

No. 23-411

In the Supreme Court of the United States

VIVEK H. MURTHY, SURGEON GENERAL, ET AL.,
Petitioners,

v.

STATE OF MISSOURI, ET AL.,
Respondents.

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT*

**BRIEF FOR REPRESENTATIVE JIM JORDAN
AND 44 OTHER MEMBERS OF CONGRESS AS
AMICI CURIAE IN SUPPORT
OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

Amici curiae are Representative Jim Jordan and 44 other Members of Congress. The full list of *amici* appears on the following page.*

Each Member of Congress has taken an oath to uphold the Constitution and laws of the United States, and they have an institutional interest in protecting First Amendment rights from encroachment by the executive branch, protecting the rule of law, and holding the executive branch accountable when it overreaches. This interest also includes ensuring that the courts police those constitutional boundaries.

Each Member signatory is concerned that the Biden Administration has violated the Constitution and abridged Americans' civil liberties. Congress—and the House Judiciary Committee and the Weaponization Subcommittee, in particular—has been investigating the executive branch's coercion and collusion with social media companies to censor speech. Evidence recently obtained by these investigations further corroborates the district court's findings and the opinions below. Thus, each Member signatory has a substantial interest in this case and offers a unique perspective by virtue of his or her role in Congress.

* Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

The following is the full list of *amici*:

United States Senate

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Ted Cruz	Roger Marshall, M.D.
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Kelly Armstrong	Anna Paulina Luna
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Andy Biggs	Max L. Miller
Dan Bishop	Alexander X. Mooney
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SUMMARY OF THE ARGUMENT

Wielding threats of intervention, the executive branch of the federal government has engaged in a sustained effort to coerce private parties into censoring speech on matters of public concern. On issue after issue, the Biden Administration has distorted the free marketplace of ideas promised by the First Amendment, bringing the weight of federal authority to bear on any speech it dislikes—including memes and jokes. Of course, Big Tech companies often required little coercion to do the Administration’s bidding on some issues. Generally eager to please their ideological allies and overseers in the federal government, these companies and other private entities have repeatedly censored accurate speech on important public issues. When the censors were too slow to suppress speech that the partisans in the Administration disliked, the federal government prodded them back into action with continual and increasing pressure.

Official pressure to suppress speech violates the First Amendment. “[A] principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” *Texas v. Johnson*, 491 U.S. 397, 408–09 (1989) (cleaned up). No doubt, the government may find some individuals’ speech “misguided, or even hurtful,” but “the point of all speech protection is to shield just those choices of content.” *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (cleaned up). “The First Amendment embodies our choice as a Nation that,

when it comes to such speech, the guiding principle is freedom—the unfettered interchange of ideas—not whatever the State may view as fair.” *Arizona Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 750 (2011) (cleaned up). The First Amendment is founded on “the hypothesis that speech can rebut speech, propaganda will answer propaganda, [and] free debate of ideas will result in the wisest governmental policies.” *Dennis v. United States*, 341 U.S. 494, 503 (1951). Thus, the First Amendment stands against any governmental effort to coerce or otherwise burden the free speech of private entities—even if that action falls short of outright suppression. Cf. *Kennedy v. Warren*, 66 F.4th 1199, 1213 (9th Cir. 2023) (Bennett, J., concurring) (“[W]e do not require a government official to list specific consequences in order to find a constitutional violation.”).

Censorship-by-proxy is an especially nefarious form of state action, given that it is designed to evade detection, oversight efforts, and public records requests. The district court found, as a matter of fact, that “the United States Government, through the White House and numerous federal agencies, pressured and encouraged social-media companies to suppress free speech.” J.A. 201. The Fifth Circuit agreed. These factual findings must be upheld unless clearly erroneous. “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985). And “[w]here an intermediate court reviews, and affirms, a trial court’s factual findings”—as here—“this Court will not lightly overturn the concurrent findings of the two

lower courts.” *Easley v. Cromartie*, 532 U.S. 234, 242 (2001).

The district court’s findings are easily “permissible”; they are clearly correct. Beyond the ample evidence cited by the courts below and the Plaintiffs, even more recent evidence obtained by the House Judiciary Committee and the Weaponization Subcommittee confirms the conclusions reached below. That evidence shows that the Biden Administration has relentlessly pressured private entities—sometimes in cooperation with other private entities—to censor speech that the Administration disliked. As detailed below, this official coercion has undermined the marketplace of ideas on issues of public importance ranging from COVID to federal elections to Biden family misdeeds. And the suppression “does not simply have an effect on speech, but is directed at certain content and is aimed at particular speakers”: conservative voices opposed to the current Administration. *Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2347 (2020). “This sort of ‘beggar thy neighbor’ approach to free speech—restricting the speech of some elements of our society in order to enhance the relative voice of others—is wholly foreign to the First Amendment.” *Bennett*, 564 U.S. at 741 (cleaned up). Likewise foreign to the First Amendment are governmental efforts to coerce the speech of private Americans. “As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” *Snyder*, 562 U.S. at 461.

Because the Biden Administration has repeatedly used government coercion to stifle public debate—and

the injunction below rightfully halts the Administration’s unlawful conduct—the Court should affirm.

ARGUMENT

I. The United States has coerced speech about COVID.

As the district court found, the federal government “suppressed alternative views” about COVID-related matters, including the origination of the virus, the efficacy of vaccines and masks, and the adverse effects of lockdowns, effectively forcing social media companies to enforce the government’s view as “the truth.” J.A. 213. The district court listed over twenty examples of the government engaging in coercive acts directed toward social media companies to bring about censorship. J.A. 205–09. And the government’s pressure campaign worked. Facebook agreed to moderate certain COVID-related speech in response to pressure from the Biden Administration, telling the government that Facebook would rely on their “authorities” to determine what content to censor. J.A. 98. Echoing the White House’s own description, the district court described the government’s direction of the companies’ content choices as a “partner[ship].” J.A. 210. The Fifth Circuit agreed, finding that the social media companies “not only continued to take down content the officials flagged, and provided requested data to the White House, but they also changed their moderation policies expressly in accordance with the officials’ wishes.” J.A. 7; see J.A. 49–68 (finding coercion and significant pressure by the White House, FBI, CDC, and CISA based on a detailed examination of the factual record).

Recent evidence corroborates these findings. The House Judiciary Committee subpoenaed internal documents from Meta, the parent entity of Facebook and Instagram; Alphabet, the parent entity of Google and YouTube; and Amazon. The documents obtained confirm that the companies censored information and altered their content moderation policies because of pressure from the Biden Administration to rid their platforms of purported “misinformation.”¹

This pressure was direct and coercive. For example, the Administration tried to suppress discussion of COVID’s origins: when a Facebook executive asked in July 2021 why the company censored the COVID lab leak theory, an executive in charge of content policy development said, “[b]ecause we were under pressure from the [A]dministration” to

¹ Rep. Jim Jordan (@Jim_Jordan), Twitter (July 27, 2023, 12:03 PM), <https://tinyurl.com/5nz8sn3b> (“THE FACEBOOK FILES PART 1”); Rep. Jim Jordan (@Jim_Jordan), Twitter (July 28, 2023, 12:03 PM), <https://tinyurl.com/3z5npf92> (“THE FACEBOOK FILES PART 2”); Rep. Jim Jordan (@Jim_Jordan), Twitter (Aug. 3, 2023, 11:00 AM), <https://tinyurl.com/4kjvehbb> (“THE FACEBOOK FILES PART 3”); Rep. Jim Jordan (@Jim_Jordan), Twitter (Aug. 7, 2023, 10:11 AM), <https://tinyurl.com/yebawzjr> (“THE FACEBOOK FILES PART 4”); Rep. Jim Jordan (@Jim_Jordan), Twitter (Sept. 5, 2023, 6:17 PM), <http://tinyurl.com/4e7a65xx> (“THE FACEBOOK FILES PART 5”); Rep. Jim Jordan (@Jim_Jordan), Twitter (Nov. 30, 2023, 8:44 AM), <http://tinyurl.com/3ma78m8x> (“THE YOUTUBE FILES PART 1”); Rep. Jim Jordan (@Jim_Jordan), Twitter (Dec. 1, 2023, 2:26 PM), <http://tinyurl.com/ms7amj7x> (“THE YOUTUBE FILES PART 2”); Rep. Jim Jordan (@Jim_Jordan), Twitter (Feb. 5, 2024, 5:44 PM), <http://tinyurl.com/mwxmzb79> (“THE AMAZON FILES”).

do so.² The same Facebook executive confessed that the company “shouldn’t have done it.”³

Yet Facebook continued to do the Administration’s bidding, repeatedly removing and reducing content the federal government disfavored. The Biden White House’s successful monthslong campaign to censor views expressing or supporting vaccine hesitancy is the clearest example of how the government coerced social media companies to change the scope and enforcement of their content moderation policies.

In a draft of an internal email, a Facebook employee explained to CEO Mark Zuckerberg and COO Sheryl Sandberg: “We are facing continued pressure from external stakeholders, including the [Biden] White House and the press, to *remove* more COVID-19 vaccine discouraging content.”⁴

Mark. Sheryt

We are seeking your guidance on whether to take more aggressive action against certain vaccine discouraging content.

We are facing continued pressure from external stakeholders, including the White House and the press, to *remove* more COVID-19 vaccine discouraging content. For example, we recently shared with the White House a list of the top 100 vaccine-related posts on FB in the U.S. for the week of 4/5-4/11. While authoritative information dominated the list, the White House was concerned that the #3 post was a vaccine discouraging humorous meme, and they called on us to delete the meme.

Another Facebook executive notified his team that a senior advisor to President Biden was “outraged”

² Ex. 1 (e-mail from Nick Clegg to Facebook employees (July 14, 2021, 11:46 AM)). All Exhibit cites are to the Appendix attached to *amici*’s brief in the Fifth Circuit. See CA5 Doc. 224.

³ *Ibid.*

⁴ Ex. 2 (e-mail from Facebook employee to Facebook employees (Apr. 27, 2021, 11:58 AM)) (emphasis in original).

“that [Facebook] did not remove” a meme that bothered the Administration.⁵ Likewise, to appease the Administration, Facebook demoted a video posted by journalist Tucker Carlson that was critical of the COVID vaccine, even though Facebook admitted that the video did not violate company policy.⁶

Tucker Carlson was not the only prominent media critic of the Biden Administration to be targeted by the Administration’s censorship efforts. According to Facebook’s internal notes of meetings with White House senior advisors, White House officials questioned whether Facebook’s enforcement of its content moderation policies against the *New York Post* was aggressive enough.⁷ Similarly, in April 2021, a White House official questioned whether Facebook could “change [its] algorithm so that people were more likely to see [the *New York Times*], [the *Wall Street Journal*], any authoritative news source over [the] Daily Wire, Tomi Lahren, polarizing people.”⁸ The White House’s requests were rooted in the paternalistic notion that Americans cannot decide for

⁵ Ex. 3 (e-mail from Nick Clegg to Facebook employees (Apr. 19, 2021, 9:40 AM)).

⁶ *Ibid.*

⁷ Ex. 4 (Facebook employee’s notes of a call between White House personnel and Facebook employees on March 26, 2021). The *New York Post*’s traffic on Facebook subsequently plummeted by over 50 percent before rebounding to “normal levels” by fall 2021. Steven Nelson, *The Post’s FB Traffic Tanked After WH Aide’s False Claim of ‘Churning Out Articles Every Day About People Dying’ From COVID Vax*, *New York Post* (Aug. 4, 2023), <https://tinyurl.com/rrmtzkk>.

⁸ Ex. 5 (Facebook employee’s notes of a call between White House personnel and Facebook employees on April 14, 2021).

themselves what information should or should not be believed. As a White House staffer condescendingly remarked in a meeting with Facebook in April 2021, “[i]f someone in rural Arkansas sees something on [Facebook], it’s the truth.”⁹ In a June 2021 meeting, the White House pushed Facebook to “reduce the spread of bad information,” *i.e.*, “bad” information according to the White House.¹⁰

The White House exerted similar pressure on YouTube. The government’s demands for meetings and information on YouTube’s policies and removals led to warnings within YouTube that the Biden “White House is very interested in our work on borderline content” and should be briefed again “to prevent anything from potentially spiraling out of control.”¹¹ YouTube considered this approach necessary because it was “seek[ing] to work closely with [the Biden] administration on multiple policy fronts.”¹²

The White House’s pressure extended to Amazon, the world’s largest online bookstore. Senior White House officials ran key searchers for topics such as “vaccine” and emailed Amazon employees directly when displeased with how the search results

⁹ Ex. 6 (Facebook employee’s notes of a call between White House personnel and Facebook employees on April 5, 2021).

¹⁰ Ex. 7 (Facebook employee’s notes of a call between White House personnel and Facebook employees on June 15, 2021).

¹¹ Rep. Jim Jordan (@Jim_Jordan), Twitter (Nov. 30, 2023, 8:44 AM), <http://tinyurl.com/4hpkfz39> (“THE YOUTUBE FILES PART 1”).

¹² *Ibid.*

appeared.¹³ One internal Amazon email regarding a “Pre-Brief for Meeting w/ the White House” started with this “Top Talking Point[]”: “Is the Admin asking us to remove books, or are they more concerned about search results/order (or both)?”¹⁴ Other internal emails reveal that Amazon was “feeling pressure from the White House” on this issue.¹⁵ The Committee’s investigation remains ongoing, but there is evidence that Amazon adopted new policies, including “enabl[ing] Do Not Promote for anti-vax books,” because of pressure from the White House.¹⁶

Not only did the Biden Administration privately coerce Facebook and other companies into censoring information, it also engaged in a public relations campaign against the companies to pressure them into submission. In July 2021, President Biden publicly denounced these companies, particularly Facebook, claiming they were “killing people” by not censoring alleged “misinformation” to the government’s satisfaction.¹⁷ Facebook employees internally lamented that the Biden White House’s “definition of ‘misinfo’ is completely unclear.”¹⁸ Following the White House’s pressure, Facebook leadership—internally

¹³ Rep. Jim Jordan (@Jim_Jordan), Twitter (Feb. 5, 2024, 5:44 PM), <http://tinyurl.com/mwxmzb79> (“THE AMAZON FILES”).

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Nandita Bose and Elizabeth Culliford, *Biden Says Facebook, Others ‘Killing People’ by Carrying COVID Misinformation*, Reuters (Jul. 16, 2021), <https://tinyurl.com/zpt53rna>.

¹⁸ Ex. 8 (e-mail from Facebook employee to Facebook employees (July 16, 2021, 8:14 PM)).

admitting that the move was “stemming from the continued criticism of our approach from the [Biden] administration”—directed employees to “brainstorm some additional policy levers we can pull to be more aggressive against . . . misinformation.”¹⁹ Ultimately, the company adopted four new, more aggressive policy options one month later.²⁰

Likewise, before meeting with the Biden Administration’s Office of the Surgeon General (OSG), a Facebook employee wrote that Sheryl Sandberg “is keen that we continue to explore some moves that we can make to show that we are trying to be responsive to the [White House].”²¹ The email continued: “My sense is that our current course—in effect explaining ourselves more fully, but not shifting on where we draw the lines . . . is a recipe for protracted and increasing acrimony with the [White House].”²² Internal documents obtained by the House Judiciary Committee and the Weaponization Subcommittee show that the Biden Administration pressured Facebook to censor information about the COVID vaccine’s side effects, even if the information was true.²³ In a July 2021 meeting with OSG, a Facebook

¹⁹ Ex. 9 (e-mail from Facebook employee to Facebook employees (Aug. 6, 2021, 7:13 PM)).

²⁰ Ex. 10 (e-mail from Nick Clegg to Facebook employees (Aug. 19, 2021, 5:25 PM)).

²¹ Ex. 11 (e-mail from Facebook employee to Facebook employees (July 22, 2021, 12:17 PM)).

²² *Ibid.*

²³ Ex. 12 (e-mail from Sheryl Sandberg to Nick Clegg (Jul. 21, 2021, 4:49 PM)) (“The Surgeon General wants us to remove true information about side effects.”).

employee confirmed that Facebook was demoting content that questioned whether vaccine mandates constituted “government overreach,” despite acknowledging “[t]hat’s not false information.”²⁴

Worse still, when Facebook questioned censoring information, the Biden Administration showed disdain and contempt for the First Amendment. For example, when the Administration flagged satirical content about the COVID vaccine, a Facebook executive first warned that removing satirical content would “represent a significant incursion into traditional boundaries of free expression in the US.”²⁵ But the Biden Administration was unpersuaded, insisting that the content “inhibits confidence” in the COVID vaccine.²⁶

A Facebook vice president warned internally that the company was at “a crossroads” with the Administration over its censorship efforts.²⁷ Facebook executives grasped the connection between the company’s business prospects and remaining in the Administration’s good graces. One executive, recommending that the company consider bending to the Administration’s censorship requests, cautioned COO Sheryl Sandberg that Facebook had “bigger fish

²⁴ Ex. 13 (Facebook employee’s notes of a call between OSG personnel and Facebook employees on July 16, 2021).

²⁵ Ex. 3 (e-mail from Nick Clegg to Facebook employees).

²⁶ *Ibid.*

²⁷ *Ibid.*

we have to fry with the Administration — data flows etc.”²⁸

Another looming issue was—and still is—reform of Section 230 of the Communications Decency Act. As the district court explained, Section 230 is “valuable” to Big Tech because of its legal protections. J.A. 210. And the district court found that the federal government “threat[ened]” Big Tech with the repeal of Section 230 to induce compliance with its censorship campaign. *Ibid.* Mark Zuckerberg has referred to the possibility of antitrust enforcement as an “existential threat” to his empire. J.A. 95. Four days after President Biden publicly accused Facebook of “killing people,” the White House Communications Director publicly said the Administration was “reviewing” Section 230 reform as an option because the social media companies “should be held accountable.”²⁹ Internal documents show that Facebook executives feared that the Biden Administration would retaliate against the company for not censoring enough: one executive commented that the dispute over content was not “a great place for us to be,” and he would be “grateful for any further creative thinking on how we can be responsive to their [content] concerns.”³⁰ In response to mounting pressure, Facebook capitulated: “By August 2021, Facebook executives were emailing

²⁸ Ex. 11 (e-mail from Facebook employee to Facebook employees).

²⁹ Betsy Klein, *White House Reviewing Section 230 Amid Efforts to Push Social Media Giants to Crack Down on Misinformation*, CNN (Jul. 20, 2021), <https://tinyurl.com/73hnfk3h>.

³⁰ Ex. 11 (e-mail from Facebook employee to Facebook employees).

each other about new planned changes to their Covid content policies,” including increased punishments for violators.³¹

In short, the Biden Administration used its power to commandeer the apparatuses of social media companies to affect their COVID-related content policies. And out of self-interest, the companies complied and censored content beyond what they otherwise would have. This government coercion violates the First Amendment.

II. The United States has coerced speech about Biden Family influence peddling.

The federal government, specifically the FBI’s Foreign Influence Task Force (FITF), also used its power and influence to deceive and coerce social media companies into suppressing factual information during the 2020 election about the Biden family that the FBI knew to be true.³² The district court rightly labeled “[t]he FBI’s failure to alert social-media companies that the Hunter Biden laptop story was real, and not mere Russian disinformation,” as “particularly troubling.” J.A. 218. The laptop contained documents and emails with incriminating details about foreign business dealings that also

³¹ Ryan Tracy, *Facebook Bowed to White House Pressure, Removed Covid Posts*, The Wall Street Journal (July 28, 2023), <https://tinyurl.com/2bepvs5t>; see also Ex. 10 (E-mail from Nick Clegg to Facebook employees).

³² Letter from Rep. Jordan, Chairman, House Comm on the Jud., to the Hon. Christopher Wray, Director, FBI, at 1 (July 20, 2023), <https://tinyurl.com/3m7a6wsa>.

implicated Hunter Biden’s father—then-presidential candidate, Joe Biden.³³

In a transcribed interview before the House Judiciary Committee and Weaponization Subcommittee, the current Section Chief of FITF, Laura Dehmlow, testified that (1) FBI agents who knew the laptop was real were some of the same FBI agents who repeatedly warned social media companies about a potential “hack-and-leak” likely to occur in October 2020; and (2) despite direct requests from Twitter and Facebook for information on the day the *New York Post* story was published, the FBI decided to deliberately withhold critical information from the social media companies.³⁴

Although the FBI had the authenticated laptop in its possession since December 2019, it did not publicly acknowledge that it was real until after the November 3, 2020, election.³⁵ Rather than acknowledge the truth, the FBI actively influenced and deceived the

³³ Emma-Jo Morris & Gabrielle Fonrouge, *Smoking-gun Email Reveals how Hunter Biden Introduced Ukrainian Businessman to VP Dad*, New York Post (Oct. 14, 2020), <https://tinyurl.com/v7maymv8>; Staff of H. Comm. on the Jud., Select Subcomm. on the Weaponization of the Fed. Gov’t, & Permanent Select Comm. on Intel., 118th Cong., *The Hunter Biden Statement: How Senior Intelligence Community Officials and the Biden Campaign Worked to Mislead American Voters* 1, 6 (2023), <https://tinyurl.com/47v4fxb8>.

³⁴ Ex. 14 (excerpts of Transcribed Interview of Laura Dehmlow before the House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (July 17, 2023)), at 29–37, 173–174.

³⁵ Jordan, *supra* note 32, at 5.

social media companies to censor the story when it inevitably came out.³⁶ In a well-executed, monthslong plan, the FBI primed the narrative, telling social media companies to “look for a ‘hack and dump’ operation by the Russians prior to the 2020 election.”³⁷ Then, once the laptop’s contents were exposed, the FBI refused to answer questions and let the narrative it had constructed do its work of distracting from and minimizing the truth. Mark Zuckerberg’s justification for censoring the story illustrates the effectiveness of this plan: “the FBI basically came to us” and said, “you should be on high alert.”³⁸ Facebook censored the story because when “[the FBI] come[s] to us and tell[s] us that we need to be on guard about something, then I want to take that seriously,” and the story “basically fit the pattern” the FBI warned about.³⁹ This federal coercion led to the censorship of accurate information.

In “the nine months leading up to the 2020 election, the FBI met over 30 times with social media platforms—all while in possession of Hunter Biden’s laptop.”⁴⁰ The FBI had “at least five meetings with Facebook, Google, Microsoft, [and] Yahoo!, in addition to multiple meetings with Twitter and Reddit.”⁴¹ Yoel

³⁶ *Id.* at 1.

³⁷ *Id.* at 4.

³⁸ Bruce Golding, *Zuckerberg Says Facebook Censored the Post’s Hunter Biden Stories Because FBI Warned of Russian Misinfo ‘Dump,’* New York Post (Aug. 26, 2022), <https://tinyurl.com/5n8xz6xd>.

³⁹ *Ibid.*

⁴⁰ Jordan, *supra* note 32, at 1.

⁴¹ *Ibid.*

Roth, former Head of Site Integrity at Twitter, confirmed in a sworn declaration that he had regular meetings in 2020 with different federal agencies, including the FBI, in which they “communicated that they expected ‘hack-and-leak operations’” against those associated with political campaigns “shortly before the 2020 presidential election, likely in October.”⁴² “These expectations of hack-and-leak operations were discussed throughout 2020.”⁴³ He was also told “that material obtained through those hacking attacks would likely be disseminated over social media platforms, including Twitter” and even that there were rumors the materials could involve Hunter Biden.⁴⁴

The companies also participated together in regular “USG-Industry” meetings, including four in October 2020, with representatives from federal agencies, including the FBI.⁴⁵ During these meetings, the FBI asked social media companies what their “hack and leak” policies were, how the companies would handle a potential “hack and leak,” and whether the companies would remove hacked materials from their platforms.⁴⁶ In response, some companies without a specific “hack and leak” policy,

⁴² Declaration of Yoel Roth, ¶¶ 10–11, Federal Elections Commission MUR 7821, (Dec. 17, 2020), <https://tinyurl.com/3mmzx2bk> [hereinafter Roth Decl.].

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Jordan, *supra* note 32, at 1.

⁴⁶ Deposition of Elvis Chan at 248:5–250:21 (D. Ct. Doc. 204-1) [hereinafter Chan Dep.]; see also Roth Decl., *supra* note 42, ¶ 11.

such as Facebook, developed and adopted a new policy during summer 2020.⁴⁷

Dehmlow confirmed that “the FBI could—and did—share information with companies regarding foreign malign influence operations, like hack-and-leak operations, including those conducted by Russia-aligned actors.”⁴⁸ For example, the agenda for the October 7, 2020 “USG-Industry” meeting—one week before the October 14 *New York Post* story—lists “Hack/Leak Concerns” as a topic.⁴⁹

According to Dehmlow, on the day the article was published, FBI met with Twitter, and a company representative asked if the laptop was real.⁵⁰ Dehmlow testified that, in response, “one of the FBI folks who was on the call” confirmed that the laptop was real before “another participant jumped in and said, ‘no further comment.’”⁵¹ After the meeting, FBI personnel “deliberated internally” and determined that—even though they knew the laptop was not Russian disinformation—in all further

⁴⁷ See Ex. 15 (excerpts of Transcribed Interview of David Agranovich before the House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (May 16, 2023)); Ex. 16 (excerpts of Transcribed Interview of Nathaniel Gleicher before the House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (June 21, 2023)).

⁴⁸ Jordan, *supra* note 32, at 2; Ex. 14 (Laura Dehmlow Transcribed Interview), at 173–74.

⁴⁹ Ex. 17 (e-mail from Facebook employee to Matthew Masterson and Brian Scully (Sept. 29, 2020, 11:41 AM)).

⁵⁰ Ex. 14 (Laura Dehmlow Transcribed Interview), at 29.

⁵¹ *Ibid.*

communications with social media companies the FBI would reply with “no comment.”⁵²

According to Dehmlow, later that same day, the FBI met with Facebook. This time the FBI had its story straight. When Facebook asked whether the laptop was real, Dehmlow, on behalf of the FBI, said, “no comment.”⁵³ The FBI has thus far refused to reveal to Congress the identities of the FBI official who told Twitter that the laptop was real, the FBI lawyer who instructed “no further comment” during the call with Twitter, or the FBI official who determined that the agency would respond only “no comment” when asked about Hunter Biden laptop’s authenticity going forward.⁵⁴

Facebook followed up again the next day, October 15.⁵⁵ According to an internal Facebook document obtained by the House Judiciary Committee and the Weaponization Subcommittee, a Facebook employee (and former FBI official) “spoke with SSA Elvis Chan (FBI San Francisco) on 15 October 2020, as a follow up to the call with the Foreign Influence Task Force on 14 October.”⁵⁶ Facebook again asked if the FBI had any new information, to which “Chan advised that he was up to speed on the current state of the matter

⁵² *Id.* at 33.

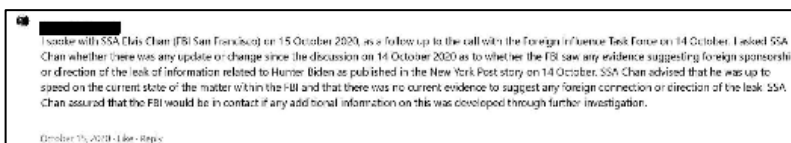
⁵³ *Id.* at 33; see also Chan Dep., *supra* note 46, at 215.

⁵⁴ See Ex. 14 (Laura Dehmlow Transcribed Interview), at 29–31; Jordan, *supra* note 32, at 5–6 (requesting a response by August 3, 2023).

⁵⁵ Ex. 18 (entry on internal Facebook case file by Facebook employee (Oct. 15, 2020)).

⁵⁶ *Ibid.*

within the FBI and that there was no current evidence to suggest any foreign connection or direction of the leak.”⁵⁷ But of course, the FBI knew not just of the *absence* of evidence suggesting any foreign connection; the FBI knew the laptop was real.⁵⁸



This internal Facebook document directly conflicts with the deposition testimony FBI Special Agent Elvis Chan provided in this case. Chan testified that he was “confident” that he “was not a party to any meeting with social media companies where Hunter Biden was discussed outside of the [October 14 FITF-Facebook meeting where Laura Dehmlow responded ‘no comment’].”⁵⁹ Later, when asked if, other than the October 14 FITF-Facebook meeting, he was “aware of any communications between anyone at Facebook and anyone at the FBI related to the Hunter Biden laptop story,” Chan responded, “No.”⁶⁰

⁵⁷ *Id.* Chan testified in his deposition that, unlike Dehmlow, FITF Section Chief Bradley Benavides, the Russia Unit Chief of FITF, and other FITF personnel, he did not know prior to October 14 that the FBI had the laptop. Cf. Chan Dep., *supra* note 46, at 230:7–19; Ex. 14 (Laura Dehmlow Transcribed Interview), at 37.

⁵⁸ Jordan, *supra* note 32; Ex. 14 (Laura Dehmlow Transcribed Interview), at 37.

⁵⁹ Cf. Chan Dep., *supra* note 46, at 215:22–216:16; Ex. 18 (entry on internal Facebook case file by Facebook employee (Oct. 15, 2020)).

⁶⁰ Chan Dep., *supra* note 46, at 233:22–234:3.

As a result of the FBI's withholding critical information on the day of (and in the days after) the *New York Post* article's publication, the social media companies began to do precisely what the FBI intended: suppress truthful First Amendment-protected speech less than three weeks before the presidential election.⁶¹ The story implicating one of the two major party candidates was blocked by Twitter and deamplified by Facebook, "significantly reducing its circulation and prevalence in users' newsfeeds,"⁶² all because the FBI—an organization that the companies felt compelled to follow—had led them to believe the laptop story was Russian disinformation.⁶³ The story was not Russian disinformation, and FBI personnel meeting with Twitter and Facebook knew *at the time* that it was not Russian disinformation.⁶⁴ The government's coercive manipulation of the marketplace of ideas no doubt affected the 2020 election.⁶⁵ The district court's

⁶¹ Jordan, *supra* note 32.

⁶² *Ibid.*

⁶³ FBI Director Wray testified that "the FBI is not in the business of moderating content or causing any social media company to suppress or censor" speech. Oversight of the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary, 118th Cong. (July 12, 2023). On July 18, Chairman Jordan and Representative Mike Johnson, Chairman of the Subcommittee on the Constitution and Limited Government, wrote a letter to Director Wray providing him the opportunity to amend his testimony. Director Wray has not responded.

⁶⁴ Jordan, *supra* note 32.

⁶⁵ See Miranda Devine, *Media Helped Hide the Real Joe Biden by Censoring Hunter Stories*, *New York Post* (Nov. 28, 2021), <https://tinyurl.com/mvp474ba>.

findings that the federal government unlawfully coerced private speech are amply supported by the evidence.

III. The United States has coerced speech about elections.

The United States also flouted the First Amendment by coercing platforms into suppressing election-related speech. This coercion is especially troubling because speech pertaining to elections “occupies the core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995). Yet the federal government has repeatedly coerced social media companies to censor election-related speech. It has done so directly, through DHS’s Cybersecurity and Infrastructure Security Agency (CISA), and indirectly, through the private-sector Election Integrity Partnership (EIP).⁶⁶

A. Cybersecurity and Infrastructure Security Agency (CISA)

Congress established CISA in 2018 to “lead cybersecurity and critical infrastructure security programs, operations, and associated policy.”⁶⁷ CISA’s “Countering Foreign Influence Task Force” (CFITF)

⁶⁶ Staff of the H. Comm. on the Jud., 118th Cong., Interim Staff Report: The Weaponization of CISA (June 26, 2023), available at <https://bit.ly/45jYPke> (D. Ct. Doc. 291-2) [hereinafter Interim CISA Report].

⁶⁷ 6 U.S.C. § 652.

focused “on election infrastructure disinformation.”⁶⁸ But in an effort to expand its focus on foreign misinformation to domestic misinformation, “CISA transitioned its [CFITF] to promote more flexibility to focus on general MDM,” or so-called “Mis-, Dis-, and Malinformation.”⁶⁹

CISA’s focus on so-called “malinformation” is particularly alarming. According to CISA, “[m]alinformation is based on fact, but used out of context to mislead, harm, or manipulate.”⁷⁰ Put more plainly, “malinformation is *factual* information that is objectionable not because it is false or untruthful, but because it is provided without adequate ‘context’—context as determined by the government.”⁷¹

In his deposition, Brian Scully, the first head of the CFITF and later the head of the MDM team at CISA,⁷² said that CISA engaged in “switchboarding,” a practice in which CISA would flag alleged disinformation to social media platforms.⁷³ According to Scully, “switchboarding” involves CISA officials first receiving alleged “misinformation” reports from election officials and then forwarding those reports to

⁶⁸ Office of Inspector Gen., Dep’t of Homeland Sec., OIG-22-58, DHS Needs a Unified Strategy to Counter Disinformation Campaigns 5 (Aug. 10, 2022), <https://tinyurl.com/2p9h2p75>.

⁶⁹ *Id.* at 7.

⁷⁰ Cybersecurity and Infrastructure Sec. Agency, Mis-, Dis-, and Malinformation Planning and Incident Response Guide for Election Officials 1 (2022), <https://tinyurl.com/52pvpn5d>.

⁷¹ Interim CISA Report, *supra* note 66, at 10.

⁷² Deposition of Brian Scully, 11:19–12:6, (available at <https://tinyurl.com/2epb2mw9>) (D. Ct. Doc. 209-1).

⁷³ *Id.* at 23:16–24:2.

social media companies so that they could take enforcement measures against the reported content.⁷⁴ Scully admitted that CISA was aware that its outreach to social media companies about alleged misinformation would trigger content moderation.⁷⁵

Petitioners highlight that CISA stated in its communications with platforms that no “favorable or unfavorable” action would be taken against them. Br. 6. But CISA’s disclaimer pointedly did *not* make a similar promise on behalf of other government agencies (including the FBI) with whom CISA shared ticket information.⁷⁶ In other words, the disclaimer “emphasized that CISA would involve law enforcement agencies and that CISA would not (or could not) commit that law enforcement agencies would not take an unfavorable action based on how the social media platforms decided to respond to the misinformation report.”⁷⁷ This omission was significant. As the former Chief Security Officer of Facebook explained, “I think all executives of all

⁷⁴ *Id.* at 17:1–18:1.

⁷⁵ *Id.* at 17:15–18:1. In response to a question from Representative Dan Bishop, DHS Secretary Mayorkas testified that he believed that “it is true” that “CISA does not flag anything to social media organizations at all,” but that he would “verify that.” Oversight of the Department of Homeland Security: Hearing Before the H. Comm. on the Judiciary, 118th Cong. (July 26, 2023). Secretary Mayorkas has failed to provide the Judiciary Committee with any information to verify his testimony.

⁷⁶ Staff of the H. Comm. on the Jud., 118th Cong., Interim Staff Report: The Weaponization of “Disinformation” 20 (Nov. 6, 2023), available at <http://tinyurl.com/2n53pdy5> [hereinafter Interim EIP Report].

⁷⁷ *Id.* at 17.

public companies understand that there's lots of parts of the government that can punish you for activity that you thought was appropriate."⁷⁸

CISA also funded and utilized third parties, such as the Center for Internet Security (CIS), to achieve these aims. CIS is the nonprofit entity responsible for operating the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC).⁷⁹ The "EI-ISAC is federally funded by CISA and a division of the Center for Internet Security."⁸⁰ The EI-ISAC allows election officials around the country to send reports of alleged "misinformation" to CIS, which CIS then forwards to the relevant social media platforms.⁸¹

For example, a state government official working for Pennsylvania's Secretary of State, a Democrat, reported to the EI-ISAC posts on Twitter and Facebook from Senator Ted Cruz's accounts.⁸² In the offending post, Senator Cruz, a Republican, asked: "Why is it only Democrat blue cities that take 'days' to count their votes? The rest of the country manages to get it done on election night."⁸³ Emblematic of this

⁷⁸ *Id.* at 20.

⁷⁹ Center for Internet Sec., EI-ISAC, <https://www.cisecurity.org/ei-isac> (last visited Jan. 5, 2024).

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Ex. 19 (e-mail from misinformation@cisecurity.org to Facebook employees (Oct. 27, 2022, 5:06 PM)).

⁸³ Sen. Ted Cruz (@tedcruz), Twitter (Oct. 27, 2022, 12:34 PM), <https://tinyurl.com/2s9dce95>.

“switchboarding,” the federally funded EI-ISAC forwarded the report to Facebook.⁸⁴

B. The Election Integrity Partnership (EIP)

The United States, primarily CISA, also coerced social media companies into censoring speech about the 2020 election through the private-sector Election Integrity Partnership (EIP), led by Stanford University. Formed in the summer of 2020, EIP was a coalition of research entities created “in consultation with CISA and other stakeholders,”⁸⁵ which “united government, academia, civil society, and industry, analyzing across platforms, to address misinformation in real time.”⁸⁶ “[F]rom the beginning,” “Stanford and CISA envisioned the partnership connecting federal agencies with social media platforms,” and CISA officials were intimately involved.⁸⁷

As one senior EIP figure explained, EIP was “set up at the request of DHS/CISA.”⁸⁸ Because the four entities comprising EIP were not government

⁸⁴ Ex. 19 (e-mail from misinformation@cisecurity.org to Facebook employees).

⁸⁵ Election Integrity P’ship, *The Long Fuse: Misinformation and the 2020 Election 2* (2021), <https://tinyurl.com/4frucxab> [hereinafter EIP].

⁸⁶ *Id.* at 241.

⁸⁷ Interim EIP Report, *supra* note 76, at 36; see, e.g., Ex. 20 (e-mail from Kate Starbird to Alex Stamos (July 8, 2020, 10:26 AM)).

⁸⁸ Interim EIP Report, *supra* note 76, at 39 (ellipsis and emphasis omitted).

entities,⁸⁹ the United States sought to use EIP to do things that the government could not do without violating the First Amendment—namely, directly monitoring and censoring speech. By its own account, EIP filled the “gap” in the government’s ability to police so-called “misinformation” and “disinformation” about elections on social media because “no government agency in the United States has the explicit mandate to monitor and correct election mis- and disinformation”⁹⁰—and because of “[u]nclear legal authorities including *very real 1st amendment questions*.”⁹¹

EIP used the Jira Service Desk, an internal ticketing software to allow approved entities (government agencies, EI-ISAC, and others) to submit “misinformation” reports, in the form of a “Jira ticket.”⁹² From there, EIP personnel analyzed the submission and could comment on the ticket, before a manager would assess whether to forward the ticket to the relevant social media platform(s).⁹³ EIP’s final report illustrates this workflow:⁹⁴

⁸⁹ Stanford Internet Observatory, the University of Washington’s Center for an Informed Public, the Atlantic Council’s Digital Forensics Research Lab, and Graphika.

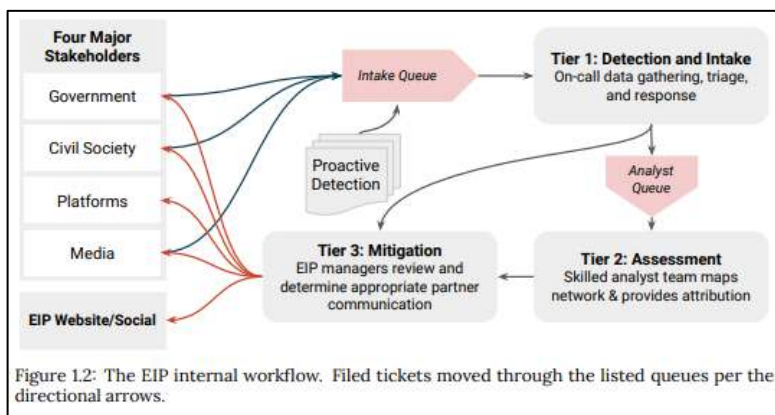
⁹⁰ EIP, *supra* note 85, at v, 2.

⁹¹ Interim EIP Report, *supra* note 76, at 41; see J.A. 222.

⁹² See generally EIP, *supra* note 85.

⁹³ *Ibid.*

⁹⁴ *Id.* at 8.



EIP was thoroughly intertwined with CISA, which aided EIP in the process of reporting undesirable election-related speech to social media platforms.⁹⁵ Stanford confirmed in a letter to Chairman Jordan that CISA was directly “tagged” in a number of Jira tickets “rather than or in addition to” the CISA-funded EI-ISAC.⁹⁶ Some of those involved with EIP worked for CISA, giving them (and CISA) direct access to the tickets.⁹⁷ Other documents obtained by the House Judiciary Committee and Weaponization Subcommittee confirm CISA’s involvement.⁹⁸ “As a consequence, CISA had visibility on what was being submitted to the EIP”—and “social media platforms

⁹⁵ *Id.* at 13.

⁹⁶ Letter from John B. Bellinger III to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 27, 2023) (on file with the H. Comm. on the Judiciary).

⁹⁷ Interim EIP Report, *supra* note 76, at 44–54.

⁹⁸ See generally Interim EIP Report, *supra* note 76; Ex. 21 (e-mail from Elena Cryst to TikTok employee (Nov. 4, 2020, 7:41 PM)); Ex. 22 (e-mail from Reddit employee to Alex Stamos (Nov. 3, 2020, 12:36 PM)).

knew that CISA had knowledge of the EIP’s intake.”⁹⁹ So even while “CISA did not directly report content to the EIP, CISA could see what was being reported to the EIP and simultaneously report the same content directly to the social media platforms.”¹⁰⁰

The FBI, the National Security Agency (NSA), and the Global Engagement Center (GEC) were also involved. The GEC is a federal government interagency organization housed within the State Department with the stated mission of countering foreign “propaganda and disinformation efforts.”¹⁰¹ Most notably, the GEC submitted tickets to EIP through Jira and “was one of the most frequently tagged organizations in” Jira.¹⁰² In addition, before the 2020 election, EIP briefed the NSA, and sent one Jira ticket to the FBI.¹⁰³ Social media platforms could

⁹⁹ Interim EIP Report, *supra* note 76, at 47.

¹⁰⁰ *Id.* at 55.

¹⁰¹ U.S. Dep’t of State, About Us—Global Engagement Center, <https://tinyurl.com/43dmawd9> (last visited Jan. 5, 2024); see also Matt Taibbi (@mtaibbi), Twitter (Mar. 2, 2023, 12:00 PM), <https://tinyurl.com/3pmhu8j6> (“GEC’s ‘Chinese’ list included multiple Western government accounts and at least three CNN employees based abroad.”).

¹⁰² Interim EIP Report, *supra* note 76, at 47; see, e.g., Ex. 23 (e-mail from Elena Cryst to Google employee (Nov. 2, 2020, 7:03 PM)).

¹⁰³ Ex. 24 (Excerpts of Transcribed Interview of Alex Stamos before the House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (June 23, 2023)).

see which entity submitted a ticket, including federal government entities.¹⁰⁴

The federally funded EI-ISAC also submitted tickets.¹⁰⁵ CISA even coordinated “an agreement” between CIS and EIP to avoid double reporting.¹⁰⁶ The two admittedly became “partners,”¹⁰⁷ sharing personnel.¹⁰⁸ Information obtained to date during the House Judiciary Committee and Weaponization Subcommittee’s investigation confirms that the government-funded EI-ISAC submitted over 100 Jira tickets in the lead-up to the 2020 election.¹⁰⁹

This close affiliation with the federal government heightened the coerciveness of EIP’s interactions with social media platforms. Stanford’s *amicus* brief in this Court claims that “EIP’s decisions about what to escalate to social media platforms were made completely independently.” Br. 25. It also suggests “that CISA did not share tips about instances of misinformation with EIP, did not have general access to EIP tickets identifying instances of misinformation,

¹⁰⁴ Letter from John B. Bellinger III to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 7, 2023) (on file with the H. Comm. on the Judiciary).

¹⁰⁵ Ex. 24 (Excerpts of Transcribed Interview of Alex Stamos before the House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government (June 23, 2023)), at 114–115.

¹⁰⁶ *Id.* at 212:07–12.

¹⁰⁷ *Id.* at 369:01–11.

¹⁰⁸ *Id.* at 168:22–171:16, 183:20–22.

¹⁰⁹ Letter from John B. Bellinger III to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (June 14, 2023) (on file with the H. Comm. on the Judiciary).

and did not ‘coordinate’ EIP’s contacts with social media platforms.” *Id.* at 24–25. These claims continue Stanford’s identified pattern of misrepresentations and deceitful public statements about EIP, including to congressional investigators.¹¹⁰

Initially, Stanford told Congress—and still continues to claim on its website—that “EIP did not make recommendations to the platforms about what actions they should take.”¹¹¹ That was and continues to be provably false: despite Stanford’s best efforts to avoid a subpoena, the Committee eventually received dozens of tickets “in which the EIP made a direct recommendation to platforms on what action should be taken.”¹¹²

Then, Stanford claimed that only the GEC submitted tickets, and otherwise it “did not use Jira to receive information from, or share information with, any federal government agencies or officials.”¹¹³ That too was wrong: besides the overlap between CISA personnel and EIP, the Committee obtained documents showing that “CISA personnel were receiving information from or generated by the Jira system” and that “CISA personnel referenced the ‘EIP-’ codes when switchboarding.”¹¹⁴

“[M]ore than a month after” the Committee interviewed a senior Stanford official (Alex Stamos)

¹¹⁰ See Interim EIP Report, *supra* note 76, at 84–92.

¹¹¹ *Id.* at 84.

¹¹² *Ibid.*; see *id.* at 86–87.

¹¹³ *Id.* at 88.

¹¹⁴ *Id.* at 90.

involved with EIP, “Stanford’s counsel finally admitted in a letter to the Committee that CISA was, in fact, involved with the EIP’s Jira system and that CISA had been directly ‘tagged’ on a number of tickets.” Stanford’s counsel claimed that “[a]t the time of Mr. Stamos’s interview, Mr. Stamos was not aware that CISA or CFITF had been “tagged” in any Jira tickets.”¹¹⁵ This assertion was dubious, as tickets that were shared with CISA “were assigned to Stamos.”¹¹⁶ Given that CISA was intimately involved in EIP’s creation and operation, CISA was directly tagged in tickets, CISA personnel had access to the ticket system, and both CISA and EIP were sharing the same information with social media companies, Stanford’s claims before this Court that CISA had no “general access to EIP tickets” and that EIP’s communications were “completely independent[]” (Br. 24–25) are hard to take seriously.

EIP onboarded major social media platforms, gaining privileged access to some of these platforms’ data and the ability to collect such data in real time.¹¹⁷ EIP’s direct recommendations for censorship resulted in the suppression of disfavored speech about the 2020 election. Thirty-five percent of the URLs that EIP “shared with Facebook, Instagram, Twitter, TikTok, and YouTube were either labeled, removed, or soft-blocked.”¹¹⁸ Every Twitter account holder that EIP

¹¹⁵ *Id.* at 91–92.

¹¹⁶ *Id.* at 92.

¹¹⁷ EIP, *supra* note 85, at 17, 181–82; see Ex. 22 (e-mail from Reddit employee to Alex Stamos).

¹¹⁸ EIP, *supra* note 85, at 27.

identified as a “Repeat Spreader” of election-related “disinformation” expressed “conservative or right-wing political views.”¹¹⁹

Content characterized as “disinformation” often did not refer to factually inaccurate posts. “EIP analysts were unable to identify a single external source to support its designation of a particular post or narrative as ‘mis- or disinformation’ in a *majority of posts* it flagged.”¹²⁰

The United States’ coercive tactics with social media platforms to quell election-related messages it finds undesirable are unconstitutional—even when funneled through a private-sector entity. See *Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (“[A] state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.” (cleaned up)).

IV. The United States is funding research and tools to enable censorship at scale.

The Committee and Select Subcommittee have also uncovered how the National Science Foundation (NSF) uses taxpayer funds for research into AI-powered censorship and propaganda tools through its Convergence Accelerator Track F program.¹²¹ These

¹¹⁹ *Id.* at 187–88.

¹²⁰ Interim EIP Report, *supra* note 76, at 67.

¹²¹ Staff of H. Comm. on the Jud., Select Subcomm. on the Weaponization of the Fed. Gov’t of the H. Comm. on the Judiciary, 118th Cong., *The Weaponization of The National*

exchanges provide context for the federal government's other interactions with "disinformation" researchers, such as CISA's interactions with the Election Integrity Partnership.

Non-public documents obtained by the Committee and Select Subcommittee demonstrate that the federal bureaucrats, "disinformation" researchers, and non-profits understood that "content moderation" and combatting so-called misinformation is, in their words, "censorship." The Committee and Select Subcommittee have obtained October 2021 presentation slides with speaker's notes in which researchers pitch their AI-powered tool to NSF as a way for "policy makers at platforms" to "*externaliz[e] the difficult responsibility of censorship.*"¹²²

The Committee and the Select Subcommittee have obtained nonpublic emails and other documents that reveal an intentional effort by NSF to hide its role in funding these censorship and propaganda tools. From legal scholars like Jonathan Turley to conservative journalists, NSF tracked public criticisms of its work in funding censorship projects. In fact, NSF went so far as to develop a media strategy that considered blacklisting certain American media outlets because they were scrutinizing NSF's funding of censorship and propaganda tools.¹²³

Science Foundation: How NSF Is Funding The Development of Automated Tools to Censor Online Speech "At Scale" and Trying to Cover Up Its Actions (Comm. Print Feb. 2024), <http://tinyurl.com/2532hdp5>.

¹²² *Id.* at 1.

¹²³ *Id.* at 2.

Moreover, NSF provided taxpayer funding to researchers who, in their proposal to NSF, cited a study “of two conservative groups” examining the “online search practices” of Americans who hold “the Bible or the Constitution” as “sacred” and “distrust[] journalists and academics.”¹²⁴ The same study claimed that “everyday” Americans “often focused on reading a wide array of *primary* sources, and performing their own synthesis,” “unlike expert lateral readers” who rely on the “expert consensus.”¹²⁵ These types of comments unveil the worldview of “disinformation” researchers, which is paternalistic at best and contemptuous at worst.

Collectively, these documents begin to shed light on why so many in the Executive Branch, Big Tech, and academia have felt entitled to try to limit public debate on issues of national import. The Executive Branch’s self-righteous motives notwithstanding, stifling speech is not only unconstitutional, but it leads to distorted, poorer policy outcomes because ideas can no longer be fairly contested on their merits.

CONCLUSION

The Court should affirm.

¹²⁴ *Id.* at 25–26.

¹²⁵ *Id.* at 26.

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