a regulation, however. Instead it directs the Secretary of Commerce to petition the FCC for such a regulation.” In short, *direct* the executive agency to *ask* the independent agency.

And in those cases where it does direct an independent agency, it does so with a light touch. “For example, it directs the Federal Trade Commission (FTC) to develop a report describing the complaints of politically motivated content moderation it receives. A report is not a terribly invasive overture into the FTC’s discretion.”

In an era when an enormous amount of policymaking is done via executive action, it is a good reminder that an administration cannot do anything it wants with any agency it desires. There are important nuances and limitations to the conduct of executive actions.