

117TH CONGRESS
2D SESSION

H. R. 9448

To prohibit the Federal Government from taking certain action relating to social media companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 2022

Mr. CLYDE (for himself, Mr. COMER, Mr. CAWTHORN, Mr. WEBER of Texas, Mrs. MILLER of Illinois, Mr. BABIN, Mr. LAMALFA, Mr. BIGGS, Mr. MASSIE, Mr. GAETZ, and Mr. MOORE of Alabama) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Oversight and Reform, and Homeland Security, 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 the Federal Government from taking certain action relating to social media companies, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Speech Defense
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The First Amendment guarantees freedoms
2 concerning religion, expression, assembly, and peti-
3 tion of the government. The First Amendment guar-
4 antees the freedom of expression by prohibiting the
5 government from restricting the press or the right of
6 an individual to speak freely. The First Amendment
7 also guarantees the right of an individual to assem-
8 ble peaceably and to petition the government.

9 (2) The Fourth Amendment states that each in-
10 dividual is secure from unreasonable searches and
11 seizures of property by the government. The Fourth
12 Amendment protects against arbitrary arrests, wire-
13 taps, and other forms of surveillance conducted with-
14 out a search warrant.

15 (3) In July 2021, the White House press sec-
16 retary, Jen Psaki, admitted that the White House
17 was working with social media companies to identify
18 “misinformation.”

19 (4) Specifically, Psaki said, “[W]e’re regularly
20 making sure social media platforms are aware of the
21 latest narratives, dangerous to public health that we
22 and many other Americans are seeing across all of
23 social and traditional media.”. Psaki also said,
24 “[W]e work to engage with them to better under-

1 stand the enforcement of social media platform poli-
2 cies.”.

3 (5) 286 pages of documents produced in July
4 2022 by the Centers for Disease Control and Pre-
5 vention, in response to a Freedom of Information
6 Act request submitted by the America First Legal
7 Foundation, revealed shocking information, includ-
8 ing the following:

9 (A) The Centers for Disease Control and
10 Prevention sent to officials of Twitter a chart
11 of tweets that the Centers for Disease Control
12 and Prevention determined to be “misinforma-
13 tion”.

14 (B) The Centers for Disease Control and
15 Prevention held regular BOLO (Be On The
16 Lookout) meetings in which the Centers for
17 Disease Control and Prevention would share
18 with social media companies, including Twitter
19 and Facebook, what the Centers for Disease
20 Control and Prevention determined to be “mis-
21 information”. In the meetings, the Centers for
22 Disease Control and Prevention would provide
23 slide decks requesting, among other things,
24 “[p]lease do not share outside your trust and
25 safety teams”.

1 (C) The Centers for Disease Control and
2 Prevention recommended to Twitter that infor-
3 mation about the Vaccine Adverse Event Re-
4 porting System be added to tweets.

5 (D) Officials from the Centers for Disease
6 Control and Prevention directly engaged with
7 Facebook, requesting that Facebook flag cer-
8 tain posts as disinformation and ensure that
9 “verifiable information sources” were not
10 blocked because posts on Facebook by State
11 Health Departments were being blocked as vac-
12 cine misinformation.

13 (E) The Centers for Disease Control and
14 Prevention created a COVID–19 Misinforma-
15 tion Reporting Channel for the Centers for Dis-
16 ease Control and Prevention and the Census
17 Bureau to make reports to Facebook and held
18 a “training meeting” about the Misinformation
19 Reporting Channel.

20 (F) \$15,000,000 of Facebook advertising
21 credits were provided to the Centers for Disease
22 Control and Prevention and the Department of
23 Health and Human Services as a “non-mone-
24 tary gift” to promote vaccines, social
25 distancing, travel, and priority communication

1 messages, which may have violated the limita-
2 tion on voluntary services described in section
3 1342 of the Antideficiency Act (31 U.S.C.
4 1342).

5 (6) The Secretary of Homeland Security,
6 Alejandro Mayorkas, failed to provide clear answers
7 to Congress about the so-called “Disinformation
8 Governance Board” and the selection of Nina
9 Jankowicz to lead the Disinformation Governance
10 Board.

11 (7) Damning whistleblower documents revealed
12 by Senators Josh Hawley and Chuck Grassley show
13 the shocking extent to which the Disinformation
14 Governance Board was willing to spy on Americans,
15 without a warrant, and flag posts for social media
16 companies as so-called “disinformation”.

17 **SEC. 3. SENSE OF CONGRESS.**

18 It is the sense of Congress that:

19 (1) The records produced by the Centers for
20 Disease Control and Prevention in response to the
21 Freedom of Information Act request described in
22 section 2(5) reveal the extent to which the Biden
23 Administration is willing to engage in unconstitu-
24 tional and otherwise unlawful activities in total dis-
25 regard of the rights of the American people.

1 (2) The “Disinformation Governance Board”
2 established by the Department of Homeland Secu-
3 rity is unconstitutional and should be terminated im-
4 mediately.

5 (3) The failure of Secretary Mayorkas to pro-
6 vide clear answers about the Disinformation Govern-
7 ance Board is disqualifying, and Secretary Mayorkas
8 should resign immediately.

9 (4) The antidote to “misinformation” and
10 “disinformation” is not censorship but more infor-
11 mation, so the American people can make informed
12 decisions independently.

13 (5) The Federal Government should not be al-
14 lowed to circumvent the Constitution of the United
15 States through intermediaries and third parties to
16 violate the rights of the American people to informa-
17 tion and freedom from intrusion by the Federal Gov-
18 ernment, even if the information is not consistent
19 with the views of officials in the Federal Govern-
20 ment.

21 **SEC. 4. PROHIBITION AGAINST FEDERAL REGULATION OF**
22 **SOCIAL MEDIA COMPANIES.**

23 (a) PROHIBITION AGAINST REGULATION.—

1 (1) PROHIBITION.—Except as provided in para-
2 graph (2), the Federal Government may not direct
3 or encourage a social media company to—

4 (A) remove or suspend a user from the so-
5 cial media platform of the social media com-
6 pany;

7 (B) label content on the social media plat-
8 form of the social media company as informa-
9 tion, disinformation, true, false, or any other
10 similar characterization; or

11 (C) share with the Federal Government
12 data or information about a particular topic or
13 group of users on the social media platform of
14 the social media company, including—

15 (i) the name, age, or demographic of
16 the users; and

17 (ii) the content such users share on
18 the social media platform of the social
19 media company.

20 (2) EXCEPTION.—The prohibitions described in
21 subparagraphs (A) and (C) of paragraph (1) do not
22 apply to an action taken by the Federal Government
23 pursuant to a warrant—

24 (A) issued by a Federal court of competent
25 jurisdiction in accordance with the procedures

1 described in rule 41 of the Federal Rules of
2 Criminal Procedure; or

3 (B) issued by a State court of competent
4 jurisdiction.

5 (b) PROHIBITION AGAINST PUBLIC-PRIVATE PART-
6 NERSHIPS.—

7 (1) PROHIBITION.—The Federal Government
8 may not enter into a public-private partnership with
9 a social media company to monitor any content dis-
10 seminated on the social media platform of the social
11 media company.

12 (2) TERMINATION OF EXISTING PUBLIC-PRI-
13 VATE PARTNERSHIPS.—Any public-private partner-
14 ship described in paragraph (1), if in existence on
15 the date of the enactment of this Act, is terminated.

16 (c) TERMINATION OF DISINFORMATION GOVERN-
17 ANCE BOARD.—

18 (1) TERMINATION.—The Disinformation Gov-
19 ernance Board established by the Department of
20 Homeland Security, if in existence on the date of the
21 enactment of this Act, is terminated.

22 (2) PROHIBITION AGAINST FEDERAL FUND-
23 ING.—Federal funds may not be used to fund any
24 other entity that is substantially similar to the

1 Disinformation Governance Board terminated pursu-
2 ant to paragraph (1).

3 (d) PROHIBITION AGAINST SOLICITING OR ACCEPT-
4 ING FREE SOCIAL MEDIA ADVERTISING.—

5 (1) IN GENERAL.—An agency employee may
6 not solicit or accept, or enter into a contract or
7 other agreement (including a no-cost agreement) for,
8 free advertising or other promotion on the social
9 media platform of a social media company.

10 (2) LIMITATION ON FUNDS.—No Federal funds
11 may be obligated or expended to—

12 (A) enter into a contract or other agree-
13 ment (including a no-cost agreement) for free
14 advertising or other promotion on the social
15 media platform of a social media company; or

16 (B) pay the salary or expenses of any
17 agency employee to solicit or accept free adver-
18 tising or other promotion on the social media
19 platform of a social media company.

20 (e) PRIVATE RIGHT OF ACTION.—An individual
21 whose account, content, or information on the social media
22 platform of a social media company has been affected in
23 violation of this Act may file a civil action against the
24 United States in the United States District Court for the

1 District of Columbia for reasonable attorneys' fees, injunc-
2 tive relief, and actual damages.

3 (f) REPORT.—Not later than 180 days after the date
4 of the enactment of this section, and annually thereafter,
5 the Attorney General, in consultation with the Assistant
6 Attorney General for Civil Rights, shall submit to the ap-
7 propriate congressional committees a report evaluating the
8 compliance by the Federal Government with this Act, in-
9 cluding a description of any action by the head of an agen-
10 cy to—

11 (1) consult with a social media company about
12 labeling content on the social media platform of the
13 social media company as described in subsection
14 (a)(1)(B); or

15 (2) engage in any other prohibited activity
16 under this Act.

17 (g) SEVERABILITY.—If any provision of this Act, or
18 the application of any such provision to any person or cir-
19 cumstance, is held to be unconstitutional, the remainder
20 of this Act, and the application of such provision to any
21 other person or circumstance, shall not be affected by the
22 holding.

23 **SEC. 5. DEFINITIONS.**

24 In this Act:

1 (1) AGENCY.—The term “agency” has the
2 meaning given such term in section 551 of title 5,
3 United States Code.

4 (2) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term “appropriate congressional com-
6 mittees” means—

7 (A) the Committee on Homeland Security,
8 the Committee on the Judiciary, and the Com-
9 mittee on Oversight and Reform of the House
10 of Representatives; and

11 (B) the Committee on Homeland Security
12 and Governmental Affairs and the Committee
13 on the Judiciary of the Senate.

14 (3) SOCIAL MEDIA COMPANY.—The term “social
15 media company” means a company that provides, in
16 or affecting interstate or foreign commerce, a social
17 media platform.

18 (4) SOCIAL MEDIA PLATFORM.—The term “so-
19 cial media platform”—

20 (A) means a website or internet medium
21 that—

22 (i) permits a person to become a reg-
23 istered user, establish an account, or create
24 a profile for the purpose of allowing users

1 to create, share, and view user-generated
2 content through such an account or profile;

3 (ii) primarily serves as a medium for
4 users to interact with content generated by
5 other users of the medium; and

6 (iii) enables one or more users to gen-
7 erate content that can be viewed by other
8 users of the medium; and

9 (B) does not include—

10 (i) any such platform that serves
11 fewer than 100,000 users;

12 (ii) an email program, email distribu-
13 tion lists, multi-person text message
14 groups, or a website that is primarily for
15 the purpose of internet commerce;

16 (iii) a private platform or messaging
17 service used by an entity solely to commu-
18 nicate with others employed by or affiliated
19 with such entity; or

20 (iv) an internet-based platform whose
21 primary purpose is—

22 (I) to allow users to post product
23 reviews, business reviews, travel infor-
24 mation and reviews; or

1 (II) to provide news or entertain-
2 ment content, but that may also in-
3 clude a comment section for users to
4 discuss such news or entertainment
5 content.

6 (5) STATE.—The term “State” means each
7 State of the United States, the District of Columbia,
8 each commonwealth, territory, or possession of the
9 United States, and each federally recognized Indian
10 Tribe.

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