

118TH CONGRESS  
1ST SESSION

# S. 2425

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

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## IN THE SENATE OF THE UNITED STATES

JULY 20, 2023

Mr. PAUL (for himself, Mr. SCHMITT, Mr. VANCE, Mr. TUBERVILLE, Ms. LUMMIS, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

3 (A) a phone call;

4 (B) any type of digital communication, in-  
5 cluding a post on a covered platform, an e-mail,  
6 a text, and a direct message;

7 (C) a photo;

8 (D) shopping and commerce history;

9 (E) location data, including a driving route  
10 and ride hailing information;

11 (F) an IP address;

12 (G) metadata;

13 (H) search history;

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

16 (J) a calendar item.

17 (2) COVERED PLATFORM.—The term “covered  
18 platform” means—

19 (A) an interactive computer service, as  
20 that term is defined in section 230(f) of the  
21 Communications Act of 1934 (47 U.S.C.  
22 230(f)); and

23 (B) any platform through which a media  
24 organization disseminates information, without

1 regard to whether the organization disseminates  
2 that information—

- 3 (i) through broadcast or print;
- 4 (ii) online; or
- 5 (iii) through any other channel.

6 (3) DIRECTOR.—The term “Director” means  
7 the Director of the Office of Management and Budg-  
8 et.

9 (4) EMPLOYEE.—

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

12 (i) means an employee of an Execu-  
13 tive agency; and

14 (ii) includes—

15 (I) an individual, other than an  
16 employee of an Executive agency,  
17 working under a contract with an Ex-  
18 ecutive agency; and

19 (II) the President and the Vice  
20 President.

21 (B) RULE OF CONSTRUCTION.—With re-  
22 spect to an individual described in subpara-  
23 graph (A)(ii)(I), solely for the purposes of this  
24 Act, the Executive agency that has entered into  
25 the contract under which the employee is work-

1           ing shall be construed to be the Executive agen-  
2           cy employing the employee.

3           (5) EXECUTIVE AGENCY.—The term “Executive  
4           agency”—

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

7                   (B) includes the Executive Office of the  
8           President.

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

11 **SEC. 3. FINDINGS.**

12          Congress finds the following:

13           (1) The First Amendment to the Constitution  
14          of the United States guarantees—

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

17                   (B) the freedom of expression by prohib-  
18          iting the government from restricting the press  
19          or the right of an individual to speak freely;  
20          and

21                   (C) the right of an individual to assemble  
22          peaceably and to petition the government.

23           (2) Freedom of speech is an essential element  
24          of liberty that restrains tyranny and empowers indi-  
25          viduals.

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

7           (4) The Supreme Court of the United States  
8 (referred to in this section as the “Court”) has  
9 upheld the right to speak free from governmental in-  
10 terference as a fundamental right.

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

15           (6) In *Turner Broadcasting System, Inc. v.*  
16 *Federal Communications Commission*, 512 U.S. 622  
17 (1994), the Court stated the following: “At the heart  
18 of the First Amendment lies the principle that each  
19 person should decide for himself or herself the ideas  
20 and beliefs deserving of expression, consideration,  
21 and adherence. Our political system and cultural life  
22 rest upon this ideal. Government action that stifles  
23 speech on account of its message, or that requires  
24 the utterance of a particular message favored by the  
25 Government, contravenes this essential right . . .

1 [and poses] the inherent risk that Government seeks  
2 not to advance a legitimate regulatory goal, but to  
3 suppress unpopular ideas or manipulate the public  
4 debate through coercion rather than persuasion.  
5 These restrictions ‘rais[e] the specter that the Gov-  
6 ernment may effectively drive certain ideas or view-  
7 points from the marketplace.’ For these reasons, the  
8 First Amendment, subject only to narrow and well-  
9 understood exceptions, does not countenance govern-  
10 ment control over the content of messages expressed  
11 by private individuals.”.

12 (7) In *R.A.V. v. City of St. Paul*, 505 U.S. 377  
13 (1992), the Court explained that the First Amend-  
14 ment to the Constitution of the United States “gen-  
15 erally prevents government from proscribing speech,  
16 or even expressive conduct, because of disapproval of  
17 the ideas expressed. Content-based restrictions are  
18 presumptively invalid.”.

19 (8) The case of *Brandenburg v. Ohio*, 395 U.S.  
20 444 (1969), stands for the proposition that speech  
21 can be suppressed only if the speech is intended, and  
22 is likely to produce, imminent lawless action.

23 (9) Justice William Brennan, in his majority  
24 opinion for the Court in *Texas v. Johnson*, 491 U.S.  
25 397 (1989), asserted that “[i]f there is a bedrock

1 principle underlying the First Amendment, it is that  
2 the government may not prohibit the expression of  
3 an idea simply because society finds the idea itself  
4 offensive or disagreeable.”.

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

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

19 (12) White House officials and officials of Ex-  
20 ecutive agencies sought to silence narratives on so-  
21 cial media platforms on issues relating to the  
22 COVID–19 pandemic.

23 (13) The Centers for Disease Control and Pre-  
24 vention engaged with officials at Facebook and Twit-  
25 ter to request that certain posts be flagged as

1 “disinformation” and held regular meetings with  
2 those companies to share instances of what govern-  
3 ment officials determined to be “misinformation”  
4 about the COVID–19 pandemic that had been  
5 spread on the platforms operated by those compa-  
6 nies.

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

13 (15) On April 27, 2022, the Department of  
14 Homeland Security announced the creation of a  
15 Disinformation Governance Board (referred to in  
16 this paragraph as the “Board”). The Director of the  
17 Board, Nina Jankowicz, sought to establish an  
18 “analytic exchange” with “industry partners”. In  
19 congressional testimony, Secretary of Homeland Se-  
20 curity Alejandro Mayorkas provided misleading testi-  
21 mony about the actions of the Board.

22 (16) Since 2020, 2 nonprofit organizations af-  
23 filiated with the Global Disinformation Index (re-  
24 ferred to in this paragraph as “GDI”) have received  
25 a total of \$330,000 in grants from Federal agencies.



1 GDI maintains a list of “global news publications  
2 rated high risk for disinformation”. Major adver-  
3 tising companies seek guidance from this purported  
4 “nonpartisan” group to determine where advertising  
5 money should be spent. Despite the self-proclaimed  
6 “nonpartisan” nature of the list, GDI includes a  
7 host of reputable media outlets, such as Reason,  
8 RealClearPolitics, and the New York Post.

9 **SEC. 4. EMPLOYEE PROHIBITIONS.**

10 (a) PROHIBITIONS.—

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

13 (A) use any form of communication (with-  
14 out regard to whether the communication is  
15 visible to members of the public) to direct, co-  
16 erce, compel, or encourage a provider to take,  
17 suggest or imply that a provider should take, or  
18 request that a provider take any action to cen-  
19 sor speech that is protected by the Constitution  
20 of the United States, including by—

21 (i) removing that speech from the ap-  
22 plicable covered platform;

23 (ii) suppressing that speech on the ap-  
24 plicable covered platform;

1 (iii) removing or suspending a par-  
2 ticular user (or a class of users) from the  
3 applicable covered platform or otherwise  
4 limiting the access of a particular user (or  
5 a class of users) to the covered platform;

6 (iv) labeling that speech as  
7 disinformation, misinformation, or false, or  
8 by making any similar characterization  
9 with respect to the speech; or

10 (v) otherwise blocking, banning, delet-  
11 ing, deprioritizing, demonetizing,  
12 deboosting, limiting the reach of, or re-  
13 stricting access to the speech;

14 (B) direct or encourage a provider to share  
15 with an Executive agency covered information  
16 containing data or information regarding a par-  
17 ticular topic, or a user or group of users on the  
18 applicable covered platform, including any cov-  
19 ered information shared or stored by users on  
20 the covered platform;

21 (C) work, directly or indirectly, with any  
22 private or public entity or person to take an ac-  
23 tion that is prohibited under subparagraph (A)  
24 or (B); or

1 (D) on behalf of the Executive agency em-  
2 ploying the employee—

3 (i) enter into a partnership with a  
4 provider to monitor any content dissemi-  
5 nated on the applicable covered platform;  
6 or

7 (ii) solicit, accept, or enter into a con-  
8 tract or other agreement (including a no-  
9 cost agreement) for free advertising or an-  
10 other promotion on a covered platform.

11 (2) EXCEPTION.—Notwithstanding subpara-  
12 graph (B) of paragraph (1), the prohibition under  
13 that subparagraph shall not apply with respect to an  
14 action by an Executive agency or employee pursuant  
15 to a warrant that is issued by—

16 (A) a court of the United States of com-  
17 petent jurisdiction in accordance with the proce-  
18 dures described in rule 41 of the Federal Rules  
19 of Criminal Procedure; or

20 (B) a State court of competent jurisdic-  
21 tion.

22 (3) EMPLOYEE DISCIPLINE.—

23 (A) IN GENERAL.—Notwithstanding any  
24 provision of title 5, United States Code, and  
25 subject to subparagraph (B), the head of an

1 Executive agency employing an employee who  
2 violates any provision of paragraph (1) (or, in  
3 the case of the head of an Executive agency  
4 who violates any provision of paragraph (1), the  
5 President) shall impose on that employee—

6 (i) disciplinary action consisting of re-  
7 moval, reduction in grade, suspension, or  
8 debarment from employment with the  
9 United States;

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

12 (iii) ineligibility for any annuity under  
13 chapter 83 or 84 of title 5, United States  
14 Code; and

15 (iv) permanent revocation of any ap-  
16 plicable security clearance held by the em-  
17 ployee.

18 (B) SPECIFIC CONTRACTOR DISCIPLINE.—

19 In the case of an employee described in section  
20 2(4)(A)(ii)(I) who violates any provision of  
21 paragraph (1), in addition to any discipline that  
22 may be applicable under subparagraph (A) of  
23 this paragraph, that employee shall be barred  
24 from working under any contract with the Fed-  
25 eral Government.

1 (b) PRIVATE RIGHT OF ACTION.—

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

8 (A) the applicable Executive agency; and

9 (B) the employee of the applicable Execu-  
10 tive agency who committed the violation.

11 (2) PRESUMPTION OF LIABILITY.—In a civil ac-  
12 tion brought under paragraph (1), there shall be a  
13 rebuttable presumption against the applicable Execu-  
14 tive agency or employee if the person bringing the  
15 action demonstrates that the applicable employee  
16 communicated with a provider on a matter relating  
17 to—

18 (A) covered information with respect to  
19 that person; or

20 (B) a statement made by that person on  
21 the applicable covered platform.

22 **SEC. 5. REPORTING REQUIREMENTS.**

23 (a) IN GENERAL.—Not later than 90 days after the  
24 date of enactment of this Act, and not less frequently than  
25 once every 90 days thereafter, the head of each Executive

1 agency shall submit to the Director and the chair and  
2 ranking member of the Committee on Homeland Security  
3 and Governmental Affairs of the Senate, the Committee  
4 on the Judiciary of the Senate, the Committee on Over-  
5 sight and Accountability of the House of Representatives,  
6 and the Committee on the Judiciary of the House of Rep-  
7 resentatives a report that discloses, for the period covered  
8 by the report, each communication between a representa-  
9 tive of a provider and an employee of that Executive agen-  
10 cy—

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

13           (2) not including any such communication that  
14           relates to combating child pornography or exploi-  
15           tation, human trafficking, or the illegal transporting  
16           or transacting in controlled substances.

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

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

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

1 (A) a detailed explanation of the nature of  
2 the violation; and

3 (B) the date of the violation.

4 (c) PUBLICATION.—

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

8 (A) collect the report and assign the report  
9 a unique tracking number; and

10 (B) publish on a publicly accessible and  
11 searchable website the contents of the report  
12 and the tracking number for the report.

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

21 **SEC. 6. CYBERSECURITY INFRASTRUCTURE AND SECURITY**  
22 **AGENCY REPORT.**

23 Not later than 180 days after the date of enactment  
24 of this Act, the Secretary of Homeland Security shall sub-  
25 mit to the Director and the chair and ranking member

1 of the Committee on Homeland Security and Govern-  
2 mental Affairs of the Senate and the Committee on Over-  
3 sight and Accountability of the House of Representatives  
4 a report that discloses any action of an employee of the  
5 Cybersecurity and Infrastructure Security Agency that—

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

8 (2) would have been in violation of section  
9 4(a)(1).

10 **SEC. 7. TERMINATION OF DISINFORMATION GOVERNANCE**

11 **BOARD.**

12 (a) **TERMINATION.**—The Disinformation Governance  
13 Board established by the Department of Homeland Secu-  
14 rity, if in existence on the date of enactment of this Act,  
15 is terminated.

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

21 **SEC. 8. PROHIBITION ON MISINFORMATION AND**  
22 **DISINFORMATION GRANTS.**

23 The head of an Executive agency may not award a  
24 grant relating to programming on misinformation or  
25 disinformation.



1 **SEC. 9. GRANT TERMS.**

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

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

14 (c) PENALTY.—Upon a determination by the head of  
15 an Executive agency that a recipient or subgrantee of a  
16 recipient has violated the certification of the recipient  
17 under subsection (a), the recipient or subgrantee, respec-  
18 tively, shall—

19 (1) repay the grant associated with the certifi-  
20 cation; and

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

23 **SEC. 10. PRESIDENTIAL WAR POWERS UNDER THE COMMU-  
24 NICATIONS ACT OF 1934.**

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

1 (1) by striking subsections (c) through (g); and

2 (2) by redesignating subsection (h) as sub-  
3 section (c).

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
5 Section 309(h) of the Communications Act of 1934 (47  
6 U.S.C. 309(h)) is amended—

7 (1) by inserting “and” before “(2)”; and

8 (2) by striking “Act;” and all that follows  
9 through the period at the end and inserting the fol-  
10 lowing: “Act.”.

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

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

15 (b) APPLICABILITY.—Notwithstanding any provision  
16 of section 552 of title 5, United States Code, any request  
17 made to an agency pursuant to that section for records  
18 relating to communication between an employee and a rep-  
19 resentative of a provider—

20 (1) shall be granted by the agency without re-  
21 gard to any exemption under subsection (b) of that  
22 section, except the agency may not release any iden-  
23 tifying information of a user of a covered platform  
24 without express written consent granted by the user  
25 to the agency; and

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

○