

118TH CONGRESS
1ST SESSION

H. R. 4791

To prohibit Federal employees and contractors from directing online platforms to censor any speech that is protected by the First Amendment to the Constitution of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2023

Mr. JORDAN (for himself, Mr. JOHNSON of Louisiana, Mr. MOORE of Alabama, Mrs. SPARTZ, Mr. BISHOP of North Carolina, Mr. ISSA, Mr. VAN DREW, Mr. BIGGS, Mr. NEHLS, Mr. GOODEN of Texas, Mr. STEUBE, Ms. STEFANIK, Mr. MCCLINTOCK, Mr. BUCK, Mr. FITZGERALD, Mr. KILEY, Mr. CLINE, and Mr. GAETZ) introduced the following bill; which was referred to the Committee on Oversight and Accountability, and in addition to the Committees on Homeland Security, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit Federal employees and contractors from directing online platforms to censor any speech that is protected by the First Amendment to the Constitution of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Free Speech Protection
3 Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) COVERED INFORMATION.—The term “cov-
7 ered information” means information relating to—

8 (A) a phone call;

9 (B) any type of digital communication, in-
10 cluding a post on a covered platform, an email,
11 a text, and a direct message;

12 (C) a photo;

13 (D) shopping and commerce history;

14 (E) location data, including a driving route
15 and ride hailing information;

16 (F) an IP address;

17 (G) metadata;

18 (H) search history;

19 (I) the name, age, or demographic infor-
20 mation of a user of a covered platform; and

21 (J) a calendar item.

22 (2) COVERED PLATFORM.—The term “covered
23 platform” means—

24 (A) an interactive computer service, as
25 that term is defined in section 230(f) of the

1 Communications Act of 1934 (47 U.S.C.
2 230(f)); and

3 (B) any platform through which a media
4 organization disseminates information, without
5 regard to whether the organization disseminates
6 that information—

7 (i) through broadcast or print;

8 (ii) online; or

9 (iii) through any other channel.

10 (3) DIRECTOR.—The term “Director” means
11 the Director of the Office of Management and Budget.
12 et.

13 (4) EMPLOYEE.—

14 (A) IN GENERAL.—Except where otherwise
15 expressly provided, the term “employee”—

16 (i) means an employee of an Execu-
17 tive agency; and

18 (ii) includes—

19 (I) an individual, other than an
20 employee of an Executive agency,
21 working under a contract with an Ex-
22 ecutive agency; and

23 (II) the President and the Vice
24 President.

1 (B) RULE OF CONSTRUCTION.—With re-
2 spect to an individual described in subpara-
3 graph (A)(ii)(I), solely for the purposes of this
4 Act, the Executive agency that has entered into
5 the contract under which the employee is work-
6 ing shall be construed to be the Executive agen-
7 cy employing the employee.

8 (5) EXECUTIVE AGENCY.—The term “Executive
9 agency”—

10 (A) has the meaning given the term in sec-
11 tion 105 of title 5, United States Code; and

12 (B) includes the Executive Office of the
13 President.

14 (6) PROVIDER.—The term “provider” means a
15 provider of a covered platform.

16 **SEC. 3. FINDINGS.**

17 Congress finds the following:

18 (1) The First Amendment to the Constitution
19 of the United States guarantees—

20 (A) freedoms concerning religion, expres-
21 sion, assembly, and petition of the government;

22 (B) the freedom of expression by prohib-
23 iting the government from restricting the press
24 or the right of an individual to speak freely;
25 and

1 (C) the right of an individual to assemble
2 peaceably and to petition the government.

3 (2) Freedom of speech is an essential element
4 of liberty that restrains tyranny and empowers indi-
5 viduals.

6 (3) Writing in support of a Bill of Rights,
7 Thomas Jefferson stated that “[t]here are rights
8 which it is useless to surrender to the government,
9 and which yet, governments have always been fond
10 to invade. These are the rights of thinking and pub-
11 lishing our thoughts by speaking or writing.”.

12 (4) The Supreme Court of the United States
13 (referred to in this section as the “Court”) has
14 upheld the right to speak free from governmental in-
15 terference as a fundamental right.

16 (5) The Court, in *Palko v. Connecticut*, 302
17 U.S. 319 (1937), wrote that freedom of thought and
18 speech “is the matrix, the indispensable condition, of
19 nearly every other form of freedom”.

20 (6) In *Turner Broadcasting System, Inc. v.*
21 *Federal Communications Commission*, 512 U.S. 622
22 (1994), the Court stated the following: “At the heart
23 of the First Amendment lies the principle that each
24 person should decide for himself or herself the ideas
25 and beliefs deserving of expression, consideration,

1 and adherence. Our political system and cultural life
2 rest upon this ideal. Government action that stifles
3 speech on account of its message, or that requires
4 the utterance of a particular message favored by the
5 Government, contravenes this essential right . . .
6 [and poses] the inherent risk that Government seeks
7 not to advance a legitimate regulatory goal, but to
8 suppress unpopular ideas or manipulate the public
9 debate through coercion rather than persuasion.
10 These restrictions ‘rais[e] the specter that the Gov-
11 ernment may effectively drive certain ideas or view-
12 points from the marketplace.’ For these reasons, the
13 First Amendment, subject only to narrow and well-
14 understood exceptions, does not countenance govern-
15 ment control over the content of messages expressed
16 by private individuals.”.

17 (7) In *R.A.V. v. City of St. Paul*, 505 U.S. 377
18 (1992), the Court explained that the First Amend-
19 ment to the Constitution of the United States “gen-
20 erally prevents government from proscribing speech,
21 or even expressive conduct, because of disapproval of
22 the ideas expressed. Content-based restrictions are
23 presumptively invalid.”.

24 (8) The case of *Brandenburg v. Ohio*, 395 U.S.
25 444 (1969), stands for the proposition that speech

1 can be suppressed only if the speech is intended, and
2 is likely to produce, imminent lawless action.

3 (9) Justice William Brennan, in his majority
4 opinion for the Court in *Texas v. Johnson*, 491 U.S.
5 397 (1989), asserted that “[i]f there is a bedrock
6 principle underlying the First Amendment, it is that
7 the government may not prohibit the expression of
8 an idea simply because society finds the idea itself
9 offensive or disagreeable.”.

10 (10) Justice Neil Gorsuch, in his majority opin-
11 ion for the Court in *303 Creative LLC v. Elenis*,
12 _____ U.S. _____ (2023), stated, “The First
13 Amendment envisions the United States as a rich
14 and complex place where all persons are free to
15 think and speak as they wish, not as the government
16 demands.”.

17 (11) As evidenced in disclosures from various
18 social media companies, Federal officials in recent
19 years have sought to censor legal speech on plat-
20 forms operated by those companies by using the
21 power of their offices to influence what opinions,
22 views, and other content that users of those plat-
23 forms may disseminate.

24 (12) White House officials and officials of Ex-
25 ecutive agencies sought to silence narratives on so-

1 cial media platforms on issues relating to the
2 COVID–19 pandemic.

3 (13) The Centers for Disease Control and Pre-
4 vention engaged with officials at Facebook and Twit-
5 ter to request that certain posts be flagged as
6 “disinformation” and held regular meetings with
7 those companies to share instances of what govern-
8 ment officials determined to be “misinformation”
9 about the COVID–19 pandemic that had been
10 spread on the platforms operated by those compa-
11 nies.

12 (14) In the midst of the 2020 election cycle, the
13 Federal Bureau of Investigation communicated with
14 high-level technology company executives and sug-
15 gested that a New York Post story regarding the
16 contents of Hunter Biden’s laptop were part of a
17 “hack and leak” operation.

18 (15) On April 27, 2022, the Department of
19 Homeland Security announced the creation of a
20 Disinformation Governance Board (referred to in
21 this paragraph as the “Board”). The Director of the
22 Board, Nina Jankowicz, sought to establish an
23 “analytic exchange” with “industry partners”. In
24 congressional testimony, Secretary of Homeland Se-

1 security Alejandro Mayorkas provided misleading testi-
2 mony about the actions of the Board.

3 (16) Since 2020, 2 nonprofit organizations af-
4 filiated with the Global Disinformation Index (re-
5 ferred to in this paragraph as “GDI”) have received
6 a total of \$330,000 in grants from Federal agencies.
7 GDI maintains a list of “global news publications
8 rated high risk for disinformation”. Major adver-
9 tising companies seek guidance from this purported
10 “nonpartisan” group to determine where advertising
11 money should be spent. Despite the self-proclaimed
12 “nonpartisan” nature of the list, GDI includes a
13 host of reputable media outlets, such as Reason,
14 RealClearPolitics, and the New York Post.

15 **SEC. 4. EMPLOYEE PROHIBITIONS.**

16 (a) PROHIBITIONS.—

17 (1) IN GENERAL.—An employee acting under
18 official authority or influence may not—

19 (A) use any form of communication (with-
20 out regard to whether the communication is
21 visible to members of the public) to direct, co-
22 erce, compel, or encourage a provider to take,
23 suggest or imply that a provider should take, or
24 request that a provider take any action to cen-

1 sor speech that is protected by the Constitution
2 of the United States, including by—

3 (i) removing that speech from the ap-
4 plicable covered platform;

5 (ii) suppressing that speech on the ap-
6 plicable covered platform;

7 (iii) removing or suspending a par-
8 ticular user (or a class of users) from the
9 applicable covered platform or otherwise
10 limiting the access of a particular user (or
11 a class of users) to the covered platform;

12 (iv) labeling that speech as
13 disinformation, misinformation, or false, or
14 by making any similar characterization
15 with respect to the speech; or

16 (v) otherwise blocking, banning, delet-
17 ing, deprioritizing, demonetizing,
18 deboosting, limiting the reach of, or re-
19 stricting access to the speech;

20 (B) direct or encourage a provider to share
21 with an Executive agency covered information
22 containing data or information regarding a par-
23 ticular topic, or a user or group of users on the
24 applicable covered platform, including any cov-

1 ered information shared or stored by users on
2 the covered platform;

3 (C) work, directly or indirectly, with any
4 private or public entity or person to take an ac-
5 tion that is prohibited under subparagraph (A)
6 or (B); or

7 (D) on behalf of the Executive agency em-
8 ploying the employee—

9 (i) enter into a partnership with a
10 provider to monitor any content dissemi-
11 nated on the applicable covered platform;
12 or

13 (ii) solicit, accept, or enter into a con-
14 tract or other agreement (including a no-
15 cost agreement) for free advertising or an-
16 other promotion on a covered platform.

17 (2) EXCEPTION.—Notwithstanding subpara-
18 graph (B) of paragraph (1), the prohibition under
19 that subparagraph shall not apply with respect to an
20 action by an Executive agency or employee pursuant
21 to a warrant that is issued by—

22 (A) a court of the United States of com-
23 petent jurisdiction in accordance with the proce-
24 dures described in rule 41 of the Federal Rules
25 of Criminal Procedure; or

1 (B) a State court of competent jurisdic-
2 tion.

3 (3) EMPLOYEE DISCIPLINE.—

4 (A) IN GENERAL.—Notwithstanding any
5 provision of title 5, United States Code, and
6 subject to subparagraph (B), the head of an
7 Executive agency employing an employee who
8 violates any provision of paragraph (1) (or, in
9 the case of the head of an Executive agency
10 who violates any provision of paragraph (1), the
11 President) shall impose on that employee—

12 (i) disciplinary action consisting of re-
13 moval, reduction in grade, suspension, or
14 debarment from employment with the
15 United States;

16 (ii) a civil penalty in an amount that
17 is not less than \$10,000;

18 (iii) ineligibility for any annuity under
19 chapter 83 or 84 of title 5, United States
20 Code; and

21 (iv) permanent revocation of any ap-
22 plicable security clearance held by the em-
23 ployee.

24 (B) SPECIFIC CONTRACTOR DISCIPLINE.—

25 In the case of an employee described in section

1 2(4)(A)(ii)(I) who violates any provision of
2 paragraph (1), in addition to any discipline that
3 may be applicable under subparagraph (A) of
4 this paragraph, that employee shall be barred
5 from working under any contract with the Fed-
6 eral Government.

7 (b) PRIVATE RIGHT OF ACTION.—

8 (1) IN GENERAL.—A person, the account, con-
9 tent, speech, or other information of which has been
10 affected in violation of this section, may bring a civil
11 action in the United States District Court for the
12 District of Columbia for reasonable attorneys' fees,
13 injunctive relief, and actual damages against—

14 (A) the applicable Executive agency; and

15 (B) the employee of the applicable Execu-
16 tive agency who committed the violation.

17 (2) PRESUMPTION OF LIABILITY.—In a civil ac-
18 tion brought under paragraph (1), there shall be a
19 rebuttable presumption against the applicable Execu-
20 tive agency or employee if the person bringing the
21 action demonstrates that the applicable employee
22 communicated with a provider on a matter relating
23 to—

24 (A) covered information with respect to
25 that person; or

1 (B) a statement made by that person on
2 the applicable covered platform.

3 **SEC. 5. REPORTING REQUIREMENTS.**

4 (a) IN GENERAL.—Not later than 90 days after the
5 date of enactment of this Act, and not less frequently than
6 once every 90 days thereafter, the head of each Executive
7 agency shall submit to the Director and the chair and
8 ranking member of the Committee on Homeland Security
9 and Governmental Affairs of the Senate, the Committee
10 on the Judiciary of the Senate, the Committee on Over-
11 sight and Accountability of the House of Representatives,
12 and the Committee on the Judiciary of the House of Rep-
13 resentatives a report that discloses, for the period covered
14 by the report, each communication between a representa-
15 tive of a provider and an employee of that Executive agen-
16 cy—

17 (1) including any such communication that con-
18 stitutes a violation of section 4(a)(1); and

19 (2) not including any such communication that
20 relates to combating child pornography or exploi-
21 tation, human trafficking, or the illegal transporting
22 or transacting in controlled substances.

23 (b) CONTENTS.—Each report submitted under sub-
24 section (a) shall include, with respect to a communication
25 described in that subsection—

1 (1) the name and professional title of each em-
2 ployee and each representative of a provider engaged
3 in the communication; and

4 (2) if the communication constitutes a violation
5 of section 4(a)(1)—

6 (A) a detailed explanation of the nature of
7 the violation; and

8 (B) the date of the violation.

9 (c) PUBLICATION.—

10 (1) IN GENERAL.—Not later than 5 days after
11 the date on which the Director receives a report
12 under subsection (a), the Director shall—

13 (A) collect the report and assign the report
14 a unique tracking number; and

15 (B) publish on a publicly accessible and
16 searchable website the contents of the report
17 and the tracking number for the report.

18 (2) SUBJECT OF REPORT.—With respect to a
19 report submitted pursuant to subsection (a) of which
20 an individual is a subject, not later than the end of
21 the business day following the business day on which
22 the report is submitted, the Director shall make a
23 reasonable effort to contact any person or entity di-
24 rectly affected by a violation of this Act described in
25 the report to inform that person of the report.

1 **SEC. 6. CYBERSECURITY INFRASTRUCTURE AND SECURITY**
2 **AGENCY REPORT.**

3 Not later than 180 days after the date of enactment
4 of this Act, the Secretary of Homeland Security shall sub-
5 mit to the Director and the chair and ranking member
6 of the Committee on Homeland Security and Govern-
7 mental Affairs of the Senate and the Committee on Over-
8 sight and Accountability of the House of Representatives
9 a report that discloses any action of an employee of the
10 Cybersecurity and Infrastructure Security Agency that—

11 (1) occurred between November 16, 2018, and
12 the date of enactment of this Act; and

13 (2) would have been in violation of section
14 4(a)(1).

15 **SEC. 7. TERMINATION OF DISINFORMATION GOVERNANCE**
16 **BOARD.**

17 (a) **TERMINATION.**—The Disinformation Governance
18 Board established by the Department of Homeland Secu-
19 rity, if in existence on the date of enactment of this Act,
20 is terminated.

21 (b) **PROHIBITION AGAINST FEDERAL FUNDING.**—No
22 Federal funds may be used to establish or support the ac-
23 tivities of any other entity that is substantially similar to
24 the Disinformation Governance Board terminated pursu-
25 ant to subsection (a).

1 **SEC. 8. PROHIBITION ON MISINFORMATION AND**
2 **DISINFORMATION GRANTS.**

3 The head of an Executive agency may not award a
4 grant relating to programming on misinformation or
5 disinformation.

6 **SEC. 9. GRANT TERMS.**

7 (a) **CERTIFICATION.**—The recipient of a grant award-
8 ed by an Executive agency on or after the date of enact-
9 ment of this Act shall certify to the head of the Executive
10 agency that the recipient or a subgrantee of the recipient,
11 during the term of the grant, will not designate any cre-
12 ator of news content, regardless of medium, as a source
13 of misinformation or disinformation.

14 (b) **PUBLICATION.**—Not later than 10 days after the
15 date on which an Executive agency awards a grant, the
16 head of the Executive agency shall publish the certification
17 received under subsection (a) with respect to the grant on
18 Grants.gov, or any successor website.

19 (c) **PENALTY.**—Upon a determination by the head of
20 an Executive agency that a recipient or subgrantee of a
21 recipient has violated the certification of the recipient
22 under subsection (a), the recipient or subgrantee, respec-
23 tively, shall—

24 (1) repay the grant associated with the certifi-
25 cation; and

1 (2) be ineligible to receive a grant from the Ex-
2 ecutive agency.

3 **SEC. 10. PRESIDENTIAL WAR POWERS UNDER THE COMMU-**
4 **NICATIONS ACT OF 1934.**

5 (a) IN GENERAL.—Section 706 of the Communica-
6 tions Act of 1934 (47 U.S.C. 606) is amended—

7 (1) by striking subsections (c) through (g); and
8 (2) by redesignating subsection (h) as sub-
9 section (c).

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
11 Section 309(h) of the Communications Act of 1934 (47
12 U.S.C. 309(h)) is amended—

13 (1) by inserting “and” before “(2)”; and
14 (2) by striking “Act;” and all that follows
15 through the period at the end and inserting the fol-
16 lowing: “Act.”.

17 **SEC. 11. APPLICABILITY OF FOIA.**

18 (a) DEFINITION.—In this section, the term “agency”
19 has the meaning given the term in section 551 of title 5,
20 United States Code.

21 (b) APPLICABILITY.—Notwithstanding any provision
22 of section 552 of title 5, United States Code, any request
23 made to an agency pursuant to that section for records
24 relating to communication between an employee and a rep-
25 resentative of a provider—

1 (1) shall be granted by the agency without re-
2 gard to any exemption under subsection (b) of that
3 section, except the agency may not release any iden-
4 tifying information of a user of a covered platform
5 without express written consent granted by the user
6 to the agency; and

7 (2) may not be granted by the agency if the
8 communication occurred pursuant to a warrant de-
9 scribed in section 4(a)(2).

○