

**CENSORSHIP LAUNDERING: HOW THE U.S. DEPARTMENT OF HOMELAND SECURITY ENABLES THE SILENCING OF DISSENT**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
OVERSIGHT, INVESTIGATIONS,  
AND ACCOUNTABILITY**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

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**CENSORSHIP LAUNDERING: HOW THE U.S.  
DEPARTMENT OF HOMELAND SECURITY  
ENABLES THE SILENCING OF DISSENT**

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**Thursday, May 11, 2023**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON OVERSIGHT, INVESTIGATIONS,  
AND ACCOUNTABILITY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:02 p.m., in room 310, Cannon House Office Building, Hon. Dan Bishop (Chairman of the subcommittee) presiding.

Present: Representatives Bishop of North Carolina, Greene, Ezell, Strong, Crane, Ivey, Thanedar, Ramirez, and Clarke.

Mr. BISHOP. The Committee on Homeland Security, Subcommittee on Oversight, Investigations, and Accountability, will come to order.

Without objection, the Chair is authorized to declare the committee in recess at any point.

The purpose of this hearing is to receive testimony from an expert panel that will outline how the Government-sponsored censorship laundering enterprise operates, the price the American people are paying for the Department of Homeland Security's role in the censorship laundering enterprise, and the legal and Constitutional implications of the Department's role in censoring American voices.

I now recognize myself for an opening statement.

Good afternoon. Welcome to the Subcommittee on Oversight, Investigations, and Accountability's hearing titled "Censorship Laundering: How the U.S. Department of Homeland Security Enables the Silencing of Dissent."

Today's hearing will examine the Department of Homeland Security's role as the nerve center of the Government scheme to censor the on-line voices of millions of Americans, laundering its efforts through a veil of ostensibly independent nongovernmental organizations.

Freedom of speech and open debate are essential features of a free society. Efforts to censor public discourse under the guise of countering misinformation, disinformation, and malinformation threaten this fundamental right.

To clarify, no one would argue or is arguing that hacking voting machines or posting incorrect voting locations to prevent people from voting would ever be acceptable.

This committee recognizes that CISA has a monumental task and supports CISA's critical mission to secure our Federal networks and critical infrastructure.

But as our witnesses today will attest, CISA has deviated from this core mission and risks losing the trust of Congress, the American people, and its vital private-sector partners.

What was initially a limited effort to counter foreign disinformation on elections metastasized into a sprawling effort that directly or indirectly censors Americans' discourse and debate that are the hallmark of our democracy.

In 2018, the Cybersecurity and Infrastructure Security Agency, CISA, was charged with protecting election infrastructure, which CISA decided unilaterally included countering election misinformation from foreign malign actors.

By the 2020 election, mission creep found CISA pivoting away from foreign sources to focus on domestic "misinformation." But the Government knew this would raise huge Constitutional concerns, so it helped create non-Governmental entities, such as the Election Integrity Project, to do for the Government what the Government could not do on its own—and they knew it.

Listen to the head of the EIP.

[Video of Alex Stamos, director, Stanford Internet Observatory, Cyber Policy Center, shown:]

Mr. STAMOS. This is not because CISA didn't care about disinformation, but at the time they lacked both kind-of the funding and the legal authorizations to go do the kinds of work that would be necessary to truly understand how election disinformation was operating.

So because of the feedback and the ideas from this group, we were able to pull together pretty quickly a project between these four different institutions to try to fill the gap of the things that the Government could not do themselves.

[End of video.]

Mr. BISHOP. So Government supported and funded NGO's to try to fill the gap of the things the Government could not do themselves. That is just incredible.

In a matter of a few months, CISA helped set up this censorship infrastructure. CISA acted as a switchboard, to use their words, to flag what they called misinformation and notify social media platforms, who could—independently, they say—decide whether to remove or modify the content.

All told, according to one source, during the 2020 election this scheme resulted in 859 million tweets collected for misinformation analysis, 22 million tweets and retweets categorized as misinformation subject to censorship, 21 Twitter users—Americans, domestic sources—identified and stigmatized as, "the most prominent repeat spreaders of disinformation," all of whom—perhaps coincidentally—were on the political right.

It's not just for elections. The same network, using the same tools, censored dozens of purportedly false COVID-19 narratives, many of which have subsequently been acknowledged as being true.

So where is this headed? What is stopping DHS from overreaching its jurisdiction again to censor more Americans on whatever it deems critical infrastructure? In fact, who can say that it's not being done right now?

We know DHS wants to expand this activity. Just last year, they tried and then retreated under ridicule from creating a Disinformation Governance Board. DHS documents suggest that CISA wants to target issues as wide-ranging as racial justice, the U.S. withdrawal from Afghanistan, the war in Ukraine, and financial markets.

The current CISA director has given us a clue as to what the ultimate goal might be. Listen to her.

[Video of Jen Easterly, director, Cybersecurity and Infrastructure Security Agency, shown:]

Ms. EASTERLY. If you think about it, you know, our mission is critical infrastructure. The most important critical infrastructure—excuse me, critical infrastructure there is, is our cognitive infrastructure. And so building that resilience is, you know, part of the mission set, in my view.

[End of video.]

Mr. BISHOP. George Orwell called and he wants his dystopian future back.

I'm gravely concerned with CISA's efforts in this space. How on Earth was this censorship laundering enterprise allowed to metastasize? Where are the civil liberties protectors within DHS and what are they doing?

It is obvious that there has been an abject failure of leadership within DHS to allow this expanded role of this nature to occur.

This scheme of censorship by proxy represents an attempt by the Government to accomplish, indirectly and in secret, what it would not have the power to do openly. It should give all Americans who care about civil liberties, who care about freedom of speech and association, great pause.

I look forward to the testimony today. I thank you all for joining us.

[The prepared statement of Chairman Bishop follows:]

STATEMENT OF CHAIRMAN DAN BISHOP

MAY 11, 2023

Good afternoon and welcome to the Subcommittee on Oversight, Investigations, and Accountability's hearing titled, "Censorship Laundering: How the U.S. Department of Homeland Security Enables the Silencing of Dissent."

Today's hearing will examine the Department of Homeland Security's role as the nerve center of the Government's scheme to censor the on-line voices of millions of Americans, laundering its efforts through a veil of ostensibly independent non-governmental organizations.

Freedom of speech and open debate are essential features of a free society. Efforts to censor public discourse under the guise of countering misinformation, disinformation, and malinformation (MDM) threaten this fundamental right.

To clarify, no one is arguing that hacking voting machines or posting incorrect voting locations to prevent people from voting is acceptable.

This committee recognizes that CISA has a monumental task in front of them and supports CISA's critical mission to secure our Federal networks and critical infrastructure.

But, as our witnesses today will attest, CISA has deviated from this core mission and risks losing the trust of Congress, the American people, and its vital private-sector partners. What was initially a limited effort to counter foreign disinformation on elections has metastasized into a sprawling effort that directly or indirectly censors Americans' discourse and debate that are the hallmark of our democracy.

## THE RISE OF THE CENSORSHIP LAUNDERING COMPLEX

In 2018, the Cybersecurity and Infrastructure Security Agency (CISA) was charged with protecting election infrastructure, which CISA decided unilaterally included countering election misinformation from foreign malign actors.

By the 2020 elections, mission creep found CISA pivoting away from foreign sources to focus on domestic “misinformation.” But the Government knew this would raise huge Constitutional concerns, so it helped create nongovernmental entities such as the Election Integrity Project (EIP) to do for the Government what the Government could not do on its own.

And they knew it, listen to the head of EIP:

“This is not because CISA didn’t care about disinformation but at the time they lacked both kind-of the funding and the legal authorizations to go do the kinds of work that would be necessary to truly understand how election disinformation was operating. So because of the feedback and the ideas from this group, we were able to pull together pretty quickly a project between these four different institutions [e.g., EIP] to try to fill the gap of the things that the Government could not do themselves.”<sup>1</sup>

So Government supported and funded NGO’s “to try to fill the gap of the things the Government could not do themselves”—That is just incredible.

## SO WHAT DID THEY DO?

In a manner of a few months, CISA helped set up this censorship infrastructure. CISA acted as a “switchboard”—their words—to flag what they called misinformation and notify social media platforms who could “independently” decide whether to remove or modify the content.

All told, during the 2020 election, this scheme resulted in

- 859 million tweets collected for “misinformation” analysis;
- 22 million tweets and retweets categorized as “misinformation” subject to censorship;
- 21 Twitter users—Americans—identified and stigmatized as “the most prominent repeat spreaders [of disinformation]” all of whom were on the political right.

And it’s not just for elections. The same network using the same tools censored dozens of purportedly false COVID–19 narratives, many of which have recently been acknowledged as being true.

## WHERE IS THIS HEADED?

What is stopping DHS from overreaching its jurisdiction again to censor more Americans on whatever it deems “critical infrastructure.” In fact, who can say that it’s not being done right now?

We know DHS wants to expand this activity. Just last year they tried, and thankfully failed, to create a Disinformation Governance Board. DHS documents suggest CISA wants to target issues as wide-ranging as racial justice, the U.S. withdrawal from Afghanistan, and financial markets.

The current CISA director has given us a clue as to what the ultimate goal might be:

“If you think about it, you know our mission is critical infrastructure. The most important critical infrastructure there is, is our cognitive infrastructure. And so building that resilience is you know part of the mission set in my view.”<sup>2</sup>

George Orwell called, he wants his dystopian future back.

## CONCLUSION

I am gravely concerned with CISA’s efforts in this space. How on earth was this censorship-laundry enterprise allowed to metastasize? Where are the civil liberties protectors within DHS?

It is obvious that there has been some abject failure of leadership within DHS to allow this type of behavior to occur.

<sup>1</sup> Alex Stamos, leader of the Election Integrity Partnership (EIP) <https://rumble.com/v1kp8r9-eip-and-cisa-unclear-legal-authorities.html> [At 0:00–0:27].

<sup>2</sup> Fireside chat with Jen Easterly, from The Tortoise Cyber Summit (30 September 2021—confirm) <https://www.youtube.com/watch?v=vox8zYvVQjc&t=33s> [At 18:10–18:27].



This scheme of censorship by proxy represents an attempt by the Government to accomplish indirectly and in secret what it would not have the power to do openly. It should give all Americans who care about civil liberties pause.

I look forward to the testimony today. Thank you all for joining today.

Mr. BISHOP. I now recognize the Ranking Member, the gentleman from Maryland, Mr. Ivey, for his opening statement.

Mr. IVEY. Thank you, Mr. Chairman.

I welcome all the witnesses. Good afternoon.

I'd like to take a moment to express my condolences for the families of the 8 people who were killed and at least 10 who were injured when an SUV deliberately slammed into a crowd at a city bus stop near a shelter for migrants in Brownsville, Texas.

I would also like to acknowledge the tragic act of targeted violence at an outlet mall that left 8 people dead, including 3 children and 7 injured in Allen, Texas.

Texas is 1 of 2 states in the United States that have seen 17 mass shootings so far this year.

I want to say with respect to this hearing, I had initially thought that the focus of the hearing would be on—because it is the Homeland Security Committee—dealing with false information, misinformation, disinformation that is aimed at—frequently by foreign parties, but not solely, we have domestic issues as well—disinformation and false information that is aimed at undermining the United States and creating additional problems for the United States to be used against us.

Some of that is domestic. Certainly, with respect to President Trump and the election denial issues, I thought that that might be the kind of thing we would talk about, since it represented a fundamental threat to democracy. It's still on-going, I guess, as we saw on CNN last night. He's still saying that he won the election.

But from the information standpoint, the lead-up to the election was the President at the time and many of his representatives in the White House and colleagues in the Republican Party saying basically that if he lost the election it would be because it was stolen.

Then we know that, based on the investigation that's been going on in Georgia and other places, that he called the Georgia secretary of state, Mr. Raffensperger, and pressured him to find, quote/unquote, find 11,780 votes so he could claim victory.

We have other variations of that too. We've got even people here in Congress who can't bring themselves to admit that President Trump didn't win the election even though there are courts in those States that have already declared that there was no fraud or theft of the election in those States.

We have on-going variations of that, for example, in Arizona. I guess Ms. Lake is still saying that the election was stolen from her even though that it's clear, according to the officials in the State, that that was not the case.

Also, I thought that we might take a look at other issues of misinformation and disinformation. For example, this committee has heard frequent testimony about the issues of the Sinaloa Cartel using misinformation, disinformation, false information with respect to the United States and with respect to migrants who might want to come to the United States, to trick them into thinking that

they can come here and find work easily or whatever in order to bring them to the country.

Then frequently, my colleagues suggest, that they use them as then mules to bring drugs into the country, and then also might use them—and we're aware of this as well—to trap them in work or sexual prostitution and other activities. But they're using misinformation and disinformation to encourage them to come.

One of the things that DHS has been, I think, trying to figure out how to do correctly and more extensively is to get the message out to those people in those countries that they shouldn't come to the United States; in other words, to fight against the disinformation that the cartel is pushing.

We have examples in the United States. We can go through the active shooter mass killing scenarios at some point if we want. But many of these are lone-wolf individuals who have been hopefully tricked, but maybe that's just the way they viewed it, into believing that they should follow principles of Nazism or white supremacy or other lines like that.

That leads them to become active shooters. Usually they act alone, they're lone wolves. But I think frequently we've seen in the aftermath of these killings the statements they make on-line about their beliefs, and many of them, especially those who have been drawn into terrorism, the information that they've got that persuaded them to become involved in terrorism in the United States. And that we need to try and find ways to address that in the United States so we can quell that effort to turn people against us in our own country.

Then we have, with respect to the January 6 rioters, we've got on-going misinformation and false information about these people being peaceful protesters or tourists even, even though I think it's clear—I think they've got 650 people-plus have been convicted of breaking the law on that day, some as serious as seditious conspiracy.

We've got domestic groups like the Oath Keepers and the Proud Boys, who actually they just were convicted a few days ago and were spewing this kind of misinformation as well. Clearly, it creates a domestic threat to us that I thought we could take a look at from the standpoint of misinformation and disinformation.

Then there was Russia, and with respect to their thinking about it. As they were preparing to invade Ukraine, they tried to do false flag information and information that was misleading, I think in an effort primarily to try and shatter the NATO coalition. And we took steps.

I thought the Biden administration handled that well, especially by doing preemptive releases of information that we gathered, the reconnaissance that we gathered through our foreign assets and assistance and also our domestic agencies, in order to show that what the Russians were putting out was false information. That was critically important because it helped to preserve the NATO coalition in the war against Ukraine.

I thought that those were the kind of things we were going to talk about. I guess, Ms. Miller-Idriss, I guess you are going to talk some about that.

With respect to the censorship issue—which is fine. We can address it, I suppose. Although I'll note that, even though it's an important issue, it's not really primarily within our jurisdiction, which is why the Judiciary Committee already had a hearing on this, I think, dealing with some of the same issues. I guess we'll get into the Twitter Files and the like in a few minutes.

I believe Section 230 was referenced in maybe your testimony, Mr. Turley, with respect to the points that you want to make, and that's fine.

But the censorship issue, which we can talk about, is kind-of tangential to the primary mission of this committee, in my view, which is protecting the homeland. I think that's why, in large part, those issues have been separated out from our jurisdiction here in the Congress and given to the Judiciary Committee and, to some extent, Energy and Commerce, which also had a hearing on this too.

We can talk about those issues. But for the witnesses, to the extent you're up for it, one of the things I will be asking you is how do we try and deal with the sort of issues that I just mentioned.

I think, Mr. Turley, you reference in your testimony—I want to say it was on page 11—that you recognize that there are problems that can come from disinformation. The focus of your testimony and your paper is on censorship, but I do want to hear, though, with respect to dealing with these issues, how do we address those? Some of those could be the same topics that we just raised.

I think Ms. Miller-Idriss will say—and I share this view—that censorship isn't the way to address those national security issues and domestic security issues. We need to try and find a way to address the misinformation and false information, frequently by using counter-pushes on information and the like, which I thought was what the board was set up to do.

We'll talk about Nina Jankowicz at some length later in the hearing today too. But I hope we can talk about those issues as well.

Mr. Turley, I don't know if you testified in the Judiciary Committee previously on this issue—you did. OK. So I appreciate your views on that.

Gentlemen, I know you have strong views about what happened to you personally with respect to that issue.

But I do hope that we'll find a way to talk about the homeland security angles of these issues and what we need to do to protect ourselves and our citizens from false information that is being used against us as a Nation and is creating domestic and foreign relations problems for us.

With that, I yield back.

[The statement of Ranking Member Ivey follows:]

STATEMENT OF RANKING MEMBER GLENN IVEY

MAY 11, 2023

I would like to take a moment to express my deepest condolences for the 8 people who were killed and at least 10 injured when an SUV deliberately slammed into a crowd at a city bus stop near a shelter for migrants in Brownsville, Texas.

I would also like to acknowledge the tragic act of targeted violence at an outlet mall that left 8 people dead, including 3 children and 7 injured in Allen, Texas. Texas is 1 of 2 States in the United States that has seen 17 mass shootings so far this year.

I'm heartened that next week, this subcommittee will be discussing politically-motivated violence since the Texas shooter wore a "right-wing death squad" patch and had potential ties to white supremacist and extremist groups. Such violence can be stoked by misinformation, disinformation, and mal-information (MDM)—the topic of this afternoon's hearing.

I certainly think it is critical that we look at the impact of false information on our country. For example, election denialism pushed our democracy to the brink in 2020. It led former President Trump to falsely claim that he had actually won the Presidential election. And to call election officials like Georgia Secretary of State Brad Raffensperger to pressure him into "find[ing] 11,780 votes" so he could claim victory. President Trump wasted taxpayer dollars on unnecessary recounts.

Worse still, it's an on-going problem nationally, election officials across the country are now planning public education campaigns so the public is harder to fool with these kinds of false election claims. We still have people here in Congress, on this committee no less, who cannot bring themselves to admit that Trump lost fair and square—even though they represent States in which Federal judges (some of them Trump appointees) have expressly found that the elections were not stolen and that the elections were fair and accurate.

Donald Trump also created what I call verdict denialism, which undermines the rule of law. He's already started saying that the jury's verdict that he sexually assaulted Jean Carroll is a "disgrace", and that the \$5 million award is somehow unfair. This is just another one of his endless "witch hunt" claims, even though judges keep rejecting his denials and more indictments are likely to come.

He's not alone. Trump adviser Steve Bannon has been charged for defrauding hundreds of thousands of donors out of \$25 million dollars, under the false pretense that all the monies raised for the "We Build the Wall" campaign would be spent constructing the U.S.-Mexico border wall.

Then there is Alex Jones, who used his media empire to say that the massacre at Sandy Hook was staged by Democrats and that the grieving parents were actually lying. He was told by a jury that he was the one actually telling the lies. But he denies the verdict and ducks paying over \$1 billion in damages claims.

Then there are my colleagues and conservatives who still claim that January 6 rioters were merely tourists. That they were merely peaceful protestors, even though 5 officers died and countless more were injured. More than 1,000 of those supposedly peaceful protestors have been charged, 541 have pleaded guilty, and 14 have been convicted or pleaded guilty of seditious conspiracy (basically an attempt to overthrow the 2020 election). This is the kind of false information that has been rejected by countless judges and juries, but the falsehoods continue to be pushed. Even by my colleagues who know better.

Let's move on to the false and misleading information issued before Russia invaded Ukraine. Russia's goal was to splinter the NATO coalition so it could attack Ukraine with impunity. Fortunately, the United States countered the false information with reconnaissance that showed the world that the Russians were lying, which held the coalition together and gave Ukraine the international support it needed to impose repeated defeats on the supposedly superior Russian military. This is the kind of capability we need to meet the international threats that we face as a Nation.

We also need to bolster our ability to fend off false information from other dangerous actors in the world, including China and the drug cartels who are flooding America with fentanyl. This is the kind of focus that the House Homeland Security Committee should have. Unfortunately, it appears that Republicans do not want to focus on these dangers to our country.

When it comes to protecting our homeland, we all have an interest in ensuring that the public has access to the accurate information they need to keep their communities safe. I am looking forward to hearing from the Democratic witness, Dr. Cynthia Miller-Idriss, who will provide this subcommittee with information on preventative approaches to combatting misinformation, disinformation, and mal-information.

Mr. BISHOP. Thank you, Ranking Member Ivey.

Other Members of the committee are reminded that opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

## STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

MAY 11, 2023

I wholeheartedly agree with Ranking Member Ivey about how critical it is that we examine the impact of false information on our Nation. The spread of misinformation, disinformation, and mal-information—including that tied to extremism—has been growing on-line, particularly on social media, where there are little to no guardrails to stop it. Unfortunately, false information and extremism don't just stay on-line. They have real-world, often dangerous, and even violent consequences.

So, let's discuss how the rampant spread of false information has diminished public confidence in our democratic institutions and why there is an appropriate role for DHS to counter disinformation when carrying out its mission.

Disinformation regarding the 2020 Presidential election outcome led to a violent attack against the Capitol aimed at preventing the peaceful, lawful transfer of power.

Disinformation has similarly undermined the response to the COVID-19 pandemic, frustrated disaster relief efforts, and exacerbated political and social divisions.

When discussing disinformation, Republican Members might want to look inward and at their own colleagues. Those on the other side have spread lies about the integrity of our elections, promoted falsehoods surrounding the COVID pandemic, called climate change a hoax, and perpetuated disinformation about the border smugglers to line their pockets, just to name a few.

Now, instead of using this subcommittee to focus on real challenges facing DHS, they want to discuss the defunct DHS Disinformation Governance Board. Republicans have spent more time discussing the Board than it actually existed.

DHS announced the Disinformation Governance Board in April 2022, paused the Board in May, and dissolved it in August. The idea behind the Board was important—to identify disinformation that threatens the homeland and disseminate accurate information to DHS components and other stakeholders. Indeed, even though the Board was dissolved, the Homeland Security Advisory Council and the Office of Inspector General both underscored the legitimacy and criticality of DHS efforts to address inaccurate information that may undermine its mission of protecting the homeland.

The Department must be able to identify, analyze, and, where necessary, address certain inaccurate information that could undermine public safety and manipulate the American public, while ensuring transparency and protecting civil liberties. It is imperative that the Department continue to exercise its authorities to make timely and accurate information regarding critical homeland security matters available to the public. This responsibility is an outgrowth of DHS's longstanding efforts at enhancing homeland security information sharing stemming from the breakdowns leading to 9/11.

I hope today's hearing will examine solutions to the challenges DHS is encountering and how Congress can provide the resources and tools needed to protect our homeland.

Mr. BISHOP. I'm pleased to have a distinguished panel of witnesses before us today on this very important topic. I ask the witnesses please to stand and raise your right hand.

[Witnesses sworn.]

Mr. BISHOP. Thank you. Please be seated.

Let the record reflect that the witnesses have answered in the affirmative.

I'd now like to formally introduce our witnesses.

Mr. Ben Weingarten is an investigative journalist and columnist.

Dr. Martin Kulldorff is an epidemiologist and biostatistician and a professor of medicine on leave at Harvard University.

Dr. Cynthia Miller-Idriss is a professor at the School of Public Affairs and School of Education at American University.

Mr. Jonathan Turley is the Shapiro Chair for Public Interest Law at George Washington University.

I thank the witnesses for being here today.

The Chair will now recognize each witness for oral statements. Each oral statement will be limited to 5 minutes, but submitted written statements by witnesses will appear in the hearing record in their entirety.

I now recognize Mr. Weingarten for 5 minutes for his opening statement.

**STATEMENT OF BENJAMIN WEINGARTEN, INVESTIGATIVE  
JOURNALIST AND COLUMNIST**

Mr. WEINGARTEN. Chairman Bishop, Ranking Member Ivey, and Members of the subcommittee, thank you for the opportunity to testify.

Government's first charge is to defend the life and limb of the governed. DHS and CISA have vital roles to play in this regard. Because their mission is so critical, we are compelled to scrutinize them in good faith. I offer today's testimony in this spirit.

Our Republic rests on the inalienable right to free speech. That right is under assault by those working to toss their political foes into the digital gulag in defense of our democracy.

Disturbingly, the Federal Government itself appears to be a key culprit. Overwhelming evidence suggests Federal agencies, top White House officials, and lawmakers, colluding with big tech and often Government-coordinated and -funded counterdisinformation groups, have imposed a mass public-private censorship regime on the American people.

This regime has suppressed opinions that diverge from its orthodoxy and even facts inconvenient to its agenda on an ever-growing number of topics, starting with elections, moving to COVID-19, and now covering many other contested issues, all under the guise of national security and public health.

CISA is core to these efforts. CISA has served as a censorship conductor, driving regular meetings between security agencies and social media companies aimed at encouraging the platforms to combat purported mis- and disinformation; that is, to censor disfavored speech, as the Government so deems it and by the Government that regulates them, and they have.

CISA has served as a censorship switchboard, in its words, collecting purported misinformation from Government and non-Government actors in the form of tweets, YouTube videos, and even private Facebook messages, and relaying the flagged content to the platforms to squelch it.

CISA has served as an architect of the broader public-private censorship regime, helping originate, consult, network, and partner with often Government-linked third parties who themselves serve as First Amendment-circumventing, mass surveillance, and mass censorship enterprises.

These systematic speech-stifling efforts, often targeting core political speech and intensifying during elections, seem tantamount to a conspiracy to violate the First Amendment and running domestic election interference. In short, we've unwittingly been paying unelected and unaccountable bureaucrats to silence ourselves.

We're told these speech police are pursuing thought crimes for our own good. Authorities say MDM, mis-, dis-, and malinformation, fuels extremism and, therefore, that it must be

purged. They ask us to ignore the selective and cynical linking of speech they disapprove of to terror, and they allied their mandate to suppress truth, malinformation being based on fact, by CISA's own definition, but the intent or impact of which our betters disapprove of.

Never discussed are questions like: Who determines what constitutes MDM? Should it be the state, which itself has cast as MDM that which it later acknowledged was settled science, or we the people?

If the state justifies speech regulation on national security or public health grounds, what are the standards for determining when wrong-think is sufficiently dangerous to rise to the level of censorship?

If skepticism about mail-in balloting, which Jimmy Carter and *The New York Times* once shared, or skepticism about COVID policies that, if more widely heard, might have saved lives and liberties, amount to violent extremist threats to critical infrastructure, as DHS has indicated, making such speech ripe for suppression, what about anti-cop sentiment or pro-abortion sentiment or radical environmentalist sentiment?

If wrong-think must be verboten, why stop at censoring it on social media? Why not pull every TV network that propagates wrong-think off the air, or review every text in every library and bookstore for wrong-think and burn the offending titles?

Why not censor wrong-thinkers' chats and emails? Why not ban them from the internet and suspend their mail service altogether? While we're at it, why not make it illegal for wrong-thinkers to possess pens and pads too?

Would proponents of the censorship regime trust their worst political foes with these powers? We may believe our fellow Americans hold bad ideas, if not ideas that are plain wrong. But the worst idea of all is that Government should be the arbiter of what we're allowed to speak and hear.

We're a free people capable of judging ideas on their merits, citizens, not subjects. Eviscerating the First Amendment will neither make us more democratic nor more safe. It would be the stuff of tyranny.

Congress has a responsibility to stand athwart history yelling: Stop! With another election season looming, censorship tools likely becoming more powerful, and the censorship regime's ambitions only growing while it stonewalls and scrubs evidence of its past doings, this subcommittee's oversight efforts are most urgent.

This body should endeavor to fully expose DHS's role in censorship, past and present and directly and by proxy, curtail funding, implement legislative remedies, and hold accountable all those who engaged in unconstitutional acts in connection therewith.

Thank you, and I look forward to taking your questions.

[The prepared statement of Mr. Weingarten follows:]

## PREPARED STATEMENT OF BENJAMIN WEINGARTEN

MAY 11, 2023

## I. INTRODUCTION

Chairman Bishop, Ranking Member Ivey, and Members of the subcommittee, thank you for the opportunity to testify today.<sup>1</sup> It is an honor and a privilege to appear before you to discuss the Department of Homeland Security's (DHS) enabling of the silencing of dissent.

Government's first charge is to defend the life and limb of the governed. DHS generally, and the Cybersecurity and Infrastructure Security Agency (CISA) specifically, have vital roles to play in this regard. Given the criticality of their mission to protect the homeland, these agencies must be held to exacting standards. Should they experience mission creep, in so doing wielding powers in ways violative of the Constitutional rights they are meant to secure for all Americans, it compels good faith scrutiny. I offer today's testimony in this spirit.

Our republic rests on the inalienable right to free speech. That right is currently under assault by those working to consign their political foes to the digital gulag in defense of "our democracy." Disturbingly, the Federal Government itself appears to be a key culprit. Overwhelming evidence<sup>2</sup> suggests that Federal agencies—led by, among others, CISA,<sup>3 4</sup>—buoyed by senior Executive branch officials and lawmakers, colluding with Big Tech, and a coterie of often Government-coordinated and Government-funded<sup>5</sup> "counter-disinformation" organizations, have imposed nothing less than a mass public-private censorship<sup>6</sup> regime on the American people.

Authorities, led by the Federal Government, tell us this censorship is for our own good—that we suffer from a pandemic of "mis-, dis-, and mal-information" (MDM);<sup>7</sup> that MDM fuels domestic terrorism;<sup>8 9</sup> and therefore that America must undertake

<sup>1</sup> I appear today on my own behalf, and my views do not necessarily reflect those of the media or other organizations with which I am affiliated.

<sup>2</sup> See generally *Missouri v. Biden* and Special Assistant Attorney General for the Louisiana Department of Justice D. John Sauer's related testimony before the House Judiciary Committee's Weaponization Subcommittee at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf>; *Hines v. Stamos*; and <https://report.foundationforfreedomonline.com/11-9-22.html>.

<sup>3</sup> DHS's Inspector General has reported that the agency's Office of Intelligence and Analysis (I&A) was also involved in counter-disinformation efforts during the 2020 election season. Other DHS components in the last several years have also worked to "counter disinformation originating from foreign and domestic sources." [Emphasis mine] See <https://www.oig.dhs.gov/sites/default/files/assets/2022-08/OIG-22-58-Aug22.pdf#page=7>. These efforts extend to other agencies including the Federal Bureau of Investigations (FBI), Department of Justice (DOJ), and Office of the Director of National Intelligence (ODNI). Senior Executive branch officials and Federal lawmakers have also publicly and privately exerted pressure on social media companies to more aggressively police speech—at times under threat of adverse regulatory or legislative action. See generally *Missouri v. Biden*; <https://www.wsj.com/articles/save-the-constitution-from-big-tech-11610387105>; <https://www.newsweek.com/taxpayer-dollars-must-not-fund-government-led-censorship-regime-opinion-1792828>.

<sup>4</sup> <https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/>.

<sup>5</sup> <https://foundationforfreedomonline.com/bidens-national-science-foundation-has-pumped-nearly-40-million-into-social-media-censorship-grants-and-contracts/>.

<sup>6</sup> I use censorship herein broadly to encompass "terminating speakers' accounts, deplatforming speakers, temporarily suspending accounts, imposing warnings or strikes against accounts to chill future disfavored speech, 'shadow banning' speakers, demonetizing content or speakers, adjusting algorithms to suppress or de-emphasize speakers or messages, deboosting speakers or content, promoting or demoting content, placing warning labels or explanatory notes on content, suppressing content in other users' feeds, promoting negative comments on disfavored content, and requiring additional click-through(s) to access content, and other methods," as plaintiffs in *Hines v. Stamos* define it. See: <https://aflegal.org/wp-content/uploads/2023/05/Doc-1-Complaint.pdf#page=9>.

<sup>7</sup> CISA has defined "Misinformation" as that which "is false, but not created or shared with the intention of causing harm." It has defined "Disinformation" as that which "is deliberately created to mislead, harm, or manipulate a person, social group, organization, or country." It has defined "Malinformation" as that which "is based on fact, but used out of context to mislead, harm, or manipulate." See: [https://www.cisa.gov/sites/default/files/publications/mdm-incident-response-guide\\_508.pdf](https://www.cisa.gov/sites/default/files/publications/mdm-incident-response-guide_508.pdf). Setting aside the question of who is to be the arbiter of truth in CISA's MDM paradigm, on what grounds, and whether and to what extent Government ought to intervene accordingly, the matter of intent baked into these definitions makes MDM a largely subjective concept.

<sup>8</sup> <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-february-07-2022>.

<sup>9</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.189520.268.0.pdf#page=88>.



a whole-of-society effort to combat MDM.<sup>10</sup> For its part, the censorship regime has equated MDM with Wrongthink—dissenting opinions from its orthodoxy, and even facts<sup>11</sup> inconvenient to its agenda, on an ever-growing number of subjective and contentious issues.<sup>12</sup> It conflates, cynically and purposefully, genuine political difference with “extremism,” which it links to danger and violence to justify speech policing.<sup>13</sup> In turn, the regime has surveilled the wide expanse of the digital public square to identify such Wrongthink, and proceeded to suppress it under guise of national security and public health.<sup>14</sup>

Notably, the public-private speech police have targeted, for example, skepticism about the integrity of mass mail-in balloting that used to be shared on a bipartisan basis and was never linked to “domestic violent extremism;”<sup>15</sup> and skepticism about COVID-19 mitigation efforts that often proved not only justified, but which in some instances, if more widely heard and understood, might have saved lives and liberties. Given authorities have asserted, but not necessarily established a clear and compelling nexus between the mere expression of such views and wide-spread or dire threats of violence—and certainly not threats justifying suspension of the First Amendment to quell them, for which this non-lawyer witness finds little precedent; and given that authorities show little equivalent concern or zeal for suppressing a virtually limitless array of other views that can be linked to violence—anti-cop sentiment to attacks on law enforcement and widespread riots,<sup>16</sup> pro-abortion sentiment to attacks on pro-life centers and threats to judges,<sup>17</sup> environmentalist sentiment to attacks on relevant targets by eco-terrorists, etc.—this indicates the speech-muzzling is rooted in politics, not the public good. Understood in this light, the censorship regime’s efforts start to look like they are intended more for its own benefit, than ours.

The regime’s systematic speech-stifling, targeting core political speech and intensifying during recent Federal election cycles, seems tantamount to a conspiracy to violate the First Amendment,<sup>18</sup> viewpoint discrimination, and running domestic election interference—ironically borne of claims of foreign election interference.

In short, Americans have unknowingly and unwittingly been paying unelected and unaccountable bureaucrats to, directly and by proxy, silence ourselves.

CISA has been described as a “nerve center” of these Federal Government-led censorship efforts. It has served as a key facilitator of, and participant in, meetings between Federal authorities and technology companies aimed at encouraging the latter to combat purported misinformation and disinformation. It has served as a clearinghouse for social media content flagged for censorship by third parties—Governmental and non-Governmental—relaying the parties’ censorship requests on to social media companies, and flagged perceived problematic speech for the platforms directly.<sup>19</sup> And it has helped foster the development of the broader public-private censorship architecture through consulting, partnering with, and networking often Government-linked third-party organizations to themselves serve as First Amend-

<sup>10</sup> See for example the Biden administration’s “National Strategy for Countering Domestic Terrorism” at <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

<sup>11</sup> <https://nypost.com/2023/03/17/private-federal-censorship-machine-targeted-true-misinformation/>.

<sup>12</sup> The targeting began largely with a focus on skepticism of the integrity and outcome of the 2020 election; it expanded to encompass derogatory views to those of Federal authorities—including those ultimately proving true and even known to be true contemporaneously—concerning virtually every aspect of COVID-19, and particularly around mitigation efforts and their efficacy; since, Federal officials have shown their intent to expand such targeting to cover “abortion, climate-related speech, ‘gendered disinformation,’ economic policy, the financial services industry, the U.S. withdrawal from Afghanistan, the war in Ukraine, and other[.]” topics, per recent testimony from litigation counsel in *Missouri v. Biden*, Special Assistant Attorney General for the Louisiana Department of Justice D. John Sauer. See: <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf>.

<sup>13</sup> <https://www.newsweek.com/biden-domestic-terror-strategy-codifies-woke-war-wrongthink-opinion-1605341>.

<sup>14</sup> <https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/>.

<sup>15</sup> <https://www.wsj.com/articles/heed-jimmy-carter-on-the-danger-of-mail-in-voting-115865-57667>.

<sup>16</sup> <https://archive.is/SA9H1>.

<sup>17</sup> [https://www.realclearinvestigations.com/articles/2023/01/25/frustrated\\_by\\_police\\_inaction\\_the\\_pro-life\\_movement\\_takes\\_up\\_the\\_work\\_of\\_law\\_enforcement\\_877348.html](https://www.realclearinvestigations.com/articles/2023/01/25/frustrated_by_police_inaction_the_pro-life_movement_takes_up_the_work_of_law_enforcement_877348.html).

<sup>18</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.268.0.pdf#page=7>.

<sup>19</sup> [https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.214.1\\_1.pdf#page=278](https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.214.1_1.pdf#page=278).

ment-circumventing,<sup>20</sup> mass-surveillance and mass-censorship clearinghouses for content flagged by, among others, Government partners.<sup>21</sup> It is perhaps incalculable how many people have been bereft of their right to speak, and listen, by way of these censorship efforts—and at what cost.

Remarkably, we would know little of such efforts were it not for a billionaire’s decision to purchase a social media platform,<sup>22</sup> and then empower a handful of journalists to expose the Government-tied censorship efforts in which it had been implicated;<sup>23</sup> and the legal action of vigilant State attorneys general, who, alongside the silenced, sued implicated Federal authorities, and through discovery began to untangle this twisted censorship web.<sup>24</sup>

As its role in the censorship regime has started to come into focus, CISA has gone about scrubbing evidence of its associated efforts;<sup>25</sup> it has reorganized related entities;<sup>26</sup> and it has stonewalled Congressional investigators<sup>27</sup>—while maintaining that, as the agency’s Director, Jen Easterly put it in recent Congressional testimony, “We don’t censor anything” or “flag anything for social media organizations at all.”<sup>28</sup>

It is hard to fully square this position with what we have learned to date. Congress can and should help resolve this seeming dispute. At minimum, the troubling evidence suggests the national security apparatus’s apparent interest in Americans’ speech warrants oversight, without which, if merited, there can be no accountability and reform. This subcommittee’s engagement, therefore, alongside other committees with relevant jurisdiction,<sup>29</sup> is most welcome and necessary. It is also most urgent, with the 2024 elections looming, censorship tools becoming more sophisticated and powerful.<sup>30</sup> and the censorship regime’s ambitions only growing—alongside its footprint.<sup>31 32 33</sup>

To help inform this subcommittee’s efforts, I will briefly address how CISA came to take on a pivotal role in this censorship regime, detail its associated actions, and offer recommendations for further oversight.

## II. HOW CISA BECAME A “NERVE CENTER” OF AMERICA’S CENSORSHIP REGIME

The plaintiffs in the landmark pending case, *Missouri v. Biden*, allege, and have revealed a trove of information substantiating the claim that there is a “massive, sprawling Federal ‘Censorship Enterprise,’ which includes dozens of Federal officials across at least 11 Federal agencies and components, who communicate with social-media platforms about misinformation, disinformation, and the suppression of private speech on social media—all with the intent and effect of pressuring social-media platforms to censor and suppress private speech that Federal officials disfavor,” in violation of the First Amendment.<sup>34</sup> The plaintiffs identify CISA specifically as a “nerve center” of Federal Government-led speech policing, which began in earnest in the run-up to the 2020 election.<sup>35</sup>

Several key developments help to explain how a DHS sub-agency tasked with preventing cyber attacks and defending physical infrastructure would come to occupy a central role in this censorship effort. Among them are that: (i) Donald Trump won

<sup>20</sup> As Justice Clarence Thomas wrote in his concurring opinion in *Biden v. Knight*, a private entity violates the First Amendment “if the Government coerces or induces it to take action the Government itself would not be permitted to do, such as censor expression of a lawful viewpoint.” Further, “The Government cannot accomplish through threats of adverse Government action what the Constitution prohibits it from doing directly.” See: [https://www.supremecourt.gov/opinions/20pdf/2009197\\_5ie6.pdf#page=11](https://www.supremecourt.gov/opinions/20pdf/2009197_5ie6.pdf#page=11).

<sup>21</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf\\_2](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf_2).

<sup>22</sup> <https://www.wsj.com/articles/elon-musk-completes-twitter-takeover-11666918031>.

<sup>23</sup> <https://www.racket.news/p/capsule-summaries-of-all-twitter>.

<sup>24</sup> See *Missouri v. Biden*.

<sup>25</sup> <https://foundationforfreedomonline.com/flash-report-dhs-quietly-purges-cisa-mis-dis-and-malinformation-website-to-remove-domestic-censorship-references-2/>.

<sup>26</sup> <https://www.racket.news/p/homeland-security-reorganizes-appearing>.

<sup>27</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-04-28-jdj-to-easterly-cisa-subpoena-cover-letter.pdf>.

<sup>28</sup> <https://www.youtube.com/watch?v=JnbWb5ZFN8s&t=4673s>.

<sup>29</sup> <https://judiciary.house.gov/media/press-releases/chairman-jordan-subpoenas-cdc-cisa-and-gec-documents-and-communications>.

<sup>30</sup> <https://foundationforfreedomonline.com/the-national-science-foundations-convergence-accelerator-track-f-is-funding-domestic-censorship-superweapons/>.

<sup>31</sup> <https://twitter.com/shellenberger/status/1651355243722973186?s=20>.

<sup>32</sup> <https://twitter.com/DFRLab/status/1654500447816654849?s=20>.

<sup>33</sup> <https://theintercept.com/2023/05/05/foreign-malign-influence-center-disinformation/>.

<sup>34</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.189-520.268.0.pdf>.

<sup>35</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf\\_2](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf_2).

the 2016 Presidential election. (ii) His victory came to be seen by many as being enabled by (a) Social media and (b) Russian interference on social media aimed at elevating Trump's candidacy. These developments would both escalate to a matter of national security "content moderation"—a euphemism for speech regulation up to and including deplatforming—and fuel the creation of America's mass public-private censorship regime.<sup>36</sup> (iii) In partial response, in January 2017 out-going DHS Secretary Jeh Johnson designated election infrastructure as a critical infrastructure subsector, putting elections ultimately under CISA's purview.<sup>37</sup> <sup>38</sup> (iv) That same year, the State Department established the Global Engagement Center (GEC), tasked with leading Federal efforts to "counter foreign state and non-state propaganda and disinformation efforts aimed at undermining United States national security interests."<sup>39</sup> The FBI also established its Foreign Influence Task Force (FITF) to "identify and counteract malign foreign influence operations targeting the United States," with an explicit emphasis on voting and elections.<sup>40</sup> (v) Following suit, in 2018 DHS stood up a Countering Foreign Influence Task Force comprised of CISA's Election Security Initiative division, and Office of Intelligence and Analysis (I&A) staff. Its purpose, according to a recent DHS Office of Inspector General (OIG) report, was to focus on "election infrastructure disinformation."<sup>41</sup> (vi) On top of this counter-disinformation mobilization, certain Federal lawmakers increasingly chided social media platforms for dithering on "content moderation," including but not exclusively pertaining to foreign adversaries.<sup>42</sup> (vii) Amid the Government's growing counter-disinformation push, a constellation of sometimes state-funded non-Governmental counter-disinformation organizations grew alongside it.<sup>43</sup>

This by no means exhaustive list of developments, combined with two shifts in the posture of key players within the looming censorship regime, would create the conditions for, and leave CISA uniquely positioned to serve as a linchpin of it. First, Federal authorities and their future private-sector partners<sup>44</sup> would train their sights increasingly on domestic Wrongthinkers over foreign adversaries as key disinformation threat actors—or at minimum focus on the content of speech over the country of origin of the speaker. Second, they would begin to treat words critical of institutions as threats to those institutions.

In CISA's case, under its first Director Chris Krebs, who served through the 2020 election cycle, that meant targeting speech dubious of election administration and outcomes as a threat to election infrastructure. Under his successor, infrastructure would come to comprise nearly every significant institution, and now, even our brains. Director Easterly would argue that the American mind—"our cognitive infrastructure"—is "the most critical infrastructure," obligating authorities to "protect" such infrastructure.<sup>45</sup> One way to do so would be through controlling the information space by suppressing disfavored narratives—hence the efforts she would take to "grow and strengthen my misinformation and disinformation team."<sup>46</sup> <sup>47</sup>

<sup>36</sup> For a more comprehensive treatment on both the theory and practice of our censorship regime, see <https://www.tabletmag.com/sections/news/articles/guide-understanding-hoax-century-thirteen-ways-looking-disinformation>.

<sup>37</sup> See <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical> and <https://www.intelligence.senate.gov/sites/default/files/documents/os-jjohnson-032118.pdf>. In the designation, Sec. Johnson describes election infrastructure as "storage facilities, polling places, and centralized vote tabulations locations used to support the election process, and information and communications technology to include voter registration databases, voting machines, and other systems to manage the election process and report and display results on behalf of State and local governments."

<sup>38</sup> <https://www.cisa.gov/topics/election-security>.

<sup>39</sup> <https://www.congress.gov/bills/114th-congress/senate-bill/2943/text>.

<sup>40</sup> <https://www.fbi.gov/news/press-releases/the-fbi-launches-a-combating-foreign-influence-webpage>.

<sup>41</sup> <https://www.oig.dhs.gov/sites/default/files/assets/2022-08/OIG-22-58-Aug22.pdf#page=7>.

<sup>42</sup> See <https://twitter.com/mtaibbi/status/1610372352872783872?s=20> and <https://www.wsj.com/articles/save-the-constitution-from-big-tech-11610387105>.

<sup>43</sup> For an extensive accounting of the theory and practice behind this burgeoning disinformation industrial complex, see <https://www.tabletmag.com/sections/news/articles/guide-understanding-hoax-century-thirteen-ways-looking-disinformation> and <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/shellenberger-testimony.pdf#page=8>.

<sup>44</sup> <https://rumble.com/v1gx8h7-dhss-foreign-to-domestic-disinformation-switcheroo.html>.

<sup>45</sup> <https://thehill.com/policy/cybersecurity/580990-cyber-agency-beefing-up-disinformation-misinformation-team/>.

<sup>46</sup> *Ibid.*

<sup>47</sup> The Biden administration in fact would incorporate this view into its first-of-its-kind National Strategy for Countering Domestic Terrorism, in calling for Government to "accelerat[e] work to contend with an information environment that challenges healthy democratic discourse"

Accordingly, CISA would come to equate first the American public's skeptical tweets on subjects like mail-in voting with attacks on election infrastructure, and later a growing list of dissident views on other issues as threats to relevant infrastructure, and arrogate unto itself the power to neutralize the threats through helping orchestrate a public-private censorship regime.

### III. CISA'S LEADERSHIP IN THE CENSORSHIP REGIME

In fact, CISA would not only help orchestrate widespread censorship efforts, but would actively participate in them. During the 2020 election, and in some instances continuing and expanding thereafter, findings from *Missouri v. Biden* and additional supporting evidence demonstrate that CISA officials contribute to censorship efforts directly and by proxy.

#### *CISA's Direct Censorship-Related Efforts*

Among other direct actions CISA officials have taken with respect to countering MDM, personnel:<sup>48</sup>

- Convene and coordinate meetings between national security and law enforcement agencies, and technology companies—including not just social media platforms Facebook/Meta, Google, Twitter, and Reddit, but also Microsoft, Verizon Media, Pinterest, LinkedIn, and Wikimedia Foundation<sup>49</sup>—aimed at combating purported misinformation and disinformation. These meetings occur more frequently in the run-up to elections.<sup>50</sup> CISA is party to at least five sets of recurring confabs with social media platforms touching on MDM and/or policing of speech on said platforms, separate and apart from the many bilateral such meetings CISA hosts.
- In 2020 meetings with social media companies, CISA and other officials warned of potential foreign “hack-and-leak” operations to come during the election. Major social media companies would proceed to censor the *New York Post's* reporting on the contents of Hunter Biden's laptop—indicating Biden family influence peddling—weeks from the 2020 Presidential election, on false grounds that it was the product of such a “hack-and-leak.”<sup>51</sup>
- It has been reported that Government warnings about “hack-and-leaks” led platforms to change their terms of service in the run-up to the 2020 election to suppress related content. In CISA-convened industry meetings, content moderation policies are a regular topic, and CISA regularly communicates with social media platforms about such policies.<sup>52</sup>
- “Switchboard” reports of purported misinformation and disinformation from State and local authorities, among others, beginning in 2018 and expanding through the 2020 election. Switchboarding entails receiving and then forwarding reports of offending content to social media platforms for censorship. Officials did so without assessing whether the content came from foreign or domestic speakers. Among other notable points about these efforts:
  - CISA staff switchboarded misinformation reports, for example, flagging tweets for censorship alleging election fraud, that ballots were not counted, and mail-in voting was implemented to benefit Democrats. One such report forwarded by a CISA official to Twitter called for “swift removal of . . . posts and continued monitoring of the user's account” because said user had “claimed . . . that mail-in voting is insecure,” and that “conspiracy theories about election fraud are hard to discount.” Twitter reported back to CISA it had taken action pursuant to its policy on Civic Integrity.<sup>53</sup>

as part of its effort to “confront long-term contributors to domestic terrorism.” See: <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf#page=29/>.

<sup>48</sup> Since much of the available record details CISA activities prior to the 2022 midterm elections, it is not entirely clear in some instances whether certain activities persist. This only further underscores the need for Congressional oversight.

<sup>49</sup> See <https://twitter.com/MSFTIssues/status/129362328826298777?s=20>. While much of this testimony focuses on the actions of social media platforms, the inclusion of other technology companies in conversations with U.S. Government agencies about MDM suggests oversight need be done on the actions of these companies in conjunction with the Federal Government as well.

<sup>50</sup> Officials from CISA, DHS's I&A division, ODNI, FITF, and other agencies attend the meetings. See: [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf\\_2#page=218](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf_2#page=218).

<sup>51</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf\\_2#page=274](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf_2#page=274).

<sup>52</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf#page=18>.

<sup>53</sup> [https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.214.1\\_1.pdf#page=267](https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.214.1_1.pdf#page=267).

- Staffers also switchboarded misinformation reports flagging obviously satirical social media accounts for censorship, including one Colorado Twitter account with 56 followers “UnOfficialCOgov.” The user’s biographical information read: “dm us your weed store location (hoes be mad, but this is a parody account).”<sup>54</sup>
- A CISA switchboard tracking spreadsheet from 2020 suggests that in certain instances, officials from both CISA and DHS I&A were the originators of flagged content ultimately conveyed by CISA staff to social media companies for review.<sup>55</sup>
- Switchboarding efforts at times would even touch on private postings on social media platforms.<sup>56</sup>
- Social media companies would often report that they would “escalate” CISA-switchboarded requests and revert to CISA once addressed.<sup>57</sup>
- Brief state officials about content CISA considers misinformation, which those officials often then flag for social media platforms for censorship; fact-check “misinformation” reports for social media platforms;<sup>58</sup> and publish “debunks of social-media narratives, knowing . . . platforms will use this information to censor,” per litigation counsel in *Missouri v. Biden*.<sup>59</sup>
- Coordinate with public and private-sector partners, including social media companies “on a variety of projects to build resilience against malicious information activities,” as well as supporting “private-sector partners’ COVID-19 response efforts via regular reporting and analysis of key pandemic-related MDM trends.”<sup>60</sup> This is part and parcel of what CISA’s Cybersecurity Advisory Committee has described as a “burgeoning MDM effort” that includes “directly engaging with social media companies to flag MDM.”<sup>61</sup>

The coordination referenced above comes from a bulletin CISA posted on its website detailing the work of its MDM team—the successor to its Countering Foreign Influence Task Force. The creation of that team formally codified the transition that had already taken place during the 2020 election cycle, from a focus on foreign to domestic speech.<sup>62</sup> In February 2023, CISA pulled down that site, redirecting viewers to a “Foreign Influence Operations and Disinformation” page that makes no mention of domestic actors. One can only speculate as to why CISA made this change.

CISA would also expand its focus to encompass not just MDM around elections, or COVID-19 vaccine efficacy under banner of defending public health infrastructure,<sup>63</sup> but “all types of disinformation, to be responsive to current events,” according to an official quoted in an August 2022 DHS OIG Report.<sup>64</sup> Evidence collected in *Missouri v. Biden* indicates CISA has been involved in combatting “misinformation” with respect to the on-going Russo-Ukrainian War,<sup>65</sup> and on an initiative in conjunction with the Treasury Department to address MDM regarding the financial services industry.<sup>66</sup>

In a January 2023 deposition taken in connection with *Missouri v. Biden*, the chief of CISA’s MDM Team, Brian Scully, asserted that his team had a mandate that was almost limitless, in pursuing MDM that could affect “critical infrastructure in a number of ways,” including causing “reputational risk [that] could come about

<sup>54</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.209.15.pdf#page=11>.

<sup>55</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.214.35.pdf>.

<sup>56</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf\\_2#page=271](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf_2#page=271).

<sup>57</sup> *Ibid.*

<sup>58</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf\\_2#page=269](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf_2#page=269).

<sup>59</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf#page=19>.

<sup>60</sup> <https://web.archive.org/web/20211231181148/https://www.cisa.gov/mdm>.

<sup>61</sup> <https://s3.documentcloud.org/documents/23175380/dhs-cybersecurity-disinformation-meeting-minutes.pdf>.

<sup>62</sup> <https://web.archive.org/web/20211231181148/https://www.cisa.gov/mdm>.

<sup>63</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf#page=25>.

<sup>64</sup> <https://www.oig.dhs.gov/sites/default/files/assets/2022-08/OIG-22-58-Aug22.pdf#page=9>.

<sup>65</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf\\_2#page=280](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf_2#page=280).

<sup>66</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf\\_2#page=283](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.-pdf?sfvrsn=739f8cbf_2#page=283).

if the integrity or the public confidence in a particular sector was critical to that sector's functioning."<sup>67</sup>

It is also possible CISA's efforts have extended beyond social media companies, and perhaps the other technology companies with which it and other Federal agencies have regularly met in connection with combatting MDM. A June 2022 report from CISA's Cybersecurity Advisory Committee Subcommittee on Protecting Critical Infrastructure from Misinformation and Disinformation ("MDM subcommittee") suggests that CISA should approach the mis- and dis-information problem "with the entire information ecosystem in view." This means focusing not just on social media platforms, but "mainstream media, cable news, hyper-partisan media, talk radio, and other on-line resources."<sup>68</sup> CISA would, as with its MDM webpage, scrap its MDM subcommittee, as first publicized in a late 2022 summary of an advisory board meeting.<sup>69</sup>

As significant as CISA's MDM efforts have been, DHS's counter-disinformation operations spread far beyond the sub-agency. According to the aforementioned August 2022 DHS OIG report, numerous components inside DHS have in recent years been targeting MDM foreign and domestic. What's more, the report details that DHS planned to target "inaccurate information" on myriad topics including "the origins of the COVID-19 pandemic and the efficacy of COVID-19 vaccines, racial justice, U.S. withdrawal from Afghanistan, and the nature of U.S. support to Ukraine."<sup>70</sup>

Corroborating the OIG Report, one document revealed in connection with Congressional inquiries into DHS's stunted Disinformation Governance Board (DGB) indicated that myriad "DHS components are already engaged in countering disinformation," alongside "excellent work being done by interagency partners, the private sector, and academia—particularly concerning identifying and analyzing disinformation," which "DHS should leverage."<sup>71</sup> A subsequent memorandum would indicate that the DGB would "support and coordinate . . . MDM work with other departments and agencies, the private sector, and non-Government actors." The purpose of creating the DGB, in other words, was not so much to establish a "Ministry of Truth," but, as plaintiffs in *Missouri v. Biden* aptly describe it, "to impose a bureaucratic structure on the enormous censorship activities already occurring involving dozens of Federal officials and many Federal agencies"—that is, to oversee many such ministries.<sup>72</sup>

#### *CISA's Proxy Censorship-Related Efforts*

Not all of these ministries are to be found within the Federal Government. CISA officials coordinate and partner with non-Governmental entities who both mass-surveil social media content for purported MDM, and serve as clearinghouses for receipt of flagged content, which they then relay to social media platforms for censorship—in an apparent bid to circumvent the First Amendment via cut-out.

CISA has primarily partnered with three non-Governmental entities, beginning during the 2020 election cycle, to facilitate the flow of problematic content for potential censorship to social media platforms: The Center for Internet Security (CIS) and its CISA-funded Election Infrastructure—Information Sharing & Analysis Center (EI-ISAC); and two consortia: The Election Integrity Partnership (EIP), and a successor organization folding in additional partners, the Virality Project (VP).

CIS is a nonprofit that collects and forwards reports of disinformation from State and local government officials to social media platforms, and which continued to do so during the 2022 election cycle.<sup>73</sup> As CISA's switchboarding activities became too labor-intensive for it, CISA would direct election officials to report content to be flagged for social media platforms to CIS. CISA would also help connect CIS, and various election official groups, with EIP.

<sup>67</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf\\_2#page=282](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact.pdf?sfvrsn=739f8cbf_2#page=282).

<sup>68</sup> [https://www.cisa.gov/sites/default/files/publications/June%202022%20CSAC%20Recommendations%20%E2%80%93%20MDM\\_0.pdf#page=2](https://www.cisa.gov/sites/default/files/publications/June%202022%20CSAC%20Recommendations%20%E2%80%93%20MDM_0.pdf#page=2).

<sup>69</sup> [https://www.racket.news/p/homeland-security-reorganizes-appearing?utm\\_source=post-email-title&publication\\_id=1042&post\\_id=110070633&isFreemail=true&utm\\_medium=email](https://www.racket.news/p/homeland-security-reorganizes-appearing?utm_source=post-email-title&publication_id=1042&post_id=110070633&isFreemail=true&utm_medium=email).

<sup>70</sup> <https://theintercept.com/2022/10/31/social-media-disinformation-dhs/>.

<sup>71</sup> <https://www.hawley.senate.gov/sites/default/files/2022-06/2022-06-07%20DOCS%20ONLY%20CEG%20JH%20to%20DHS%20%28Disinformation%20Governance%20Board-%29%5B1%5D.pdf>.

<sup>72</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.268.0.pdf#page=106>.

<sup>73</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf#page=19>.

EIP is a non-Governmental “anti-disinformation” consortium that was conceived by and created in consultation with CISA officials in the run-up to the 2020 election. Its stated purpose was to fill the “critical gap” created by the fact no Federal agency “has a focus on, or authority regarding, election misinformation originating from domestic sources within the United States.”<sup>74</sup> That lack of “authority” may have included both an inability for Government agencies, to access social media platform data—as EIP did—as well as “very real First Amendment questions” regarding EIP’s work, as a key player in the consortium, Renee DiResta, would acknowledge.<sup>75</sup>

EIP’s four partner organizations, “leading institutions focused on understanding misinformation and disinformation in the social media landscape,”<sup>76</sup> sharing pervasive ties to the Federal Government, include the:

- *Stanford Internet Observatory (SIO)*.—Founded in June 2019 by former Facebook chief security officer Alex Stamos, several of SIO’s students came up with the idea for EIP while serving as CISA interns.<sup>77</sup> Stamos serves on CISA’s Cybersecurity Advisory Committee. He and Chris Krebs, CISA’s director through the 2020 election, formed a consultancy in late 2020 called the Krebs/Stamos Group. CISA’s top election official through 2020, Matt Masterson, who was involved in the establishment of EIP, joined SIO as a fellow after leaving CISA in January 2021. SIO’s Research Manager, the aforementioned DiResta, served as a Subject-Matter Expert for CISA’s Cybersecurity Advisory Committee’s since-abolished MDM subcommittee.<sup>78</sup>
- *University of Washington’s Center for an Informed Public*.—Founded in December 2019, its cofounder Kate Starbird served as the chairperson of the since-abolished MDM subcommittee—serving incidentally alongside former Twitter executive Vijaya Gadde, a leader of its censorship efforts prior to her ouster under new owner Elon Musk.<sup>79</sup> UW’s Center, along with SIO, would share in a \$3 million National Science Foundation grant awarded in August 2021 to “study ways to apply collaborative, rapid-response research to mitigate on-line disinformation.”<sup>80</sup>
- *The Atlantic Council’s Digital Forensics Research Lab*.—Founded in 2016, it receives substantial taxpayer funding from a variety of agencies.<sup>81</sup>
- *Graphika*.—Founded in 2013, it reportedly has historically received funding from DARPA and the Defense Department’s Minerva Initiative.<sup>82</sup>

Collectively, these groups sought to “fill the gap” by creating a mass-surveillance and censorship-flagging platform aimed at “content intended to suppress voting, reduce participation, confuse voters as to election processes, or delegitimize election results without evidence.”<sup>83</sup> In practice, this meant targeting for suppression speech dubious of an unprecedented election given the sweeping, pandemic-driven changes made to the voting system that cycle, whereby the razor-thin final results in key States did not materialize for days.<sup>84</sup> EIP did so in part through lobbying social media platforms to adopt more aggressive content moderation policies around election rhetoric, and flagging relevant content including entire narratives via “tickets” for suppression by social media platforms under their often EIP-influenced terms. EIP analysts—some 120 of whom worked on the project in the waning days of the 2020 election—both identified content for flagging via tickets, and incorporated re-

<sup>74</sup> <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf#page=9>.

<sup>75</sup> [https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact-pdf?sfvrsn=739f8cbf\\_2#page=265](https://ago.mo.gov/docs/default-source/press-releases/212-3-proposed-findings-of-fact-pdf?sfvrsn=739f8cbf_2#page=265).

<sup>76</sup> <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf#page=20>.

<sup>77</sup> *Ibid.*

<sup>78</sup> [https://www.racket.news/p/homeland-security-reorganizes-appearing?r=5mz1&utm\\_campaign=post&utm\\_medium=web](https://www.racket.news/p/homeland-security-reorganizes-appearing?r=5mz1&utm_campaign=post&utm_medium=web).

<sup>79</sup> <https://www.politico.com/news/magazine/2020/10/28/twitter-vijaya-gadde-free-speech-policies-technology-social-media-429221>.

<sup>80</sup> <https://www.cip.uw.edu/2021/08/15/national-science-foundation-uw-cip-misinformation-rapid-response-research/>.

<sup>81</sup> <https://www.google.com/url?q=https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/&source=gmail&ust=1683295935068000&usg=AOvVaw0KqPf31iTuGK3TncCZZwjc>.

<sup>82</sup> <https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/>.

<sup>83</sup> <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf#page=23>.

<sup>84</sup> Former Trump State Department Cyber official Mike Benz would observe that CISA, “tasked with election security,” via EIP “also gained the power to censor any questions about election security.” See: <https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/>.

quests from “trusted external stakeholders.”<sup>85</sup> It lists three such Governmental stakeholders: CISA,<sup>86</sup> CISA-backed EI-ISAC, and the State Department’s GEC. EIP in fact connected “Government partners” with “platform partners”—understood to be the social media companies—to enable the former to debunk flagged content directly for the latter.<sup>87</sup>

Some raw numbers concerning EIP’s efforts during the 2020 election cycle alone illustrate the size and scope of its effort. EIP:

- Collected 859 million tweets for “misinformation” analysis.
- Flagged for Twitter tweets shared 22 million times ultimately labeled “misinformation,” a disproportionate percentage of which were dinged for “delegitimization,”<sup>88</sup> which Twitter adopted as a standard for suppression.<sup>89</sup>
- Influenced platforms to take action on 35 percent of all URLs flagged—21 percent slapped with a warning label where content remained visible, 13 percent removed, and 1 percent “soft-blocked” with a warning one would have to bypass to view the content.<sup>90</sup>
- Pushed platforms to target dozens of “misinformation narratives” for throttling.
- Impacted hundreds of millions of posts and videos across major social media platforms via the terms of service policy changes for which EIP lobbied. EIP members openly boasted that technology companies would never have modified their terms accordingly without EIP’s insistence and “huge regulatory pressure” from Government.<sup>91</sup>

Further demonstrating the interconnection between EIP and CISA, the group featured former CISA Director Chris Krebs at the launch seminar associated with the report in which it divulged some of these figures.

Of note, EIP coded less than 1 percent of its tickets for having an element of foreign interference. EIP characterized all 21 of the “most prominent repeat spreaders” of election integrity “misinformation” on Twitter as “conservative or right-wing.”<sup>92</sup> Of the civil society groups that submitted tickets to the EIP, many had a left-leaning bent—including the DNC itself.<sup>93</sup> None appear to have been right-leaning.

Mike Benz, a former State Department Cyber official during the Trump administration, has found that many principals in EIP leadership were heavily invested in the idea that Russia interfered in the 2016 Presidential election, to President Trump’s benefit, and that they or the organizations with which they were affiliated were critical generally of Trump and Western populist movements. In an associated report, he concludes that given the backgrounds of EIP’s principals, when originally conceived in June 2020 it should have been understood to be “a partisan, powerfully connected political network, panicked that Americans might push back on the use of mail-in ballots months in the future,” convened “to stop that pushback from happening by unleashing censorship of the internet on a scale never before seen in American history.”<sup>94</sup>

Though the EIP’s efforts would re-emerge in the 2022 election, in the interim it also launched a successor effort called the Virality Project, targeting MDM spreading in relation to COVID-19, such as “narratives that questioned the safety, distribution, and effectiveness of the vaccines.” Its leaders, including Stamos communicated with CISA officials about their efforts, as they did during the original EIP operation. DiResta would serve as principal executive editor of its final April 2022 report, and contributors included herself alongside Kate Starbird and Matt

<sup>85</sup> <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2023-03/Sauer-Testimony.pdf#page=19>.

<sup>86</sup> It is worth noting that CISA and EIP’s relationship went both ways. At times, evidence suggests, CISA would forward reports of misinformation received directly from EIP on to social media platforms for their review.

<sup>87</sup> <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.-189520.209.2.pdf#page=47>.

<sup>88</sup> EIP cites as an example of delegitimization “Claims of fraud or malfeasance with inaccurate or missing evidence.” See: <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.189520.209.2.pdf#page=25>.

<sup>89</sup> Alex Stamos has challenged this characterization in terms of tweets EIP ensnared. The competing arguments can be seen here: <https://twitter.com/MikeBenzCyber/status/1644110224150736897?s=20>.

<sup>90</sup> <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf#page=57>.

<sup>91</sup> <https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/>.

<sup>92</sup> <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf#page=205>.

<sup>93</sup> <https://oversight.house.gov/wp-content/uploads/2022/11/DHS-Censorship-Letter-11022022.pdf/>.

<sup>94</sup> <https://www.google.com/url?q=https://foundationforfreedomonline.com/dhs-censorship-agency-had-strange-first-mission-banning-speech-that-casts-doubt-on-red-mirage-blue-shift-election-events/&source=gmail&ust=1683295935068000&usg=AOvVaw0KqPj31iTuGK3TncCZZwjc>.



Masterson. Several current and former CISA interns are also listed as “researchers and analysts” who monitored social media platforms in connection with the project.

The VP’s stakeholders included Federal health agencies, working alongside social media platforms to combat, for example, vaccine-related “misinformation.” All told, the Virality Project tracked content with 6.7 million engagements on social media per week—or over 200 million during the 7 months over which the project transpired.

Much of what the VP cast as “misinformation” included true facts to the extent they portrayed narratives with which the project’s leaders—and certainly its Government partners—disapproved of, from reports of vaccine injuries to discussion of “breakthrough” cases and “natural immunity,” to discussion of potential then-hypothetical vaccine mandates. VP particularly targeted the speech of “health freedom” groups, and like EIP, overwhelmingly targeted right-leaning figures.

#### IV. CONCLUSION

We may find much of the speech that social media platforms have suppressed in recent years under Government coercion, cajoling, and/or collusion to be wrong-headed or objectionable. But infinitely more wrongheaded, objectionable, and indeed dangerous for a free society than the proliferation of “bad ideas” is perhaps the worst idea of all: That Government should be the arbiter of what we are allowed to think and speak.

The notion that to ensure the health and safety of the country, the public and private sectors must work together to silence those who express unauthorized opinions, that such opinions are to be treated as threats to an infinitely flexible definition of “critical infrastructure,” and those who hold them as actual or would-be domestic terrorists, is the stuff of tyranny.

That the state itself has treated as dangerous MDM that which ultimately often has become settled science—indicating Government officials and their partners en masse should have been deplatformed themselves by their own standards—illustrates the folly of this project.

To turn over to the state and its private sector ancillaries a monopoly on narrative would ultimately give these partners a monopoly on power, reducing us from citizens with agency to hapless subjects.

We are a free people capable of evaluating information and ideas for ourselves to discern fact from fiction, and separate good ideas from bad.

Historically, we would have held in utter contempt authorities who would suggest we are incapable of thinking for ourselves, and that for our own benefit, since the authorities know best, that they will do the thinking for us—while silencing those who dare dissent.

No American should stand for it today.

If, as the foregoing suggests, CISA, and perhaps other DHS components, have played an integral role in imposing a mass public-private censorship regime on the American people, it is incumbent upon this and other relevant Congressional bodies to get to the bottom of it.

This subcommittee can help develop a comprehensive picture of the “public” side of the regime within DHS by using its oversight powers to, over a time line beginning from CISA’s inception in November 2018, pursue the following questions:

- Which offices and personnel within CISA<sup>95</sup> are or have been engaged in social media censorship efforts, or related efforts to impact any other part of the “information ecosystem” as CISA has defined it?
- Which other DHS agencies, and/or Federal, State, county, and local government entities have CISA coordinated with in connection with social media censorship efforts, or related efforts to impact any other part of the “information ecosystem” as CISA has defined it?
- Which entities within DHS, independent of CISA, if any,<sup>96</sup> engaged in social media censorship efforts, or related efforts to impact any other part of the “information ecosystem” as CISA has defined it?

<sup>95</sup> Plaintiffs in *Missouri v. Biden* assert that “On information and belief, CISA maintains a number of task forces, working groups, and similar organizations as joint Government-private enterprises, which provide avenues for Government officials to push for censorship of disfavored viewpoints and speakers online.” See: <https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.189520.268.0.pdf#page=87>.

<sup>96</sup> An August 10, 2022 DHS Office of Inspector General report indicates that several other DHS components have engaged over “the last 3 years to counter disinformation originating from foreign and domestic sources.” [Emphasis mine] See <https://www.oig.dhs.gov/sites/default/files/assets/2022-08/OIG-22-58-Aug22.pdf#page=10>.

- What specific policies and practices has each DHS entity developed and undertaken in connection with each respective censorship effort?
- Is there a comprehensive list of all communications, technology, media, educational, non-profit, and any other non-governmental agency with which DHS broadly engaged in fostering its censorship efforts?
- What level of Federal funding has each DHS entity received to carry out such censorship efforts?
- What level of Federal funding has each private-sector entity with which DHS interacted in its censorship efforts received?
- What have been the qualitative and quantitative impacts of such censorship efforts during periods leading up to and immediately following the 2020 and 2022 elections?
- What censorship efforts are CISA and/or any other DHS agencies engaging in at present, and/or planning for in anticipation of the 2024 elections?

Only with full transparency can Congress and the American people understand the full size and scope of this portion of the censorship regime and determine what if anything Congress ought to do about it—be it in terms of withholding funding, curtailing operations, and/or holding malefactors to account.

If indeed we have had a mass public-private censorship regime foisted upon us, defunding, dismantling, and deterring Government officials from participating in, or funding such an apparatus ever again, would seem to be of the utmost importance.

Congress should be commended for efforts already under way to prevent such behavior.<sup>97</sup> I hope it will do more.

Once again, thank you for the honor of appearing before you to discuss these important issues, and I would be happy to answer any questions from the committee.

Mr. BISHOP. Thank you, Mr. Weingarten.

I now recognize Dr. Kulldorff for 5 minutes for his opening statement.

#### **STATEMENT OF MARTIN KULLDORFF, PH.D., EPIDEMIOLOGIST AND BIOSTATISTICIAN**

Mr. KULLDORFF. Thank you all for having me here.

Censorship can be deadly. Freedom of speech is always important, but it is especially important during a national emergency, such as a pandemic. No authority is infallible. When a new virus emerges, it is impossible for politicians and public health officials to get everything right without listening to discussions between a wide cast of scientists with different ideas and expertise and thoughts.

I'm an epidemiologist, a biostatistician, and a professor of medicine at Harvard on leave. For over two decades I've done research on the detection and monitoring of infectious disease outbreaks and on the safety evaluation of vaccines and drugs. I helped build the Nation's disease surveillance systems. Despite this, I was censored and blacklisted during the pandemic by Twitter, LinkedIn, YouTube, and Facebook.

In early 2020, we already knew from Wuhan data that there is more than a thousandfold difference in COVID mortality between the old and the young. During the pandemic, we failed to adequately protect older Americans while school closures and other lockdown measures generated enormous collateral public health damage that we now must live with, and die from, for years to come.

During the spring of 2020, Sweden was the only major Western country to keep schools and daycare open for children ages 1 to 15. Among those 1.8 million children, there were zero COVID deaths

<sup>97</sup> <https://www.Congress.gov/bill/118th-congress/house-bill/140/text>.

and the COVID risk for teachers was less than the average of other professions.

This showed that it was safe to keep schools open. It was important for America to know that, but in July 2020, a *New England Journal of Medicine* article on school closures did not even mention Sweden. That's like reporting on a new medical treatment without including information from the comparison control group.

Unable to publish my thoughts about the pandemic in U.S. English-language media, in the summer of 2020 I used my Twitter account to share the Swedish data and argue for open schools. But in July 2020, Twitter put me on their "trends blacklist" to limit the reach of my open school posts.

In October 2020, I authored the Great Barrington Declaration with two fellow epidemiologists. We argued for better protection of high-risk older people while keeping schools open and letting young people live more normal lives. This was shadow banned by Google and censored by Reddit. Our Facebook page was unpublished.

In March 2021, Twitter censored a post when I wrote that, quote, "Thinking that everybody must be vaccinated is as scientifically flawed as thinking that nobody should. COVID vaccines are important for older high-risk people and their caretakers. Those with prior natural infection do not need it. Nor children." Twitter falsely claimed that the tweet was misleading and it could not be replied to, shared, or liked.

We have known about infection-acquired immunity since the Athenian Plague in 430 BC, and the questioning, denial, and censoring of such natural immunity is the most stunning denial of a scientific fact during the pandemic—with deadly consequences.

At a time when vaccines were in short supply, we were vaccinating young adults and people with natural immunity who did not need it before many older Americans whose lives could have been saved by it.

Another example. Through randomized studies and reviews, we know that face masks provide only marginal or no protection against COVID. It is then dangerous to make older high-risk Americans believe that masks will protect them when they will not, as they may go to crowded restaurants or supermarkets thinking that their mask is keeping them safe.

In May 2021, I was temporarily suspended by Twitter for 3 weeks for writing that, "Naively fooled to think that masks would protect them, some older high-risk people did not socially distance properly, and some died from COVID-19 because of it. Tragic. Public health officials/scientists must always be honest with the public."

In April 2021, I participated in a scientific roundtable hosted by Florida Governor Ron DeSantis. This was censored by YouTube.

Many nurses were infected while heroically taking care of COVID patients, and some of them were later fired for not taking a vaccine even though they had stronger immunity than the vaccinated. In October 2021, I wrote an article urging hospitals to hire instead of fire nurses with natural immunity, as they are the least likely to infect older frail patients. This was censored by LinkedIn.

The primary victim of censorship is not me and others being censored, but the public. As politicians, to properly serve your con-

stituents, you have both the right to hear from and the duty to listen to a range of scientists. The public also has that right.

Censorship inevitably leads to self-censoring. Some of my public health colleagues do not speak up for fear of being censored, silenced, or slandered, like I was.

When the Bill of Rights was written, Americans had lived through troubled times. They did not use that as an excuse for censorship. I think they understood that freedom of speech is especially important during difficult times when difficult decisions must be made.

I hope that the 118th Congress is just as wise as the first Congress was when it adopted the First Amendment as part of the Bill of Rights.

Thank you very much for listening.

[The prepared statement of Mr. Kulldorff follows:]

PREPARED STATEMENT OF MARTIN KULLDORFF

CENSORSHIP CAN BE DEADLY

Censorship can be deadly. Freedom of speech is always important, but it is especially important during a national emergency such as a pandemic. No authority is infallible, and when a new virus emerges, it is impossible for politicians and public health officials to get things right without listening to discussions between a wide cast of scientists with different areas of expertise and thoughts.

I am an epidemiologist, a biostatistician, and a professor of medicine at Harvard, on leave. For over two decades I have done research on the detection and monitoring of infectious disease outbreaks and on the safety evaluation of vaccines and drugs. I helped build the Nation's disease surveillance systems. Despite this, I was censored and blacklisted during the pandemic, by Twitter, LinkedIn, YouTube, and Facebook.

In early 2020, we already knew from Wuhan data that there is more than a thousand-fold difference in COVID mortality between the old and the young.<sup>1</sup> During the pandemic, we failed to adequately protect older Americans while school closures and other lockdown measures generated enormous collateral public health damage that we now must live with, and die from, for years to come.

During the spring of 2020, Sweden was the only major Western country to keep schools and daycare open for children ages 1 to 15. Among those 1.8 million children, there were zero COVID deaths and the COVID risk for teachers were less than the average of other professions.<sup>2</sup> This showed that it was safe to keep schools open. It was important for America to know that, but a July 2020 *New England Journal of Medicine* article on school closure did not even mention Sweden.<sup>3</sup> That's like reporting on a new medical treatment without including information from the comparison control group.

Unable to publish my thoughts about the pandemic in U.S. English language media, in the summer of 2020 I used my Twitter account to share the Swedish data and argue for open schools. But in July 2020, Twitter put me on their "trends blacklist" to limit the reach of my open school posts.<sup>4</sup>

In October 2020, I authored the Great Barrington Declaration with two fellow epidemiologists, Dr. Sunetra Gupta at Oxford and Dr. Jay Bhattacharya at Stanford.<sup>5</sup> We argued for better protection of high-risk older people while keeping schools open and letting young people live more normal lives. This was shadow banned by Google and censored by Reddit.<sup>6</sup> After posting in favor of prioritizing the elderly for vaccination, our Facebook page was "unpublished". (Figure 1)

<sup>1</sup> Kulldorff M. *COVID-19 Counter Measures Should be Age Specific*. LinkedIn, April 10, 2020.

<sup>2</sup> Public Health Agency of Sweden. *COVID-19 in schoolchildren—A comparison between Finland and Sweden*, July 7, 2020.

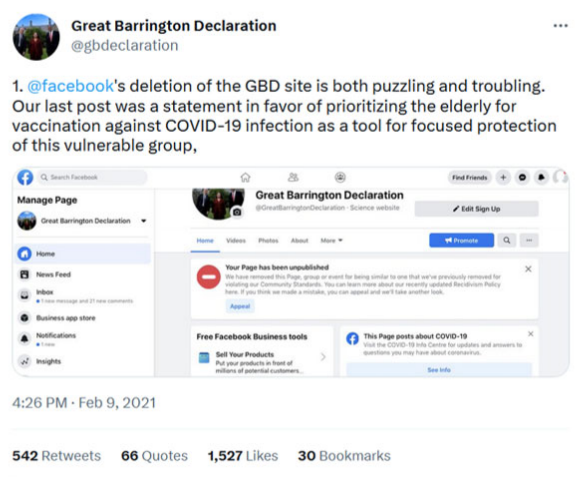
<sup>3</sup> Levinson M, Cevik M, Lipsitch M. *Reopening Primary schools during the Pandemic*. *New England Journal of Medicine*, July 29, 2020.

<sup>4</sup> Bhattacharya J. *What I discovered at Twitter headquarters*, UnHerd, December 22, 2022.

<sup>5</sup> Bhattacharya J, Gupta S, Kulldorff M. *Great Barrington Declaration*, October 4, 2020.

<sup>6</sup> Young T. *Why can't we talk about the Great Barrington Declaration?* *The Spectator*, October 17, 2020.

## FIGURES



**Figure 1: Tweet with Screenshot of “Unpublished” Facebook Page.**

In March 2021, Twitter censored a post when I wrote that “Thinking that everyone must be vaccinated is as scientifically flawed as thinking that nobody should. COVID vaccines are important for older high-risk people and their care-takers. Those with prior natural infection do not need it. Nor children.” Twitter falsely claimed that the tweet was misleading, and it could not be replied to, shared, or liked. We have known about infection-acquired immunity since the Athenian Plague in 430 B.C., and the questioning, denial, and censoring of such natural immunity is the most stunning denial of scientific facts during the pandemic. With deadly consequences. At a time when vaccines were in short supply, we were vaccinating young adults and people with natural immunity, who did not need it, before many older Americans who whose lives could have been saved by it. (Figure 2)



Figure 2: Twitter, March 2021


Through randomized studies and reviews,<sup>7,8</sup> we know that face masks provide only marginal or no protection against COVID. A randomized study in Denmark showed no significant benefit<sup>9</sup> while a Yale University study conducted in Bangladesh showed a reduction between 0 and 18 percent.<sup>10</sup> It is then dangerous to make older high-risk Americans believe that masks will protect them when they will not, as they may go to crowded restaurants or supermarkets thinking that their mask is keeping them safe. In May 2021 I was temporarily suspended by Twitter for 3 weeks for writing that: “Naively fooled to think that masks would protect them, some older high-risk people did not socially distance properly, and some died from COVID–19 because of it. Tragic. Public health officials/scientists must always be honest with the public”. (Figure 3)

<sup>7</sup> Jefferson T, et al. *Physical interventions to interrupt or reduce the spread of respiratory viruses*. Cochrane Library, January 30, 2023.

<sup>8</sup> Liu AT, Prasad V, Darrow JJ. *Evidence for Community Cloth Face Masking to Limit the Spread of SARS-CoV-2: A Critical Review*, Cato Working Paper, November 8, 2021.


<sup>9</sup> Bundgaard H, et al. *Effectiveness of Adding a Mask Recommendation to Other Public Health Measures to prevent SARS-CoV-2 Infection in Danish Mask Wearers: A Randomized Controlled Trial*. Annals of Internal Medicine, November 18, 2020.

<sup>10</sup> Abaluck J, et al. *Impact of community masking on COVID–19: A cluster-randomized trial in Bangladesh*. Science, December 2, 2021.


Options ▾


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## We've temporarily limited some of your account features




**Martin Kulldorff**  
@MartinKulldorff

**What happened?**

We have determined that this account violated the [Twitter Rules](#). Specifically, for:

1. Violating the [policy on spreading misleading and potentially harmful information related to COVID-19](#).  
We understand that during times of crisis and instability, it is difficult to know what to do to keep yourself and your loved ones safe. Under this policy, we require the removal of content that may pose a risk to people's health, including content that goes directly against guidance from authoritative sources of global and local public health information.

For more information on COVID-19, as well as guidance from leading global health authorities, please refer to the following links:  
[Coronavirus disease \(COVID-19\) advice for the public from the WHO](#)  
[FAQs about COVID-19 from the WHO](#)

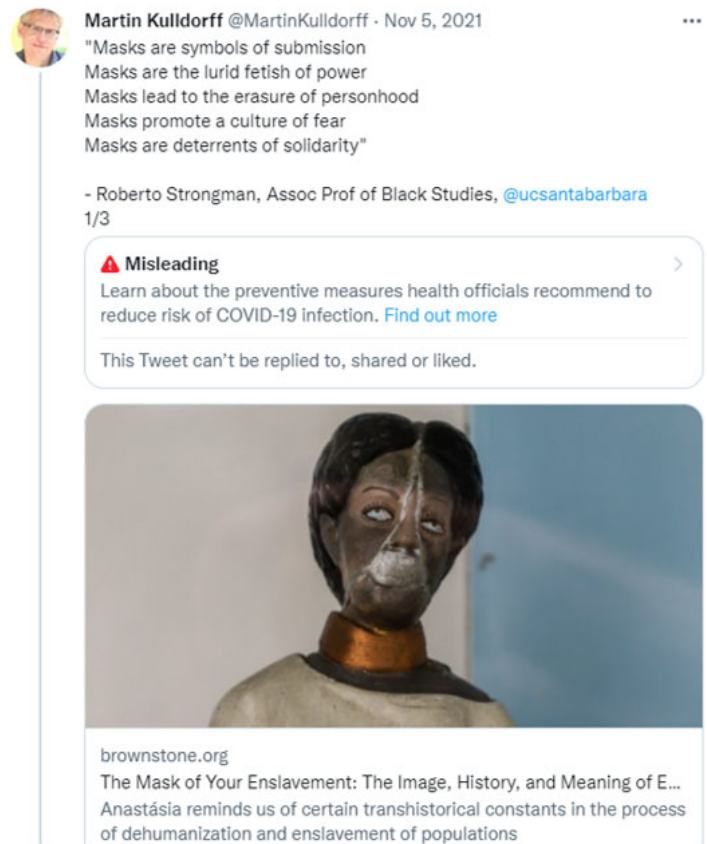


**Martin Kulldorff**  
@MartinKulldorff

Naïvely fooled to think that masks would protect them, some older high-risk people did not socially distance properly, and some died from #COVID19 because of it. Tragic. Public health officials/scientists must always be honest with the public. <https://t.co/xNENoOBVla>

**Figure 3: Twitter, May 2021**

Twitter also censored me for quoting and linking to an article about masks written by an Associate Professor of Black Studies at the University of California. (Figure 4)



**Figure 4: Twitter, November 2021**

In April 2021 I participated in a scientific roundtable hosted by Florida Governor Ron DeSantis. This roundtable was censored by YouTube after being posted by a CBS-affiliated television station in Florida.<sup>11</sup> YouTube is owned by Google.

Many nurses were infected while heroically taking care of COVID patients, and some of them were later fired for not taking a vaccine even though they had stronger immunity than the vaccinated. In October 2021, I wrote an article urging hospitals to hire instead of fire nurses with natural immunity, as they are the least likely to infect older frail patients.<sup>12</sup> That was censored by LinkedIn, which is owned by Microsoft.<sup>13</sup> Hospitals and nursing homes could have better protected patients if they had actively hired personnel with infection-acquired immunity. That would have saved lives.

<sup>11</sup> Wilson K, Ross A. *YouTube removes video of DeSantis coronavirus roundtable*. Tampa Bay Times, April 9, 2021.

<sup>12</sup> Kulldorff M. *Hospitals Should Hire, not Fire, Nurses with Natural Immunity*. Brownstone Institute, October 1, 2021.

<sup>13</sup> *Harvard Epidemiologist Censored by LinkedIn for Defending Healthcare Jobs*. Brownstone Institute, October 4, 2021.



LinkedIn censored me multiple times, one other example being a repost of an interview with the chief epidemiologist of Iceland<sup>14 15</sup> (Figures 5–9). That is, LinkedIn did not only censor public health academics but also government public health officials that did not conform to LinkedIn’s view on the pandemic.



**Figure 5: LinkedIn, August 2021**

<sup>14</sup>LinkedIn Censors Harvard Epidemiologist Martine Kulldorff, Brownstone Institute, August 12, 2021.

<sup>15</sup>Tucker JA. Kulldorff Deleted: Famed Epidemiologist and Early Opponent of Lockdowns Banned by LinkedIn, Brownstone Institute, January 28, 2022.

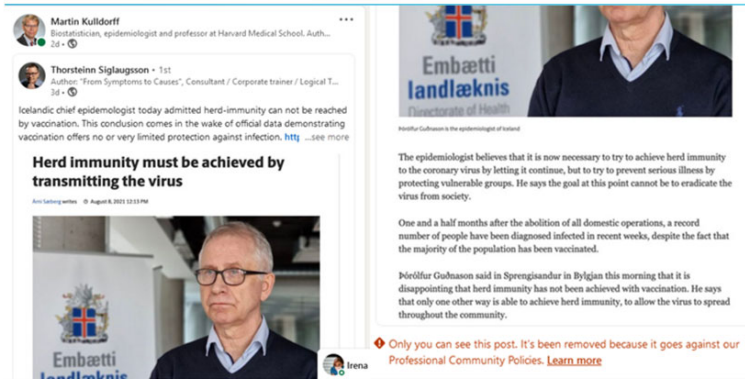


Figure 6: LinkedIn, August 2021

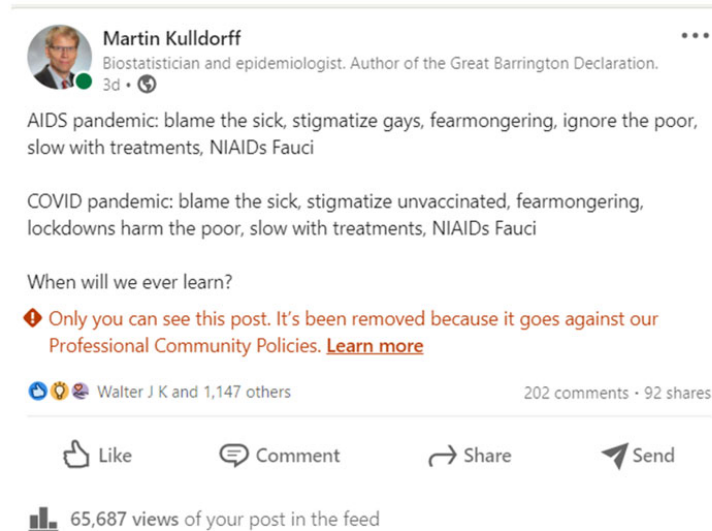


Figure 7: LinkedIn, January 2022

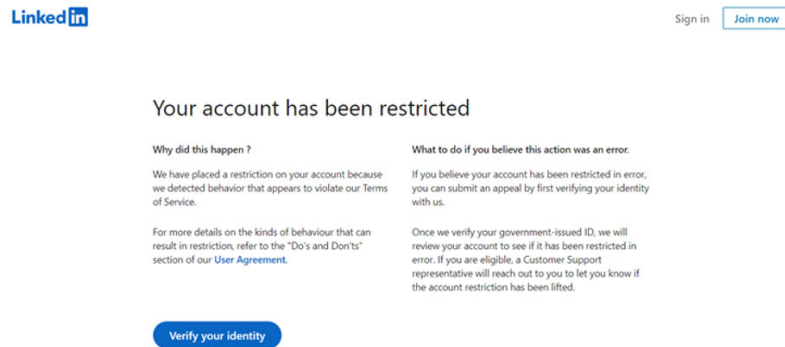


Figure 8: LinkedIn, January 2022



Figure 9: LinkedIn, Last Post Before Account Suspension, January 2022

As a leading expert on vaccine safety, CDC asked me to serve on their COVID-19 Vaccine Safety Technical Work Group. In April 2021, CDC fired me from that group.<sup>16</sup> If you think I was fired for questioning the vaccines, you are wrong. I am probably the only person fired by CDC for being too pro-vaccine. On April 13, 2021, CDC paused the Johnson & Johnson vaccine after reports of blood clots in a few women under age 50. There were no reported cases among older people, who benefit the most from the vaccines. Since there was a general vaccine shortage at the time, I argued in an op-ed in *The Hill* that the vaccine should not be paused for older high-risk Americans.<sup>17</sup> That got me fired, although CDC did lift the pause 4 days later. Tragically, some older Americans died because of this vaccine “pause”.

The primary victim of censorship is not me and others being censored, but the public. As politicians, to properly serve your constituents, you have both the right to hear from and a duty to listen to a range of scientists. The public also has that right. For example, how many of you knew that Sweden kept their schools open in the spring of 2020 without a single COVID mortality among its 1.8 million children? How many of you know now, that for 2020–20202 [sic] Sweden focused protection

<sup>16</sup>Pullman J. *CDC Punishes ‘Superstar’ Scientist For COVID Vaccine Recommendation The CDC Followed 4 Days Later*, *The Federalist*, April 28, 2021.

<sup>17</sup>Kulldorff M. *The dangers of pausing the J&J vaccine*. *The Hill*, April 17, 2021.

strategy led to the lowest excess mortality among western countries?<sup>18</sup> Censorship deprives both you and the public from vital information needed to save lives.

Censorship inevitably leads to self-censoring. Some of my public health colleagues did not speak up for fear of being censored, silenced, or slandered, like I was. I don't blame them. I was also forced to self-censor, to avoid being permanently banned from social media. (Figure 10)



Figure 10: Twitter, March 15, 2022

I have a question for you: Do we have freedom of speech because of the First Amendment or do we have the First Amendment because freedom of speech is important to preserve society and life?

When the Bill of Rights was written, Americans had lived through troubled times. They did not use that as an excuse for censorship. I think they understood that freedom of speech is especially important during difficult times when difficult decisions must be made. I hope that the 118th Congress is just as wise as the 1st Congress was when it adopted the First Amendment as part of the Bill of Rights.

Thank you for listening.

Mr. BISHOP. Thank you, Dr. Kulldorff.

I now recognize Dr. Miller-Idriss for her 5-minute opening statement.

**STATEMENT OF CYNTHIA MILLER-IDRISS, PH.D., PROFESSOR, SCHOOL OF PUBLIC AFFAIRS AND SCHOOL OF EDUCATION, FOUNDING DIRECTOR, POLARIZATION AND EXTREMISM RESEARCH AND INNOVATION LAB, AMERICAN UNIVERSITY**

Ms. MILLER-IDRISS. Chairman Bishop, Ranking Member Ivey, Members of the committee, I'd like to thank you for your service to our country and for calling attention to the critical issue of disinformation.

In addition to being a professor at American University, I also direct a research lab there called the Polarization and Extremism Research and Innovation Lab, also known as PERIL.

<sup>18</sup>Simmons M. Sweden, *COVID and 'excess deaths': a look at the data*. The Spectator, March 10, 2023.

PERIL designs, tests, and scales up evidence-based tools and intervention strategies to help people recognize and reject harmful on-line content while safeguarding their freedom of speech as an alternative to security-based approaches that rely on surveillance, monitoring, censorship, or banning.

We do not teach people what to think. Our work is nonpartisan and rooted in evidence. Our research has demonstrated with consistent statistical significance that people can learn to recognize persuasive and manipulative tactics in order to make more informed choices in their lives, especially on-line.

Over the past 3 years, PERIL has fielded a constant stream of emails and calls from individuals in communities across the country, all asking for help confronting the impacts of disinformation and propaganda in their lives.

In Michigan, a grandfather and military veteran wrote to ask what he could do about his grandson, who had joined an armed militia.

In Texas, faith leaders asked us for ways to support pastors whose congregations were torn apart by partisan polarization and conspiracy theories.

In Vermont, a local entrepreneur asked if the school system could help prevent future employees, most of whom he hired from the high school, from espousing propaganda that had become a problem in his staff.

These stories illustrate what research evidence has also demonstrated: We face a national crisis rooted in the rampant circulation of disinformation and harmful on-line content. American communities are coming to us because they feel threatened by on-line disinformation. They aren't alone.

As the ADL has reported, white supremacist propaganda efforts are at the highest level ever recorded, jumping 38 percent over 2021 levels, following a pattern of violence that has been escalating for years.

The good news is there's a growing body of evidence about what works to equip the public with tools that shore up their own capacity while protecting the right to free speech and reducing the need for security-based approaches.

We found that it only takes 7 to 12 minutes of reading one of our intervention guides for its audience to be significantly better informed about harmful on-line content and the risks of violence, to be more empowered and confident about intervening, to build their own capability to intervene, and to know where to get more help.

Importantly, across our work, we've found that both prior to and after reading our parents and caregivers guide, Democrats and Republicans did not significantly differ in their knowledge.

Republicans scored better, significantly better, 5 percent better than Democrats did, in terms of knowledge of extremism after having read our guide, and members of both political parties reported being satisfied with the guide's contents and equally willing to intervene with a young person.

There's also strong emerging evidence that even short interventions can have a lasting impact on local communities. We're currently studying a group of 1,500 parents in 3-month intervals, par-

ents and caregivers, for a full year after reading our intervention tool.

Three months after reading our guide, 11 percent, over 11 percent said that after the intervention they either joined or created a group to discuss issues of youth radicalization.

Six percent of our participants, or about 75 people, told us that within the 3 months after reading our guide they used what they learned to take direct action to prevent youth from encountering further harmful content.

Overall, 3 months after reading our guide, parents and caregivers retained the vast majority of the knowledge and skills they had learned.

Taken together, our evidence shows that it's possible to provide communities with tools to be safer on-line. Parents, grandparents, teachers, coaches, mental health professionals, and others deserve help confronting an unprecedented amount of harmful on-line content to keep their families safe and protected.

We detail several policy recommendations in our written testimony. Most substantially, we would like to see the U.S. Government, like some of our allies overseas, create a central, national, nonpartisan center for prevention to help equip local communities with tools, evidence, and capacity-building trainings about what works.

The crisis of domestic violent extremism that is fueled by disinformation and propaganda cannot be solved by law enforcement and security-based approaches alone. We must invest in upstream strategies to keep communities safe from on-line harms.

We seek a world in which every community is equipped with the tools they need to reject harmful on-line propaganda, conspiracy theories, and manipulative content without the need for censorship, surveillance, banning, or security-based solutions.

Thank you for your attention, and I look forward to your questions.

[The prepared statement of Ms. Miller-Idriss follows:]

PREPARED STATEMENT OF CYNTHIA MILLER-IDRISS

THURSDAY, MAY 11, 2023, 2 O'CLOCK PM ET

Chairman Green, Ranking Member Thompson, and Members of the committee: I would like to thank you for your service to our country and for calling attention to the critical issue of disinformation. My name is Cynthia Miller-Idriss, and I am a professor in the Department of Justice, Law, and Criminology and in the School of Education at the American University in Washington, DC, where I also direct the Polarization and Extremism Research and Innovation Lab (PERIL)—an applied research lab in the School of Public Affairs. I have been studying education-based solutions to the prevention of violent extremism, including through early prevention related to disinformation and propaganda—for over 20 years. I want to acknowledge the support of my research team at PERIL, whose assistance was invaluable in preparing my testimony today.<sup>1</sup>

The Polarization and Extremism Research and Innovation Lab, PERIL, develops evidence-based initiatives—such as, short-form videos, trainings and train-the-trainer programs, research studies, community toolkits and guides—to build social cohesion, reverse political polarization, and prevent violent extremism. Utilizing a public

<sup>1</sup>With gratitude to researchers and staff at American University's Polarization and Extremism Research and Innovation Lab (PERIL) who helped prepare this written testimony: Dr. Pasha Dashtgard, Dr. Brian Hughes, Laura Kralicky, Wyatt Russell, and to colleagues at the Southern Poverty Law Center for their support and partnership on many of the intervention tools and guides cited above.

health framework and multi-disciplinary, pre-preventative approaches, we design, test, and scale up evidence-based tools and intervention strategies to help people recognize and reject harmful on-line and off-line content, propaganda, supremacist ideologies, conspiracy theories, misinformation, and disinformation while safeguarding their freedom of speech. As widely recognized experts and leaders in the field of preventing extremism and radicalization, we have created effective, evidence-based resources to inoculate against propaganda and extremist content, as well as empower individuals to intervene and interrupt early radicalization and keep their loved ones safe from on-line manipulation—all as an alternative to security-based approaches that rely on surveillance, monitoring, censorship, or banning.

PERIL's work focuses specifically on equipping people with tools to recognize on-line manipulation in order to protect themselves and their loved ones from disinformation that seeks to harm them (see below for definitions of disinformation and related terms). We do not teach people what to think; our work is nonpartisan and rooted in evidence. Our focus is on responding to community needs and on providing resources to help people understand the kinds of persuasive techniques that bad actors often use to manipulate others. For example, foreign influence operations, domestic and international extremist and terrorist groups, and scammers seeking a profit will often use rhetorical strategies, propaganda, and emotional tactics that are designed and used to convince others to believe, think, or act in a specific manner. These persuasive techniques manipulate observers for the purposes of grooming, recruiting, and building support for violent ideologies, tactics, strategies, or actions. Our research has demonstrated with consistent statistical significance that people can learn to recognize persuasive and manipulative tactics in order to make more informed choices in their lives, especially on-line.

#### SCOPE AND SCALE: COMMUNITIES IN NEED

The national crisis facing communities across the country is all too evident. Over the past 3 years, PERIL has fielded a constant stream of emails and calls from individuals and communities across the country—all asking for help confronting the impacts of disinformation and propaganda in their lives. In Michigan, a grandfather and military veteran wrote to ask what he could do about his grandson, who had joined an armed militia. In Texas, faith leaders asked for ways to support pastors whose congregations were torn apart by partisan polarization and conspiracy theories. In Washington State, a local government needed training for city employees to prevent polarization and reject on-line manipulation. In Vermont, a local entrepreneur asked if the school system could do more to ensure that his future employees—most of whom he hired straight from the local high school—would stop espousing so much propaganda and conspiracy theories, which had become a problem for his business. A local mom wanted help with her middle school son, who during the pandemic had consumed so much on-line misogyny that he said he did not need to respect her authority as a parent, because she is a woman.

These stories illustrate what research evidence has also demonstrated: We face a national crisis rooted in the rampant circulation of propaganda, dis/mis and malinformation, and other harmful on-line content. American communities are coming to us because they feel threatened by on-line disinformation. Some fall prey to hostile foreign influence operations by people who try to manipulate Americans for profit or to disrupt our democratic process. People give their bank information to scammers pretending to be from the IRS. Teenagers share intimate details of their lives with people on-line who they think are friends their own age, but who are not. Others come to believe propaganda and disinformation that lures them into what they think is heroic action to save their racial or ethnic group after going down rabbit holes of antisemitic conspiracies about demographic change and a supposed orchestrated replacement of white people.

The data on this is clear. The pace, scope, and scale of violent extremism have probably increased and are escalating rapidly. The Anti-Defamation League reports that white supremacist propaganda efforts are at the highest level they have ever recorded, jumping 38 percent above 2021 levels to 6,751 reported cases in 2022.<sup>2</sup> These incidents include distribution of racist, antisemitic, and anti-LGBTQIA+ fliers, graffiti and posters, stickers, banners, and laser projections that have heavily targeted houses of worship and other community institutions.

The repercussions of so much circulation of propaganda, conspiracy theories, and disinformation are abundantly clear. Between 2013 and 2021, the number of open

<sup>2</sup>Anti-Defamation League, Center on Extremism. "Audit of Antisemitic Incidents, 2022." March, 2023. <https://www.adl.org/sites/default/files/pdfs/2023-03/ADL-2022-Audit-of-Antisemitic-Incidents-2021.pdf>.

domestic terrorism-related cases in the United States jumped 357 percent to 9,049 cases, with the most violent incidents being committed by racially or ethnically motivated violent extremists during the same years.<sup>3</sup> Of the 444 people killed by extremism in the United States between 2013 and 2022, the significant majority of deaths were at the hands of right-wing extremists (335 deaths, or 75 percent).<sup>4</sup> Of those killed by right-wing extremists in 2021, 73 percent were affiliated with white supremacy, 5 percent with incel/toxic masculinity extremism, and 17 percent with anti-Government extremism.<sup>5</sup> The 2022 racist shooting that killed 10 people in a grocery store in a predominantly Black neighborhood in Buffalo, motivated by the false Great Replacement conspiracy theory, is just one tragic recent example.

Non-lethal attacks have also risen significantly. More than 50 bomb threats were made to HBCUs (Historically Black Colleges and Universities) and predominantly Black churches in 2022. And the problem goes well beyond white supremacist extremism.<sup>6</sup> Antisemitism, conspiracy theories, anti-LGBTQ+ hate, and misogynistic content has spiked across on-line platforms. Before he was banned from social media platforms in mid-2022, violent and deeply misogynistic videos from one content creator were viewed 12 billion times on TikTok alone.<sup>7</sup> Violent outcomes often show a toxic mix of ideological hatred. Just this week, 8 people lost their lives at a Texas shopping mall at the hands of a man with a swastika tattoo who had posted both violent misogynistic and neo-Nazi content on-line.

In October 2020, the U.S. Department of Homeland Security under President Trump issued a threat assessment report declaring domestic violent extremism in general and white supremacist extremists (WSEs) in particular the “most persistent and lethal threat in the Homeland.”<sup>8</sup> The Biden administration issued a similar assessment in spring 2021,<sup>9</sup> followed by the first-ever national strategy to counter domestic terrorism, noting the rising threat from white supremacist extremism and anti-Government and unlawful militias that threaten civilians, elected officials, and democratic institutions.<sup>10</sup> Much of this violence is motivated by disinformation, propaganda, and conspiracy theories. According to the Global Terrorism Database, terrorist attacks motivated by conspiracy theory extremists were responsible for 119 attacks in 2020—a jump from 6 attacks the year before—in Australia, New Zealand, the United States, Canada, United Kingdom and Germany.<sup>11</sup> Meanwhile, hate crimes in the United States are at the highest level in decades,<sup>12</sup> despite persistent underreporting. In sum, the United States and our allies have seen rising violent extremism and hate-fueled and political violence fueled by antisemitism, conspiracy theories, propaganda, disinformation, and other harmful on-line content as a pattern of violence that has been escalating for years.

<sup>3</sup>U.S. Government Accountability Office, Report to the Ranking Member, Committee on Homeland Security, House of Representatives. “DOMESTIC TERRORISM Further Actions Needed to Strengthen FBI and DHS Collaboration to Counter Threats.” GAO–23–104720. February, 2023. <https://www.gao.gov/assets/gao-23-104720.pdf>.

<sup>4</sup>Anti-Defamation League, a Report from the ADL Center on Extremism. “Murder & Extremism in the United States in 2022.” February, 2023. <https://www.adl.org/sites/default/files/pdfs/2023-02/Murder-and-Extremism-in-the-United-States-in-2022.pdf>.

<sup>5</sup>Anti-Defamation League, a Report from the ADL Center on Extremism. “Murder & Extremism in the United States in 2022.” February, 2023. <https://www.adl.org/sites/default/files/pdfs/2023-02/Murder-and-Extremism-in-the-United-States-in-2022.pdf>.

<sup>6</sup>Weissman, Sara. “Suspect Identified in Bomb Threats Against HBCUs.” Inside Higher Ed., November 16, 2022. <https://www.insidehighered.com/news/2022/11/17/fbi-says-most-bomb-threats-against-hbcus-made-minor>.

<sup>7</sup>Miller-Idriss, Cynthia. “How to Counter Andrew Tate’s Growing Subculture of Violent Toxic Masculinity.” MSNBC, February 7, 2023. <https://www.msnbc.com/opinion/msnbc-opinion/counter-andrew-tates-growing-subculture-violent-toxic-masculinity-rcna69411>.

<sup>8</sup>U.S. Department of Homeland Security. “Homeland Threat Assessment.” October, 2020. [https://www.dhs.gov/sites/default/files/publications/2020\\_10\\_06\\_homeland-threat-assessment.pdf](https://www.dhs.gov/sites/default/files/publications/2020_10_06_homeland-threat-assessment.pdf)

<sup>9</sup>Office of the Director of National Intelligence, “Domestic Violent Extremism Poses Heightened Threat in 2021.” March 1, 2021. [https://www.dhs.gov/sites/default/files/publications/21\\_0301\\_odni\\_unclass-summary-of-dve-assessment-17\\_march-final\\_508.pdf](https://www.dhs.gov/sites/default/files/publications/21_0301_odni_unclass-summary-of-dve-assessment-17_march-final_508.pdf).

<sup>10</sup>Executive Office of the President, National Security Council. “National Strategy for Countering Domestic Terrorism.” June, 2021. <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

<sup>11</sup>START (National Consortium for the Study of Terrorism and Responses to Terrorism). (2022). Global Terrorism Database 1970–2020 [data file]. <https://www.start.umd.edu/gtd>,

<sup>12</sup>U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division. “Supplemental Hate Crime Statistics, 2021”. March, 2023. <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.



## WHAT WORKS TO PREVENT AND COUNTER DISINFORMATION

The good news is there is a growing body of evidence about what works to equip the public with tools that shore up their capacity to intervene in pathways to violent extremism, while protecting their right to free speech and reducing the need for security-based approaches. We have found that it only takes 7–12 minutes of reading one of our intervention guides for its audience to be significantly better informed about harmful on-line content and the risks of radicalization to violence; to feel more empowered and confident about intervening; to build their own capability to intervene; and to know where to get more help.\* This is the case across our research with parents and caregivers, including grandparents, uncles, and cousins; with educators and youth mentors; with local governments and small businesses, and more. For example, in just 12 minutes of reading one of our intervention tools, 85 percent of our participants understood the process by which youth become radicalized, and 83 percent felt that they knew where to get help if they suspect a young person to be engaging in extremist ideas.

Importantly, across our work, we found that both prior to and after reading our parents and caregivers guide, Democrats and Republicans did not significantly differ in their knowledge of extremism. Republicans scored significantly better (5 percent better) than Democrats did in terms of knowledge of extremism after having read the guide, and members of both political parties reported being satisfied with the guide's contents and equally willing to intervene with a young person they suspect is coming into contact with radicalizing content. We have also found that education alone doesn't solve our problem of disinformation. Our research has shown that higher levels of education do not necessarily mean people have the skills to consistently recognize harmful manipulation tactics on-line. On the contrary—we found that parents with higher levels of education were overconfident in their ability to help children distinguish trustworthy and untrustworthy news sources. After reading our guide, their confidence went down as they realized how tricky on-line disinformation and harmful content can be.

There is also strong emerging evidence that even short interventions can have a lasting impact on local communities. We are currently studying a group of 1,500 parents and caregivers in 3-month intervals for a full year after reading our intervention tool. Three months after reading our guide for parents and caregivers, over 11 percent (135 individuals) of respondents said that after the intervention, they either joined or created a group that discusses issues of youth radicalization and extremism. Six percent of our participants, or about 75 people, told us that within the 3 months after reading our guide, they used what they learned to take direct action to prevent youth from radicalizing further or being recruited through additional on-line manipulation. Overall, 3 months after reading our guide, parents and caregiver retained the vast majority of the knowledge and skills they had learned. Seventy-five percent of participants reported understanding the process by which youth become radicalized on-line—a 23 percent increase from the initial survey—and 70 percent felt prepared to talk with youth about on-line extremism—only a 5 percent drop from the initial survey. Over a third of participants told us they had shared or used the information with their biological children, while nearly 13 percent shared it with other young people in their family, including grandchildren, nephews and nieces, and cousins.

Taken together, our evidence shows that it is possible to provide communities with tools to be safer on-line. Parents, grandparents, teachers, coaches, mental health professionals, and others deserve help confronting an unprecedented amount of harmful on-line content and being more confident and capable to keep their families safe and protected from harmful on-line content. All communities need information and tangible action steps for how to help their loved ones resist manipulative rhetoric, propaganda, conspiracy theories, and disinformation they are exposed to on-line and off-line in ways that help them make better choices while avoiding censorship, surveillance, monitoring, or other security-based approaches.

\* Findings from the lab are included in the following works: PERIL (Polarization & Extremism Research & Innovation Lab) & SPLC (Southern Poverty Law Center). "Empowered to Intervene: An Impact Report on the PERIL/SPLC Guide to Youth Radicalization. 2021. <https://www.splcenter.org/peril-assessments-impact#impact-parents>; PERIL & SPLC. "Building Networks & Addressing Harm: A Community Guide to Online Youth Radicalization, Impact Study." November, 2023. <https://www.splcenter.org/peril-assessments-impact#impact-networks>; PERIL & SPLC. "Parents & Caregivers Longitudinal Impact Study.," PERIL & Rosa Luxemburg Stiftung. "Resources to Combat Extremism: Impact Study Report." 2022.; PERIL & The Lumina Foundation. "Building Resilient & Inclusive Communities of Knowledge." July, 2022. <https://perilresearch.com/wp-content/uploads/2022/12/PERIL-Building-Inclusive-and-Resilient-Campuses-v15.2-FINAL.pdf>.

## ADOPTING A PUBLIC HEALTH APPROACH

PERIL advocates for a holistic public-health mode of prevention consisting of investments at the primary, secondary, and tertiary prevention levels to prevent violent extremism and the components that contribute to it, including disinformation and propaganda. Primary prevention refers to efforts to address radicalization before it takes root, including through broad civic education and media literacy focused on helping the public build resilience in ways that do not infringe on their right to free speech or free association, and that work as an alternative to security-based approaches that surveil, monitor, censor, or ban content. Secondary prevention refers to efforts to mitigate the impacts of already radicalized people and groups, primarily through surveillance, monitoring, arrests, and interruption of plots. Tertiary prevention refers to focused deradicalization efforts, including through prison deradicalization programs and “exit”-type counseling services that help radicalized individuals disengage from extremism.

An effective public health approach to countering disinformation builds prevention and intervention across all three of those levels—with the significant majority of efforts and resources on the primary prevention side—and would require four things. First, it must be nimble and responsive to communities’ needs depending on regional areas of concern. Second, it must be holistic and whole-of-community in ways that broaden engagement of a wide range of government offices, agencies, and organizations beyond the security and law enforcement sectors, such as the education, health and human services, and mental health sectors. It would include primary prevention efforts through the arts, community organizations, faith communities, or other community-based non-profits. Third, an effective public-health prevention model rests on evidence at all levels of intervention. This means moving beyond outcome evaluations that describe only outputs, or the numbers of people trained, the numbers of downloads of a particular tool, or other descriptive metrics that do not actually provide evidence of impact. Finally, a holistic public health approach focuses on building resilient systems as well as resilient individuals. Resilience to propaganda and disinformation is not merely a technical skill, in other words: it is also rooted in national and community values and commitment to an inclusive democracy that must be reinforced, emphasized, and modeled in all aspects of life across the life course. The aim is to reduce the fertile ground in which disinformation, propaganda, hate, and anti-democratic ideas thrive.

This is a vision of a public health-style prevention system that works to prevent violence and counter harm while simultaneously promoting concrete steps toward inclusive equity, respect, coexistence, and real and symbolic recognition of difference. Such a prevention system gives us the best chance of building community social cohesion, reducing violent outcomes, and strengthening our democracies.

## POLICY RECOMMENDATIONS

1. Invest in a holistic, community-based, public-health approach to preventing the spread of supremacist ideologies, mis/dis/malinformation, conspiracy theories, and propaganda. This includes creating avenues to fund both pilot testing of innovative approaches, followed by national scale-up of what is proven to be effective in primary-level prevention strategies, including digital literacy and civic education that equips educators, parents and caregivers, youth mentors, faith leaders, coaches, mental health counselors, and others with better tools to recognize and “offramp” individuals who are persuaded by disinformation from further radicalization to violence. The Federal Government can support the creation of impact-driven networks that bring together government agencies from well beyond the security sector; civil society institutions like schools, mental health professionals, sports leagues and after-school programs; local NGO’s and advocacy efforts that enhance community wellness; and others. At the local level, people need to hear and see pathways for their own engagement, to spark their imaginations about ways to act, to be moved to change their behaviors, to know there are resources to support their learning, and to want to know more in ways that make a difference in their families’ and communities’ well-being.
2. Incentivize and prioritize rigorous impact assessment and evaluation frameworks to ensure policies and programs are implemented as intended and are effective beyond descriptive metrics. Evaluation frameworks and results funded with public dollars should be made publicly available to ensure transparency and reduce the need for every initiative to reinvent the wheel.
3. Ensure that prevention initiatives focus on equipping the public with better tools for their own decision making, while not interfering with any individual’s freedom of speech, conscience, or association. We cannot repeat the mistakes of

historical civil liberties violations or promote censorship as a solution to disinformation.

4. Continue to work with the tech sector to remove harmful and dangerous content, while understanding that banning and content removal is an after-the-fact solution that does not, on its own, solve the crisis of disinformation and propaganda. Addressing the problem of disinformation must begin with upstream prevention that reduces the production of and receptivity to harmful content to begin with.

5. Create a central, national, nonpartisan center for prevention to provide Federal, State, and local governments and all local communities with tools, resources, training, capacity-building, and evidence about what works.

#### DEFINITIONS

We define disinformation as false, untrue, or incorrect information spread to intentionally deceive, manipulate, misinform, and erode an individual or group's belief of established facts, often with a specific interest or goal. This includes efforts from hostile foreign influence operations, profiteers, and international extremist and terrorist groups who aim to harm American democracy, U.S. elections, or scam unsuspecting Americans for profit. It also includes domestic efforts that undermine inclusive democracy, such as antisemitism or anti-immigrant conspiracy theories, or compromise the physical health and well-being of communities. Disinformation is similar but distinct from misinformation, which is the unintentional sharing of false or incorrect information or untrue claims spread without the aim to deceive, manipulate, or harm. It also differs from malinformation, which refers to true claims spread with the intent to deceive, manipulate, or harm. Propaganda refers to manipulative persuasive techniques that seek to make people believe true or untrue information, or values and opinions, sometimes using dis/mis/malinformation, persuasive narratives (stories that help audiences imagine themselves as heroes, villains, victors, or victims), or rhetoric (emotionally stirring language, image, and sounds), which lend manipulative power. Extremism is the belief that one group of people is in dire conflict with other groups who don't share the same racial or ethnic, gender or sexual, religious, or political identity. This "us" versus "them" framework positions the "other" as an existential threat and calls for total separation, domination, or other forms of violence.

Notably, terrorist violence from domestic violent extremists does not usually link back to specific groups. Instead, it's most often perpetrated by individuals who have experienced networked on-line radicalization through exposure to propaganda. Groups are still an important source of much of the propaganda that circulates in extremist scenes and subcultures, including on-line. Finally, it is important to note that the spread of on-line propaganda and disinformation is fueled by how people spend time on-line. On-line radicalization happens in part when people spend time in echo chambers, where extreme content is self-reinforcing across platforms. There is also significant algorithmic radicalization through recommendation systems that suggest content that is related, but more salacious or more extreme than the content the viewer just watched. This can lead to "rabbit holes" of disinformation, conspiracy theories and propaganda consumption that are difficult to climb out of.

#### CONCLUSION

The crisis of domestic violent extremism that is fueled by disinformation and propaganda cannot be solved by law enforcement and security-based approaches. We must invest in upstream strategies to keep communities safe from on-line harms. We seek a world in which every community is equipped with the tools they need to reject harmful on-line propaganda, conspiracy theories, and manipulative content without the need for censorship, surveillance, banning, or security-based solutions. Thank you for your attention and I look forward to your questions.

Mr. BISHOP. Thank you, Dr. Miller-Idriss.

I now recognize Professor Turley for his 5-minute opening statement.

**STATEMENT OF JONATHAN TURLEY, SHAPIRO CHAIR FOR  
PUBLIC INTEREST LAW, THE GEORGE WASHINGTON UNI-  
VERSITY**

Mr. TURLEY. Thank you, Chairman Bishop, Ranking Member Ivey, Members of the subcommittee. It's an honor to be before you today and also to participate with my esteemed co-witnesses.

This is obviously a question of tremendous importance to all of us. We all love our country, and I believe we all love free speech, and we have to find a way to talk to each other to find a way to deal with our rivaling concerns.

From my perspective, I've been an advocate for free speech my entire life. Some people have even called me an absolutist of free speech. There was a time when that was a compliment, but I admit that I do resist most efforts to regulate speech.

What we have seen thus far—and we've only seen a fraction of the complex of censorship in the U.S. Government—is a censorship system of breathtaking size. We've seen only a fraction through the Twitter Files, through some hearings, and some litigation.

From the free speech community, it's like a game of whack-a-mole. Every time we deal with a disinformation office that raises concerns, we find out that there are five others.

One of the things I have emphasized in my testimony is that I think people of good faith can come together to at least say that we need to know the full scope of the disinformation system we have in the Government. We can debate.

I really took to heart the Ranking Member's comments about finding solutions here. We can look at those solutions. But we also need to look at what's the current effort thus far in terms of speech regulation, censorship, and blacklisting.

Many of these grants, many of these programs are straight blacklisting programs. They are to identify people, to discourage in some cases advertisers from supporting sites. This is money coming from the U.S. Government to support these types of efforts, and that's deeply problematic.

Many of these efforts are not just to remove people, but to isolate them. The recent disclosures of LinkedIn as engaging in censorship is an example of that.

As an academic, I've seen this. It's an honor to appear with one of our esteemed scientific academics who was the subject of censorship. But the idea is to isolate people, to chill their speech. It's working. It's succeeding.

Now, the whole point of much of my testimony is to look at what the legal standards are, how far the Government can go without tripping the wire of the First Amendment, but more importantly, to what extent this damages free speech.

The courts have emphasized over and over again that the Government cannot enlist agents to do indirectly what they are prohibited from doing directly. I believe that is what we're seeing today.

The collateral harm is considerable. People talk about speech as harmful. So is censorship. When you censor people like my esteemed colleague from Harvard, you are denying a public debate about public health issues, issues like, did we need to close our schools?

We're facing a terrible psychological and educational crisis that is linked to the shutdowns of the pandemic. We're now debating that when we should have been debating this at the time.

Those are costs. Those are costs that come from censorship.

Now, in my testimony I explore the cases that admittedly have a difficult time of when the Government trips this wire under the First Amendment. I'd be happy to talk about that today.

I obviously am very critical of CISA's idea that it is supposed to be regulating the cognitive infrastructure. That Orwellian notion really sends people like me into a tight fetal position. The fact is we don't need the Government looking at our cognitive anything, whether it's the infrastructure or not.

Recently, an English court found someone guilty of toxic ideology. That is a sort of cognitive infrastructure problem. I hope we don't go in that direction.

MDM is designed to give the maximal space for censorship. It is something I hope this committee will turn its back on.

Many of us welcome a debate that will come when we know the full extent of these efforts, but let it be an open and honest debate. Let's understand what has been done. Then we can debate, as citizens that love this country, the type of solutions the Ranking Member spoke of.

[The prepared statement of Mr. Turley follows:]

PREPARED STATEMENT OF JONATHAN TURLEY

MAY 11, 2023

I. INTRODUCTION

Chairman Bishop, Ranking Member Ivey, Members of the subcommittee, my name is Jonathan Turley, and I am a law professor at George Washington University, where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law.<sup>1</sup> It is an honor to appear before you today to discuss free speech and Government censorship.

For the purposes of background, I come to this subject as someone who has written,<sup>2</sup> litigated,<sup>3</sup> and testified<sup>4</sup> in the areas of Congressional oversight and the First

<sup>1</sup>I appear today on my own behalf, and my views do not reflect those of my law school or the media organizations that feature my legal analysis.

<sup>2</sup>In addition to a blog with a focus on First Amendment issues ([www.jonathanturley.org](http://www.jonathanturley.org)), I have written on First Amendment issues as an academic for decades. See, e.g., Jonathan Turley, *THE INDISPENSABLE RIGHT: FREE SPEECH IN THE AGE OF RAGE* (forthcoming 2024); Jonathan Turley, *The Unfinished Masterpiece: Speech Compulsion and the Evolving Jurisprudence of Religious Speech* 82 MD L. REV. (forthcoming 2023); Jonathan Turley, *Rage Rhetoric and the Revival of American Sedition*, 65 William & Mary Law Review (forthcoming 2023); Jonathan Turley, *The Right to Rage in American Political Discourse*, GEO. J.L. & PUB. POL'Y (forthcoming 2023); Jonathan Turley, *Harm and Hegemony: The Decline of Free Speech in the United States*, 45 HARV. J.L. & PUB. POL'Y 571 (2022); Jonathan Turley, *The Loadstone Rock: The Role of Harm in The Criminalization of Plural Unions*, 64 EMORY L.J. 1905 (2015); Jonathan Turley, *Registering Publicus: The Supreme Court and Right to Anonymity*, 2002 SUP. CT. REV. 57–83.

<sup>3</sup>See, e.g., Eugene Volokh, *The Sisters Wives Case and the Criminal Prosecution of Polygamy*, WASH. POST, Aug. 28, 2015 (discussing challenge on religious, speech, and associational rights); Jonathan Turley, *Thanks to the Sisters Wives Litigation, We have One Less Morality Law*, WASH. POST, Dec. 12, 2013.

<sup>4</sup>See, e.g., "Hearing on the Weaponization of the Federal Government," U.S. House of Representatives, House Judiciary Committee, Select Subcommittee on the Weaponization of the Federal Government, February 9, 2023 (Statement of Jonathan Turley); *Examining the "Metastasizing" Domestic Terrorism Threat After the Buffalo Attack: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (2022) (Statement of Jonathan Turley); *Secrecy Orders and Prosecuting Leaks: Potential Legislative Responses to Deter Prosecutorial Abuse of Power: Hearing Before H. Comm. on the Judiciary*, 117th Cong. (2021) (Statement of Jonathan Turley); *Fanning the Flames: Disinformation and Extremism in the Media: Hearing Before the Subcomm. on*

Continued

Amendment for decades. I have also represented the U.S. House of Representatives in litigation.<sup>5</sup> My testimony today obviously reflects that past work and I hope to offer a fair understanding of the governing Constitutional provisions, case law, and standards that bear on this question.

As I recently testified before the House Judiciary Committee, the growing evidence of censorship and blacklisting efforts by the Government raises serious and troubling questions over our protection of free speech.<sup>6</sup> There are legitimate disagreements on how Congress should address the role of the Government in such censorship. The first step, however, is to fully understand the role played in prior years and to address the deep-seated doubts of many Americans concerning the actions of the Government to stifle or sanction speech.

The Twitter Files and other recent disclosures raise serious questions of whether the United States Government is now a partner in what may be the largest censorship system in our history. That involvement cuts across the Executive branch, with confirmed coordination with agencies ranging from the Homeland Security to the State Department to the Federal Bureau of Investigation (FBI). Even based on our limited knowledge, the size of this censorship system is breathtaking, and we only know of a fraction of its operations through the Twitter Files, Congressional hearings, and pending litigation. Most of the information has come from the Twitter Files after the purchase of the company by Elon Musk. Notably, Twitter has 450 million active users<sup>7</sup> but it is still only ranked 15th in the number of users, after companies such as Facebook, Instagram, TikTok, Snapchat, and Pinterest.<sup>8</sup> The assumption is that the Government censorship program dovetailed with these other companies, which continue to refuse to share past communications or work with the Government. Assuming these efforts extended to the larger platforms, we have a Government-supported censorship system that is unparalleled in history.

We now have undeniable evidence of a comprehensive system of censorship that stretches across the government, academia, and corporate realms. Through disinformation offices, grants, and other means, an array of Federal agencies has been active “stakeholders” in this system. This includes Homeland Security, State Department, the FBI, and other Federal agencies actively seeking the censorship of citizens and groups.

The partners in this effort extend across social media platforms. The goal is not just to remove dissenting views, but also to isolate those citizens who voice them. We recently learned that this effort extended even to companies like LinkedIn.<sup>9</sup> New emails uncovered in the *Missouri v. Biden* litigation reportedly show that the Biden administration’s censorship efforts extended to Facebook to censor private communications on its WhatsApp messaging service.<sup>10</sup> The effort to limit access, even to professional sites like LinkedIn, creates a chilling effect on those who would challenge majoritarian or official views. It was the same chilling effect experienced by scientists who tried to voice alternative views on vaccines, school closures, masks, or the COVID origins. The success of this partnership may surpass anything achieved by direct state-run systems in countries like Russia or China.

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*Comm’n & Tech. of the H. Comm. on Energy & Com.*, 117th Cong. (2021) (Statement of Jonathan Turley); *The Right of The People Peacefully to Assemble: Protecting Speech By Stopping Anarchist Violence: Hearing Before the Subcomm. on the Const. of the S. Comm. on the Judiciary*, 116th Cong. (2020) (Statement of Jonathan Turley); *Respect for Law Enforcement and the Rule of Law: Hearing Before the Commission on Law Enforcement and the Administration of Justice*, (2020) (Statement of Jonathan Turley); *The Media and The Publication of Classified Information: Hearing Before the H. Select Comm. on Intelligence*, 109th Cong. (2006) (Statement of Jonathan Turley).

<sup>5</sup>See *U.S. House of Representatives v. Burwell*, 185 F. Supp. 3d 165 (D.D.C. 2016), <https://casetext.com/case/us-house-of-representatives-v-capacity-1>.

<sup>6</sup>Some of today’s testimony is material included from that earlier hearing. “Hearing on the Weaponization of the Federal Government,” U.S. House of Representatives, House Judiciary Committee, Select Subcommittee on the Weaponization of the Federal Government, February 9, 2023 (Statement of Jonathan Turley).

<sup>7</sup>*Twitter Revenue and User Statistics*, BUSINESS OF APPS, Jan. 31, 2023, <https://www.businessofapps.com/data/twitter-statistics/>.

<sup>8</sup>*Most Popular Social Networks*, STATISTA, <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>.

<sup>9</sup>Jonathan Turley, “Connect to Opportunity”: State Department Pushed LinkedIn to Censor “Disinformation,” Res Ipsa Blog ([www.jonathanturley.org](http://www.jonathanturley.org)), Apr. 12, 2023, <https://jonathanturley.org/2023/04/12/connect-to-opportunity-new-evidence-shows-state-department-pushing-linkedin-to-censor-disinformation/>.

<sup>10</sup>Jonathan Turley, New Documents Expose Government Censorship Efforts at Facebook and WhatsApp, Res Ipsa Blog ([www.jonathanturley.org](http://www.jonathanturley.org)), March 26, 2023, <https://jonathanturley.org/2023/03/26/new-documents-expose-government-censorship-efforts-at-facebook-and-whatsapp/>.

The recent disclosures involving the Cybersecurity and Infrastructure Security Agency (CISA) is chillingly familiar. It is part of an ever-expanding complex of Government programs and grants directed toward the censorship or blacklisting of citizens and groups. In just a matter of weeks, the size of this complex has come into greater focus and has confirmed the fears held by many of us over the use of private actors to do indirectly what the Government is prohibited from doing directly. I have called it “censorship by surrogate” and CISA appears to be the latest agency to enlist private proxy actors.

The focus of this hearing is particularly welcomed, as it reminds us that the cost of censorship is not just the loss of the right to free expression. Those costs can include the impact of reducing needed public debate and scrutiny in areas like public health. For years, Government and corporate figures worked to silence scientists and researchers who opposed Government policies on mask efficacy, universal vaccinations, school closures, and even the origin of COVID-19. Leading experts Drs. Jayanta Bhattacharya (Stanford University) and Martin Kulldorff (Harvard University) as well as a host of others, faced overwhelming attacks for questioning policies or views that later proved questionable or downright wrong. Those doctors were the co-authors of the Great Barrington Declaration, which advocated for a more focused COVID response that targeted the most vulnerable populations, rather than widespread lockdowns and mandates.

Dr. Kulldorff was censored in March 2021 when he tweeted “Thinking that everyone must be vaccinated is as scientifically flawed as thinking that nobody should. COVID vaccines are important for older high-risk people and their care-takers. Those with prior natural infection do not need it. Nor children.” Every aspect of that tweet was worthy of scientific and public debate. However, with the support of political, academic, and media figures, such views were suppressed at the very moment in which they could have made the most difference. For example, if we had a true and open debate, we might have followed other countries in keeping schools open for young children. Agencies and the media now recognize that these objections had merit. We are now experiencing an educational and mental health crisis associated with a lockdown that might have been avoided or reduced (as in other countries). Millions died as Government agencies enlisted companies to silence dissenting viewpoints on best practices and approaches. We do not know how many of those deaths or costs might have been avoided because this debate was delayed until after the pandemic had largely subsided.

The purpose of my testimony today is to address the legal question of when Government support for censorship systems becomes a violation of the First Amendment and, more broadly, when it convenes free speech principles. To that end, I hope to briefly explore what we know, what we do not know, and why we must know much more about the Government’s efforts to combat speech deemed misinformation, disinformation, and malinformation (MDM).

Regardless of how one comes out on the Constitutional ramifications of the Government’s role in the censorship system, there should be no serious debate over the dangers that Government-supported censorship presents to our democracy. The United States Government may be outsourcing censorship, but the impact is still inimical to the free speech values that define this country. This should not be a matter that divides our political parties. Free speech is the core article of faith of all citizens in our Constitutional system. It should transcend politics and, despite our deepening divisions, unite us all in a common cause to protect what Justice Louis Brandeis once called “the indispensable right.”<sup>11</sup>

## II. MDM AND CENSORSHIP BY SURROGATE

It is a common refrain among many supporters of corporate censorship that the barring, suspension, or shadow banning of individuals on social media is not a free speech problem. The reason is that the First Amendment applies to the Government, not private parties. As a threshold matter, it is important to stress that free speech values are neither synonymous with, nor contained exclusively within, the First Amendment. The First Amendment addressed the most prevalent danger of the time in the form of direct Government regulation and censorship of free speech and the free press. Yet, free speech in society is impacted by both public and private conduct. Indeed, the massive censorship system employed by social media companies presents the greatest loss of free speech in our history. These companies, not the Government, now control access to the “marketplace of ideas.” That is also a free speech threat that needs to be taken seriously by Congress. While the *Washington Post* has shown that the Russian trolling operations had virtually zero impact on

<sup>11</sup> *Whitney v. California*, 274 U.S. 357, 375–76 (1927) (Brandeis, J., concurring).

our elections,<sup>12</sup> the corporate censorship of companies like Twitter and Facebook clearly had an impact by suppressing certain stories and viewpoints in our public discourse. It was the response to alleged disinformation, not the disinformation itself, that manipulated the debate and issues for voters.

The First Amendment addresses actions by the Government, but there are certainly actions taken by these agencies to censor the views of citizens. While one can debate whether social media executives became effective Government agents, public employees are Government agents. Their actions must not seek to abridge the freedom of speech. It is possible that a systemic Government program supporting a privately-run censorship system is sufficient to justify injunctive relief based on the actions of dozens of Federal employees to target and seek the suspension of citizens due to their viewpoints. However, this program can also run afoul of the First Amendment if the corporate counterparts in the system are considered effective Government agents themselves. The most common example occurs under the Fourth Amendment where the Government is sometimes viewed as acting through private security guards or snitches performing tasks at its request.

The same agency relationship can occur under the First Amendment, particularly on social media. The “marketplace of ideas” is now largely digital. The question is whether the private bodies engaging in censorship are truly acting independently of the Government. There is now ample reason to question that separation. Social media companies operate under statutory conditions and agency review. That relationship can allow or encourage private parties to act as willing or coerced agents in the denial of free speech. Notably, in 1946, the Court dealt with a town run by a private corporation in *Marsh v. Alabama*.<sup>13</sup> It was that corporation, rather than a Government unit, that prevented citizens from distributing religious literature on a sidewalk. However, the Court still found that the First Amendment was violated because the corporation was acting as a governing body. The Court held that, while the denial of free speech rights “took place, [in a location] held by others than the public, [it] is not sufficient to justify the State’s permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties.”<sup>14</sup>

Congress has created a curious status for social media companies in granting immunity protections in Section 230. That status and immunity have been repeatedly threatened by Members of Congress unless social media companies expanded censorship programs in a variety of different areas. The demands for censorship have been reinforced by letters threatening Congressional action. Many of those threats have centered around removing Section 230 immunity, pursuing antitrust measures, or other vague regulatory responses. Many of these threats have focused on conservative sites or speakers. The language of the Section itself is problematic in giving these companies immunity “to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”<sup>15</sup> As Columbia Law professor Phil Hamburger has noted, the statute appears to permit what is made impermissible under the First Amendment:<sup>16</sup> “Congress makes explicit that it is immunizing companies from liability for speech restrictions that would be unconstitutional if lawmakers themselves imposed them.”<sup>17</sup> As Hamburger notes, that does not mean that the statute is unconstitutional, particularly given the judicial rule favoring narrow constructions to avoid unconstitutional meanings.<sup>18</sup> However, there is another lingering issue raised by the use of this power to carry out the clear preference on “content moderation” of one party.

The Court has recognized that private actors can be treated as agents of the Government under a variety of theories. Courts have found such agency exists when the Government exercises “coercive power” or “provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state.”<sup>19</sup> The Court has also held that the actions of a private party can be “fairly

<sup>12</sup>Tim Starks, *Russian Trolls on Twitter Had Little Influence on 2016 Election*, WASH. POST, Jan. 9, 2023, <https://www.washingtonpost.com/politics/2023/01/09/russian-trolls-twitter-had-little-influence-2016-voters/>.

<sup>13</sup>*Marsh v. Alabama*, 326 U.S. 501 (1946).

<sup>14</sup>*Id.* at 509.

<sup>15</sup>47 U.S.C. § 230(c).

<sup>16</sup>Philip Hamburger, *The Constitution Can Crack Section 230*, WALL STREET JOURNAL (Jan. 30, 2021).

<sup>17</sup>Congress makes explicit that it is immunizing companies from liability for speech restrictions that would be unconstitutional if lawmakers themselves imposed them.

<sup>18</sup>*Id.* See, e.g., *Republican Party of Hawaii v. Mink*, 474 U.S. 1301, 1302 (1985) (narrowly interpreting the recall provisions of the Honolulu City Charter).

<sup>19</sup>*Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).



treated as that of the state itself” where there exists a “close nexus between the state and the challenged action” that a private action “may be fairly treated as that of the state itself.”<sup>20</sup> I will return to the case law below, but first it is useful to consider what is currently known about the Government-corporate coordination revealed by the Twitter Files.

I will not lay out the full array of communications revealed by Twitter and recent litigation, but some are worth noting as illustrative of a systemic and close coordination between the company and Federal officials, including dozens reportedly working within the FBI. The level of back-channel communications at one point became so overwhelming that a Twitter executive complained that the FBI was “probing & pushing everywhere.” Another official referred to managing the Government censorship referrals as a “monumental undertaking.” At the same time, dozens of ex-FBI employees were hired, including former FBI General Counsel James Baker. There were so many FBI employees that they set up a private Slack channel and a crib sheet to allow them to translate FBI terms into Twitter terms more easily. The Twitter Files have led groups from the right to the left of our political spectrum to raise alarms over a censorship system maintained by a joint Government-corporate effort.<sup>21</sup> Journalist Matt Taibbi was enlisted by Elon Musk to present some of these files and reduced his findings to a simple header: “Twitter, the FBI Subsidiary.”

As discussed today, these disclosures show that FBI is not alone among the Federal agencies in systemically targeting posters for censorship. Indeed, emails reveal FBI figures, like San Francisco Assistant Special Agent in Charge Elvis Chan, asking Twitter executives to “invite an OGA” (or “Other Government Organization”) to an upcoming meeting. A week later, Stacia Cardille, a senior Twitter legal executive, indicated the OGA was the CIA, an agency under strict limits regarding domestic activities. Much of this work apparently was done through the multi-agency Foreign Influence Task Force (FITF), which operated secretly to censor citizens. Cardille referenced her “monthly (soon to be weekly) 90-minute meeting with FBI, DOJ, DHS, ODNI [Office of the Director of National Intelligence], and industry peers on election threats.” She detailed long lists of tasks sent to Twitter by Government officials. The censorship efforts reportedly included “regular meetings” with intelligence officials. This included an effort to warn Twitter about a “hack-and-leak operation” by state actors targeting the 2020 Presidential election. That occurred just before the *New York Post* story on Hunter Biden’s laptop was published and then blocked by Twitter. It was also blocked by other social media platforms like Facebook.<sup>22</sup>

The files also show the staggering size of Government searches and demands. The FBI reportedly did key word searches to flag large numbers of postings for possible referral to Twitter. On November 3, 2020, Cardille told Baker that “[t]he FBI has “some folks in the Baltimore field office and at HQ that are just doing keyword searches for violations. This is probably the 10th request I have dealt with in the last 5 days.” Baker responded that it was “odd that they are searching for violations of our policies.” But it was not odd at all. Twitter had integrated both current and former FBI officials into its network and the FBI was using the company’s broadly-defined terms of service to target a wide array of postings and posters for suspensions and deletions.

At one point, the coordination became so tight that, in July 2020, Chan offered to grant temporary top-secret clearance to Twitter executives to allow for easier communications and incorporation into the Government network.<sup>23</sup> This close working relationship also allowed the Government use of accounts covertly, reportedly with the knowledge of Twitter. One 2017 email sent by an official from United States Central Command (CENTCOM) requested that Twitter “whitelist” Arabic-language Twitter accounts that the Government was using to “amplify certain messages.” The Government also asked that these accounts be granted the “verified” blue checkmark.

<sup>20</sup> *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974).

<sup>21</sup> Compare *Yes, You Should be Worried About the Relationship with Twitter*, THE FIRE, Dec. 23, 2022, <https://www.thefire.org/news/yes-you-should-be-worried-about-fbis-relationship-twitter-with-Branco-Marcetic-Why-the-Twitter-Files-Are-In-Fact-a-Big-Deal>, JACOBIN, Dec. 29, 2022, <https://jacobin.com/2022/12/twitter-files-censorship-content-moderation-intelligence-agencies-surveillance>.

<sup>22</sup> Mark Zuckerberg has also stated that the FBI clearly warned about the Hunter Biden laptop as Russian disinformation. David Molloy, *Zuckerberg Tells Rogan that FBI Warning Prompted Biden Laptop Story Censorship*, BBC, August 26, 2022, <https://www.bbc.com/news/world-us-canada-62688532>.

<sup>23</sup> Gadde and Roth both testified that they do not know if anyone took up this offer for clearances.

The range of available evidence on Government coordination with censorship extends beyond the Twitter Files and involves other agencies. For example, recent litigation brought by various States over social media censorship revealed a back-channel exchange between defendant Carol Crawford, the CDC's Chief of digital media and a Twitter executive.<sup>24</sup> The timing of the request for the meeting was made on March 18, 2021. Twitter senior manager for public policy Todd O'Boyle asked Crawford to help identify tweets to be censored and emphasized that the company was "looking forward to setting up regular chats." However, Crawford said that the timing that week was "tricky." Notably, that week, Dorsey and other CEOs were to appear at a House hearing to discuss "misinformation" on social media and their "content moderation" policies. I had just testified on private censorship in circumventing the First Amendment as a type of censorship by surrogate.<sup>25</sup> Dorsey and the other CEOs were asked at the March 25, 2021, hearing about my warning of a "little brother problem, a problem which private entities do for the Government which it cannot legally do for itself."<sup>26</sup> Dorsey insisted that there was no such censorship office or program.

The pressure to censor COVID-related views was also coming from the White House, as they targeted Alex Berenson, a former *New York Times* reporter, who had contested agency positions on vaccines and underlying research. Rather than push information to counter Berenson's views, the White House wanted him banned. Berenson was eventually suspended.

These files show not just a massive censorship system but a coordination and integration of the Government to a degree that few imagined before the release of the Twitter Files. Congressional hearings have only deepened the alarm for many in the free speech community. At one hearing, former Twitter executive Anika Collier Navaroli testified on what she called the "nuanced" standard used by her and her staff on censorship, including the elimination of "dog whistles" and "coded" messaging. She then said that they balanced free speech against safety and explained that they sought a different approach:

"Instead of asking just free speech versus safety to say free speech for whom and public safety for whom. So whose free expression are we protecting at the expense of whose safety and whose safety are we willing to allow to go the winds so that people can speak freely?"

The statement was similar to the statement of the former CEO Parag Agrawal. After taking over as CEO, Agrawal pledged to regulate content as "reflective of things that we believe lead to a healthier public conversation." Agrawal said the company would "focus less on thinking about free speech" because "speech is easy on the internet. Most people can speak. Where our role is particularly emphasized is who can be heard."

The sweeping standards revealed at these hearings were defended by Members as necessary to avoid "insurrections" and other social harms. What is particularly distressing is to hear Members repeatedly defending censorship by citing Oliver Wendell Holmes' famous statement on "shouting fire in a crowded theater." This mantra has been grossly misused as a justification for censorship. From statements on the pandemic to climate change, anti-free speech advocates are claiming that opponents are screaming "fire" and causing panic. The line comes from *Schenck v. United States*, a case that discarded the free speech rights of citizens opposing the draft. Charles Schenck and Elizabeth Baer were leading socialists in Philadelphia who opposed the draft in World War I. Fliers were distributed that encouraged men to "assert your rights" and stand up for their right to refuse such conscription as a form of involuntary servitude. Writing for the Court, Justice Oliver Wendell Holmes dismissed the free speech interests in protecting the war and the draft. He then wrote the most regrettable and misunderstood judicial soundbites in history: "the character of every act depends on the circumstances in which it is done . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic." "Shouting fire in a crowded theater" quickly became a mantra for every effort to curtail free speech.

<sup>24</sup>The lawsuit addresses how experts, including Drs. Jayanta Bhattacharya (Stanford University) and Martin Kulldorff (Harvard University), have faced censorship on these platforms.

<sup>25</sup>*Fanning the Flames: Disinformation and Extremism in the Media: Hearing Before the Subcomm. on Comm'n & Tech. of the H. Comm. on Energy & Com.*, 117th Cong. (2021) (Statement of Jonathan Turley, Shapiro Professor of Public Interest Law, The George Washington University Law School).

<sup>26</sup>*Misinformation and Disinformation on Online Platforms: Hearing Before the Subcomm. on Comm'n & Tech. and Subcomm. on Consumer Protection of the H. Comm. on Energy & Com.*, 117th Cong. (2021).

Holmes sought to narrow his clear and present danger test in his dissent in *Abrams v. United States*. He warned that “we should be eternally vigilant against attempts to check the expression of opinions that we loath and believe to be fraught (sic) with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that at an immediate check is required to save the country.” Holmes’ reframing of his view would foreshadow the standard in *Brandenburg v. Ohio*, where the Supreme Court ruled that even calling for violence is protected under the First Amendment unless there is a threat of “imminent lawless action and is likely to incite or produce such action.” However, Members are still channeling the standard from *Schenck*, which is a curious choice for most Democrats in using a standard used against socialists and anti-war protesters.

Even more unnerving is the fact that Navaroli’s standard and those referencing terms like “delegitimization” makes the *Schenck* standard look like the model of clarity. Essentially, they add that you also have to consider the theater, movie, and audience to decide what speech to allow. What could be treated as crying “Fire!” by any given person or in any given circumstances would change according to their “nuanced” judgment.

### III. CISA WITHIN THE GOVERNMENT-CORPORATE ALLIANCE

The role of CISA in this complex of Government-corporate programs only recently came into closer scrutiny. The Department of Homeland Security was previously the focus of public controversy with the disclosure of the creation of Department’s Disinformation Governance Board and the appointment of Nina Jankowicz, its head.

Jankowicz was a long advocate for censorship in the name of combating disinformation. At the time, White House press secretary Jen Psaki described the board as intended “to prevent disinformation and misinformation from traveling around the country in a range of communities.”<sup>27</sup> While the Department ultimately yielded to the public outcry over the board and disbanded it, the public was never told of a wide array other offices doing much of the same work in targeting citizens and groups for possible censorship.

In January 2017, the Homeland Security declared that election infrastructure would be treated as “critical infrastructure.” CISA took a lead in supporting election infrastructure integrity and countering election misinformation. In 2018, CISA and its Countering Foreign Influence Task Force (CFITF) reportedly assumed a greater role in monitoring and counteracting foreign interference in U.S. elections. In 2020, this work appears to have expanded further to pursue allegations of “switch boarding” by domestic actors, or individuals thought to be acting as conduits for information undermining elections or critical infrastructure. Much about this work remains unclear and I am no expert on CISA or its operational profile. However, the expanding mandate of CISA follows a strikingly familiar pattern.

The Twitter Files references CISA participation in these coordination meetings.

Given a mandate to help protect election integrity, CISA plunged into the monitoring and targeting of those accused of disinformation. Infrastructure was interpreted to include speech. As its director, Jen Easterly, declared “the most critical infrastructure is our cognitive infrastructure” and thus included “building that resilience to misinformation and disinformation, I think, is incredibly important.”<sup>28</sup> She pledged to continue that work with the private sector including social media companies on that effort. We do not need the Government in the business of building our “cognitive infrastructure.” Like content moderation, the use of this euphemism does not disguise the Government’s effort to direct and control what citizens may read or say on public platforms.

Over the years, the range of information deemed harmful has expanded to the point that even true information is now viewed as harmful for the purposes of censorship. Some of the recent disclosures from Twitter highlighted the work of Stanford’s Virality Project which insisted “true stories . . . could fuel hesitancy” over taking the vaccine or other measures.<sup>29</sup> It is reminiscent of the sedition prosecutions

<sup>27</sup> Press Briefing by Press Secretary Jen Psaki, April 29, 2022, <https://www.whitehouse.gov/briefing-room/press-briefings/2022/04/28/press-briefing-by-press-secretary-jen-psaki-april-28-2022/>.

<sup>28</sup> Maggie Miller, *Cyber Agency Beefing Up Disinformation, Misinformation Team*, THE HILL, Nov. 10, 2022, <https://thehill.com/policy/cybersecurity/580990-cyber-agency-beefing-up-disinformation-misinformation-team/>.

<sup>29</sup> Jonathan Turley, *True Stories . . . Could Fuel Hesitancy*: Stanford Project Worked to Censor Even True Stories on Social Media, Res Ipsa Blog ([www.jonathanturley.org](http://www.jonathanturley.org)), March 19, 2023, at <https://jonathanturley.org/2023/03/19/true-stories-could-fuel-hesitancy-stanford-project-worked-to-censor-even-true-stories-on-social-media/>.

under the Crown before the American revolution where truth was no defense. Even true statements could be viewed as seditious and criminal. Once the Government gets into the business of speech regulation, the appetite for censorship becomes insatiable as viewpoints are deemed harmful, even if true. CISA shows the same broad range of suspect speech:

- Misinformation is false, but not created or shared with the intention of causing harm.
- Disinformation is deliberately created to mislead, harm, or manipulate a person, social group, organization, or country.
- Malinformation is based on fact, but used out of context to mislead, harm, or manipulate. An example of malinformation is editing a video to remove important context to harm or mislead.”<sup>30</sup>

MDM regulations offer the Government the maximal space for censorship based on how information may be received or used. The inclusion of true material used to “manipulate” others is particularly chilling as a rationale for speech controls.

According to the Election Integrity Partnership (EIP), “tickets” flag material for investigation that can be “one piece of content, an idea or narrative, or hundreds of URLs pulled in a data dump.”<sup>31</sup> These tickets reportedly include those suspected of “delegitimization,” which includes speech that undermines or spread distrust in the political or electoral system. The ill-defined character of these categories is by design. It allows for highly selective or biased “ticketing” of speech. The concern is that conservative writers or sites subjected to the greatest targeting or ticketing. This pattern was evident in other recent disclosures from private bodies working with U.S. agencies. For example, we recently learned that the U.S. State Department funding for the National Endowment for Democracy (NED) included support for the Global Disinformation Index (GDI).<sup>32</sup> The British group sought to discourage advertisers from supporting sites deemed dangerous due to disinformation. Companies were warned by GDI about “risky” sites that pose “reputational and brand risk” and asked them to avoid “financially supporting disinformation on-line.” All ten of the “riskiest” sites identified by the GDI are popular with conservatives, libertarians, and independents, including *Reason*, a site featuring legal analysis of conservative law professors. Liberal sites like *HuffPost* were ranked as the most trustworthy. The categories were as ill-defined as those used by CISA. *RealClearPolitics* was blacklisted due to what GDI considers “biased and sensational language.” The *New York Post* was blacklisted because “content sampled from the *Post* frequently displayed bias, sensationalism, and clickbait, which carries the risk of misleading the site’s reader.” After the biased blacklisting was revealed, NED announced that it would withdraw funding for the organization. However, as with the Disinformation Board, the Disinformation Index was just one of a myriad of groups being funded or fed information from Federal agencies. These controversies have created a type of “Whack-a-mole” challenge for the free speech community. Every time one censorship partnership is identified and neutralized, another one pops up.

EIP embodies this complex of groups working with agencies. It describes itself as an organization that “was formed between four of the Nation’s leading institutions focused on understanding misinformation and disinformation in the social media landscape: the Stanford Internet Observatory, the University of Washington’s Center for an Informed Public, Graphika, and the Atlantic Council’s Digital Forensic Research Lab.” The EIP has referred to CISA as one of its “stakeholders” and CISA has used the partnership to censor individuals or groups identified by the agency. We still do not the full extent of the coordination between CISA and other agencies with private and academic groups in carrying out censorship efforts. However, the available evidence raises legitimate questions over an agency relationship for the purposes of the First Amendment.

#### IV. OUTSOURCING CENSORSHIP: THE NEED FOR GREATER TRANSPARENCY AND ACCOUNTABILITY

In recent years, a massive censorship complex has been established with Government, academic, and corporate components. Millions of posts and comments are now

<sup>30</sup> Foreign Influence Operations and Disinformation, <https://www.cisa.gov/topics/election-security/foreign-influence-operations-and-disinformation>.

<sup>31</sup> ELECTION INTEGRITY PARTNERSHIP, THE LONG FUSE MISINFORMATION AND THE 2020 ELECTION 9 (2021), <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf>.

<sup>32</sup> Jonathan Turley, *Scoring Speech: How the Biden Administration has been Quietly Shaping Public Discourse*, Res Ipsa Blog ([www.jonathanturley.org](http://www.jonathanturley.org)), Feb. 20, 2023, <https://www.jonathanturley.org/2023/02/20/scoring-speech-how-the-biden-administration-has-been-quietly-shaping-speech/>.

being filtered through this system in arguably the most sophisticated censorship system in history. This partnership was facilitated by the demands of the First Amendment, which bars the Government from directly engaging in forms of prior restraint and censorship. If “necessity is the mother of invention,” the censorship complex shows how inventive motivated people can be in circumventing the Constitution. It has been an unprecedented challenge for the free speech community. The First Amendment was designed to deal with the classic threat to free speech of a Government-directed system of censorship. However, the traditional model of a ministry of information is now almost quaint in comparison to the current system. It is possible to have an effective state media by consent rather than coercion. There is no question that the work of these academic and private groups limits free speech. Calling opposing views disinformation, malinformation, or misinformation does not sanitize the censorship. It is still censorship being conducted through a screen of academic and corporate entities. It may also contravene the First Amendment.

The Government can violate the Constitution through public employees or private actors. As I testified recently before the Judiciary Committee, this agency relationship can be established through consent or coercion. Indeed, the line can be difficult to discern in many cases. There is an argument that this is a violation of the First Amendment.

Where the earlier debate over the status of these companies under Section 230 remained mired in speculation, the recent disclosures of Government involvement in the Twitter censorship program presents a more compelling and concrete case for arguing agency theories. These emails refer to multiple agencies with dozens of employees actively coordinating the blacklisting and blocking of citizens due to their public statements.

There is no question that the United States Government is actively involved in a massive censorship system. The only question is whether it is in violation of the First Amendment.

Once again, the Twitter Files show direct action from Federal employees to censor viewpoints and individual speakers on social media. The Government conduct is direct and clear. That may alone be sufficient to satisfy courts that a program or policy abridges free speech under the First Amendment. Even if a company like Twitter declined occasionally, the Federal Government was actively seeking to silence citizens. Any declinations only show that that effort was not always successful.

In addition to that direct action, the Government may also be responsible for the actions of third parties who are partnering with the Government on censorship. The Government has long attempted to use private parties to evade direct limits imposed by the Constitution. Indeed, this tactic has been part of some of the worst chapters in our history. For example, in *Lombard v. Louisiana*,<sup>33</sup> the Supreme Court dealt with the denial of a restaurant to serve three Black students and one white student at a lunch counter in New Orleans reserved for white people. The Court acknowledged that there was no State statute or city ordinance requiring racial segregation in restaurants. However, both the Mayor and the Superintendent of Police had made public statements that “sit-in demonstrations” would not be permitted. The Court held that the Government cannot do indirectly what it cannot do directly. In other words, it “cannot achieve the same result by an official command which has at least as much coercive effect as an ordinance.”<sup>34</sup>

As the Court said in *Blum v. Yaretsky* (where state action was not found), “a state normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state.”<sup>35</sup> Past cases (often dealing with state action under the Fourteenth Amendment) have produced different tests for establishing an agency relationship, including (1) public function; (2) joint action; (3) Governmental compulsion or coercion; and (4) Governmental nexus.<sup>36</sup> Courts have noted that these cases “overlap” in critical respects.<sup>37</sup> I will not go into each of these tests but they show the highly contextual analysis performed by courts in finding private conduct taken at the behest or direction of the Government. The Twitter Files show a multilayered incorporation of Government information, access, and personnel in the censorship program. One question is “whether the state has so far insinuated itself into a position of interdependence

<sup>33</sup> 373 U.S. 267 (1963).

<sup>34</sup> *Id.* at 273.

<sup>35</sup> *Blum v. Yaretsky*, 457 U.S. 991, 1004–05 (1982).

<sup>36</sup> *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021); *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). Some courts reduce this to three tests.

<sup>37</sup> *Rogalinski v. Meta Platforms, Inc.*, 2022 U.S. Dist. LEXIS 142721 (August 9, 2022).

with [the private entity] that it must be recognized as a joint participant in the challenged activity.”<sup>38</sup> Nevertheless, the Supreme Court noted in *Blum* that “[m]ere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the state responsible for those initiatives.”<sup>39</sup>

Courts have previously rejected claims of agency by private parties over social media.<sup>40</sup> However, these cases often cited that lack of evidence of coordination and occurred before the release of the Twitter Files. For example, in *Rogalinski v. Meta Platforms, Inc.*,<sup>41</sup> the court rejected a claim that Meta Platforms, Inc. violated the First Amendment when it censored posts about COVID-19. However, the claim was based entirely on a statement by the White House Press Secretary and “all of the alleged censorship against Rogalinski occurred before any Government statement.” It noted that there was no evidence that there was any input of the Government to challenge the assertion that Meta’s message was “entirely its own.”<sup>42</sup>

There is an interesting comparison to the decision of the United States Court of Appeals for the Sixth Circuit in *Paige v. Coyner* where the Court dealt with the termination of an employee after a county official called her employer to complain about comments made in a public hearing.<sup>43</sup> The court recognized that “[t]his so-called state-actor requirement becomes particularly complicated in cases such as the present one where a private party is involved in inflicting the alleged injury on the plaintiff.”<sup>44</sup> However, in reversing the lower court, it still found state action due to the fact that a Government official made the call to the employer, which prompted the termination.

Likewise, in *Dossett v. First State Bank*, the United States Court of Appeals for the Eighth Circuit ruled that the termination of a bank employee was the result of state action after school board members contacted her employer about comments made at a public-school board meeting.<sup>45</sup> The Eighth Circuit ruled that the district court erred by instructing a jury that it had to find that the school board members had “actual authority” to make these calls. In this free speech case, the court held that you could have state action under the color of law when the “school official who was purporting to act in the performance of official duties but was acting outside what a reasonable person would believe the school official was authorized to do.”<sup>46</sup> In this case, Federal officials are clearly acting in their official capacity. Indeed, that official capacity is part of the concern raised by the Twitter Files: the assignment of dozens of Federal employees to support a massive censorship system.

Courts have also ruled that there is state action where Government officials use their positions to intimidate or pressure private parties to limit free speech. In *National Rifle Association v. Vullo*, the United States Court of Appeals for the Second Circuit ruled that a free speech claim could be made on the basis of a state official’s pressuring companies not to do business with the NRA.<sup>47</sup> The Second Circuit held “although Government officials are free to advocate for (or against) certain viewpoints, they may not encourage suppression of protected speech in a manner that ‘can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official’s request.’”<sup>48</sup> It is also important to note that pressure is not required to establish an agency relationship under three of the prior tests. It can be based on consent rather than coercion.

We have seen how censorship efforts began with claims of foreign interference and gradually expanded into general efforts to target harm or “delegitimizing” speech. The Twitter Files show FBI officials warning Twitter executives that their platform was being targeted by foreign powers, including a warning that an executive cited as a basis for blocking postings related to the Hunter Biden laptop. At the same time, various Members of Congress have warned social media companies that they could face legislative action if they did not continue to censor social media. Indeed, after Twitter began to reinstate free speech protections and dismantle its censorship program, Rep. Schiff (joined by Reps. André Carson (D-Ind.), Kathy Castor (D-Fla.) and Sen. Sheldon Whitehouse (D-R.I.)) sent a letter to Facebook, warning it not to relax its censorship efforts. The letter reminded Facebook that some lawmakers are

<sup>38</sup> *Gorenc v. Salt River Project Agr. Imp. & Power Dist.*, 869 F.2d 503, 507 (9th Cir. 1989).

<sup>39</sup> *Blum*, 457 U.S. at 1004–05.

<sup>40</sup> *O’Handley v. Padilla*, 579 F. Supp.3d 1163 1192–93 (N.D. Cal. 2022).

<sup>41</sup> 2022 U.S. Dist. LEXIS 142721 (August 9, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> *Paige v. Coyner*, 614 F.3d 273, 276 (6th Cir. 2010).

<sup>44</sup> *Id.*

<sup>45</sup> 399 F.3d 940 (8th Cir. 2005).

<sup>46</sup> *Id.* at 948.

<sup>47</sup> *National Rifle Association of America v. Vullo*, 49 F.4th 700, 715 (2d Cir. 2022).

<sup>48</sup> *Id.* (quoting *Hammerhead Enters., Inc. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983)).

watching the company “as part of our on-going oversight efforts”—and suggested they may be forced to exercise that oversight into any move by Facebook to “alter or rollback certain misinformation policies.” This is only the latest such warning. In prior hearings, social media executives were repeatedly told that a failure to remove viewpoints were considered “disinformation.” For example, in a November 2020 Senate hearing, then-Twitter CEO Jack Dorsey apologized for censoring the Hunter Biden laptop story. But Sen. Richard Blumenthal, D-Conn., warned that he and his Senate colleagues would not tolerate any “backsliding or retrenching” by “failing to take action against dangerous disinformation.”<sup>49</sup> Senators’ demands increased censorship in areas ranging from the pandemic to elections to climate change.

These warnings do not necessarily mean that a court would find that executives were carrying out Government priorities. An investigation is needed to fully understand the coordination and the communications between the Government and these companies. In *Brentwood Academy v. Tennessee Secondary School Athletic Assn.*,<sup>50</sup> the Supreme Court noted that State action decisions involving such private actors are highly case-specific:

“What is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity. From the range of circumstances that could point toward the state behind an individual face, no one fact can function as a necessary condition across the board for finding state action; nor is any set of circumstances absolutely sufficient, for there may be some countervailing reason against attributing activity to the government . . .

“Our cases have identified a host of facts that can bear on the fairness of such an attribution. We have, for example, held that a challenged activity may be state action when it results from the state’s exercise of ‘coercive power,’ . . . when the state provides ‘significant encouragement, either overt or covert,’ . . . or when a private actor operates as a ‘willful participant in joint activity with the state or its agents,’ . . . We have treated a nominally private entity as a State actor when it is controlled by an ‘agency of the state,’ . . . when it has been delegated a public function by the state, . . . when it is ‘entwined with governmental policies,’ or when government is ‘entwined in [its] management or control.’”<sup>51</sup>

Obviously, many of these elements appear present. However, the Twitter Files also show executives occasionally declining to ban posters targeted by the Government. It also shows such pressure coming from the Legislative branch. For example, the Twitter Files reveal that Twitter refused to carry out censorship requests from at least one Member targeting a columnist and critic. Twitter declined and one of its employees simply wrote, “no, this isn’t feasible/we don’t do this.”<sup>52</sup> There were also requests from Republicans to Twitter for action against posters, including allegedly one from the Trump White House to take down content.<sup>53</sup>

We simply do not know the extent of what companies like Twitter “did do,” nor for whom. We do not know how demands were declined when flagged by the CISA, FBI, or other agencies. The report from Twitter reviewers selected by Elon Musk suggests that most requests coming from the Executive branch were granted. That is one of the areas that could be illuminated by this select subcommittee. The investigation may be able to supply the first comprehensive record of the Government efforts to use these companies to censor speech. It can pull back the curtain on America’s censorship system so that both Congress and the public can judge the conduct of our Government.

Whether the surrogate censorship conducted by social media companies is a form of Government action may be addressed by the courts in the coming years. However, certain facts are well-established and warrant Congressional action. First, while

<sup>49</sup> *Misinformation and Disinformation on Online Platforms: Hearing Before the Subcomm. on Comm’n & Tech. and Subcomm. on Consumer Protection of the H. Comm. on Energy & Com.*, 117th Cong. (2021).

<sup>50</sup> 531 U.S. 288 (2001).

<sup>51</sup> *Id.* at 296.

<sup>52</sup> Jonathan Turley, “We Don’t Do This”: Twitter Censors Rejected Adam Schiff’s Censorship Request, THE HILL, Jan. 5, 2023, <https://thehill.com/opinion/judiciary/3800380-we-dont-do-this-even-twitters-censors-rejected-adam-schiffs-censorship-request/>.

<sup>53</sup> This included the Trump White House allegedly asking to take down derogatory tweets from the wife of John Legend after the former President attacked the couple. Moreover, some Trump officials supported efforts to combat foreign interference and false information on social media. It has been reported that Twitter has a “database” of Republican demands. Adam Rawnsley and Asawin Suebaeny, *Twitter Kept Entire “Database” of Republican Requests to Censor Posts*, ROLLING STONE, Feb. 8, 2023, <https://www.rollingstone.com/politics/politics-news/elon-trump-twitter-files-collusion-biden-censorship-1234675969/>.

these companies and Government officials prefer to call it “content moderation,” these companies have carried out the largest censorship system in history, effectively governing the speech of billions of people. The American Civil Liberties Union, for example, maintains that censorship applies to both Government and private actions. It is defined as “the suppression of words, images, or ideas that are ‘offensive,’ [and] happens whenever some people succeed in imposing their personal political or moral values on others.”<sup>54</sup> Adopting Orwellian alternative terminology does not alter the fact that these companies are engaging in the systemic censoring of viewpoints on social media.

Second, the Government admits that it has supported this massive censorship system. Even if the censorship is not deemed Government action for the purposes of the First Amendment, it is now clear that the Government has actively supported and assisted in the censorship of citizens. Objecting that the conduct of Government officials may not qualify under the First Amendment does not answer the question of whether members believe that the Government should be working for the censorship of opposing or dissenting viewpoints. During the McCarthy period, the Government pushed blacklists for suspected communists and the term “fellow travelers” was rightfully denounced regardless of whether it qualified as a violation of the First Amendment. Even before Joe McCarthy launched his un-American activities hearings, the Justice Department created an effective blacklist of organizations called “Attorney General’s List of Subversive Organizations” (AGLOSO) that was then widely distributed to the media and the public. It became the foundation for individual blacklists.<sup>55</sup> The maintenance of the list fell to the FBI. Ultimately, blacklisting became the norm with both Legislative and Executive officials tagging artists, writers, and others. As Professor Geoffrey Stone observed, “Government at all levels hunted down ‘disloyal’ individuals and denounced them. Anyone so stigmatized became a liability to his friends and an outcast to society.”<sup>56</sup> At the time, those who raised the same free speech objections were also attacked as “fellow travelers” or “apologists” for communists. It was wrong then and it is wrong now. It was an affront to free speech values that have long been at the core of our country. It is not enough to say that the Government is merely seeking the censorship of posters like any other user. There are many things that are more menacing when done by the Government rather than individuals. Moreover, the Government is seeking to silence certain speakers in our collective name and using tax dollars to do so. The FBI and other agencies have massive powers and resources to amplify censorship efforts. The question is whether Congress and its individual members support censorship whether carried out by corporate or Government officials on social media platforms.<sup>57</sup>

Third, the Government is engaged in targeting users under the ambiguous mandates of combating disinformation or misinformation. These are not areas traditionally addressed by public affairs offices to correct false or misleading statements made about an agency’s work. The courts have repeatedly said that agencies are allowed to speak in their voices without viewpoint neutrality.<sup>58</sup> As the Second Circuit stated, “[w]hen it acts as a speaker, the Government is entitled to favor certain views over others.”<sup>59</sup> This was an effort to secretly silence others. Courts have emphasized that “[i]t is well-established that First Amendment rights may be violated by the chilling effect of governmental action that falls short of a direct prohibition against speech.”<sup>60</sup> These public employees were deployed to monitor and target user spreading “disinformation” on a variety of subjects, from election fraud to Government corruption. The Twitter Files show how this mandate led to an array of abuses, from targeting jokes to barring opposing scientific views.

<sup>54</sup>American Civil Liberties Union, *What is Censorship?*, <https://www.aclu.org/other/what-censorship>.

<sup>55</sup>Robert Justin Goldstein, *Prelude to McCarthyism*, PROLOGUE MAGAZINE, Fall 2006, <https://www.archives.gov/publications/prologue/2006/fall/agloso.html>. Courts pushed back on the listing to require some due process for those listed.

<sup>56</sup>Geoffrey R. Stone, *Free Speech in the Age of McCarthy: A Cautionary Tale*, 93 CALIF. L. REV. 1387, 1400 (2005).

<sup>57</sup>The distinction between these companies from other corporate entities like the NFL or Starbucks is important. There is no question that businesses can limit speech on their premises and by their own employees. However, these companies constitute the most popular communication platforms in the country. They are closer to AT&T than Starbucks in offering a system of communication.

<sup>58</sup>*Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009); *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 553 (2005).

<sup>59</sup>*Wandering Dago, Inc. v. Destito*, 879 F.3d 20, 34 (2d Cir. 2018).

<sup>60</sup>*Zieper v. Metzinger*, 474 F.3d 60, 65 (2d Cir. 2007).



These facts already warrant bipartisan action from Congress. Free speech advocates have long opposed disinformation mandates as an excuse or invitation for public or private censorship. I admittedly subscribe to the view that the solution to bad speech is better speech, not speech regulation.<sup>61</sup> Justice Brandeis embraced the view of the Framers that free speech was its own protection against false statements: “If there be time to discover through discussion the falsehood and the fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech not enforced silence.”<sup>62</sup> We have already seen how disinformation was used to silence dissenting views of subjects like mask efficacy and COVID policies like school closures that are now being recognized as legitimate.

We have also seen how claims of Russian trolling operations may have been overblown in their size or their impact. Indeed, even some Twitter officials ultimately concluded that the FBI was pushing exaggerated claims of foreign influence on social media.<sup>63</sup> The Twitter Files refer to sharp messages from the FBI when Twitter failed to find evidence supporting the widely-reported foreign trolling operations. One Twitter official referred to finding “no links to Russia.” This was not for want of trying. Spurred on by the FBI, another official promised “I can brainstorm with [redacted] and see if we can dig even deeper and try to find a stronger connection.” The pressure from the FBI led Roth to tell his colleagues that he was “not comfortable” with the agenda of the FBI and said that it reminded him of something “more like something we’d get from a Congressional committee than the Bureau.”

The danger of censorship is not solely a concern of one party. To his great credit, Rep. Ro Khanna (D., Cal.) in October 2020, said that he was appalled by the censorship and was alarmed by the apparent “violation of the 1st Amendment principles.”<sup>64</sup> Congress can bar the use of Federal funds for such disinformation offices. Such legislation can require detailed reporting on agency efforts to ban or block public comments or speech by citizens. Even James Baker told the House Oversight Committee that there may be a need to pass legislation to limit the role of Government officials in their dealings with social media companies.<sup>65</sup> Legislation can protect the legitimate role of agencies in responding and disproving statements made out its own programs or policies. It is censorship, not disinformation, that has damaged our Nation in recent years. Free speech like sunshine can be its own disinfectant. In *Terminiello v. City of Chicago*, the Supreme Court declared that:

“The right to speak freely and to promote diversity of ideas . . . is . . . one of the chief distinctions that sets us apart from totalitarian regimes . . . [A] function of free speech under our system of Government is to invite dispute. Speech is often provocative and challenging. [F]reedom of speech, though not absolute, is nevertheless protected against censorship.”<sup>66</sup>

Disinformation does cause divisions, but the solution is not to embrace Government-corporate censorship. The Government effort to reduce speech does not solve the problem of disinformation. It does not change minds but simply silences voices in national debates.

## V. CONCLUSION

There is obviously a deep division in Congress over censorship, with many Members supporting the efforts to blacklist and remove certain citizens or groups from social media platforms. That is a debate that many of us in the free speech community welcome. However, let it be an honest and open debate. The first step in securing such a debate is to support transparency on the full extent of these efforts by Federal agencies.

<sup>61</sup> See generally Jonathan Turley, *Harm and Hegemony: The Decline of Free Speech in the United States*, 45 HARV. J.L. & PUB. POLY 571 (2022).

<sup>62</sup> Whitney, 274 U.S. at 375, 377.

<sup>63</sup> In his testimony, Roth stated that they found substantial Russian interference impacting the election. *Protecting Speech from Government Interference and Social Media Bias, Part 1: Twitter’s Role in Suppressing the Biden Laptop Story: Hearing Before the H. Comm. on Oversight & Accountability*, 118th Cong. (2023) (Statement of Yael Roth, former head of trust and safety, Twitter). That claim stands in conflict with other studies and reports, but it can also be addressed as part of the investigation into these communications.

<sup>64</sup> *Democratic Rep. Ro Khanna Expressed Concerns Over Twitter’s Censorship of Hunter Biden Laptop*, FOX NEWS, Dec. 2, 2022, <https://www.foxnews.com/politics/democratic-rep-ro-khanna-expressed-concerns-twitters-censorship-hunter-biden-laptop-story>.

<sup>65</sup> *Protecting Speech from Government Interference and Social Media Bias, Part 1: Twitter’s Role in Suppressing the Biden Laptop Story: Hearing Before the H. Comm. on Oversight & Accountability*, 118th Cong. (2023) (Statement of James Baker, former general counsel, FBI.)

<sup>66</sup> *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (citations omitted).

The second step is to allow these questions to be discussed without attacking journalists and witnesses who come to Congress to share their own concerns over the threat to both free press and free speech values. Calling reporters “so-called journalists” or others “Putin lovers” represent a return to the rhetoric used against free speech advocates during the Red Scare.<sup>67</sup> We are better than that as a country and our Constitution demands more from this body. If Members want to defend censorship, then do so with the full record before the public on the scope and standards of this Government effort.

The public understands the threat to free speech and strongly supports an investigation into the FBI’s role in censoring social media. Despite the push for censorship by some politicians and pundits, most Americans still want free-speech protections. It is in our DNA. This country was founded on deep commitments to free speech and limited Government—and that Constitutional tradition is no conspiracy theory. Polls show that 73 percent of Americans believe that these companies censored material for political purposes.<sup>68</sup> Another poll showed that 63 percent want an investigation into FBI censorship allegations.<sup>69</sup>

Adlai Stevenson famously warned of this danger: “Public confidence in the integrity of the Government is indispensable to faith in democracy; and when we lose faith in the system, we have lost faith in everything we fight . . . for.” Senator Stevenson’s words should resonate on both sides of our political divide and that we might, even now, find a common ground and common purpose. The loss of faith in our Government creates political instabilities and vulnerabilities in our system. Moreover, regardless of party affiliation, we should all want answers to come of these questions. We can differ on our conclusions, but the first step for Congress is to force greater transparency on controversies involving bias to censorship. One of the greatest values of oversight is to allow greater public understanding of the facts behind Government actions. Greater transparency is the only course that can help resolve the doubts that many have over the motivations and actions of their Government. I remain an optimist that it is still possible to have a civil and constructive discussion of these issues. Regardless of our political affiliations and differences, everyone in this room is here because of a deep love and commitment to this country. It was what brought us from vastly different backgrounds and areas in our country. We share a single article of faith in our Constitution and the values that it represents. We are witnessing a crisis of faith today that must be healed for the good of our entire Nation. The first step toward that healing is an open and civil discussion of the concerns that the public has with our Government. We can debate what measures are warranted in light of any censorship conducted with Government assistance. However, we first need to get a full and complete understanding of the relationship between Federal agencies and these companies in the removal or suspension of individuals from social media. At a minimum, that should be a position that both parties can support in the full disclosure of past Government conduct and communications with these companies.

Once again, thank you for the honor of appearing before you to discuss these important issues, and I would be happy to answer any questions from the committee.

Mr. BISHOP. Thank you, Professor Turley.

Members will be recognized by order of seniority for their 5 minutes of questioning. An additional round of questioning may be called after all Members have been recognized.

I now recognize myself for 5 minutes of questioning.

Mr. Weingarten, you laid out in your testimony, your written testimony, that CISA—and that’s the reason I think this subcommittee, as the oversight committee, needs to look at this also, it’s an issue of supreme importance—that CISA had a central role in creating this what I refer to as the censorship laundering enterprise.

<sup>67</sup>Jonathan Turley, *Is the Red Scare Turning Blue?*, Res Ipsa Blog ([www.jonathanturley.org](http://www.jonathanturley.org)), Feb. 12, 2023, <https://jonathanturley.org/2023/02/12/is-the-red-scare-going-blue-democrats-acuse-government-critics-of-being-putin-lovers-and-supporting-insurrectionists/>.

<sup>68</sup>Sean Burch, *Nearly 75 percent of Americans Believe Twitter, Facebook Censor Posts Based on Viewpoints*, Pew Finds, THE WRAP, Aug. 19, 2020, <https://www.thewrap.com/nearly-75-percent-twitter-facebook-censor/>.

<sup>69</sup>63% Want FBI’s Social Media Activity Investigated, RASMUSSEN REPORTS, Dec. 26, 2022, [https://www.rasmussenreports.com/public\\_content/politics/partner\\_surveys/twittergate\\_63\\_want\\_fbi\\_s\\_social\\_media\\_activity\\_investigated](https://www.rasmussenreports.com/public_content/politics/partner_surveys/twittergate_63_want_fbi_s_social_media_activity_investigated).

You mentioned that it convened meetings with social media companies and others and other law enforcement agencies. They switchboarded, meaning that a request to censor would come in from other sources. They'd pass them on. They would brief state officials on sort-of what's acceptable thought and not, coordinate with public and private-sector partners to, "build resilience." I'll maybe get a chance to ask Dr. Miller-Idriss about that topic.

I wonder if you'd elaborate on this one aspect, this coordination with private-sector partners. Professor Turley made reference to it. It's an article you made reference to, the Siegel *Tablet* mag article. He refers to it as the NGO Borg. That is to say, all these acronymed entities.

Talk about that, if you would, a little bit.

Mr. WEINGARTEN. Well, thank you, Mr. Chairman.

Briefly, switchboarding, that concept of receiving purported misinformation or disinformation and then passing it on to a platform and the platform responding and saying escalated and, yes, under XYZ policy we have actioned, we have taken action on this tweet.

It seems to me that CISA understood that when it ran up against domestic speech, even though it appears domestic speech was captured in its switchboarding efforts, it recognized that the proper way to do this, in the term that this hearing has used of laundering it, could be better done through outsourcing those efforts, but in close coordination with the Government.

So you mentioned before EIP, the Election Integrity Partnership. This is a consortium of four outside nongovernmental groups. It includes the Stanford Internet Observatory, University of Washington's CIP, the Atlantic Council's DFRLab, as well as a company called Graphika. Many of these organizations have links and ties to Government officials.

Essentially what CISA did, in conjunction with EIP and, according to EIP officials, with some interns who were both working at CISA while at the same time members of SIO, the Stanford Internet Observatory, was create a platform to pass along purported mis-, dis-, and malinformation for this platform to, as shown in that graphic before, collect and surveil tweets, to then for this platform to pressure social media companies to change their terms of service, and then flag for them specific instances of content they believed ran up against those flags, and consequently have led to, as shown, 22 million tweets and retweets and such to be labeled misinformation.

Mr. BISHOP. That phenomenon appears to be—it sort-of goes underground, the Government censoring effort. There are a lot of other indications that it's kind-of being—the tracks are being covered. Maybe we'll get a chance to talk about that some more.

Dr. Kulldorff, you're an epidemiologist of 30 years' experience, two decades at Harvard. You are, to me, the epitome of a public health expert. So you made some views, expressed some views on COVID issues, and then you were censored. CISA may have played a role in that.

CISA, one of the connections, this Election Integrity Project or whatever it's called, Partnership, became the Virality Project, which then censored COVID information. So not only were you

censored by YouTube and Twitter and the like, there was a Government hand in this kind of censorship.

Thank you for your role in the attorney generals of Louisiana and Missouri's litigation that is, frankly, to be thanked for the exposure of a lot of it.

How does that make you feel, that the Government was responsible for censoring your views?

Mr. KULLDORFF. I think it's stunning. If you had mentioned this 3 years ago, I wouldn't have believed you, that scientists would be censored in this country.

Mr. BISHOP. Dr. Miller-Idriss, you have said—one thing I appreciated in your testimony, you said that we should protect people's First Amendment rights as you go about this. How do you propose to do that?

Ms. MILLER-IDRISS. Thank you for the question.

I would say by not telling them what to think, by not censoring them, by not telling people what they should be thinking, but just helping them make better choices about recognizing some of the tricky content that, for example, their kids encounter on-line.

Mr. BISHOP. Well, but there's a recognition, the Supreme Court has recognized that there's a First Amendment right of access to information as well as the right to speak.

Ms. MILLER-IDRISS. Yes.

Mr. BISHOP. One of your proposals in your policy recommendation list is that you continue to work with the tech sector to remove harmful and dangerous content.

If it's content that the First Amendment allows, how could you possibly justify removing it under the—as a Government agency?

Ms. MILLER-IDRISS. Well, I would say, as a Government employee or agency or anyone would want to remove criminal content, content that is incitement to violence, criminal content, something that is inciting someone, that is live-streaming the murder of people in a Walmart, for example. That's what I'm talking about when I talk about harmful content.

Mr. BISHOP. OK. My 5 minutes have expired, unfortunately. I hope we'll be able to have a second round.

I now recognize Ranking Member Ivey for 5 minutes for questions he may have.

Mr. IVEY. I'm pretty sure we'll have a second round, whether we like it or not.

Professor Turley, let me come back to you. I thought I pulled up your testimony here. But it goes to the question I raised when I was making my opening statement, which was that you'd raised the issue—I'm sorry. It's page 18 of your testimony.

"Disinformation does cause divisions, but the solution is not to embrace Government-corporate censorship."

So what would be the types of solutions we're looking at? Just off Dr. Miller-Idriss' statement.

For example, a new phenomenon apparently is people. I guess when I was a kid they would pull the fire alarm. Now they're making calls and saying that there's an active shooter at elementary school X. Because of the networking that everything has now, that gets picked up by the police and the EMT and frightened parents, news media, even though it's false.

So one example—I mean, there’s multiple others. We could talk about the recruitment videos and the like. You might have gradations of those. But, I mean, what would be your take on how we should be addressing these kinds of issues?

Mr. TURLEY. Thank you very much for that question.

I actually think there is a lot of common ground there in terms of what we can do positively to deal with disinformation.

Disinformation is a real thing. It is a thing that people go on the internet. It seems to be a license for people, and in an age of rage that license can be truly horrific when you look at how people transform themselves on the internet.

What I would stress is that the Government should not be in the business of censorship. That’s a bright line that the Government can live with. Instead, it should focus on producing better information and to have offices that can counter—because, remember, the courts have accepted that—the Supreme Court has said the Government doesn’t have to be neutral on information. When it speaks, it’s allowed to take a side. It’s allowed to say what it believes is true.

Mr. IVEY. Well, but let’s follow up on that.

So I, as Government official, learn that there’s no active shooter at that elementary school and I call YouTube, Twitter, whoever, and say, hey, look, that’s false information, you’re scaring parents to death, can you take that down?

Mr. TURLEY. Well, first of all, that example you gave may indeed be a crime under State law, to make false claims of that kind with the purpose of triggering panic.

But, more importantly, one of the things that can be done is that the social media companies and the Government can immediately flag information they believe is untrue and speak in their own voice.

What I think we need to develop—and I think there’s a lot of room there to develop it—is to try to create better guardrails that keep the U.S. Government on this side of censorship. That includes the use of agencies. The use of private companies, in my view, do trigger the First Amendment. I think that the Government has actually violated the First Amendment.

Mr. IVEY. Since I’m running out of time, there was something else I wanted to raise. I’ll have to come back to you all in the next round.

You did mention Nina Jankowicz in your statement, who I had a chance to meet during a deposition in the Judiciary Committee. I’ve started following her and what happened with respect to her. She was the person, as you may recall, who was appointed to head that board. As it turned out, she was essentially forced out of the position before it was even formed.

I’ll offer a couple of articles here that can be put into the record. But there’s an individual named Jack Posobiec, I guess his name is, who put out arguably false information about her that got picked up by Chairman Jordan and others. Actually, I think Ms. Taylor Greene had some comments with respect to it. We can put them in the record. I think Mr. Gaetz did as well.

That sort-of escalated into her getting death threats. She had to hire a security company. She was 8 months pregnant.

Ms. GREENE. Parliamentary question, Mr. Chairman.

Mr. IVEY. I didn't say that you—

Mr. BISHOP. What is that?

Ms. GREENE. He mentioned my name and accused me of saying false information about Nina Jankowicz.

Mr. BISHOP. The committee will be at ease.

Mr. IVEY. Can we pause the clock?

Mr. BISHOP. Yes. Please do. In fact, put 20 seconds back on the clock, please. The committee will suspend.

[Pause.]

Mr. BISHOP. Members are reminded not to engage in personalities.

The gentleman is recognized.

Mr. IVEY. Thank you.

But Members of Congress made comments about her that took on a life of their own, that became viral on the internet, led to the death threats that she got—and still gets, actually, even though she's been out of the position for about a year, at least. I think she's filing a lawsuit against FOX for propagating these stories as well.

But she was clearly a victim of, in my view, misinformation, disinformation. From her perspective, it was very ironic, because that's what she was actually brought into the Government to try and address.

So I'll come back to it later. But thank you, Professor Turley, for your comments.

Mr. BISHOP. The gentleman yields back.

I now recognize the gentlelady, Ms. Greene of Georgia, for her 5 minutes.

Ms. GREENE. Thank you so much, Mr. Chairman.

Thank you, witnesses, for coming before our committee today.

I am one of those that believe our First Amendment is one of the greatest rights that we have. I also am so grateful to be an American, always believing that freedom of speech was something that we possessed until the past few years, where myself and many other Americans—Dr. Kulldorff—we found ourselves—I, like you, had my Twitter account permanently banned for posting my speech, opinions, and thoughts on Twitter about COVID-19.

I'm not a doctor or an expert like you are. You certainly are an expert in the field on it. It's a shame that you had your speech censored.

But it's appalling to me that CISA, which is taxpayer-funded by the American people, the same American people that are given the right to the freedom of speech, that are given this great freedom by our Founders, had their speech censored.

That combination between the Homeland Security and CISA, working with private companies, big tech companies and others, to silence Americans is a grave assault on all of these Americans' First Amendment rights.

So I'd like to ask each of you, Mr. Weingarten, do you believe in the First Amendment?

Mr. WEINGARTEN. Wholeheartedly.

Ms. GREENE. Dr. Kulldorff.

Mr. KULLDORFF. I do.

Ms. GREENE. Dr. Miller-Idriss.

Ms. MILLER-IDRISS. Absolutely.

Ms. GREENE. Mr. Turley.

Mr. TURLEY. I do.

Ms. GREENE. Great. Well, it seems that we all share the same belief.

I would like to ask, since we're talking about truth and information, given that CISA engaged in this with the Department of Homeland, who is the author of truth? I'll ask each of you again. Who's in charge of truth?

Mr. Weingarten.

Mr. WEINGARTEN. Well, I believe, as citizens, we're all entitled to evaluate facts and opinions and decide for ourselves.

Ms. GREENE. Dr. Kulldorff.

Mr. KULLDORFF. Nobody is in charge. It's a collective responsibility.

Ms. GREENE. Dr. Miller-Idriss.

Ms. MILLER-IDRISS. I agree. There's no truth with a capital "T". I think we all need to be equipped with the tools to evaluate evidence and make decisions.

Ms. GREENE. Mr. Turley.

Mr. TURLEY. I agree with all those comments.

Ms. GREENE. Great. This is very overwhelmingly fantastic.

But I'd like to ask a question, Dr. Miller-Idriss, if I may.

You're an expert on so-called right-wing extremism, including on-line radicalization by right-wing extremist groups. You've written several books on right-wing extremism, including "Hate in the Homeland: The New Global Far Right." You're a member of the Southern Poverty Law Center, the SPLC Tracking Hate and Extremism Advisory Committee.

I couldn't find any of your work studying left extremism or antifa or BLM. I mean, we all know antifa and BLM riots are responsible for \$2 billion of damage across American cities in 2020, and antifa literally took over Portland and declared their own autonomous zone.

So I'm just wondering, how do you consider your organization, PERIL, a good source of informing people on what they should believe and not believe when you do no study whatsoever into left extremism?

Ms. MILLER-IDRISS. Thank you for the question.

I'm an expert on the far right because I spent the first 20 years of my career working in Germany in the post-Holocaust, post-unification surge of far-right extremism. I know you have a hearing on Tuesday on far-left extremism.

Ms. GREENE. Yes. But, Dr. Miller-Idriss, just to let you know, this is America. We're not Nazi Germany.

Ms. MILLER-IDRISS. Yes, absolutely right. But that's how when I pivoted here, the first time I was asked to testify was about that evidence that I had learned from what Germany had been doing, and then that became relevant here for policy makers.

But we don't—first of all, just to respond to your query about what we teach people, we don't teach people anything. We are just looking at helping them understand what the tactics of manipulation are on-line so they can make better decisions.

We have experts who do work on environmental extremism. We have experts who work on Islamist forms of extremism. But because, both under the Trump administration and the Biden administration, the emphasis has been right now on the greatest, most lethal threat, which has been determined to be far right, meaning white supremacist extremism and unlawful militias——

Ms. GREENE. Well, Dr. Miller-Idriss, just real quick, I'm out of time. But would you consider Trump supporters extremists?

Ms. MILLER-IDRISS. We are worried about violent extremism. So that to the extent—not about what people believe, but to the extent that they are moving toward violence.

Ms. GREENE. Trump supporters specifically?

Ms. MILLER-IDRISS. If they're calling for violence. It doesn't matter to me who they support.

Ms. GREENE. I haven't seen any—by the way, there's a great rally in Iowa this weekend if you want to study people on the right and what they believe. You'll find secure borders, freedom of speech.

Mr. BISHOP. The gentlewoman's time——

Ms. GREENE. No crime.

Thank you. I yield back.

Mr. BISHOP. The gentlewoman's time has expired.

I recognize Mrs. Ramirez for her 5 minutes of questioning.

Mrs. RAMIREZ. Thank you, Chairman and Ranking Member Ivey.

I have a couple of comments for Dr. Miller-Idriss. But I want to come back real quick before that to something I heard a couple of my colleagues mention. This question is for Dr. Kulldorff.

I heard that it was referred that you too have been censored by CISA and sharing that concern that both of you are censored. Could you give me examples of how CISA has censored you?

Mr. KULLDORFF. I was censored by Twitter, by YouTube, by LinkedIn, Facebook, and Reddit. They don't tell who is behind it. So sometimes they don't say anything. Whatever I said just disappears. Sometimes one gets a note saying something of the style of, "It goes against our standards." But they never tell—they never told me, the person being censored, who was behind it.

Mrs. RAMIREZ. So, Doctor, just for the record here, just I think on the record here, Cybersecurity and Infrastructure Security Agency, you have no evidence that they censored you. You were told by Twitter and other social media outlets that you were not allowed to continue posting these things, but CISA itself there's no evidence was censoring you, correct? Yes or no?

Mr. KULLDORFF. They never disclosed who sort-of was behind it or what was behind it.

Mrs. RAMIREZ. OK. Well, thank you. I just wanted to make sure that that was on the record, that CISA itself had not censored you. There's no evidence of that.

So I want to come back, Dr. Miller-Idriss, to the work that you've been doing, your work on disinformation and the role of hate in community violence.

Look, it could not be happening at a more urgent time. We talk about the border here. We talk about children, families, people seeking asylum. There's all sorts of things that are said about them.



Just a few days since—just a few days ago someone senselessly drove their car into a group of migrants outside of a shelter in Brownsville, the same border that my mother crossed pregnant with me. A witness of the horrible scene heard the attacker make anti-immigrant remarks after he initially tried to run away after plowing his car into people, killing several and injuring more.

There isn't always a written manifesto to directly point to when it comes to extreme hate, but we know there's a troubling connection between spreading hateful ideas and extreme violence that destabilizes entire communities, and the cost for this could be human lives.

In your testimony you shared that pace, scope, and scale of violent extremism have probably increased and are escalating rapidly due to propaganda, conspiracy theories, and disinformation. Is that correct?

Ms. MILLER-IDRISS. Yes.

Mrs. RAMIREZ. What kind of impact does spreading propaganda and disinformation have on vulnerable communities, such as immigrants and asylum seekers?

Ms. MILLER-IDRISS. The impact on vulnerable communities, of course, is to terrorize them. So we saw that in Buffalo. We've seen that in Pittsburgh. We've seen that in record-breaking anti-Semitism and attacks on the LGBTQ community. With every vulnerable community, essentially, we're seeing spikes, surges, or record-breaking hate. Hate crimes are higher than they've been in well over a decade.

So the impact is on families that are torn apart, communities that are torn apart, but also people who are afraid to go to synagogue, to go to church, to go to their school board meetings in some cases, that they're going to be met with violent protesters.

Mrs. RAMIREZ. Thank you.

There's an extremely disturbing rise in people who commit extreme violence that cite the great replacement theory, which, to be absolutely clear, is a white supremacist conspiracy theory that alleges that white people are being replaced by Black and Brown people, including immigrants.

In your opinion, what are the most effective strategies for countering conspiracy theories like the great replacement theory that promote deadly violence and are frequently a source of inspiration for people who commit horrific violence in our communities?

Ms. MILLER-IDRISS. Well, what we have found is that people—nobody likes to find out that they're being manipulated. People do not like to find out that they're being manipulated or that they're at risk of manipulation.

I think it is extremely difficult to counter propaganda and conspiracy theories once they circulate. You get into challenges to freedom of speech. You get into censorship issues. You also get into ineffective strategies, as we've seen.

But what does work is to prevent people from believing it in the first place. We have excellent evidence that that can be done by teaching them how manipulative tactics work and letting them make up their own minds.

Mrs. RAMIREZ. Dr. Miller-Idriss, I really appreciate all of your work.

Chairman, I yield back.

Mr. BISHOP. The gentlelady yields back.

I now recognize Mr. Ezell for his 5 minutes of questioning.

Mr. EZELL. Thank you, Mr. Chairman.

CISA has an important mission in safeguarding cyber networks and protecting the physical infrastructure that our society depends on. The agency has enjoyed broad bipartisan support since Congress established CISA in 2018 because it plays a key role in protecting the homeland. It is my goal that this continues with its original intent.

Mr. Weingarten, what concerns do you have about CISA's ability to fulfill its core responsibilities?

Mr. WEINGARTEN. Well, I would say there's a huge opportunity cost to devoting resources supposed to be intended toward foreign threat actors toward domestic ones, and on the basis of interpreting speech to be a threat to a virtually limitlessly-defined critical infrastructure, up to and including our brands.

So the first thing would be it's a huge shift in resources. To the extent it's trampling on our rights directly or by proxy, that directly undermines its mission.

Mr. EZELL. Thank you.

Documents obtained in a lawsuit show Brian Scully, a deputy of CISA's Countering Foreign Influence Task Force, communicating regularly with external organizations. At one point Mr. Scully even offers up a CISA-run web page as a resource to help with one partner's "pre-bunking" efforts.

In other words, CISA was generating content and then pushing it through external parties to shape their censorship efforts.

Can you walk us through some of the key players involved in discussions like these and how they work together to create a censorship operation, Mr. Weingarten?

Mr. WEINGARTEN. So, as you noted, Mr. Scully is one senior official who I believe is the chief of the MDM team now. It is worth noting that that foreign task force became the MDM team, going from foreign to domestic and foreign actors under its purview.

Beyond that, Matt Masterson, I believe, was a top election official within CISA. He ultimately would end up, I believe, becoming a—it may be a nonresident fellow at the Stanford Internet Observatory. There's sort-of a revolving door here.

Worth noting, Christopher Krebs, as well, former director of CISA, he ended up starting a consultancy with the head of SIO, Alex Stamos.

We can go through several other individuals on the outside, as well. So non-CISA officials but officials—or, rather, principals who were coordinated by CISA, worked with CISA, ended up on CISA's advisory committees and such. Those would include Kate Starbird at the University of Washington's CIP, as well. Renee DiResta within SIO, I believe, was a research director there. She has direct ties to CISA advisory committees, as well.

So there's a slew of people, and it's sort-of a revolving door, and it starts to blur the line between public and private.

Mr. EZELL. Thank you.

Professor Turley, this censorship laundering enterprise basically gives Government officials and their private-sector partners the power to control public discourse.

What is the danger of the Government focusing on some of these subjective terms like misinformation and malinformation?

Mr. TURLEY. Well, the danger is significant. You have terms like malinformation that starts out by saying the information may be true, but we're going to target that information because it's being used to manipulate others.

Statements like that are really quite chilling for all of us that value free speech. The question is, should the Government be in that business?

But it is in that business. I mean, in terms of the two legal issues that we look at, these are Government agents who are acting.

So we don't even have to get into the question of whether there's an agency relationship with private companies. There are Government officials who are taking these acts and actively participating in what is the largest censorship system in the history of this country.

Then, second, you have private actors who are being used by what I call censorship by surrogate. Both of those raise Constitutional questions.

But putting all that aside, one of the things I emphasize in my testimony is people constantly have this mantra: It's not a First Amendment problem, so it's not a free speech problem.

That's not true. The First Amendment is designed to deal with one problem of free speech. It was the traditional, the most looming problem at the time. It is not synonymous or exclusive with the term free speech.

What the U.S. Government is doing now is a serious threat to free speech.

Mr. EZELL. Thank you, Mr. Turley.

Mr. Chairman, I yield back.

Mr. BISHOP. The gentleman yields back.

The Chair now recognizes Ms. Clarke for her 5 minutes of questioning.

Ms. CLARKE. Good afternoon.

First, let me thank our panel of witnesses for joining us today and thank Chairman Bishop, Ranking Member Ivey for calling this hearing.

The Department's role in addressing mis-, dis-, and malinformation is certainly a worthy topic of discussion for this subcommittee.

Unfortunately, many of my colleagues are politicizing a serious issue today, and I'd like to set the record straight.

The rapid spread of mis-, dis-, and malinformation is a threat to our security and to the institutions at the foundation of our democracy.

Both the Department of Homeland Security's Office of Inspector General and the Homeland Security Advisory Council have determined disinformation to be a threat to national security and to the successful execution of DHS's mission, from disaster response, to border security, to election security.

Mr. Chairman, I ask unanimous consent to insert into the record reports on disinformation from the DHS Office of the Inspector General\* and the Homeland Security Advisory Council\*\*.

Mr. BISHOP. Without objection, so ordered.

Ms. CLARKE. Thank you.

As the former Chair of the Subcommittee on Cybersecurity and Infrastructure Protection, I'm acutely aware of the threat mis-, dis-, and malinformation poses to the election security and other critical infrastructure.

In 2020, DHS had to provide guidance to telecommunications firms to prevent attacks on 5G cell towers linked to a COVID conspiracy theory.

In the wake of the election-related disinformation campaigns aimed to undermine public confidence in election outcomes, CISA established Rumor Control to serve as a trusted source of election information.

Suffice it to say, the threat posed by disinformation is real and we have to take it seriously.

Dr. Miller-Idriss, I thank you for your testimony today and for your leadership in developing mechanisms to combat disinformation.

Would it surprise you to learn that the intelligence community has referenced misinformation or disinformation as a threat to national security in every Worldwide Threat Assessment except one since 2016?

Ms. MILLER-IDRISS. No, that does not surprise me.

Ms. CLARKE. Mr. Chairman, I ask unanimous consent to insert into the record the Worldwide Threat Assessments from 2016, 2018, and 2023.\*\*\*

Mr. BISHOP. Without objection, so ordered.

Ms. CLARKE. Thank you, sir.

I am concerned that my colleagues are attempting to make a real discussion about combating disinformation so politically toxic that no one will touch it. What kind of threat does that pose to our national security?

Well, I yield back.

Mr. BISHOP. The gentlelady yields back.

I now recognize Mr. Strong for his 5 minutes of questioning.

Mr. STRONG. Thank you, Mr. Chairman.

I'd like to remember those that are defending America's Southern Border, as we're a matter of hours from not an insurgent, but an all-out invasion of tens of thousands of illegal migrants, to name a few, from Mexico, Guatemala, Honduras, El Salvador, Cuba, Haiti, Iran, Russia, and China too.

While fentanyl, heroin, cocaine, marijuana continue to pour into America, the Secretary of Homeland Security continues to testify

\*The information has been retained in committee files and is also available at <https://www.oig.dhs.gov/sites/default/files/assets/2022-08/OIG-22-58-Aug22.pdf>.

\*\*The information has been retained in committee files and is also available at [https://www.dhs.gov/sites/default/files/2022-08/22\\_0824\\_ope\\_hsac-disinformation-subcommittee-final-report-08242022.pdf](https://www.dhs.gov/sites/default/files/2022-08/22_0824_ope_hsac-disinformation-subcommittee-final-report-08242022.pdf).

\*\*\*The information has been retained in committee files and is also available at [https://www.dni.gov/files/documents/SASC\\_Unclassified\\_2016\\_ATA\\_SFR\\_FINAL.pdf](https://www.dni.gov/files/documents/SASC_Unclassified_2016_ATA_SFR_FINAL.pdf), <https://www.dni.gov/files/documents/Newsroom/Testimonies/2018-ATA--Unclassified-SSCI.pdf> and <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf> respectively.

and spew on every network that he has operational control of the Southern Border.

As this administration struggles to admit that their policies created the Southern Border debacle that will soon unfold before the world's eyes, the fact is President Donald Trump's policies worked and America was protected.

Thank you again for being here with us today.

The Cybersecurity and Infrastructure Security Agency, or CISA, was originally formed under the Trump administration to reduce and eliminate threats to U.S. critical physical and cyber infrastructure. It's hard to believe the agency has gotten so far away from its original mission.

This shouldn't come as a surprise if you recall CISA director Jen Easterly's view on CISA's mission, which Chairman Bishop just reminded us of.

In August 2021, she said, "One could argue we are in the business of critical infrastructure, and the most critical infrastructure is our cognitive infrastructure."

The director of CISA, whose mission is to protect and secure our country's sensitive infrastructure, is more worried about policing America's thoughts than cyber attacks coming from China and Russia.

Much of the public information regarding CISA's censorship activities is only known because of the *Missouri v. Biden* lawsuit and the release of internal communications from Twitter after it came under new ownership.

One such revelation includes that there is a formalized process—a formalized process—for Government officials to directly flag content on Facebook and Instagram and request its removal or suppression.

I have an image that I would like to put on the screen.

[Slide.]

Mr. BISHOP. So ordered.

[The information follows:]



Mr. STRONG. This is the landing page for Meta's content request system, which is still active as of this morning, you must have a Government or law enforcement email to use. Yet CISA officials

maintain that they, “don’t flag anything to social media organizations at all. We don’t do any censorship.”

Mr. Weingarten, can you share some additional examples of actions that DHS and CISA specifically have taken to keep their actions hidden from America’s people?

Mr. WEINGARTEN. Thank you, Congressman.

Mr. STRONG. Yes, sir.

Mr. WEINGARTEN. Several instances of this.

First, there’s been stonewalling of Congressional inquiries into CISA’s efforts, and subsequently the House Judiciary Weaponization Subcommittee has subpoenaed Director Easterly in connection with the subject that we’re talking about today.

Beyond that, there’s been scrubbing of not only documents but also websites, which illustrates the fact that CISA was intently focused and may well still be intently focused and certainly its partners are intently focused on domestic speech.

In fact, it’s almost comical. If you go to a site, I believe the URL was [cisa.gov/mdm](http://cisa.gov/mdm), it now takes you to a foreign mis-, dis-, and malinformation site. There’s no sign of domestic activity that it’s pursuing related to it.

So I’d say scrubbing, stonewalling are the two biggest instances that we’ve seen thus far.

Mr. STRONG. Thank you.

There have been several examples of DHS trying to expand its censorship activities, only to back down when the public found out, such as last year’s effort to create a Disinformation Governance Board.

Mr. Weingarten, do these actions suggest about where DHS would like to go in the disinformation space in the future?

Mr. WEINGARTEN. I think by the words of the DHS Secretary, absolutely. But if they are not able to carry it on, their partners actually in the private-sector side were encouraging the creation, I believe, of something like a Center for Mis- and Disinformation Excellence within the Government, and that seems to be what the DGB was intended to be.

But we have other ministries of countering mis-, dis-, and malinformation, even if there isn’t some oversight body layered onto it.

Mr. STRONG. Thank you.

I thank each of you for being here today.

Mr. Chairman, I yield back.

Mr. BISHOP. Thank you. The gentleman yields back.

I now recognize the gentleman from Arizona, Mr. Crane, for his 5 minutes.

Mr. CRANE. Thank you, Mr. Chairman.

Thank you guys for being here.

I’d like to take a second to push back on one of my colleague’s comments that he made a second ago to a friend of mine who’s not in the room to defend herself.

Mr. Ivey actually said, “I guess Ms. Lake is still saying that the election was stolen from her even though it’s clear, according to the officials in the State, that this was not the case.”

Now, I find it funny when people in this town use that defense “according to the officials.” Right. Like the American people believe

the officials. They don't. A recent Pew study showed that only 20 percent of the American people believe the elected officials.

It's also funny, too, because we all know that election fraud couldn't take place in this country, could it? Right? This is America. That couldn't take place here.

Mr. IVEY. Will the gentleman yield for a request?

Mr. CRANE. Just recently we're finding out that this President, this Commander-in-Chief, has used his position and influence for years to funnel millions of dollars to his family. That's something I also thought I'd never see in this town.

Mr. IVEY. Will the gentleman yield?

Mr. CRANE. No, I will not. No, I will not.

Mr. IVEY. I mean, you did invoke my name.

Mr. CRANE. Well, I actually quoted you. So I will not.

All right. Though I don't agree with Mr. Ivey's comments, I'm glad that he's allowed to say them, because I do support the First Amendment. I support his First Amendment. I support everybody in this room's First Amendment.

You know what? You know what's important about supporting the First Amendment? It's most important when you disagree with people. That's really the only time it's important, because when we don't agree—everybody supports the First Amendment when you agree with somebody.

It's interesting, because I was listening to the panel up here and we went down the line and everybody here said that they support the First Amendment.

Yet, when we were going back and researching some of Dr. Miller-Idriss' comments, MSNBC, 7/17 of 2022, on the January 6 hearings, she says this: "What we need right now is a massive investment in and commitment to countering disinformation at all levels. This includes holding tech companies accountable for dangerous and harmful information shared on their platforms."

She goes on to say, "It requires strategies to prevent public and elected officials from sharing disinformation or trying to undermine our elections and the peaceful transfer of power.

"But above all, we need serious and sustained public education and campaigns to build population-wide resilience to disinformation, understanding of source integrity, and ways to distill false claims from true facts."

It's interesting, ma'am, because it seems like you only support free speech when you agree with it or you wouldn't make the statement, "It requires strategies"—I'm going to zone in here on this—"strategies to prevent public and elected officials from sharing disinformation."

I've gone through some of your tweets, ma'am. Whether we're talking about COVID vaccines or far-right extreme groups, there's a lot of things that you and I would disagree on. As a matter of fact, there's a lot of things that people sitting on your left and right would disagree on.

But you think that we should stop them from being able, according to your own quote, according to your own words, that we should stop them from being able to say that.

That's a problem, ma'am, because, I'll tell you again, the most important time to support somebody's free speech isn't when you agree with them. It's when you disagree with them.

Ma'am, I hope that you and others that think like you are not successful, because I fought really hard to make sure that my kids, and hopefully some day my grandkids, don't live under communism or socialism or some other tyrannical dictatorship.

Thank you. I yield back.

Mr. BISHOP. The gentleman yields back.

Mr. Thanedar is recognized for his 5 minutes of questioning.

Mr. THANEDAR. Thank you, Mr. Chair.

I want to thank all the witnesses to be here and for your testimony.

I have a question for Dr. Miller-Idriss, if I may.

As we have heard here today, the disinformation that spreads on-line can have dangerous real-world consequences. Disinformation has been used to incite violence, including the January 6 insurrection and crime targeted at ethnic minorities. This disinformation undermines trust in journalism and science and drowns out marginalized voices.

Dr. Miller-Idriss, based on your research and expertise, what have you found are the best strategies for combating pervasive disinformation campaigns?

Ms. MILLER-IDRISS. Thank you for the question.

What we find in the evidence is that the best way to work to combat disinformation, if you will, is to prevent people from making the choices that would lead to the spread of that to begin with.

So we focus on teaching people about manipulative tactics, regardless of the content, and also about recognizing sort-of warning signs in their loved ones, regardless of the ideology.

So, for example, one of the things we hear from our focus groups is that young people have been saying in classrooms things like there is no political solution. That comes from the left. That comes from the right. It is a call to violence to say there's no more political solution, we have to move to violence.

So if an adult hears that, they know that a child is exposed to something on-line that is potentially opening up rabbit holes of further harm and disinformation. So that's what we work on.

Mr. THANEDAR. Thank you.

Now, despite my Republican colleagues' misplaced fixation on the defunct Disinformation Governance Board and their own disinformation on the board's intended role, the Department of Homeland Security has a significant and valid role to play in combating the dangerous disinformation that compromises our security.

There are plenty of examples of disinformation occurring that has a homeland security nexus, including that tied to domestic terrorism, election security, migration, and disaster responses.

Now, to what extent should DHS and other Governmental agencies be identifying and addressing harmful content that may threaten homeland security?

Ms. MILLER-IDRISS. Thank you for the question.

I think that what we hear anyway in our lab is that American communities are desperate. They are worried. They're worried



about what they're seeing, what their loved ones are seeing, and they're afraid.

So I think that the Government has an obligation to help local communities with better ways to recognize and reject harmful content.

I think that that includes a national security frame, but not exclusively a national security frame. That has to also be something that is education, that is health and human services, that is about what local communities need.

That needs to include some expertise in where to draw the line. I would welcome the opportunity to have longer conversations about where that line falls, because I think that's one of the biggest issues we face.

Mr. THANEDAR. Well, I thank you.

Mr. Chairman, I yield back.

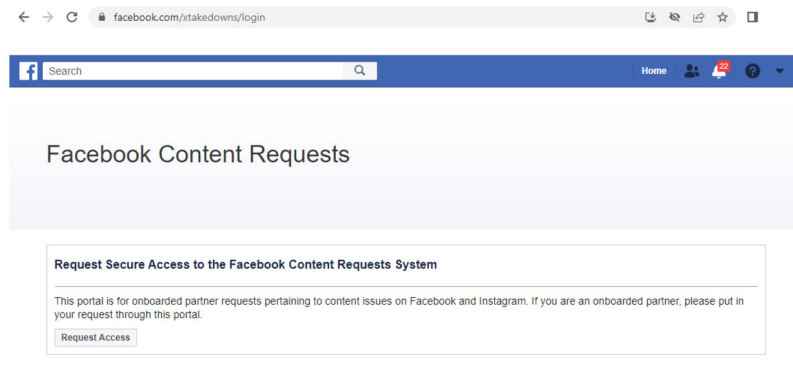
Mr. BISHOP. The gentleman yields back.

We'll proceed to a second round of questioning. We are up against votes, so we'll try to proceed as quickly as we can. We'll see if the witnesses are available to remain if we have to have a break for votes. We'll see if you can do that.

So I at this time recognize—well, let me do this first.

Without objection, I want to submit for the record the graphic shown by Mr. Strong during his 5 minutes, the Facebook Content Request screen.

[The information follows:]



Mr. BISHOP. Now I recognize myself for 5 minutes of questioning.

So, Dr. Miller-Idriss, I want to sort-of pursue where I left off and others have illustrated.

I think you said, notwithstanding what you wrote, that we should continue to work with social media platforms to remove harmful and dangerous, I think was your terminology. Then you gave some examples, an example of a bomb threat or something like that. That's illegal speech, not protected by the First Amendment.

But let me just clarify, because I think the concern is, whether or not you're concerned about manipulation and propaganda and

these sort of things, there may be a subterfuge for subtle censorship.

So let me get at it in this way. Do you believe that propaganda from foreign governments should be allowed on social media and the Federal Government should—and the Government should take no effort to interfere with or facilitate its removal?

Ms. MILLER-IDRISS. I believe that if there is disinformation circulating from foreign governments that is intended to harm our democracy, that that should be removed, that that should be removed.

Mr. BISHOP. Are you a lawyer?

Ms. MILLER-IDRISS. No.

Mr. BISHOP. OK. So there's a case called *Lamont v. Postmaster General* from 1965, it's old law, in which the U.S. Supreme Court held that a United States citizen has a First Amendment right to foreign communist propaganda that comes through the mails to us.

Do you think communist propaganda might be harmful?

Ms. MILLER-IDRISS. I think that—I think I'm flattered that you think that my expertise extends that broadly to disinformation and propaganda across the spectrum. My expertise as a professor of education is about equipping communities with tools to reject harmful content.

Mr. BISHOP. Well, and I'm not trying to be unfair. What I'm trying to do—I am trying to pin you down a little bit. Because there's this notion—and I think Professor Turley's gotten to it some—but there's this notion out there that, well, we're not against—we want to preserve—I get this all the time—we're going protect the First Amendment, protect everybody's First Amendment rights.

But what I was just sharing with you is that there's a First Amendment right to propaganda, communist propaganda from abroad, that's been established as long as I've been alive.

Ms. MILLER-IDRISS. Yes.

Mr. BISHOP. So is that harmful? Do you include that? I'm not trying to repeat the question.

I am trying to say this. If you're trying to—you say you want to teach people what is manipulative and not to be manipulated. I have no problem about that. But you also are proposing to this committee that there's a massive Government investment, Government should invest in you, frankly.

Well, let me ask you this: You are funded by the Department of Homeland Security, right?

Ms. MILLER-IDRISS. Uh-huh.

Mr. BISHOP. Is anybody else here, by the way, funded by the Department of Homeland Security?

[Nonverbal response.]

Mr. BISHOP. You have funding from the National Science Foundation? Is that correct?

Ms. MILLER-IDRISS. I did.

Mr. BISHOP. You did. OK.

Anybody else?

[Nonverbal response.]

Mr. BISHOP. The Government—I think what concerns me is you seem to think that you are the right arbiter to decide what is mis-

information, malinformation, which is actually true but somehow being misused for harm.

How do you arrogate that? I mean, that's the wrong term. How do you assume that you should be the arbiter?

With respect, you are on the left. There's a tweet from a couple of days ago where you're talking about whiteness and how the Irish were not white and then became white. I mean, it seems to me to be fairly extreme even by the standards I hear from my colleagues on the Democrat.

Why should you be the arbiter to decide who needs to be protected from manipulation or propaganda?

Ms. MILLER-IDRISS. I understand the question and your concern, and I should not be the arbiter as an individual.

I run a research lab. When we get asked to equip local communities with tools, we do a comprehensive mapping of all propaganda. We do interviews, focus groups with people. We figure out what that content is. Then we equip, then we create the tools, and then we test it, like we did, like I reported on here today.

So I'm never putting my opinion into—I'm a columnist separately with an opinion. But I never put my opinion into the classroom or into the research tools. That comes from a group of people who are hired to work on it with their methodological expertise.

Mr. BISHOP. Let me see if I can get the professor in, Professor Turley, to deal with this. Because it seems to me that the notion that the Government should take, with all respect, Dr. Miller-Idriss' view of what is manipulative or what is misinformation and then have that sort-of spread out to the public to teach them to be prepared is a recipe for disaster.

Can you speak to that, Professor Turley?

Mr. TURLEY. Well, it's also tragically familiar. I'm just finishing a book on free speech now, and it goes back to England before the Revolution. Many of the rationales we use today actually came from not only England, but came from the Star Chamber. The Star Chamber was used to prosecute sedition. They came up with this idea that there's, "bad tendency speech," that there's some speech that has a bad tendency.

That took hold in the United States. Even though many of the Framers rejected it, it took hold with some early decisions. Holmes is a good example of losing his mind by saying, talking about crying fire in a crowd theater, which he regretted, and that decision was later rejected by the Supreme Court.

The Government should not be in the disinformation business. It should not be trying to shape speech. It's a very clear line and one that we have lost.

Mr. BISHOP. One of the problems—and I'll turn it over in just a second—but one of the problems seems to me that people think—it's a vague concept—they want to preserve the full right to speak that the First Amendment or the right to have access to information, and yet I'm not sure we know what that is. You've got to know what the law is before you know whether you're agreeing with it or you're doing something in violation of it, with all respect.

My time has more than expired. I yield to Mr. Ivey for his 5 minutes of questions.

You're recognized.

Mr. IVEY. Thank you, Mr. Chairman.

I think it's a complicated area, I mean, just sort-of what we're going through, for example, the statement that there's no specific truth, which I think sounds fine in the abstract.

But if you say something like, "Sir, if someone accused you of being a sexual pedophile, how would you respond?" that's a false statement. That's definitely not true. So when we say there's no such thing as truth, I do kind of struggle with those.

With the issue with respect to elections, Mr. Crane's gone, we had a chance to chat a little bit outside, but just briefly, and I'll come back to this point.

I did want to note that he mentioned public officials aren't trusted. But only a public official can certify elections. So if there's no public official in Arizona that's going to say the election is accepted—usually it's the secretary of state—I don't know what they do out there with that. But I'm pretty sure they do it just like all the other 50 States do.

But, anyway, back to this point. I think really quick on that point, a couple public—we talked about Government speech and what they do.

Wear your seat belts. I'm old enough to remember a time before we had seat belts, and then there was a pushback about putting them in the cars. Then there was pushback, free speech pushback, but statements I think were clearly false, that they weren't necessary, they didn't save lives. I'm OK with the Government doing that.

Tobacco's another one. I grew up in North Carolina and Virginia. Everything—they almost had tobacco-flavored pacifiers in North Carolina back in those days because it was the way to go. But clearly it was dangerous to our health. I don't even know if the tobacco industry's come around to acknowledging that. But clearly it's true, it hurts your health, and clearly their denials were false.

Another one's drunk driving. I remember when people have a steering wheel in one hand and a beer in the other one and it was OK. That had to change over time because it was true that driving and drinking were a bad combination.

So I think it can be tricky if we get too absolute in the statements that we're making along these lines.

I do take Professor Turley's point, although even in those circumstances I think there are scenarios where it makes sense for the Government to at least be involved.

Now, we might not say they should be able to take down information. But in the damaging scenarios that we talked about, for example, or people giving false weather information, just things that can really cause dislocations in people's lives, I think it should be an option for the Government to say, "No, that's incorrect."

We run into scenarios with respect to COVID and others. I take that point. I'm not an epidemiologist. But I think we have to be careful about sort-of pushing and saying none of them can get involved.

I apologize. We were just talking about we wish we had more than 5 minutes. I mean, sort-of the question I had, Mr. Weingarten, you raised—well, and Mr. Turley, too, I guess—sort-of the private entities coming together to have communications

about what to take down or whatever. I take it you view that as you see negative connotations around that.

I do kind-of wonder if there are some good reasons for them to do that. For example, lawsuits in the Government are now pushing them in the direction of they are being pushed toward managing content. If they don't, they get in trouble for it. Matter of fact, they get dragged up here by Congress who beats them up about not taking it down.

We could go back to the TikTok hearing. What was that, last month? I don't agree with everything TikTok's doing, but we are putting a lot on them and expecting them to manage content and essentially publicly punishing them when they don't.

So there may be a reason to have those conversations. Maybe we'll have another hearing where people can come up from DHS and from some of these entities. I'm open to that. We could talk about it then.

I did want to finish with this. Nina Jankowicz, I did want to not leave that unfinished. There's a couple articles I'd like to offer for the record. One is "A surreal experience: Former Biden 'disinfo' chief details harassment." That's out of *Politico*. Then the other one is "Old comments by disinformation board director misrepresented on-line." That's an *AP* story.

I'd like to offer those for the record, as well.

Mr. BISHOP. Without objection, so ordered.

[The information follows:]

ARTICLE SUBMITTED FOR THE RECORD BY RANKING MEMBER GLENN IVEY

'A SURREAL EXPERIENCE': FORMER BIDEN 'DISINFO' CHIEF DETAILS HARASSMENT

By Heidi Przybyla

03/08/2023 04:30 AM EST

In a Valentine's Day court hearing in Arlington, Virginia, Nina Jankowicz finally got to face a man who'd been stalking her for nearly a year and secured a restraining order against him.

Jankowicz, 33, is a researcher and author of two books whose stint heading the Biden administration's Disinformation Governance Board lasted a few weeks last spring before the board itself was dissolved by the administration following an outcry by GOP lawmakers that it was going to censor the free speech of conservatives.

But that was just the beginning, she said, detailing for the first time a year of intense public and online harassment spurred, she said, by conservative media attacks and emblemized by the self-styled citizen-journalist who repeatedly stalked her, doxxing and recording her without her consent.

"It was a surreal experience to be forced to confront this guy," Jankowicz told *POLITICO* in an interview. In one video, she says, the man said her newborn should be put in "baby jail."

Now, it looks like Jankowicz will be back in the spotlight. Rep. Jim Jordan (R-Ohio) plans to make Jankowicz a star witness before his new Select Subcommittee on the Weaponization of Government, which Republicans say will investigate alleged abuses of Federal authority. On Monday, Jordan issued a subpoena compelling Jankowicz to sit for a deposition and Jankowicz says she will abide by it.

Jankowicz says her story shows what can happen to any private citizen or government official who gets cast as a villain in a far-right conspiracy plot. "I didn't intend for my entire career to be lit on fire before my eyes by taking this job," she said.

The now-defunct initiative that Jankowicz briefly headed was aimed at developing government-wide recommendations to stop the flow of disinformation sponsored by China, Russia and violent domestic extremists.

Jankowicz, who managed programs on Russia and Belarus for the National Democratic Institute and has advised the Ukrainian government, was chosen for her expertise in online disinformation, according to the Department of Homeland Security, under which she served.

Jordan says she has refused several requests to testify voluntarily. Jankowicz and her attorney say that's because the assumption behind his demand—that she was tasked to police speech—is false. In his subpoena letter, Jordan said she is “uniquely situated” to provide relevant information about the board.

Jankowicz, who is a new mother, says she plans to file a lawsuit against Fox News and launched a crowdsourcing campaign to support her legal fees.

“Fox News irrevocably changed my life when they force fed lies about me to tens of millions of their viewers,” she says in a video accompanying her GoFundMe. “In addition to the deferral of my dream of serving my country, I’ve lost something irreplaceable: peace with my son during his first year in the world,” she says in the video.

Fox News did not respond to multiple emails to company spokespersons seeking comment.

On Fox shows including those hosted by Laura Ingraham, Tucker Carlson and Sean Hannity, she’s been called a “conspiracy theorist,” a “useful idiot,” and “insane.”

When she was 8 months pregnant, said Jankowicz, strangers online were calling her a Nazi and ugly and said she should die.

Rep. Darrell Issa (R-Calif.) decried her “history of spreading disinformation.”

Rep. Elise Stefanik (R-N.Y.) repeatedly said the board was akin to the “Communist ‘Ministry of Truth.’” Sen. Tom Cotton (R-Ark.) even said she “appears to be mentally unstable.” Rep. Marjorie Taylor Greene (R-Ga.) said she felt sorry her child has to “have that kind of mother.”

For a time, she says, her blood pressure spiked. She wore a hat, sunglasses and a mask to prenatal doctor appointments, hired a private security consultant to monitor the situation and relied on yoga and meditation to calm her nerves. A few weeks before her due date, the consultant advised her and her husband to leave the house for safety reasons, which they ultimately deemed not practical.

Republicans objected, from the start, to the premise of the board and the idea that the government should play any role in defining disinformation, according to a spokesman for Jordan.

“The very idea of ‘disinformation’ involves policing speech. Period,” he said.

A number of GOP lawmakers likened it to an Orwellian plot and took aim at Jankowicz for statements she made on social media prior to her government appointment—mostly expressing doubt about the origins of Hunter Biden’s laptop, but also about coronavirus disinformation and Elon Musk’s takeover of Twitter.

Regarding the blowback Jankowicz encountered, the Jordan aide said she agreed to serve as the board’s public face, and should thus be held accountable in public.

“She’s the top person and a public figure. Any assertion otherwise is ridiculous,” he said. Jordan “has only ever referred to her or wrote to her in her official capacity,” he said.

Jankowicz counters that Jordan has “repeatedly referenced my statements as a private citizen.”

#### *Taking credit*

When she stepped down in May, Sen. Josh Hawley, (R-Mo.), took credit.

Hawley was among the loudest critics claiming the board was “policing Americans’ speech.” He also called Jankowicz a “human geyser of misinformation,” citing tweets about Hunter Biden’s laptop in which she suggested it could be part of a Russian disinformation campaign.

“Only when a patriotic whistleblower came forward with documents did we learn the truth,” he tweeted about board-related paperwork that he says shows the administration’s plan for the board was more extensive than publicly revealed.

Jankowicz, however, says the documents—which Hawley and other Congressional Republicans have had since last June—contradict many of the claims he, Hannity, Carlson, Jordan and numerous other figures made in public and on Fox’s airwaves about the board’s mission.

“It’s hard for boring truths to outpace inflammatory lies,” said Jankowicz.

“They’re saying the opposite of what’s on paper. Everything is disproven by documents they have in their possession. They’re just assuming nobody is going to read them.”

A response from DHS to a letter Hawley sent in late April seeking answers states the board “is an internal working group that does not have operational capacity.”

Both Jordan and Hawley have zeroed in on an April 28, 2022 draft talking points memo for a meeting with Twitter executives that Jankowicz says never came to pass. It proposed Twitter become involved in “analytic exchanges” with DHS and that the board would serve as a “coordinating mechanism” for outreach to industry,

civil society and international partners. Hawley's office expressed alarm about plans for a similar meeting with Facebook's Meta.

"Those are remarkably outward facing activities for a supposedly internal working group that lacks operational capacity," said the Jordan spokesman.

Yet the "analytic exchanges," says Jankowicz, refer to a pre-existing DHS initiative titled "Public-Private Analytic Exchange Program" that spans a number of industries and aims to help government analysts working on, for instance, threats to supply chains and ransomware.

Further, the next sentence says the board's initial work would center on "domestic violent extremism" and "irregular migration," and said Twitter should be "thanked" for its engagement with an existing cybersecurity agency created under President Donald Trump. During the 2020 election, it ran a "Rumor Control" website that sought to "prebunk" incorrect claims with factual information, reads page 3 of a Sept. 13, 2021 memorandum.

The materials, spanning between September 2021 to January 2022, also stipulate the need for protocols to "protect privacy, civil rights and civil liberties." Its mission would be information sharing and prescriptive in nature.

The department "should not attempt to be an all-purpose arbiter of truth in the public arena" but focus on disinformation "impacting DHS core missions," it continues.

"It's been extremely frustrating that these documents haven't been covered at all," said Jankowicz.

In an email response, Hawley's office said emails he obtained show Homeland Security Secretary Alejandro Mayorkas misled him about when the board first began meeting. The emails Hawley cited as proof pertain to preparatory meetings of lower level "steering group" aides—not the board itself.

Hawley also seized on an email that a DHS cybersecurity official sent Jankowicz and others regarding an opinion piece that ran in the *Washington Post* arguing that tech companies should block a Kremlin propaganda symbol.

Hawley said the information behind the op-ed was funded by a "liberal dark money group."

In a statement, Hawley spokeswoman Abigail Marone said: "Conducting rigorous government oversight and holding Biden Administration officials accountable is what Missourians expect Josh to do. And it's great news for the American people that Biden's Disinformation Board was dissolved because of it."

Marone also cited language from the board's charter stating that board members would "ensure that their respective components implement, execute and follow board decisions."

#### *Fox Fixture*

Meanwhile, on Fox News, Jankowicz became such a fixture that, when DHS paused the board, Jordan thanked anchor Sean Hannity for "the work you've done in helping get rid of this governance board."

During this year and last, she's been featured in more than 250 broadcast segments on Fox, whose hosts and guests have repeated false "assertions of fact" about her more than 400 times, she alleges. Hannity called her "one of the biggest perpetrators and purveyors of disinformation in the entire country."

Convinced the firestorm would not end unless she stepped down, Jankowicz said she chose to exit the department. "It just felt like they completely rolled over to Republican lies," she said of the Biden administration.

"What has been shocking is the extent to which it [the harassment] has continued," said Jankowicz, citing at least two incidents of men snapping photos of her and posting them to social media.

She blames the continued focus of Fox News primetime anchors and their guests. Jankowicz "will come after you," Jordan said on Hannity's show, alleging "the left" wants to make people who disagree with them "not allowed to talk." He retweeted a (now-deleted) video taken out of context claiming she wanted to edit tweets. Numerous Fox segments featured a Tik Tok video she'd made more than a year before in which she did a parody of a "Mary Poppins" song.

Jankowicz, who has been involved in community theater most of her life, said it was "openly campy" and one of several educational spots on disinformation she did on the platform.

#### *Hunter Biden and the Dossier*

Republicans also criticized statements Jankowicz had made prior to taking her position about Hunter Biden's laptop. Jankowicz holds that "the [Steele] Dossier was real and the Hunter [Biden] laptop story was false," Jordan said on Fox last April.

She did repeatedly express skepticism about the laptop's origins, which she says was because it was Trump's personal lawyer, Rudy Giuliani, who handed it to authorities. More than 50 former senior intelligence officials also called it "deeply suspicious" at the time, and Jankowicz says there is no record of her declaring the laptop itself wasn't real.

One tweet went viral without the context that it was her live tweeting an Oct. 20 Presidential debate in which she paraphrased Biden referencing that same letter. Another cited an intelligence report concluding that the Kremlin "used proxies" to push unsubstantiated claims about Biden, which she called "a clear nod to the alleged Hunter laptop."

POLITICO itself has not authenticated all the Hunter Biden hard drive files cited in media reports, but POLITICO reporter Ben Schreckinger confirmed the authenticity of some emails on the drive in a 2021 book.

Jankowicz says she never assessed the veracity of a now-infamous dossier compiled by the former British spy Christopher Steele that made explosive claims linking Trump to the Kremlin. Rather, she praised its author in an unrelated matter and debated its origins in a couple of tweets. In 2019, a special counsel investigation concluded that it could not determine a criminal conspiracy between Moscow and the Trump campaign.

She also supported Hillary Clinton in the 2016 election, praised efforts to crack down on coronavirus misinformation and expressed concern over Elon Musk's plans to buy Twitter.

#### *Personal Toll*

Perhaps ironically, in April 2022 amid the fury, a book Jankowicz had in the works was published. Its title: "How to Be a Woman Online" and survive threats and harassment. It was based on her knowledge of how Russian disinformation is often presented through a gendered lens.

Since then, she says, she's received tens of thousands of harassing online posts and hundreds of violent threats. One anonymous poster—who called her a "Tranny Jew" on April 28—said: "I can't wait for the open violence phase of this war to kick off."

As the taunts peaked last spring, she says she pleaded with her superiors to allow her to speak to the media to "defend myself." Fox shows were showing her picture and talking about her being pregnant so she could be easily identified, she said.

"It was about my life, it was about threats to my family and it was clear the administration was mostly concerned about how to put the fire out and not how to protect me," she said.

When she finally was notified that DHS would pause the board, she was offered an opportunity to remain in the department but felt she had no choice but to leave. "I said 'I'm not going to stay if I can't speak to media,'" she said.

Jankowicz also questioned the commitment to the project because they'd "abandoned" it so quickly.

Further, because she'd "become toxic," Jankowicz said "It just didn't seem worth it."

DHS cited instances in which both Mayorkas and White House Press Secretary Jen Psaki defended Jankowicz' work. Mayorkas has told the *Washington Post* that the agency "could have done a better job of communicating what it [the board] is and what it isn't."

The board's "purpose was grossly and intentionally mischaracterized," a DHS spokesperson said in a statement to POLITICO, and Jankowicz "was subjected to unjustified and vile personal attacks and physical threats."

About 2 weeks later, she gave birth to her first child.

The attacks kept coming. Jankowicz recalled that it was during a middle-of-the-night bottle feeding when her husband informed her that Hawley had begun touting the documents he'd obtained from a whistleblower and Freedom of Information Act request. Two months after her resignation, Jankowicz sent a letter to Hawley and Sen. Chuck Grassley, R-Iowa, citing ongoing "aggressive, sexualized, vulgar and threatening messages" she was receiving online, on the phone and even at home.

Hawley reacted to her plea to "stop amplifying these lies" by tweeting that Jankowicz should testify under oath. By that time, he had been in possession of the board's internal documents for a number of weeks, having received them in June, she said.

Today, Jankowicz continues to juggle diaper changes, pumping breast milk and other aspects of life as a new mother with consultations with her four sets of attorneys—to address her protective order; to respond to Jordan's probe; for a "frivolous" lawsuit alleging she is censoring someone; and a tax adviser for her GoFundMe.

When she sues Fox, that will require a fifth lawyer, she says.



ARTICLE SUBMITTED FOR THE RECORD BY RANKING MEMBER GLENN IVEY

OLD COMMENTS BY DISINFORMATION BOARD DIRECTOR MISREPRESENTED ONLINE

By SOPHIA TULP

Published 6:04 PM EST, May 14, 2022

**CLAIM:** Nina Jankowicz, the director of the Department of Homeland Security's Disinformation Governance Board, said she wants verified Twitter users to be able to edit other users' tweets.

**AP'S ASSESSMENT:** Missing context. Comments Jankowicz made during a January 2021 presentation, more than a year before she was named to lead the disinformation board, are being misconstrued. A video of Jankowicz's full remarks shows she was explaining an existing program offered by Twitter that allows certain users to write notes contextualizing claims made in tweets. Jankowicz did not say she personally wanted verified users to edit tweets, nor has she said she plans to implement something similar through the board.

**THE FACTS:** Jankowicz's comments, made more than a year ago during an online call hosted by a school librarians' association, are being taken out of context to suggest she recently expressed a desire to have select Twitter users edit peoples' tweets.

"There it is, folks: Nina Jankowicz, head of Biden's so-called 'Disinformation Governance Board' wants to give blue checks the ability to edit others' tweets," one Twitter user wrote Friday, sharing a minute-long video of Jankowicz speaking during the call.

"Biden's 'Ministry of Truth' director says she wants 'verified people' like her to be able to edit people's tweets so they can 'add context to certain tweets,'" wrote another user, without mentioning the video is not recent.

The clip was also shared on Facebook and by conservative political pundits.

Assertions that Jankowicz was expressing a personal desire to launch a tweet-editing program, especially in her capacity as the director of the disinformation board, are misleading.

The comments were taken from a 90-minute virtual conversation hosted by the Georgia Independent School Librarians on Jan. 27, 2021, in which Jankowicz discussed the state of disinformation. More than an hour into her presentation, another member on the call asked Jankowicz about a Twitter program they had heard about.

"I heard something about Twitter is now or getting ready to start allowing other Twitter users to—help me out here, that's where I sort of lost track of 'what is it Twitter's letting people do?'" the speaker asked.

"I haven't looked into this in a huge way yet because it just came out, and I am eligible for it because I am verified," Jankowicz responded. "But there are a lot of people who shouldn't be verified, who aren't, you know, legit, in my opinion. I mean, they are real people, but they're not trustworthy. Anyway, so verified people can essentially start to edit Twitter, the same sort of way that Wikipedia is, so they can add context to certain tweets."

Jankowicz used air quotations when she said the word "edit" and also mentioned that such notations would give context "so that people have a fuller picture rather than just an individual claim on a tweet."

The Twitter pilot program, called Birdwatch, had been announced 3 days prior, on Jan. 25, 2021. At the time, Twitter described it as "a new community-driven approach to help address misleading information."

Twitter stated that the program would allow pilot participants to write notes that would add factual context to tweets that contained potentially misleading claims. Participants would not be able to change the actual tweets. The company said the notes would be reviewed by others and visible on a separate site, not on Twitter.

The clip of Jankowicz being shared online only shows her talking about the program features. But her full remarks make clear she was explaining the Twitter program in response to a question, not proposing her own ideas. Further, she never said she herself wanted to allow verified Twitter users to edit people's tweets.

Later on the call, Jankowicz said, "I like the idea of adding more context to claims and tweets and other content online rather than just removing it," but she also offered caveats about the program, including that verified users aren't always trustworthy, and that the social media company was asking volunteers to "do their work for them."

"I'm not sure it's the solution," she stated, adding she likely wouldn't be participating because of time constraints.

DHS did not immediately respond to a request for comment.

The AP works with Twitter to elevate credible news and information on the platform. The collaboration is part of AP's robust news verification efforts, including work to add context to misleading content and reduce the circulation of misinformation online.

DHS has released few details on how the Disinformation Governance Board will function and what powers it will have. The effort has drawn criticism since it was announced in late April, with some likening it to a dystopic attempt to punish people for certain views. Others have expressed concern it could violate freedom of speech.

DHS Secretary Alejandro Mayorkas has said the board would examine how the agency currently counters disinformation and make sure it "does not infringe on freedom of speech, rights of privacy, civil rights and civil liberties," the AP reported.

Mr. BISHOP. The gentleman yields back.

The gentlelady, Ms. Clarke, is recognized.

Ms. CLARKE. Thank you, Mr. Chairman.

As I had stated in my conversation with the panel just a few minutes ago, that I am concerned that my colleagues are attempting to make any discussion about combating disinformation so politically toxic that no one will touch it. That's a threat. It's a threat to our way of life.

I'd like to ask you, Dr. Miller-Idriss, what type of threat does it pose to our national security? Because this is the Homeland Security Committee. A lot of the conversation we've had here today really should be in the Judiciary Committee. But let's speak specifically about national security.

Ms. MILLER-IDRISS. Well, the kinds of propaganda and disinformation that we work on, like the great replacement conspiracy theory, the false great replacement conspiracy theory, motivate terrorist actors. Even when there's not a specific conspiracy theory like that or a specific manifesto, we see that these toxic online cultures motivate shootings, like in Highland Park or Uvalde or in Texas this past weekend.

So I think a lot of what we're seeing here is that we have a lot of agreement. Nobody wants censorship, actually, I think. None of us want censorship at all. I think if you're not going to have censorship and banning, then there has to be something at the other end to equip people to recognize and reject.

What happens in the middle is how you determine what actually that disinformation is. I think there's some very clear cases. Like, I think most people, I hope, would agree that the great replacement conspiracy theory is extremely harmful disinformation that has caused terrorist shootings, that leads to terrorist acts.

I hope that we can get some help from the Government for the communities that keep coming to us desperate for help, because I really feel bad for them, and we're trying to equip them with better tools.

Ms. CLARKE. Thank you.

I find myself sort-of trying to figure out, when I hear my colleagues talk about the fact that there's a right to free speech, 100 percent, full stop, and then I hear about all the States that are banning books right now, there just seems to be such a major contradiction. It just blows my mind.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. BISHOP. I thank the gentlelady for yielding back.

Let's see. I guess we have votes on the floor. So we certainly won't proceed to a final or a further round.

I do thank the witnesses for the valuable testimony. It is interesting to me, as I hear all of this, it's something that begs digging into further. I think we miss each other in terminology going back and forth even to the point just made by Dr. Miller-Idriss.

If someone advocates a, what did you call it, a great replacement theory, you look at *U.S. v. Brandenburg*, that's clearly protected First Amendment speech.

Then the question—I respect Ms. Clarke's inquiry she's repeated, and Mr. Ivey's, that there's a question of how to combat disinformation. But there's certainly things you can't do. The Government can't prohibit that which the Supreme Court has said for a long time is clearly protected.

So it's a confounding area but one that requires—and I agree with—I appreciate the Ranking Member's comment that it's something that warrants further examination. I hope we'll have a chance to do that further in another continuation hearing.

I thank the witnesses for their valuable testimony and the Members for their questions.

The Members of the subcommittee may have some additional questions for the witnesses, and we would ask the witnesses to respond to these in writing. Pursuant to Committee Rule VII(D), the hearing record will be open for 10 days.

Without objection, the committee stands adjourned.

[Whereupon, at 3:43 p.m., the subcommittee was adjourned.]

