

119TH CONGRESS
1ST SESSION

S. 188

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

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2025

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

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,
7 600 U.S. 570 (2023), stated, “The First Amend-
8 ment envisions the United States as a rich and com-
9 plex place where all persons are free to think and
10 speak as they wish, not as the government de-
11 mands.”

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 Exec-
 14 utive 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 Government Reform of the House of Represent-
 6 atives, and the Committee on the Judiciary of the House
 7 of Representatives a report that discloses, for the period
 8 covered by the report, each communication between a rep-
 9 resentative of a provider and an employee of that Execu-
 10 tive agency—

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 Government Reform of the House of Represent-
4 atives a report that discloses any action of an employee
5 of the Cybersecurity and Infrastructure Security Agency
6 that—

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

9 (2) would have been in violation of section
10 4(a)(1).

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

12 **BOARD.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

○