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The Subcommittee on Oversight, Investigations, and Accountability

“Eliminating Waste, Fraud, and Abuse at the Department of Homeland Security: Addressing the Biden-Harris Administration’s Failures,”

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Mr. Chairman, Mr. Ranking Member, and Members of the Committee, thank you for the opportunity to testify.

I. Introduction

“Freedom of speech is a principal pillar of a free government: When this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.”¹

— *Benjamin Franklin, U.S. Founding Father*

The answer to so-called “wrong” speech is more speech. The moment that speech is limited, so too is freedom. To give government, or any specific party, the power to determine what is true, and what is not, is to give extraordinary power to that party. It is a slippery slope. This is where tyranny begins.

Free speech has been under assault in recent years. Social media companies like Facebook and the formerly named Twitter have worked with government, or non-profits funded by government, to identify speech that they disagree with and not only remove the content, but also sometimes remove the speaker communicating this content altogether. Unfortunately, the views censored consistently leaned one way.

¹ Jared Sparks, *The Works of Benjamin Franklin*, (Boston: Hilliard, Gray, and Company, 1840), available at https://books.google.com/books?id=qXQUJhWz2rQC&pg=PA285&lpg=PA285&dq=%E2%80%9CFree+dom+of+speech+is+a+principal+pillar+of+a+free+government:+When+this+support+is+taken+away,+the+constitution+of+a+free+society+is+dissolved,%E2%80%9D&source=bl&ots=JTqQGNvLis&sig=Q3og-_EfuwQ0lrjvF4dt0NGMlB&hl=en&sa=X&ved=0ahUKEwi98PHJ6s_NAhXlbZoKHSDbDd04ChDoAQgbMAA#v=onepage&q=%E2%80%9CFreedom%20of%20speech%20is%20a%20principal%20pillar%20of%20a%20free%20government%3A%20When%20this%20support%20is%20taken%20away%2C%20the%20constitution%20of%20a%20free%20society%20is%20dissolved%2C%E2%80%9D&f=false

Social media is the new vehicle for news. 54% of adults say that they at least sometimes get their news from social media.² Understandably, if certain viewpoints are prohibited from having access to a source that such a significant portion of people use to access information, the ability to arrive at the truth is severely suppressed.

Now imagine that social media and the government become ideologically aligned. If government and social media coordinate, or if government coerces social media, government becomes infinitely more powerful.

Unfortunately, this is not imaginary, but in fact it is exactly where we found ourselves for the last four years. In the run-up to the 2020 election, efforts to label, discredit, and ban so-called “dis-, mis-, and mal- information” effectively became official policy at many social media companies and supported by NGOs. But with the Biden Administration, the government’s involvement was formalized. The Administration gave grants to outside organizations to censor speech – something the First Amendment prohibited the administration from directly doing itself.

This should be alarming for all Americans. Anyone should be able to understand that government should never be involved in moderating content of Americans. That violates the very principle that the First Amendment rests upon. By combining forces with platforms in order to moderate content is simply the government doing indirectly what the Constitution prohibits it from doing directly.

II. Biden’s Administration’s Abuses, Including His Department of Homeland Security

Before detailing the efforts made during the Biden years, it is important to first lay the groundwork for how internet censorship has been conducted. Censors use three different categories of speech violations when reviewing social media: dis-, mis-, and mal- information.³ Disinformation is deliberately false speech created to mislead, harm, or manipulate. Misinformation is factually false, but not created or shared with the intent to harm. Malinformation is defined as factually correct speech that has been taken out of or presented without context.⁴

Of course, there may be bad actors who want to intentionally spread false information for various nefarious reasons. But the problem with regulating categories of speech is this: who decides? Regulation of speech first requires someone to determine what is true, and what is not. And, as seen by our weekly

² “Social Media and News Fact Sheet,” Pew Research Center, September 17, 2024, <https://www.pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet/>.

³ Curtis M. Schube and Gary Lawkowski, “Restoring Online Free Speech and Shutting Down the Censorship Industrial Complex,” December 2023, 3, <https://modernizegovernance.org/wp-content/uploads/2023/12/Censorship.pdf>.

⁴ Ibid.

news cycle for years now, the *perception* of what is true and what is not frequently differs, and may evolve over time as the amount and quality of information improves. Even those who live in the same communities may perceive truth differently.

Giving the power to define and fix what is “true” to the government, social media, or anyone else, is dangerous. With regard to government, it inverts the balance of power that the framers of our Constitution intended: that the government serves the people. Government is not meant to pick sides. It is not meant to punish those who disagree simply for disagreeing.

Second, government is ultimately a human institution. It is susceptible to human sins that come with power. And, even if righteously motivated, those humans can make mistakes and be wrong.

It is for these reasons that the overarching premise of this testimony is this: the antidote to mis-, dis-, and mal- information is more speech, not less. Government should provide facts, data, and information to the public in support of policy decisions. But government should never silence, punish or vilify those who disagree with those decisions. Nor should it provide resources to those who do.

A. DHS Censorship Efforts

The Cyber Security and Infrastructure Security Agency (CISA), housed within the DHS, has been actively involved in censorship. The agency, created in 2018, has a mission of “lead[ing] cybersecurity and critical infrastructure security programs, operations, and associated policy.”⁵ “Critical infrastructure,” as defined in 2003 by Homeland Security Presidential Directive 7, meant “information technology; telecommunications; chemical; transportation systems, including mass transit, aviation, maritime, ground/surface, and rail and pipeline systems; emergency services; and postal and shipping.”⁶

These items intuitively align with “infrastructure.” The dictionary definition means “the resources (such as personnel, buildings, or equipment) required for an activity.”⁷ The word itself denotes tangible structures.

⁵ 6 U.S.C. § 652.

⁶ United States House of Representatives, Committee on the Judiciary, *The Weaponization of CISA: How a “Cybersecurity” Agency Colluded with Big Tech and “Disinformation” Partners to censor Americans*, June 26, 2023, 5, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/cisa-staff-report6-26-23.pdf>, (“House Judiciary Report”) citing Homeland Sec. Presidential Directive 7, 2. Pub. Papers 1739 (Dec. 17, 2003).

⁷ “Infrastructure,” Merriam-Webster, accessed March 5, 2025, <https://www.merriam-webster.com/dictionary/infrastructure>.

Yet, beginning in 2021, under the direction of Jen Easterly, the Biden-era CISA interpreted critical infrastructure to include thought. She remarked that “The most critical infrastructure is our *cognitive infrastructure*, so building that resilience to misinformation and disinformation, I think is incredibly important.”⁸

CISA also actively employed people with social media ties to help it in its efforts. One example is Vijaya Gadde, who joined an advisory committee with CISA from Twitter⁹ for, among other things, to “combat[] misinformation and disinformation impacting the security of critical infrastructure.”¹⁰ In June 2021, she then, along with her Committee, drafted an “information ecosystem” report, which called for censoring not only citizens, but the press too, through the monitoring of “social media platforms of all sizes, mainstream media, cable news, hyper partisan media, talk radio and other online resources.”¹¹ The resource she promoted¹² using is the Global Disinformation Index (GDI), an NGO dedicated to “identifying disinformation” with a focus on “at-risk groups” that include “immigrants, to protected classes like women, persecuted minorities, people of colour [sic], the LGBTQ+ community, children, etc.”¹³

In January 2021, soon after President Biden took office, CISA changed its focus. Even one of its task forces, named “Countering Foreign Influence Task Force,” was renamed the “Mis-, Dis- and Malinformation” (MDM) task force.¹⁴ CISA acknowledged that its focus was no longer exclusively on “countering foreign influence,” but also MDM from domestic sources.¹⁵ The topics were to include “the

⁸ Maggie Miller, “Cyber Agency Beefing Up Disinformation, Misinformation Team,” *The Hill*, Nov. 10, 2021, <https://thehill.com/policy/cybersecurity/580990-cyber-agency-beefing-up-disinformationmisinformation-team/>.

⁹ Twitter was already known to actively censor for content-based messaging. See, for example, *O’Handley v. Padilla*, 579 F. Supp. 1163 (N.D. Cal. 2022).

¹⁰ Department of Homeland Security-Cybersecurity & Infrastructure Security Agency, *CISA Names 23 Members to New Cybersecurity Advisory Committee*, December 1, 2021, <https://www.cisa.gov/news-events/news/cisa-names-23-members-new-cybersecurity-advisory-committee>.

¹¹ Jon Levine, “House Republicans Promise to Investigate Exec Vijaya Gadde’s role in Twitter Censorship,” *New York Post*, December 3, 2022, <https://nypost.com/2022/12/03/house-republicans-to-investigate-vijaya-gadde-role-in-twitter-censorship/>.

¹² Charlie McCarthy, “Ex-Twitter Exec Promoted to GDI to DHS Subcommittee,” *Newsmax*, July 12, 2023, <https://www.newsmax.com/newsfront/twitter-exec-gadde/2023/07/12/id/1126847/>.

¹³ Global Disinformation Index, “How We Define Disinformation,” accessed March 6, 2025, <https://www.disinformationindex.org/mission>.

¹⁴ CSC White Paper #6: Countering Disinformation in the United States at 14, U.S. Cybersecurity Solarium Commission (Dec. 2021), <https://www.hsdl.org/c/view?docid=863779> (“The Countering Foreign Influence Task Force, established in 2018 within CISA’s predecessor agency, became in 2021 the Mis-, Dis-, and Malinformation (MDM) team, which ‘work[s] in close coordination with interagency and private sector partners, social media companies, academia, and international partners on a variety of projects to build resilience against malicious information activities.’”).

¹⁵ House Judiciary Report 10.

origins of the Covid-19 pandemic and the efficacy of Covid-19 vaccines, racial justice, U.S. withdrawal from Afghanistan, and the nature of the U.S. support to Ukraine.”¹⁶

This same “MDM”¹⁷ committee also included a member from University of Washington’s Center for an Informed Public, Kate Starbird, another organization devoted to online censorship.¹⁸ It is dedicated to “translate research about misinformation and disinformation into policy.”¹⁹ Alongside Gadde and Starbird were government representatives from CISA.

Perhaps scarier, CISA’s own definition of monitored activity included “malinformation,” which as noted above is “based on fact, but used out of context to mislead, harm, or manipulate.”²⁰ Now, even true information, merely interpreted to the government’s disliking, was objectionable. CISA employed 15 people to dedicate themselves to this effort.²¹

CISA was actively involved in flagging content at the beginning. It flagged election related content as far back as 2018.²² However, once domestic speech was the focus, CISA had other organizations perform its bidding. Starbird emailed the subcommittee the recommendation that “CISA should also engage in content- and narrative-specific mitigation efforts....CISA should support these efforts...through funding outside organizations to assist this work.”²³

B. Federal Grants that Sponsored Censorship

The Center for Internet Security (CIS), a nonprofit, was found to have served as a conduit for election officials to report alleged false or misleading content about the 2020 election.²⁴ CIS’ Elections Infrastructure Sharing and Analysis Center (“EISAC”) was a “collaborative partnership between CIS, CISA, and the Election Infrastructure Subsector Government Coordinating Council.” It was CIS that would

¹⁶ Aaron Kleigman, “DHS Agency Appears to be ‘Burying’ Evidence of Involvement with ‘Domestic Censorship Activities’: Expert,” March 7, 2023, <https://www.foxnews.com/politics/dhs-agency-appears-burying-evidence-involvement-domestic-censorship-activities-expert>.

¹⁷ Standing for Mis-, Dis-, and Mal- Information.

¹⁸ House Judiciary Report 6.

¹⁹ University of Washington-Center for an Informed Public, *About*, accessed March 6, 2025, <https://www.cip.uw.edu/about/>.

²⁰ House Judiciary Report 10, citing CYBERSECURITY AND INFRASTRUCTURE SEC. AGENCY, MIS-, DIS-, AND MALINFORMATION PLANNING AND INCIDENT RESPONSE GUIDE FOR ELECTION OFFICIALS, at 1 (2022), https://www.cisa.gov/sites/default/files/2022-11/mdm-incident-response-guide_508.pdf.

²¹ *Ibid.* 11.

²² *Ibid.* 12.

²³ *Ibid.* 21.

²⁴ *Ibid.* 7.

send the reports to social media platforms.²⁵ So while technically CISA did not report the content, it was in collaboration with those who did. While CISA proudly boasted that it did not engage in switchboarding for the 2022 election cycle, it actually had only transferred the “switchboard function” to EI-ISAC.²⁶ They have received \$107.9 million in DHS grants, which were paid out from 2022-2024.²⁷

This was not the only non-profit/NGO benefitting financially from DHS for carrying out censorship activities at the behest of the government. GDI, the British-based non-profit discussed previously, for example, received \$960,000 for its efforts.²⁸ In 2022, \$7 million went to a DHS media literacy campaign, which was to focus on “misinformation and disinformation.”²⁹ These funds went to what appear to be partisan NGOs, such as The Carter Center, funded by President Jimmy Carter, who received \$99,372 in 2022. The University of Rhode Island received \$701,612 to combat disinformation, conspiracy theories, and propaganda. The Woodrow Wilson International Center for Scholars received \$750,000 to create a game to help students identify disinformation. The Urban Rural Action received \$769,190.³⁰ The DHS grant document provided that “Disinformation, conspiracy theories, and propaganda have become large-scale social problems, shaping the way citizens view facts, define truth, and make decisions.”³¹

FEMA also used grant money to combat alleged disinformation. Under its grants’ descriptions on FEMA’s website, under the category of “Domestic Violent Extremism,” it lists grants for “open-source analysis of misinformation campaigns....and online/social media-based threats.” It also provides grants for “training and awareness programs....to educate the public on misinformation and disinformation campaigns....”³²

²⁵ Ibid.

²⁶ House Judiciary Report 22.

²⁷ *Center for Internet Security, Inc.*, USASpending.gov, accessed March 6, 2025, <https://www.usaspending.gov/recipient/3fe5cc66-9042-5e94-dd7b-53e58329f4bf-R/latest>. While some of this grant was *for* 2019, the payments began in 2022.

²⁸ McCarthy.

²⁹ Corruption Chronicles, “Millions in DHS Terrorism Prevention Grants go to Promote Media Literacy, Combat Disinformation,” Judicial Watch, October 3, 2022, <https://www.judicialwatch.org/millions-in-dhs-prevention-grants/>.

³⁰ Ibid.

³¹ Ibid.

³² Federal Emergency Management Agency, *FY 2024 Homeland Security Grant Program Frequently Asked Questions*, April 16, 2024, <https://www.fema.gov/grants/preparedness/homeland-security/fy-24-faqs>.

C. Blocking Legal Redress for Censorship - Hiding Behind Standing Doctrine

Why would CISA, and other subagencies, send money to outside organizations to monitor online content and report it, rather than do that itself? The answer is because this would blatantly violate the First Amendment. “Content-based laws — those that target speech based on its communicative content—are presumptively unconstitutional...”³³ It is content-based speech if the speech is regulated “because of the topic discussed or the idea or message expressed.”³⁴

The government, therefore, cannot regulate, and suppress, based upon content. But the government knows that, as the law is applied now, private parties can suppress speech. In a case out of California that had very similar facts, where the state of California coordinated with an NGO, who then reported content to social media, the court found that there was no standing because “there is no allegation that the State had any contact with Twitter...nor is there any allegation that the State was involved in any of Twitter’s content moderation decisions.”³⁵ “Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives.”³⁶ That case was dismissed as to Twitter too, likening their rights to a newspaper, giving it a “First Amendment right to moderate content disseminated on their platforms.”³⁷

Thus, a censored party is in a catch-22. If they seek recourse against the government, the government simply points its finger at the social media company. The social media company simply says that it is protected by the ability to moderate content on its private social media business. There is no recourse.

This is exactly what the Department of Justice argued in *Murthy v. Missouri*. In *Murthy*, it was alleged that various agencies, including CISA, “coerced” or “significantly encouraged” social media platforms to moderate content.³⁸ In the government’s brief, which cited *O’Handley* numerous times, it argued that the censored parties lacked standing “because they have not shown any cognizable injuries that are fairly traceable to the government,” noting that the content moderation was performed by private parties.³⁹ The Supreme Court agreed, noting

³³ *Reed v. Town of Gilbert*, 135 S.Ct. 2218, 2226 (2015).

³⁴ *Ibid*.

³⁵ *O’Handley*, 579 F.Supp. 3d at 1189.

³⁶ *Ibid*. 1181, quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982).

³⁷ *Ibid*. 1187, quoting *Netchoice v. Paxton*, 573 F.Supp.3d 1092, 1106 (W.D. Tex. 2021).

³⁸ 144 S.Ct. at 1984.

³⁹ Brief For the Petitioners, 13, *Murthy v. Missouri*, No. 23-411, available at https://www.supremecourt.gov/DocketPDF/23/23-411/293780/20231219192259919_23-411ts%20Murthy.pdf.

that “platforms had independent incentives to moderate content and often exercised their own judgment.”⁴⁰

Thus, without some action by Congress changing this paradigm, agencies can creatively avoid consequences for their censorship efforts.

III. Solutions

Congress could reduce a lot of these problems with some very simple, and commonsense solutions. First, Congress should prohibit any agency from funding non-governmental organizations whose purpose is to suppress political speech, dissent, or narratives that do not align with the government’s chosen message.⁴¹ No government money should ever be used to suppress speech, regardless of whether the actor is governmental or private.

Second, specific to the term “critical infrastructure,” Congress should define the term to prevent there from being any question that the term does not mean “cognitive.” Congress should also order agencies to review their policies to determine whether other statutory interpretations have led to the moderation of content online.

Third, Congress should explicitly grant standing to those who are targeted for internet censorship. As stated previously, the government has hidden behind standing to get away with censorship and the Supreme Court has enabled that to continue. But if Congress were to explicitly create a cause of action for situations where government coordinates with big tech, then citizens would have recourse. Creating personal liability and employment discipline would also deter government employees from acting independent of agency policy.

IV. Conclusion

The efforts of CISA, FEMA, and DHS as a whole, to participate in censorship activity by way of funding the censors is disturbing. It runs contrary to the spirit of the First Amendment, at the very least. But Congress has the power to prevent this behavior in the future. The simple solutions suggested within would disrupt this practice. Congress should do so.

⁴⁰ *Murthy*, 144 S.Ct. at 1987.

⁴¹ Of course, exceptions should be made for legitimate law enforcement purposes. For example, if criminal activity is coordinated over social media platforms, government should be permitted to identify and have removed that content. The same goes for other criminal content, such as child pornography.