

CENSORSHIP ACCOUNTABILITY ACT

—————
JULY 11, 2024.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4848]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4848) to provide for a right of action against Federal employees for violations of First Amendment rights, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	5
Committee Consideration	7
Committee Votes	7
Committee Oversight Findings	10
New Budget Authority and Tax Expenditures	10
Congressional Budget Office Cost Estimate	10
Committee Estimate of Budgetary Effects	11
Duplication of Federal Programs	11
Performance Goals and Objectives	11
Advisory on Earmarks	11
Federal Mandates Statement	11
Advisory Committee Statement	11
Applicability to Legislative Branch	11
Section-by-Section Analysis	12
Dissenting Views	12

The amendment is as follows:
Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Censorship Accountability Act”.

SEC. 2. RIGHT OF ACTION AGAINST FEDERAL EMPLOYEES FOR VIOLATIONS OF FIRST AMENDMENT RIGHTS.

(a) **IN GENERAL.**—A Federal employee who, under color of any statute, ordinance, regulation, custom, or usage, of the United States, subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the First Amendment, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

(b) **EXCEPTION.**—This section does not authorize a Federal employee to bring a suit against their Federal employer or the Federal Government for conduct that is within the scope of the employment relationship.

(c) **ATTORNEY’S FEES.**—In any action or proceeding to enforce this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.

(d) **DEFINITION.**—In this section, the term “Federal employee” means an individual, other than the President or the Vice President, who occupies a position in any agency or instrumentality of the executive branch (including any independent agency).

(e) **SEVERABILITY.**—If any provision of this Act or the application of a provision of this Act to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions to any person or circumstance, shall not be affected thereby.

Purpose and Summary

H.R. 4848, the Censorship Accountability Act, introduced by Representative Dan Bishop (R-NC), will permit injured parties to sue federal executive branch officials for violations of their First Amendment rights and receive monetary damages. This bill will provide a remedy for the injured parties and deter would-be federal censors from engaging in further infringements upon the First Amendment. The Censorship Accountability Act is modeled on 42 U.S.C. § 1983, a Reconstruction-era statute that permits Americans to sue state and municipal employees for violating their federal constitutional rights.

Background and Need for the Legislation

The Committee’s work has revealed evidence of censorship that violates the First Amendment

The Committee and its Select Subcommittee on the Weaponization of the Federal Government are conducting an extensive investigation into government-induced censorship on social media and other Big Tech platforms. The Committee and Select Subcommittee have uncovered evidence that prove Facebook and Instagram censored posts and changed content moderation policies because of unconstitutional pressure from the Biden White House.¹ The Committee and Select Subcommittee have uncovered evidence

¹ See Jim Jordan (@Jim Jordan), X, (July 27, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684595375875760128; Jim Jordan (@Jim Jordan), X, (July 28, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684957660515328001; Jim Jordan (@Jim Jordan), X, (Aug. 3, 2023, 11:00 AM), https://twitter.com/Jim_Jordan/status/1687116316073930752; Jim Jordan (@Jim Jordan), X, (Sept. 5, 2023, 6:17 PM), https://twitter.com/Jim_Jordan/status/1699184930331267539; Jim Jordan (@Jim Jordan), X (May 1, 2024, 3:31 PM), https://x.com/Jim_Jordan/status/1785753836532978067; see also Ryan Tracy, *Facebook Bowed to White House Pressure, Removed Covid Posts*, WALL ST. J. (July 28, 2023).

detailing similar efforts by the Biden White House to censor content on YouTube.² Most recently, the Committee and Select Subcommittee have shown how the Biden White House pressured Amazon to censor vaccine-related books.³ In all three cases, two senior White House officials, Andy Slavitt and Rob Flaherty, communicated the Biden White House’s censorship demands to the social media and technology companies.⁴ This bill would allow the American people to hold executive branch employees like Slavitt and Flaherty accountable for their censorship.

Likewise, the Committee has uncovered other evidence of government-driven censorship, including how the Department of Homeland Security’s (DHS) Cybersecurity and Infrastructure Security Agency (CISA) and the State Department’s Global Engagement Center (GEC) collaborated with academic institutions, nonprofits, and other third parties, censor Americans’ speech.⁵

*Notwithstanding the Supreme Court’s decision in *Murthy v. Missouri*, Congress must act to deter censorship*

On May 5, 2022, the states of Louisiana and Missouri filed a lawsuit alleging that the federal government coerced or otherwise worked with social media platforms to censor constitutionally protected speech.⁶ On July 4, 2023, a federal district court in Louisiana issued a preliminary injunction.⁷ The court enjoined the government and certain federal officials from communicating with social media companies to censor protected speech.⁸ The court found “substantial evidence . . . of a far-reaching . . . censorship campaign,” one where the federal government acted like “an Orwellian ‘Ministry of Truth.’”⁹

On September 8, 2023, the U.S. Court of Appeals for the Fifth Circuit affirmed the district court’s judgment in part, narrowing the injunction’s scope, and issuing a revised decision on October 3.¹⁰ On October 20, the Supreme Court decided to take the case but also stayed the preliminary injunction pending review.¹¹ As Justice Alito noted in his dissent from the grant of the application for stay:

² Jim Jordan (@Jim Jordan), X, (Nov. 30, 2023, 8:44 AM), https://twitter.com/Jim_Jordan/status/1730221179632226337; Jim Jordan (@Jim Jordan), X, (Dec. 1, 2023, 2:26 PM) https://twitter.com/Jim_Jordan/status/1730669728002142706; Jim Jordan (@Jim_Jordan), X (May 1, 2024, 4:09 PM), https://x.com/Jim_Jordan/status/1785763383142129733.

³ Jim Jordan (@Jim Jordan), Twitter (Feb. 5, 2024, 5:44 PM), https://twitter.com/Jim_Jordan/status/1754637204146581783; Jim Jordan (@Jim Jordan), X (May 1, 2024, 3:56 PM), https://x.com/Jim_Jordan/status/1785760331370725664; Jim Jordan (@Jim Jordan), X (June 21, 2024, 8:41 AM), https://x.com/Jim_Jordan/status/1804132417260728697.

⁴ Jim Jordan (@Jim Jordan), X, (July 27, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684595375875760128; Jim Jordan (@Jim Jordan), X, (July 28, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684957660515328001; Jim Jordan (@Jim Jordan), X, (Aug. 3, 2023, 11:00 AM), https://twitter.com/Jim_Jordan/status/1687116316073930752; Jim Jordan (@Jim Jordan), X, (Nov. 30, 2023, 8:44 AM), https://twitter.com/Jim_Jordan/status/1730221179632226337; Jim Jordan (@Jim Jordan), X, (Dec. 1, 2023, 2:26 PM) https://twitter.com/Jim_Jordan/status/1730669728002142706; Rep. Jim Jordan (@Jim Jordan), Twitter (Feb. 5, 2024, 5:44 PM), https://twitter.com/Jim_Jordan/status/1754637204146581783.

⁵ STAFF OF SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF ‘DISINFORMATION’ PSEUDO-EXPERTS AND BUREAUCRATS: HOW THE FEDERAL GOVERNMENT PARTNERED WITH UNIVERSITIES TO CENSOR AMERICANS’ POLITICAL SPEECH (Comm. Print Nov. 6, 2023).

⁶ Complaint at 75, *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. May 5, 2022).

⁷ Memorandum Ruling on Request for Preliminary Injunction at 155, *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023).

⁸ *Id.* at 87–88.

⁹ *Id.* at 154.

¹⁰ See Revised Opinion at 74, *Missouri v. Biden*, No. 23–30445 (5th Cir. Oct. 3, 2023); see also First Opinion at 74, *Missouri v. Biden*, No. 23–30445 (5th Cir. Sept. 8, 2023).

¹¹ *Murthy v. Missouri*, 601 U. S. ____ (2023) (Alito, J., dissenting), slip. op. at 1.

“[a]t this time in the history of our country, what the Court has done, I fear, will be seen by some as giving the Government a green light to use heavy-handed tactics to skew the presentation of views on the medium that increasingly dominates the dissemination of news.”¹²

On June 26, 2024, the Supreme Court reversed the Fifth Circuit without addressing the merits of the claims.¹³ Justice Barrett, writing for the majority, concluded that none of the plaintiffs (Missouri, Louisiana, and five individuals) were able to show a “concrete link between their injuries” and the Biden Administration’s pressure campaign.¹⁴ Justice Alito, joined by Justices Thomas and Gorsuch, dissented, and noted that documents obtained by the plaintiffs, and the Committee, revealed that the Biden White House “engaged in a covert scheme of censorship.”¹⁵ The dissent concluded that the Biden Administration’s actions were “blatantly unconstitutional” and, in part due to documents uncovered during the Committee’s and Select Subcommittee’s investigation, “we now know that valuable speech was . . . suppressed.”¹⁶

The case now returns to the district court for further proceedings. Although the Supreme Court held that the plaintiffs failed to meet the high burden for a preliminary injunction, the plaintiffs, likely with additional discovery, will have the opportunity to prove their case on the merits.

Current law is inadequate to deter executive branch censorship

Under 42 U.S.C. § 1983, state and municipal government employees are liable for damages for violating individuals’ clearly established constitutional rights.¹⁷ Section 1983, however, “does not encompass claims against federal officials.”¹⁸ While the Supreme Court created a cause of action against federal employees in the *Bivens* case for certain constitutional violations,¹⁹ the judicial application of that doctrine is limited and does not allow relief for First Amendment claims.²⁰ Further, the Court recently narrowed the applicability of *Bivens*, signaling that the Court is hesitant to expand the doctrine and may even consider further narrowing its applicability for future litigants.²¹ Accordingly, under current statutory and federal case law, when federal executive branch officials violate First Amendment rights, the American people have limited recourse.

¹²*Id.* at 5.

¹³*Murthy v. Missouri*, 603 U.S. ____ (2024) (slip op.).

¹⁴*Id.* at 29 (Barrett, J., majority op.).

¹⁵*Id.* at 30 (Alito, J., dissenting) (citing Interim Staff Report of the House Judiciary Committee, *The Censorship-Industrial Complex: How Top Biden White House Officials Coerced Big Tech To Censor Americans, True Information, and Critics of the Biden Administration*, (May 1, 2024)).

¹⁶*Id.* at 4, 2 (Alito, J., dissenting) (citing Interim Staff Report of the House Judiciary Committee, *The Censorship-Industrial Complex: How Top Biden White House Officials Coerced Big Tech To Censor Americans, True Information, and Critics of the Biden Administration*, (May 1, 2024)).

¹⁷See 42 U.S.C. § 1983; see generally MARTIN SCHWARTZ, SECTION 1983 LITIGATION (3D ED. 2014).

¹⁸*Id.* at 7 (cleaned up).

¹⁹See *id.*; see generally *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

²⁰See, e.g., *Reichle v. Howards*, 566 U.S. 658, 663 n.4 (2012) (“We have never held that *Bivens* extends to First Amendment claims.”).

²¹See Howard M. Wasserman, *Court Constricts, Even if it Does Not Quite Eliminate, Damages Actions Under Bivens*, SCOTUSBLOG (Jun. 8, 2022); Cassandra Burke Robertson, *SCOTUS Sharply Limits Bivens Claims—and Hints at Further Retrenchment*, ABA (Apr. 14, 2020).

The Censorship Accountability Act is a direct result of the Committee's oversight

As part of its oversight, the Committee and Select Subcommittee have received testimony that supports the Censorship Accountability Act's underlying policy. For example, in a Select Subcommittee hearing, Louisiana Attorney General Jeff Landry “encourage[d] Congress to . . . pass legislation to expand civil liability . . . by creating a specific cause of action for monetary damages” for censorship.²² Other witnesses, including Twitter Files journalist Michael Shellenberger, have called for similar legislative action.²³

Modeled generally on § 1983, the Censorship Accountability Act permits Americans to sue executive branch officials who violate their First Amendment rights for damages.²⁴ It also includes language based on 42 U.S.C. § 1988(b),²⁵ which permits courts to award attorney's fees to prevailing plaintiffs in § 1983 claims.²⁶ Congress enacted § 1983 to “encourag[e] private litigants to act as ‘private attorneys general’ in seeking to vindicate the civil rights laws.”²⁷ Like § 1983, the Censorship Accountability Act will encourage attorneys to bring cases on behalf of plaintiffs and will allow victims to pursue compensation when executive branch officials violate their First Amendment rights. Finally, as with § 1983 before it, this bill will help preserve fundamental American freedoms that are under attack by rogue government actors who have abrogated to themselves the right to decide what Americans can and cannot say.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, a hearing titled “Hearing on the Weaponization of the Federal Government” was held on Thursday, March 30, 2023, before the Subcommittee on the Weaponization of the Federal Government of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- U.S. Senator Eric Schmitt, Missouri;
- Attorney General Jeff Landry, Louisiana;

²²Hearing on the Weaponization of the Fed. Gov., *Hearing Before the Select Subcomm. on the Weaponization of the Fed. Gov. of the H. Comm. on the Judic.*, 118th Cong. 6 (2023) (testimony of Jeff Landry, Att’y Gen. of Louisiana); *see generally id.* at 2 (testimony of D. John Sauer, Special Ass’t Att’y Gen., Louisiana Dep’t of Justice, (“For years, federal officials have perpetrated a hostile takeover of this ‘modern public square.’ This hostile takeover has largely succeeded. Congress should take swift action to restore freedom to the most pivotal sector of political and social expression—social media.”)).

²³Hearing on the Weaponization of the Fed. Gov., *Hearing Before the Select Subcomm. on the Weaponization of the Fed. Gov. of the H. Comm. on the Judic.*, 118th Cong. 4 (2023) (testimony of Michael Shellenberger (“I would also encourage Congress to prohibit government officials from asking the platforms [to remove content], which the Supreme Court may or may not rule [unconstitutional] next year when it decides on the Missouri v. Biden case.”)).

²⁴H.R. 4848 § 2(a). Existing doctrines may prevent any given plaintiff from recovering depending on the facts of the case. *See, e.g., Tapley v. Collins*, 211 F.3d 1210, 1214 (11th Cir. 2000) (explaining “the Supreme Court has said that the defense of qualified immunity is so well established, that if Congress wishes to abrogate it, Congress should specifically say so”) (citation and internal quotation marks omitted).

²⁵*See id.* § 2(c).

²⁶*See* 42 U.S.C. § 1988(b) (providing for recovery of attorney's fees in actions to enforce section 1983 claims).

²⁷*Donnell v. United States*, 682 F.2d 240, 245 (D.C. Cir. 1982); *cf. id.* (observing of a similar statute that “Congress depends heavily upon private citizens to enforce the fundamental rights involved[,] [and attorney's fees] . . . are a necessary means of enabling private citizens to vindicate these Federal rights.” (internal quotation marks omitted)).

- D. John Sauer, Special Assistant Attorney General, Louisiana Department of Justice; and
- Matthew Seligman, Professor, Stanford Constitutional Law Center.

The hearing addressed the *Missouri v. Biden* lawsuit challenging the Biden Administration’s violation of the First Amendment by directing social media companies to censor and suppress Americans’ free speech.

The Committee held a related hearing titled “Hearing on the Weaponization of the Federal Government” was held on Thursday, May 18, 2023, before the Subcommittee on the Weaponization of the Federal Government of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Garret O’Boyle, Whistleblower; FBI Special Agent;
- Steve Friend, Whistleblower; former FBI Special Agent;
- Marcus Allen, Whistleblower; FBI Staff Operations Specialist; and
- Tristan Leavitt, President, Empower Oversight.

The hearing addressed abuses seen at the FBI, including its “collusion with Big Tech to gather intelligence on Americans, censor political speech, and target citizens for malicious prosecution.”²⁸

The Committee held a further related hearing titled “Hearing on the Weaponization of the Federal Government” was held on Thursday, July 20, 2023, before the Subcommittee on the Weaponization of the Federal Government of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Robert F. Kennedy Jr.;
- Emma-Jo Morris, Breitbart News;
- D. John Sauer, Special Assistant Attorney General, Louisiana Department of Justice; and
- Maya Wiley, President and CEO, The Leadership Conference on Civil and Human Rights.

The hearing addressed the federal government’s role in censoring Americans, the *Missouri v. Biden* case, and Big Tech’s collusion with out-of-control government agencies to silence speech.

The Committee held a further related hearing titled “Hearing on the Weaponization of the Federal Government” was held on Thursday, November 30, 2023, before the Subcommittee on the Weaponization of the Federal Government of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Matt Taibbi, Twitter Files journalist and author;
- Michael Shellenberger, Twitter Files journalist, author, and environmentalist;
- Rupa Subramanya, journalist for *The Free Press*; and
- Olivia Troye, former Homeland Security Advisor and Counterterrorism Advisor, Office of Vice President Pence.

The hearing, which took place one year after the first Twitter Files publication, addressed the federal government’s involvement in social media censorship as well as the recent attacks on independent journalism and free expression.

²⁸Hearing on the Weaponization of the Fed. Gov., Hearing Before the Select Subcomm. on the Weaponization of the Fed. Gov. of the H. Comm. on the Judic., 118th Cong. (May 18, 2023).

The Committee held a further related hearing titled “Hearing on the Weaponization of the Federal Government” was held on Tuesday, February 6, 2024, before the Subcommittee on the Weaponization of the Federal Government of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Greg Lukianoff, President and CEO, Foundation for Individual Rights and Expression (FIRE);
- Lee Fang, Investigative journalist;
- Katelynn Richardson, Supreme Court Reporter, Daily Caller News Foundation; and
- Norman Eisen, former U.S. Ambassador to the Czech Republic.

The hearing addressed the threat to the First Amendment posed by artificial intelligence and the federal government’s role in funding the development of AI-powered censorship and propaganda tools that can be used by governments and Big Tech to monitor and censor speech at scale.

Committee Consideration

On February 29, 2024, the Committee met in open session and ordered the bill, H.R. 4848, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 19 to 11, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee’s consideration of H.R. 4848:

1. Vote on Amendment #2 to H.R. 4848 ANS, offered by Mr. Ivey, failed 10–16
2. Vote on favorably reporting H.R. 4848, as amended, passed 19–11

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19
ROLL CALL

Date: 2/29/24

Vote on: Ivey Amndt (#2) to HR 4848 ANS

Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)	✓		
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)			
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)		✓		MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 10 Nays: 16 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19

Date: 2/29/24

ROLL CALL

Vote on: *Final Passage of HR 4848, as amended*

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. BUCK (CO)				MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. BIGGS (AZ)	✓			MR. JOHNSON (GA)		✓	
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)			
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)			
MR. ROY (TX)	✓			MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)	✓			MR. CORREA (CA)		✓	
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)	✓			MS. McBATH (GA)		✓	
MR. CLINE (VA)	✓			MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)			
MR. GOODEN (TX)				MS. ROSS (NC)		✓	
MR. VAN DREW (NJ)	✓			MS. BUSH (MO)			
MR. NEHLS (TX)	✓			MR. IVEY (MD)		✓	
MR. MOORE (AL)	✓			MS. BALINT (VT)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)	✓						
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 19 Nays: 11 Present: _____
 Passed: X Failed: _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to filing of the report and is included in the report. Such a cost estimate is included in this report.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 4848 from the Director of the Congressional Budget Office:

H.R. 4848, Censorship Accountability Act			
As ordered reported by the House Committee on the Judiciary on February 29, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply? No	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	Excluded from UMRA
		Contains private-sector mandate?	Excluded from UMRA
* = between zero and \$500,000.			

H.R. 4848 would create a new right of action against a federal employee in their personal capacity if they violate the First Amendment rights of any person within the United States. The legislation would exempt the President and Vice-President from that liability. The bill also would not authorize the right of action for a federal employee who brings a suit against their employer or the federal government for conduct within the scope of their employment.

CBO estimates that the administrative costs associated with implementing the bill would be less than \$500,000 over the 2024–2029 period because few cases are likely to be affected. Any related spending would be subject to the availability of appropriated funds.

CBO has not reviewed H.R. 4848 for intergovernmental or private-sector mandates because section 4 of the Unfunded Mandates

Reform Act excludes from the application of that act any legislative provisions that would enforce the constitutional rights of individuals. CBO has determined that this bill falls within that exclusion because it enforces the First Amendment rights of all individuals within the United States.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Grace Watson (for mandates). The estimate was reviewed by Ann E. Futrell, Senior Adviser for Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 4848 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 4848 would permit injured parties to sue federal executive branch officials for violations of their First Amendment rights and receive monetary damages.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 4848 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Federal Mandates Statement

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Section-by-Section Analysis

Section 1. Short Title. This section sets forth the short title of the bill as the “Censorship Accountability Act”.

Section 2. Right of Action Against Federal Employees for Violations of First Amendment Rights. This section makes a federal employee who violates First Amendment rights liable in law and equity to injured parties, clarifies that the bill does not authorize suits by federal employees against the government for conduct within the scope of the employment relationship, and permits a court to award a prevailing plaintiff a reasonable attorney’s fee.

This section also defines “federal employee” as an individual, other than the President or Vice President, occupying a position in the executive branch and contains a standard severability clause.

Dissenting Views

H.R. 4848, the so-called “Censorship Accountability Act,” creates a federal cause of action for a person to sue a federal employee who, acting “under color of any” federal law, violates that person’s “rights, privileges, or immunities secured by the First Amendment.” The bill does not authorize federal employees to sue their federal employers or the federal government for employment-related conduct. It also defines “federal employee” to mean anyone holding a position in the Executive Branch, other than the President and Vice President.

While, in principle, I could support a proposal to allow someone to sue a federal official for their violation of a constitutional right, H.R. 4848 is not a serious effort at reform. The Committee held no hearing to allow Members to thoroughly vet the merits of H.R. 4848, including the chance to hear from constitutional law and civil litigation experts. If we had, we could have considered several concerns with the bill’s drafting, which invites too many unanswered questions.

Instead, the Majority’s effort to move this legislation is based on the false factual premise that officials in the Biden Administration have colluded with technology companies to suppress conservative viewpoints on social media platforms. After an investigation that expended tremendous Committee time and resources, the Majority has failed to produce *any* credible evidence in support of its scurrilous accusation, a conclusion that the Supreme Court recently echoed in *Murthy v. Missouri*. Notably, the Supreme Court found that many of the findings made by the District Court in that case—claims the Majority has repeatedly cited in this investigation as factual evidence—“unfortunately appear to be clearly erroneous,” noting that “much of the evidence is inapposite.”¹ Yet, as a consequence of the Majority’s narrow and partisan focus, H.R. 4848 is unnecessarily limited in scope to rights “secured by the First Amendment.” The bill leaves unmet the American people’s interest in an effective remedy for violations of *all* of their constitutional rights, not just those secured by the First Amendment.²

¹ *Murthy v. Missouri*, No. 23–411, *slip opinion* at 12 n. 4 (S. Ct. Jun. 26, 2024).

² It is no answer to say that other remedies exist against federal officials for the protection of all other constitutional rights, as the Majority suggested during markup. There is no federal statutory cause of action analogous to 42 U.S.C. § 1983, which allows a person to sue local and state officials in their individual capacities, as well as local governments, for money damages for violations of federal rights and on which H.R. 4848 is purportedly modeled. While the Su-

Additionally, the bill's exception for lawsuits brought by federal employees against their employers or the federal government may be too broad, potentially eroding federal employees' ability to vindicate their free speech or religious liberty rights under the bill even in cases concerning conduct that is far removed from the workplace context. Finally, the bill exempts from its scope the President and the Vice President of the United States by excluding them from the definition of "federal employee," which appears to be an attempt to protect Donald Trump should he become President again.

If the Majority were serious about enacting a statute to provide a cause of action for victims of constitutional violations committed by federal officials, I would be happy to work with them on such an effort. For the foregoing reasons, however, I must dissent from the Majority's decision to report H.R. 4848 favorably out of Committee.

A. H.R. 4848 IS UNNECESSARILY LIMITED IN SCOPE TO THE FIRST AMENDMENT BECAUSE IT IS BASED ON THE FALSE FACTUAL PREMISE THAT THE FEDERAL GOVERNMENT CENSORED ONLINE SPEECH

There is little substantive reason why H.R. 4848 should be limited in scope to rights "secured by the First Amendment" when a person's interest in remedying violations of other constitutional rights is equally strong. The bill should have been drafted in the first instance to cover all constitutional rights. During the markup of H.R. 4848, I offered an amendment that would have replaced the term "First Amendment" in Section 2(a) with "Constitution." Unfortunately, the Committee rejected this amendment in a partisan vote.

It is telling that the Majority limited the bill's scope to the First Amendment, as this is an indication of the sponsors' true intent to use the bill as a gimmick to assert their false claims about the supposed suppression of conservative speech. H.R. 4848 appears to be the Majority's attempt at "effective legislation" in response to their false allegations that the Executive Branch has "coerced" technology companies into violating the First Amendment rights of their platforms' conservative users.

The Majority's drive to push H.R. 4848 must be understood in context. At the start of the 118th Congress, Congress established the Select Subcommittee on the Weaponization of the Federal Government ("Select Subcommittee"). One of the main purposes behind the establishment of the Select Subcommittee was to facilitate the Majority's partisan investigation to uncover evidence supporting the assertion that "the Executive Branch coerced and colluded with [Big Tech] companies and other intermediaries to censor speech" on technology platforms and "to develop effective legislation, such as the possible enactment of new statutory limits on the Executive Branch's ability to work with Big Tech to restrict the circulation of

preme Court in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), found a very limited Fourth Amendment-based implied cause of action against federal officials, the Court has narrowed even this limited remedy substantially and steadily since the early 1980's. And, as recently as 2022, the Court emphasized that if it "were called to decide *Bivens* today, we would decline to discover any implied causes of action in the Constitution" and that "in all but the most unusual circumstances, prescribing a cause of action is a job for Congress, not the courts." *Egbert v. Boule*, 596 U.S. 482, 486, 502 (2022). H.R. 4848 and the legislative "process" surrounding it are a missed opportunity.

content and deplatform users.”³ Despite having taken more than 200 hours of testimony from nearly four dozen witnesses, including internet researchers, technology company employees, and former federal officials—as well as having obtained nearly half a million pages of documents—the Majority has found no credible evidence to support its assertion. Tellingly, the Majority continues to refuse to release the transcripts from these interviews, no doubt because it realizes that doing so would expose the weakness of its claims.

In addition to the Select Subcommittee’s efforts, in May 2022, two state attorneys general and five private plaintiffs filed a lawsuit against the Biden Administration in federal district court alleging “that federal government officials violated the First Amendment by ‘coercing’ or ‘significantly encouraging’ social media companies to remove or demote content from their platforms.”⁴ The plaintiffs in this case “contend[ed] that federal officials specifically targeted conservative-leaning speech across a range of topics, including the origin of the COVID–19 pandemic, the efficacy of masks and vaccines, the security of voting by mail, [and] the integrity of the 2020 presidential election.”⁵ In July 2023, the district court issued a sweeping preliminary injunction prohibiting the federal defendants from communicating with social media companies “for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms,” among other related activities.⁶ The Court of Appeals for the Fifth Circuit subsequently narrowed the preliminary injunction and, on October 23, 2023, the Supreme Court issued a stay on the preliminary injunction while agreeing to hear the case on the issues presented in the application for stay.⁷ On June 26, 2024, the Supreme Court held that neither the individual nor the state plaintiffs had established Article III standing to seek an injunction against any defendant. In reaching its decision, the Majority opinion noted that the “evidence indicates that the platforms had independent incentives to moderate content and often exercised their own judgment”⁸—a sentiment which has been echoed repeatedly in the Committee’s interviews with technology company employees. The Majority also found that the Fifth Circuit relied on the District Court’s factual findings—which mirrored the conspiracy theory underlying the Majority’s investigation—many of which appear to be “clearly erroneous”.⁹

³Letter from the Honorable Jim Jordan, Chairman, H. Comm. on the Judiciary, to Sundar Pichai, Chief Executive Officer, Alphabet Inc., Feb. 15, 2023.

⁴Brennan Center for Justice, Court Case Tracker: *Murthy v. Missouri* (formerly *Missouri v. Biden*), Blog post, Updated Dec. 27, 2023 available at <https://www.brennancenter.org/our-work/court-cases/murthy-v-missouri-formerly-missouri-v-biden>.

⁵*Id.*

⁶*Missouri v. Biden*, No. 3:22–CV–01213, 2023 WL 4335270, (W.D. La. July 4, 2023), *aff’d in part, rev’d in part*, 80 F.4th 641 (5th Cir. 2023), opinion withdrawn and superseded on reh’g, 83 F.4th 350 (5th Cir. 2023), cert. granted sub nom. *Murthy v. Missouri*, 144 S. Ct. 7 (2023), and *aff’d in part, rev’d in part*, 83 F.4th 350 (5th Cir. 2023), and cert. granted sub nom. *Murthy v. Missouri*, 144 S. Ct. 7 (2023).

⁷*Murthy v. Missouri*, 144 S. Ct. 7 (2023).

⁸*Murthy v. Missouri*, No. 23–411, slip opinion at 12 (S. Ct. Jun. 26, 2024).

⁹*Id.* n.4.

B. H.R. 4848 IS POORLY DRAFTED AND MAY IMPACT THE RIGHTS OF FEDERAL EMPLOYEES TO SEEK REDRESS FOR VIOLATIONS OF THEIR FIRST AMENDMENT RIGHTS

Somewhat paradoxically, by referring to rights “secured by the First Amendment,” H.R. 4848 may be broader than its drafters intended, as the First Amendment is not limited to the right to free speech, but includes other rights, such as the right to the free exercise of religion and a prohibition on the establishment of religion, the rights to a free press and free assembly, and to petition the government for a redress of grievances. Even after markup, it is unclear whether this was intentional or a drafting error, particularly given the bill short title’s reference to “censorship.”

Moreover, its exception for lawsuits brought by federal employees against their employers or the federal government may be too broad. For example, given that the bill otherwise authorizes lawsuits for violations of rights “secured by the First Amendment,” this exception—in conjunction with a broad reading of “rights secured by the First Amendment”—could be read to undermine federal employees’ ability to vindicate their religious free exercise rights against the employee’s federal employer. Also, the bill provides that it does not authorize a suit by federal employees against their employers “for conduct that is within the scope of the employment relationship,” a phrase that is broad enough to potentially erode federal employees’ ability to vindicate their free speech rights. Under current law, assessments of whether restrictions on federal employees’ speech are constitutional usually require application of a nuanced balancing test. H.R. 4848’s language, however, appears not to account for this subtlety and, therefore, may risk leaving federal employees without a remedy in cases where their constitutional free speech rights are violated by their employer.

C. H.R. 4848 EXCLUDES THE FIRST AMENDMENT VIOLATIONS CAUSED BY THE PRESIDENT AND VICE PRESIDENT

H.R. 4848’s exemption for the President and the Vice President of the United States is unjustified and appears simply to be an attempt to protect Donald Trump from First Amendment-related lawsuits should he become President again. Indeed, Mr. Trump had a history of using his office to attempt to suppress his critics’ First Amendment free expression rights. For example, after his Administration ordered tear gas to be fired against peaceful Black Lives Matter protestors in Lafayette Park in the aftermath of George Floyd’s killing, the protestors sued President Trump and other federal defendants for First Amendment violations. A federal court dismissed their claims because *Bivens* did not extend to First Amendment claims against the federal officials.¹⁰ While the Majority may claim that the President and Vice President are exempted because they are the only elected officials in the Executive Branch who routinely engage in protected political speech, by exempting the President from suit under this bill, it is clear that the sponsors

¹⁰ See *Black Lives Matter D.C. v. Trump—Challenging Federal Officers’ Unprovoked Attack On Civil Rights Demonstrators At Lafayette Square In Front Of The White House*, ACLU District of Columbia, available at <https://www.acludc.org/en/cases/black-lives-matter-dc-v-trump-challenging-federal-officers-unprovoked-attack-civil-rights>.

intend to continue giving a future President Trump the ability to act with impunity against his critics' First Amendment rights.

CONCLUSION

The need for a statutory remedy against federal officials for their violations of constitutional rights, including those that the First Amendment guarantees, is real. The Majority's efforts surrounding H.R. 4848 could have been an opportunity for meaningful substantive reform of civil rights litigation and could have given Americans a real means to vindicate their constitutional rights. Sadly, but perhaps not surprisingly, the Majority has wasted this opportunity, choosing instead to sing the only song it knows—simply using this bill as yet another platform to elevate baseless and partisan charges instead of actually legislating for the American people. I certainly reject the Majority's factual premise in support of this legislation, but I also outlined a number of substantive shortcomings and ambiguities that could have been addressed at markup. The Majority chose instead to ignore my points. For all these reasons, I must dissent.

JERROLD NADLER,
Ranking Member.

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