CENSORSHIP'S NEXT FRONTIER: THE FEDERAL GOVERNMENT'S ATTEMPT TO CONTROL ARTIFICIAL INTELLIGENCE TO SUPPRESS FREE SPEECH

Interim Staff Report of the

Committee on the Judiciary
and the
Select Subcommittee on the Weaponization of the Federal Government

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The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government are conducting oversight of how and to what extent the executive branch has coerced or colluded with social media and technology companies and other intermediaries to censor lawful speech.[1] As part of this oversight, the Committee and Select Subcommittee have examined the risk that the federal government's involvement in and regulation of artificial intelligence (AI) can pose to free speech.[2] Previously, the Committee and Select Subcommittee uncovered that the Biden-Harris Administration is funding the development of AI-powered speech-monitoring tools that could enable the mass censorship of American speech.[3] This interim staff report details threats to the free and open development of AI, identifies the free speech risks associated with the federal government's current involvement in AI development, and recommends approaches that Congress should take to protect Americans' fundamental First Amendment rights.

Throughout the 118th Congress, the Committee's and Select Subcommittee's oversight has demonstrated that the executive branch regularly abuses new technologies—and regulatory power over these technologies—to censor protected American speech. Most recently, the executive branch has coerced and colluded with social media companies to censor true information, opinions, jokes, and satire about elections, COVID-19, and other matters of public importance.[4] This campaign to silence Americans is a frontal assault on the First Amendment: as the Supreme Court has stated, "speech concerning public affairs is more than self-expression; it is the essence of self-government."[5]

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[1] *See* Ryan Tracy, *Facebook Bowed to White House Pressure, Removed Covid Posts*, WALL ST. J. (July 28, 2023).
[2] *See, e.g.,* STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024); *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024).
[3] *Id*.
[4] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., ELECTION INTERFERENCE: HOW THE FBI "PREBUNKED" A TRUE STORY ABOUT THE BIDEN FAMILY'S CORRUPTION IN ADVANCE OF THE 2020 PRESIDENTIAL ELECTION (Comm. Print Oct. 30, 2024); STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE CENSORSHIP-INDUSTRIAL COMPLEX: HOW TOP BIDEN WHITE HOUSE OFFICIALS COERCED BIG TECH TO CENSOR AMERICANS, TRUE INFORMATION, AND CRITICS OF THE BIDEN ADMINISTRATION (Comm. Print May 1, 2024); STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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); STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF CISA: HOW A "CYBERSECURITY" AGENCY COLLUDED WITH BIG TECH AND "DISINFORMATION" PARTNERS TO CENSOR AMERICANS (Comm. Print June 26, 2023); Letter from Mark Zuckerberg, CEO, Meta, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 26, 2024) ("In 2021, senior officials from the Biden Administration, including the White House, repeatedly pressured our teams for months to censor certain COVID-19 content, including humor and satire, and expressed a lot of frustration with our teams when we didn't agree.").
[5] Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).

Now, the federal government's censorship campaign has moved to a new frontier: AI. The Biden-Harris Administration has regulated new AI models directly and indirectly, pressuring private companies to "advance equity,"[6] stop "algorithmic discrimination,"[7] and "mitigate the production of harmful and biased outputs."[8] These regulations provide the means for the federal government to monitor, suppress, and ultimately censor views and information disfavored by the government. AI companies, aware of the power that federal regulators have over their future, have raced to comply with the government's directives, even allowing the government to inspect new AI models before they are released to the public.[9] Meanwhile, the executive branch has used taxpayer dollars to fund the development of AI-powered censorship tools to police online speech at a scale never seen before.[10]

The burgeoning federal chokehold on AI innovation could have profound negative effects for our nation. If allowed to develop in a free and open manner, AI could dramatically expand Americans' capacity to create knowledge and express themselves. However, needless regulation from political actors in the executive branch could enable, if not compel, government-preferred bias to become ingrained in AI models, thereby undermining Americans' First Amendment right to free expression. As one expert testified to the Select Subcommittee in February 2024, "[a] regulatory panic could result in a small number of Americans deciding for everyone else what speech, ideas, and even questions are permitted in the name of 'safety' or 'alignment.'"[11] Ultimately, Congress holds the keys: by rejecting censorship and embracing open, decentralized AI innovation, the United States can encourage AI development in a way that respects the First Amendment.

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[6] SELECT COMM. ON A.I. OF THE NAT'L SCI. AND TECH. COUNCIL, EXEC. OFF. OF THE PRESIDENT, NATIONAL ARTIFICIAL INTELLIGENCE RESEARCH AND DEVELOPMENT STRATEGIC PLAN UPDATE (May 2023).

[7] *FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI*, THE WHITE HOUSE (July 21, 2023).

[8] SELECT COMM. ON A.I. OF THE NAT'L SCI. AND TECH. COUNCIL, EXEC. OFF. OF THE PRESIDENT, NATIONAL ARTIFICIAL INTELLIGENCE RESEARCH AND DEVELOPMENT STRATEGIC PLAN UPDATE (May 2023).

[9] Press Release, Nat'l Inst. of Standards & Tech., U.S. AI Safety Institute Signs Agreements Regarding AI Safety Research, Testing and Evaluation with Anthropic and OpenAI (Aug. 29, 2024), https://www.nist.gov/news-events/news/2024/08/us-ai-safety-institute-signs-agreements-regarding-ai-safety-research.

[10] *See, e.g.,* STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024); *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024).

[11] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (testimony of Greg Lukianoff).

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The Committee's and Select Subcommittee's oversight has revealed how the executive branch has abused new technologies—most recently social media—to censor Americans' free speech, often by covertly coercing or colluding with private companies.[12] Over the past several years, individuals at every level of the federal government have used veiled threats of retaliation to coerce social media companies to silence the voices of American citizens. The world's largest platforms mostly went along with it, trading away free speech on their platforms to try to satisfy the powerful agencies within the executive branch.

The White House. In the name of combatting vaccine hesitancy, the Biden-Harris White House coerced and colluded with the world's largest tech companies—including Facebook, YouTube, and Amazon—to censor true information, satire, and opinions, and successfully pressured them to change their content moderation policies and enforcement practices.[13]

The Department of Homeland Security and the State Department. In the name of combatting alleged election "misinformation" and foreign malign influence, the Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Security Agency (CISA) and the State Department's Global Engagement Center (GEC) partnered with Stanford University and "disinformation" pseudo-scientists to create the Election Integrity Partnership (EIP), which worked to censor Americans' online speech before and after the 2020 election.[14] The EIP worked directly with social media companies' content moderation teams, who gave the EIP's censorship requests priority.[15] The EIP submitted specific censorship recommendations to social media companies to remove or demote thousands of Americans' online posts, including true information, jokes, and political opinions.[16]

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[12] *See* Ryan Tracy, *Facebook Bowed to White House Pressure, Removed Covid Posts*, WALL ST. J. (July 28, 2023).

[13] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE CENSORSHIP-INDUSTRIAL COMPLEX: HOW TOP BIDEN WHITE HOUSE OFFICIALS COERCED BIG TECH TO CENSOR AMERICANS, TRUE INFORMATION, AND CRITICS OF THE BIDEN ADMINISTRATION (Comm. Print May 1, 2024); Letter from Mark Zuckerberg, CEO, Meta, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 26, 2024) ("In 2021, senior officials from the Biden Administration, including the White House, repeatedly pressured our teams for months to censor certain COVID-19 content, including humor and satire, and expressed a lot of frustration with our teams when we didn't agree.").

[14] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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); *see also* STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF CISA: HOW A "CYBERSECURITY" AGENCY COLLUDED WITH BIG TECH AND "DISINFORMATION" PARTNERS TO CENSOR AMERICANS (Comm. Print June 26, 2023).

[15] *Id.*; Transcribed Interview by H. Comm. of the Judiciary of Senior Manager on YouTube's Gov't Affairs & Public Policy Team (June 6, 2024), at 89 (on file with the Comm.).

[16] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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).

The Federal Bureau of Investigation. In the name of combatting a potential "Russian hack-and-leak operation," the FBI repeatedly met with Big Tech in the lead-up to the 2020 presidential election, priming the companies to censor true information about the Biden family's influence peddling.[17] In the years following the 2020 election, the FBI continued to directly pressure social media companies to take down posts and censor certain views.[18] The FBI and other federal agencies, including CISA, restarted their meetings with these companies to discuss alleged "misinformation" and "disinformation" in the lead-up to the 2024 election.[19]

The National Science Foundation. In the name of combatting "misinformation," the National Science Foundation (NSF) poured millions of taxpayer-funded grant dollars into the development of AI-powered tools to mass monitor and censor online content.[20] One NSF-funded project aimed to automate the flagging of "bad posts" and bragged about helping social media platforms "[e]xternaliz[e] the difficult responsibility of censorship."[21]

These examples demonstrate the breadth of the executive branch's efforts to monitor and suppress speech and viewpoints disfavored by those in power. The extent of this censorship regime signals that the federal government will likely seek to do the same with respect to AI companies.

II. THE THREAT OF AI CENSORSHIP

Government involvement in AI development presents a dual threat. First, as the Committee and Select Subcommittee have previously warned, AI offers government bureaucrats and government-partnered intermediaries the ability to mass monitor and mass censor speech at unprecedented speed and scale.[22] Second, government censorship of AI training data, algorithms,

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[17] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., ELECTION INTERFERENCE: HOW THE FBI "PREBUNKED" A TRUE STORY ABOUT THE BIDEN FAMILY'S CORRUPTION IN ADVANCE OF THE 2020 PRESIDENTIAL ELECTION (Comm. Print Oct. 30, 2024); Letter from Mark Zuckerberg, CEO, Meta, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 26, 2024) ("[T]he FBI warned us about a potential Russian disinformation operation about the Biden family and Burisma in the lead up to the 2020 election. That fall, when we saw a *New York Post* story reporting on corruption allegations involving then-Democratic presidential nominee Joe Biden's family, we sent that story to fact-checkers for review and temporarily demoted it while waiting for a reply. It's since been made clear that the reporting was not Russian disinformation, and in retrospect, we shouldn't have demoted the story.").
[18] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE FBI'S COLLABORATION WITH A COMPROMISED UKRAINIAN INTELLIGENCE AGENCY TO CENSOR AMERICAN SPEECH (Comm. Print July 10, 2023).
[19] Kevin Collier & Ken Dilanian, *FBI Resumes Outreach to Social Media Companies Over Foreign Propaganda*, NBC NEWS (Mar. 20, 2024).
[20] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024) at 1, 11-13, 15-16; U.S. National Science Foundation, *Track F: WiseDex // Phase 1 Project Video*, YOUTUBE (June 17, 2022), https://www.youtube.com/watch?v=18gNRQaQtfw.
[21] *Id.*
[22] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE

and outputs can lead to woke, biased, and inaccurate AI-generated results. Both forms of censorship rob the United States of AI's knowledge-building and expressive capabilities.

A. There are two distinct AI censorship threats.

AI-powered censorship. AI-powered content moderation tools enable Big Tech to censor disfavored viewpoints at a far greater scale than was previously possible using only human moderators and earlier-generation, rule-based algorithms. As investigative journalist Lee Fang testified to the Select Subcommittee in February 2024, "the rapid development of artificial intelligence tools, in particular, offers powerful entities the unprecedented ability to monitor, flag, and censor billions of individuals at a scale and scope never before conceivable."[23] Indeed, companies and non-profits, some funded by the federal government, are already developing AI tools to automatically mass monitor and flag content to be censored.[24] Armed with AI-powered content moderation tools, Big Tech can more fully and quickly comply with the government's censorship demands.[25]

For example, the Committee and Select Subcommittee found that Stanford University created the Election Integrity Partnership (EIP)—a consortium of "disinformation" pseudo-scientists who monitored and flagged Americans' social media posts for censorship—in 2020 "at

SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024); *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (written testimony of Lee Fang) ("Moderna also employed the services of the artificial intelligence firm Talkwalker to monitor vaccine-related conversations across 150 million websites, including social media and gaming platforms like Steam . . . Logically, a British artificial intelligence firm that has expanded into the U.S. market . . . is now competing for contracts to monitor and remove alleged social media misinformation in the upcoming 2024 presidential election . . . The United Kingdom government awarded Logically multi-million-dollar contracts to combat misinformation about the COVID-19 pandemic. The company instead surveilled activists and academics who expressed legitimate forms of speech, including thoughtful concerns about pandemic lockdowns and vaccine passports, according to a recent watchdog report on the firm's activities. Logically previously boasted of a special partnership with Meta, the parent company of Facebook and Instagram, to automatically suppress and label content they deemed as misinformation, giving the company immense influence over content moderation decisions.").
[23] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (submitted written testimony of Lee Fang).
[24] *See, e.g.,* STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024) at 15-16 (The federal government funded the development of an AI-powered tool that "harnesses the wisdom of crowds and AI techniques to help flag more posts," helping social media companies to achieve "more comprehensive, equitable, and consistent enforcement, significantly reducing the spread of misinformation."); Lee Fang, *Logically.AI of Britain and the Expanding Global Reach of Censorship*, REALCLEARINVESTIGATIONS (Jan. 25, 2024) ("During the 2021 local elections in the U.K., Logically monitored up to 'one million pieces of harmful content,' some of which they relayed to government officials, according to a document reviewed by RealClearInvestigations. The firm claimed to spot coordinated activity to manipulate narratives around the election, information they reported to tech giants for takedowns.").
[25] *Id.*; *see also* Allie Funk et al., *The Repressive Power of Artificial Intelligence*, FREEDOM HOUSE (Oct. 4, 2023) ("In at least 22 countries, social media companies were required—either explicitly or indirectly through the imposition of tight deadlines for the removal of banned material—to use automated systems for content moderation.").

the request of DHS/CISA."[26] With over 100 staff, the EIP targeted *thousands* of posts by Americans for censorship.[27] Armed with AI-powered tools—some of which are funded by the government[28]—a successor to the EIP operating during future election cycles could monitor and flag *tens of millions* of Americans' election-related posts for censorship.

Censored AI. Generative AI models involve a combination of training data and machine learning algorithms. If a bad actor wanted to prevent an AI model from providing certain information to a user, it could train the model on carefully selected data, omitting certain information so that if a user ever asked for that information, the AI model would be unable to provide it.[29] Alternatively, a bad actor could program an AI model to censor certain outputs regardless of the training data by manipulating the model's machine learning algorithm. For example, a bad actor could insert code into the model's machine learning algorithm instructing it not to produce certain outputs, even if the available data responsive to the user's prompt suggests it should.[30] In either case, government involvement in an AI model's development presents an opportunity for government-directed censorship.

B. Regulations limiting private expressive uses of AI will impair AI development and are presumptively unconstitutional.

Permitting the expressive use of AI, outside the control of the government, will benefit the United States. As free speech advocate Greg Lukianoff testified to the Select Subcommittee, AI "empowered by First Amendment principles, including freedom to code, academic freedom, and freedom of inquiry" could dramatically accelerate "the development of new knowledge."[31] America can be home to this AI-driven knowledge revolution, but "tying the hands of the greatest programmers in the world would be to lose our advantage to our most determined foreign adversaries."[32] It is an economic and national security imperative that the U.S. leads AI

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[26] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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) at 39.
[27] *Id.*
[28] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024) at 15; U.S. National Science Foundation, *Track F: WiseDex // Phase 1 Project Video*, YOUTUBE (June 17, 2022), https://www.youtube.com/watch?v=18gNRQaQtfw.
[29] *See, e.g.,* Allie Funk et al., *The Repressive Power of Artificial Intelligence*, FREEDOM HOUSE (Oct. 4, 2023) ("Early research indicates that chatbots' outputs reflect the censorship embedded in their training data, a reminder that generative AI tools influenced by state-controlled information sources could serve as force multipliers for censorship . . . The Chinese government has sought to regulate training data directly: Chinese consumer-facing generative AI products, like Baidu's ERNIE Bot and Alibaba's Tongyi Qianwen, are required to implement stringent content controls and ensure the 'truth, accuracy, objectivity, and diversity' of training data, as defined by the CCP. Indeed, chatbots produced by China-based companies have refused to engage with user prompts on sensitive subjects like Tiananmen Square and have parroted CCP claims about Taiwan.").
[30] *See, e.g.*, Jacob Mchangama & Jules White, *The Future of Censorship Is AI-Generated*, TIME (Feb. 26, 2024).
[31] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (testimony of Greg Lukianoff).
[32] *Id.*

development worldwide. Strict regulation of AI and burdensome government censorship demands will make this less likely.

Moreover, legislation or regulation broadly restricting expressive uses of AI, including writing, editing, and design, violates the First Amendment.[33] AI creators' editorial decisions about which data they use to train their AI models and which user prompts their AI models will respond to are protected by longstanding and well-developed First Amendment doctrine.[34] While existing exceptions to the First Amendment, including incitement, true threats, and defamation, should apply to AI-generated content, Congress and executive branch regulators should treat AI models like other forms of speech and guarantee creators and users the broadest possible berth to express themselves.[35]

III. CURRENT AI REGULATORY EFFORTS WILL LEAD TO GOVERNMENT CENSORSHIP

The Biden-Harris Administration's current regulatory approach threatens to stifle American AI innovation while supercharging the federal government's ability to censor AI models and outputs—precisely the opposite of what America needs. The Biden-Harris Administration has pushed to censor new and developing AI models, funded the development of AI-powered censorship tools, and collaborated with foreign nations to import onerous European-style AI regulations to the U.S.

A. The federal government is coercing AI developers to censor new models.

Just as the Biden-Harris Administration pressured social media companies to censor protected speech, it is now coercing AI companies to develop "woke" AI models that comply with government censorship demands. Through ostensibly voluntary "frameworks," "blueprints," and "resources," the Biden-Harris Administration has given AI companies a clear warning: censor your AI models, or else. Big Tech, mindful of the federal government's power to kill AI in its infancy, has so far complied. The timeline below outlines the Biden-Harris Administration's coercive scheme:

- **2021-2022:** The National Institute of Standards and Technology (NIST) worked with Big Tech to develop an AI Risk Management Framework (AI RMF) urging companies to manage "harmful bias"[36] and "incorporate trustworthiness considerations into the design, development, use, and evaluation of AI."[37]

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[33] *Artificial Intelligence, Free Speech, and the First Amendment*, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION, https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment (last accessed Aug. 23, 2024).

[34] *Id.*

[35] *Id.* (Under current constitutional law, "any government restriction on the expressive use of AI needs to be narrowly tailored to serve a compelling governmental purpose, and the regulation must restrict as little expression as is necessary to achieve that purpose.").

[36] NAT'L INST. OF STANDARDS & TECH., NO. AI 100-1, ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK (AI RMF 1.0), at 2-3, 12, 17-18, 36, 38-39 (Jan. 2023).

[37] *AI RMF Development*, NIST, https://www.nist.gov/itl/ai-risk-management-framework/ai-rmf-development (created July 28, 2021; last updated Jan. 2, 2024).

- **October 2022:** The Biden-Harris White House issued a Blueprint for an AI Bill of Rights, calling on AI companies to "take proactive and continuous measures" against "algorithmic discrimination," including "proactive equity assessments" and "pre-deployment and ongoing disparity testing and mitigation."[38]

- **May 2023:** The Biden-Harris White House issued an updated National AI R&D Strategic Plan, advocating for (1) "research into language models and other generative AI systems to mitigate the production of harmful and biased outputs"; (2) expanded public-private partnerships that focus on "equity" in "AI design, development, and deployment"; and (3) the establishment of AI standards and benchmarks to detect and avoid "inappropriate bias" and to audit and monitor the "trustworthiness of AI systems."[39]

- **July 2023:** The Biden-Harris White House obtained "voluntary" commitments from seven of the world's largest AI companies, including Google, Meta, Microsoft, Amazon, and OpenAI, to mitigate "harmful bias" and "algorithmic discrimination" while promoting "responsible innovation."[40]

- **September 2023:** Eight more AI companies made the same "voluntary" commitments to the Biden-Harris White House.[41]

- **October 2023:** President Biden signed an Executive Order (EO) on the "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence" (1) requiring AI companies to report to the federal government on an ongoing basis about how they train and develop certain "dual-use foundation models"; (2) calling for the establishment of "consensus industry standards, for developing and deploying safe, secure, and trustworthy AI systems"; and (3) directing the Department of Justice to prevent and address "algorithmic discrimination" in AI.[42]

- **November 2023:** Two days after President Biden signed the EO, NIST announced the creation of a U.S. AI Safety Institute (USAISI) to "facilitate the development of standards for safety, security, and testing of AI models" and "align and coordinate

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[38] OFFICE OF SCI. AND TECH. POLICY, EXEC. OFF. OF THE PRESIDENT, BLUEPRINT FOR AN AI BILL OF RIGHTS at 23 (Oct. 2022).
[39] SELECT COMM. ON A.I. OF THE NAT'L SCI. AND TECH. COUNCIL, EXEC. OFF. OF THE PRESIDENT, NATIONAL ARTIFICIAL INTELLIGENCE RESEARCH AND DEVELOPMENT STRATEGIC PLAN UPDATE, at 13, 22, 32 (May 2023).
[40] *FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI*, THE WHITE HOUSE (July 21, 2023). The seven signatories were Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI. *Id.*
[41] *FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Eight Additional Artificial Intelligence Companies to Manage the Risks Posed by AI*, THE WHITE HOUSE (Sept. 12, 2023) The eight signatories were Adobe, Cohere, IBM, Nvidia, Palantir, Salesforce, Scale AI, and Stability. *Id.*
[42] Exec. Order 14110, 88 Fed. Reg. 75191 §§ 4.1(a), 4.2(a), 7.1(a) (Oct. 30, 2023).

work" with the UK's AI Safety Institute,[43] which has made addressing "misinformation" a key part of its mission.[44]

- **February 2024:** President Biden appointed his former economic policy adviser Elizabeth Kelly to lead the USAISI, and NIST announced the creation of a U.S. AI Safety Institute Consortium (AISIC) to "unite" 200+ AI companies and organizations with the federal government to "establish[] the foundations for a new measurement science in AI safety"[45] and "[d]evelop guidance and benchmarks for identifying and evaluating AI capabilities, with a focus on capabilities that could potentially cause harm."[46]

- **July 2024:** NIST published a "companion resource" for its AI Risk Management Framework, recommending that AI companies "integrate tools" to "[i]dentify patterns associated with misinformation or manipulation" and "[e]ngage in due diligence to analyze GAI [generative AI] output for harmful content" and "potential misinformation."[47] The Biden-Harris White House also announced that Apple had agreed to its "voluntary" commitments.[48]

- **August 2024:** OpenAI and Anthropic, two of the nation's largest AI companies, signed an agreement with NIST allowing the federal government to "receive access to major new models from each company prior to and following their public release."[49]

- **October 2024:** The Biden-Harris White House issued a National Security Memorandum (NSM) on AI (1) "formally designat[ing] the AI Safety Institute as U.S. industry's primary port of contact in the U.S. Government" for "pre- and post-public deployment testing for safety, security, and trustworthiness of frontier AI models"; (2) "lay[ing] out strengthened and streamlined mechanisms for the AI Safety Institute to partner with national security agencies"; (3) directing the AISI to "issue guidance for AI developers on how to test, evaluate, and manage risks to

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[43] Press Release, U.S. Dep't of Commerce, At the Direction of President Biden, Department of Commerce to Establish U.S. Artificial Intelligence Safety Institute to Lead Efforts on AI Safety (Nov. 1, 2023), https://www.commerce.gov/news/press-releases/2023/11/direction-president-biden-department-commerce-establish-us-artificial.

[44] Press Release, UK Gov't, Prime Minister launches new AI Safety Institute (Nov. 2, 2023), https://www.gov.uk/government/news/prime-minister-launches-new-ai-safety-institute ("The Institute will carefully test new types of frontier AI before and after they are released to address the potentially harmful capabilities of AI models, including exploring all the risks, from social harms like *bias and misinformation*.") (emphasis added).

[45] Press Release, Nat'l Inst. of Standards & Tech., Biden-Harris Administration Announces First-Ever Consortium Dedicated to AI Safety (Feb. 8, 2024), https://www.nist.gov/news-events/news/2024/02/biden-harris-administration-announces-first-ever-consortium-dedicated-ai.

[46] Artificial Intelligence Safety Institute Consortium, 88 Fed. Reg. 75276, 75277 (Nov. 2, 2023).

[47] NAT'L INST. OF STANDARDS & TECH., NO. AI 600-1, ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK: GENERATIVE ARTIFICIAL INTELLIGENCE PROFILE AT 28, 40 (July 2024).

[48] *FACT SHEET: Biden-Harris Administration Announces New AI Actions and Receives Additional Major Voluntary Commitment on AI*, THE WHITE HOUSE (July 26, 2024).

[49] Press Release, Nat'l Inst. of Standards & Tech., U.S. AI Safety Institute Signs Agreements Regarding AI Safety Research, Testing and Evaluation with Anthropic and OpenAI (Aug. 29, 2024), https://www.nist.gov/news-events/news/2024/08/us-ai-safety-institute-signs-agreements-regarding-ai-safety-research.

safety, security, and trustworthiness" posed by their models, including "[h]ow to develop mitigation measures to prevent malicious or improper use of models"; (4) directing federal agencies to "prioritize research" and "pursue partnerships" with the private sector to "advance AI safety and trustworthiness," including "to address the malicious use of AI to generate misleading videos or images [] of political or public figures"; and (5) "direct[ing] the creation of a Framework to Advance AI Governance and Risk Management in National Security," which "require[s] agencies to monitor, assess, and mitigate AI risks" related to "bias and discrimination" and "ensure future AI applications are responsible[.]"[50]

- **November 2024:** Consistent with the NSM**,** NIST's USAISI established a taskforce comprised of federal agencies—including the Departments of Defense (DoD) and Homeland Security (DHS), the National Security Agency (NSA), and the National Institutes of Health (NIH)—to "collaborate on the development of new AI evaluation methods and benchmarks" as part of the Biden-Harris Administration's "whole-of-government approach to AI safety."[51]

These "frameworks," "blueprints," and "resources," are not truly "voluntary." In reality, they are coercive attempts to require AI companies to give government a toehold in the development of new AI systems so that it can control the flow of information in and out of AI models. As the Committee has previously demonstrated, terms like "harmful bias" and "misinformation" are vague and readily weaponized to promote censorship.[52] Like the social media companies before them, AI developers are likely mindful that the powerful executive branch could cripple their businesses with regulatory retaliation, leaving practically no choice but to comply with the Biden-Harris Administration's demands.[53]

The Biden-Harris Administration has not merely attempted to censor AI covertly—it has also regulated AI directly. In October 2023, President Biden issued a sweeping executive order (1) requiring AI companies to share information about how they train and develop certain "dual-use foundation models" with the federal government; (2) calling for the establishment of "consensus industry standards, for developing and deploying safe, secure, and trustworthy AI

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[50] *FACT SHEET: Biden-Harris Administration Outlines Coordinated Approach to Harness Power of AI for U.S. National Security*, THE WHITE HOUSE (Oct. 24, 2024); THE WHITE HOUSE, MEMORANDUM ON ADVANCING THE UNITED STATES' LEADERSHIP IN ARTIFICIAL INTELLIGENCE; HARNESSING ARTIFICIAL INTELLIGENCE TO FULFILL NATIONAL SECURITY OBJECTIVES; AND FOSTERING THE SAFETY, SECURITY, AND TRUSTWORTHINESS OF ARTIFICIAL INTELLIGENCE (Oct. 24, 2024).

[51] Press Release, U.S. Dep't of Commerce, U.S. AI Safety Institute Establishes New U.S. Government Taskforce to Collaborate on Research and Testing of AI Models to Manage National Security Capabilities & Risks (Nov. 20, 2024), https://www.commerce.gov/news/press-releases/2024/11/us-ai-safety-institute-establishes-new-us-government-taskforce.

[52] *See, e.g.,* STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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).

[53] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE CENSORSHIP-INDUSTRIAL COMPLEX: HOW TOP BIDEN WHITE HOUSE OFFICIALS COERCED BIG TECH TO CENSOR AMERICANS, TRUE INFORMATION, AND CRITICS OF THE BIDEN ADMINISTRATION (Comm. Print May 1, 2024), at 4-5, 10.

systems"; and (3) directing the Department of Justice to prevent and address "algorithmic discrimination" in AI.[54] The order paves the way for direct government control of the AI market: in an October 2024 implementation memorandum, the White House directed NIST to "establish an enduring capability to lead voluntary unclassified pre-deployment safety testing of frontier AI models on behalf of the United States Government[.]"[55] In November 2024, NIST began this effort, establishing a task force to "assist in measuring and evaluating AI models."[56] The federal government intends to become the AI gatekeeper, ensuring that only models complying with its censorship demands are released. In four short years, the Biden-Harris Administration has unilaterally changed the AI regulatory landscape from one fostering growth and innovation to one in which major AI companies are pressured to give the government the opportunity to test drive new AI models before their public release.

AI companies' efforts to comply with federal directives to reduce alleged bias in their AI models may have led to woke, inaccurate outputs and censorship.[57] Early in 2024, the Committee and Select Subcommittee demonstrated that Alphabet's (the parent company of Google and YouTube) efforts to comply with President Biden's AI Executive Order and "White House Commitments"—including selecting external groups to help combat "[s]ocietal risks" and alleged "[r]epresentational and distributional harms"[58]—may have caused Alphabet's Gemini AI to produce historically inaccurate outputs.[59] Testimony from Alphabet employees and nonpublic internal company documents confirm that the Biden-Harris White House, NIST, and other federal agencies had engaged with the company on so-called "responsible AI" innovation and may have been the impetus behind Google's decision to utilize external testing for certain issues.[60]

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[54] Exec. Order 14110, 88 Fed. Reg. 75191 §§ 4.1(a), 4.2(a), 7.1(a) (Oct. 30, 2023).

[55] THE WHITE HOUSE, MEMORANDUM ON ADVANCING THE UNITED STATES' LEADERSHIP IN ARTIFICIAL INTELLIGENCE; HARNESSING ARTIFICIAL INTELLIGENCE TO FULFILL NATIONAL SECURITY OBJECTIVES; AND FOSTERING THE SAFETY, SECURITY, AND TRUSTWORTHINESS OF ARTIFICIAL INTELLIGENCE (Oct. 24, 2024).

[56] Alexandra Kelley, *NIST sets up new task force on AI and national security*, NEXTGOV/FCW (Nov. 21, 2024).

[57] *See, e.g.*, *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (testimony of Greg Lukianoff) ("My number one concern with AI . . . is the inherent bias that we're already baking into it. That's one of the things that scares me the most. And just to give a comical example, we asked ChatGPT to write a poem about why Representative Jim Jordan is the best politician in the country. It refused to do that. We ran this for every single member of the Committee, and it refused to do this only for Republicans."); Megan Morrone, *Meta AI creates ahistorical images, like Google Gemini*, AXIOS (Mar. 1, 2024); *see also* Editorial Board, *Meta AI's false facts about Trump shooting are part of a disturbing trend*, N.Y. POST (Aug. 3, 2024).

[58] Gemini Team, *Gemini: A Family of Highly Capable Multimodal Models*, GOOGLE (2024) at 38 (citing the White House's Voluntary AI Commitments); *FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence*, THE WHITE HOUSE (Oct. 30, 2023).

[59] Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Daniel F. Donovan, Counsel for Alphabet (Mar. 2, 2024) (on file with the Comm.); Adi Robertson, *Google apologizes for 'missing the mark' after Gemini generated racially diverse Nazis*, THE VERGE (Feb. 21, 2024); Nico Grant, *Google Chatbot's A.I. Images Put People of Color in Nazi-Era Uniforms*, N.Y. TIMES (Feb. 22, 2024); Chris Pandolfo, *Google to pause Gemini image generation after AI refuses to show images of White people*, FOX BUSINESS (Feb. 22, 2024).

[60] *See, e.g.,* Transcribed Interview of Google's AI Principles, Operations, and Governance Lead, H. Comm. on the Judiciary (Apr. 11, 2024) (on file with the Comm.) at 35-36, 39, 77. ("Before the White House commitments were announced, the Public Policy team had shared with me a draft and asked if I had any opinions on it, if, given my experience doing our AI, again, and governance for 5 or so years, if I had any thoughts on what was workable, what was not workable, and just share that with the Public Policy team . . . I also identified the areas that we weren't doing and just saying, just calling out we haven't done, for example, external testing . . . [E]xternal testing was the

More generally, government cannot regulate Americans' speech—including AI models and AI-generated content—without inherently weighing in on what viewpoints should be favored or disfavored. "Misinformation," "harmful bias," "equity," and other similar terms are inherently subjective and easily weaponized to censor political opponents.[61] AI-related regulations and other government involvement to address alleged misinformation and bias pose a serious risk to devolve into pure censorship. Greg Lukianoff, President of the Foundation for Individual Rights and Expression (FIRE), testified to the Select Subcommittee that during his career as a free speech advocate he has frequently been "shocked" by the degree to which censors label "tame, moderate speech" as "hate speech."[62] Indeed, as journalist Lee Fang testified to the Select Subcommittee, government decisions about censorship are often "politically motivated," and "government censorship of truthful and accurate speech, rather than dispelling conspiracy theories, serves only to exacerbate the erosion of public trust."[63]

B. The federal government is funding AI-powered censorship models.

The executive branch of the federal government has poured millions of taxpayer dollars into the development of AI-powered tools to mass monitor and censor content,[64] leading to the censorship of protected speech.[65] Beginning in 2021, the NSF's Convergence Accelerator Track F grant program spent millions of dollars on the development of AI-powered tools to combat alleged "misinformation," including one project that aimed to automate the flagging of "bad posts" and help social media platforms "[e]xternaliz[e] the difficult responsibility of censorship."[66] Likewise, the State Department's Global Engagement Center (GEC) offered seed funding to an AI company offering microtargeting for "behavior change campaigns" targeting foreign vaccine hesitancy.[67] Under the Biden-Harris Administration, Americans' taxpayer

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only one off the top of my head that I didn't even think there was maybe another team at Google doing it . . . For the White House commitments, the external testing was the one area that we hadn't already done.").

[61] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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).

[62] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Federal Government*, 118th Cong. (Feb. 6, 2024) (testimony of Greg Lukianoff).

[63] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Federal Government*, 118th Cong. (Feb. 6, 2024) (testimony of Lee Fang).

[64] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024).

[65] *See, e.g.,* Gabe Kaminsky, *Disinformation Inc: Meet the groups hauling in cash to secretly blacklist conservative news*, WASH. EXAMINER (Feb. 9, 2023).

[66] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024) at 15; U.S. National Science Foundation, *Track F: WiseDex // Phase 1 Project Video*, YOUTUBE (June 17, 2022), https://www.youtube.com/watch?v=18gNRQaQtfw; *see also Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (testimony of Katelynn Richardson).

[67] Email from the U.S. Embassy in Nairobi, Kenya to State Dep't Personnel (June 10, 2021) (on file with the Comm.).

dollars are being spent subsidizing the development of AI-powered technologies that could later be used to surveil and silence them.

Other nations have already turned similar tools on their own citizens. During the COVID-19 pandemic and in the lead-up to the 2021 local elections in the United Kingdom, the British government allegedly worked with an AI company to monitor over a million online posts and censor journalists, activists, and lawmakers who criticized pandemic policies and other government initiatives.[68] In 2022, the Canadian government reportedly worked with the same AI company to monitor the online activity of truck drivers participating in the "Freedom Convoy" lockdown protests.[69]

C. American regulators want to copy the European Union's onerous AI regulations.

The EU's newly passed AI Act requires "[a]ll high-risk AI systems [to] be assessed before being put on the market and also throughout their lifecycle" and allows government bureaucrats to "ban" any AI model that they deem to pose "unacceptable risks."[70] Allowing the government to serve as the gatekeeper of the AI marketplace gives the government extraordinary leverage over AI model inputs and outputs, increasing the risk of censorship. Furthermore, with such severe consequences for failing to censor sufficiently (in the eyes of the government) and the inevitable chilling effect of any government involvement in the regulation of speech, many companies might aggressively censor their AI models to ensure they satisfy the expected biases of the government reviewers.

Despite these threats to fundamental liberties, some American policymakers have sought to imitate the EU's new law. For example, Colorado's new Artificial Intelligence Act "shares some similarities with the EU AI Act," imposing steep "obligations relating to documentation, disclosures, risk analysis and mitigation, governance, and impact assessments for developers and deployers of high-risk AI systems."[71] Similarly, one proposed bill in the New York legislature would require registration and government licensing of AI models deemed to be "high-risk" and require AI developers to ensure that their models "provide equitable outcomes" and "prevent . . . harmful outcomes."[72] In addition, Democrats in Congress have demanded that the Federal Election Commission (FEC) censor X's new Grok-2 AI art generator, citing concerns over the need to address alleged "dangerous falsehoods."[73]

The Biden-Harris Administration has even sought to deepen cooperation with censorious foreign nations on AI regulations. For example, in November 2024, the Administration

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[68] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Federal Government*, 118th Cong. (Feb. 6, 2024) (testimony of Lee Fang); *see also* Lee Fang, *Logically.AI of Britain and the Expanding Global Reach of Censorship*, REALCLEARINVESTIGATIONS (Jan. 25, 2024).

[69] *Id.*

[70] *See EU AI Act: first regulation on artificial intelligence*, EUROPEAN PARLIAMENT (Aug. 6, 2023).

[71] Stuart D. Levi et al., *Colorado's Landmark AI Act: What Companies Need to Know*; SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP (June 24, 2024); *see* Colo. Rev. Stat. tit. 6, art. 1, pt. 17 (2024).

[72] Assembly Bill A8195, N.Y. State Leg. 2023-2024 Legis. Session (N.Y. 2023).

[73] Letter from Democratic Members of Congress to Lisa J. Stevenson, Acting Gen. Couns., Fed. Election Comm'n (Aug. 26, 2024); *see* Sean Cooksey (@SeanJCooksey), X (Aug. 27, 2024, 12:38 PM), https://x.com/SeanJCooksey/status/1828472171917627729.

announced the creation of an International Network of AI Safety Institutes—whose founding members include the UK, Canada, and the European Commission—to help guide the U.S.'s AI regulatory efforts.[74] In April 2024, Secretary of State Antony Blinken and Secretary of Commerce Gina Raimondo pledged to work with the EU to "advance and reinforce interoperability between AI governance frameworks," implying that the Biden-Harris Administration is seeking to back-door the EU's AI regulations into the United States.[75] And, in September 2024, the Biden-Harris Administration joined the Council of Europe's "Framework Convention" on AI, which "offers a legal structure focused on combating instances of discrimination resulting from AI system use."[76] Indeed, nonpublic State Department documents obtained by the Committee and Select Subcommittee describe how the "U.S. AI Safety Institute and others in the interagency have strong working relationships with EU counterparts."[77] The U.S. AI Safety Institute met with the EU's newly created "AI Office," the entity in charge of implementing and enforcing the EU's AI Act, for the first time in July 2024.[78]

IV. CONGRESS CAN PREVENT AI-POWERED CENSORSHIP

Congress can legislate to ensure that the federal government does not censor AI models, fund AI-powered censorship tools, or use AI to violate Americans' fundamental freedoms. To ensure that American AI leads the world and is developed in accordance with our fundamental First Amendment principles, Congress should work to (1) ensure the federal government is not inappropriately involved in private AI algorithm or dataset decisions; (2) ban funding of AI research related to content moderation; (3) end foreign collaboration on AI regulations involving lawful speech; and (4) stop censorious AI regulations.

1. *The federal government should not be involved in AI algorithm or dataset decisions for lawful speech.*

The Committee and Select Subcommittee have shown that numerous executive branch agencies have coerced and colluded with social media companies to censor lawful American speech directly[79] and by proxy.[80] The federal government should not be allowed to require

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[74] Tharin Pillay, *U.S. Gathers Global Group to Tackle AI Safety Amid Growing National Security Concerns*, TIME (Nov. 21, 2024).

[75] *U.S-EU Joint Statement of the Trade and Technology Council*, THE WHITE HOUSE (Apr. 5, 2024).

[76] Alexandra Kelley, *U.S. joins Council of Europe's AI and human rights framework*, NEXTGOV/FCW (Sept. 6, 2024).

[77] U.S. State Dep't Memorandum on EU Digital Issues (on file with the Comm.).

[78] *Id.*; *see European AI Office*, EUROPEAN COMM'N (last visited Dec. 16, 2024).

[79] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE CENSORSHIP-INDUSTRIAL COMPLEX: HOW TOP BIDEN WHITE HOUSE OFFICIALS COERCED BIG TECH TO CENSOR AMERICANS, TRUE INFORMATION, AND CRITICS OF THE BIDEN ADMINISTRATION (Comm. Print May 1, 2024); STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE FBI'S COLLABORATION WITH A COMPROMISED UKRAINIAN INTELLIGENCE AGENCY TO CENSOR AMERICAN SPEECH (Comm. Print July 10, 2023).

[80] *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T 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).

compliance with, or condition federal funding on, an AI company's policies governing moderation of lawful speech, model inputs or outputs, algorithms, or information sharing practices.

2. Congress should not fund content moderation-related AI research.

The Committee and Select Subcommittee have uncovered the federal funding of AI-powered censorship tools[81] and investigated federally funded companies and organizations using AI to demonetize and deplatform conservative news organizations.[82] The executive branch should not be allowed to fund (1) research into AI-powered tools for content moderation or combatting so-called mis-, dis-, or malinformation;[83] or (2) research seeking to measure or counter issues relating to the fairness, bias, equity, or other "societal risk" of a private company's AI model. New and developing censorious technologies represent a threat of a different magnitude to online speech and thus the modern town square. At a minimum, American taxpayers should not be funding tools that may take away one of their most important fundamental rights.

3. The U.S. should not follow or take part in collaborative global AI regulation efforts of lawful speech.

The U.S. should not look abroad for inspiration when it comes to regulating and using AI. Foreign governments have worked with AI companies to systematically censor their citizens' online speech and passed new AI laws facilitating government censorship of this critical technology, including the EU's AI Act.[84] Government-sponsored censorship programs similar to

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[81] STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF THE NATIONAL SCIENCE FOUNDATION: HOW NSF IS FUNDING THE DEVELOPMENT OF AUTOMATED TOOLS TO CENSOR ONLINE SPEECH "AT SCALE" AND TRYING TO COVER UP ITS ACTIONS (Comm. Print Feb. 5, 2024).

[82] Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Daniel J. Rogers, Exec. Dir., Global Disinformation Index (Mar. 10, 2023); *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Mar. 9, 2023) (testimony of Matt Taibbi) ("For every government agency scanning Twitter, there were perhaps 20 quasi-private entities doing the same, including Stanford's Election Integrity Project, NewsGuard, the Global Disinformation Index, and others, many taxpayer-funded."); STAFF OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., GARM'S HARM: HOW THE WORLD'S BIGGEST BRANDS SEEK TO CONTROL ONLINE SPEECH (Comm. Print July 10, 2024) ("GARM pushes its members to use news rankings organizations, like the Global Disinformation Index (GDI) and NewsGuard, that disproportionately label right-of-center news outlets as so-called misinformation."); *see also Under the Microscope: Examining the Censorship-Industrial Complex and its Impact on American Small Business: Hearing Before the H. Comm. on Small Business*, 118th Cong. (June 26, 2024).

[83] *See also* STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF CISA: HOW A "CYBERSECURITY" AGENCY COLLUDED WITH BIG TECH AND "DISINFORMATION" PARTNERS TO CENSOR AMERICANS (Comm. Print June 26, 2023) at 10 ("According to CISA's own definition, '[m]alinformation is based on fact, but used out of context to mislead, harm, or manipulate.' In other words, malinformation is *factual* information that is objectionable not because it is false or untruthful, but because it is provided without adequate 'context'—context as determined by the government.") (footnote omitted) (emphasis in original).

[84] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (testimony of Lee Fang); *Artificial Intelligence, Free Speech, and the First Amendment*, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION, https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment (last accessed Aug.

these are bad policy and are likely unconstitutional in the United States.[85] Congress should also exercise careful oversight of collaborative international efforts to regulate AI.

4. Federal regulatory authority over AI could result in censorship.

AI regulations—even if they do not specifically address AI-produced speech—could provide government officials with enormous leverage to coerce companies to suppress certain types of lawful speech.[86] As FIRE President Greg Lukianoff testified to the Select Subcommittee, "the most chilling threat that the government poses in the context of emerging AI is regulatory overreach that limits its potential as a tool for contributing to human knowledge. A regulatory panic could result in a small number of Americans deciding for everyone else what speech, ideas, and even questions are permitted in the name of 'safety' or 'alignment.'"[87] Indeed, allowing for the "decentralized development and use of AI" is the best way to protect against bias and other blind spots.[88]

Accordingly, Congress should not permit the executive branch to involve itself in the training or moderation of AI models, particularly as it relates to efforts to mitigate so-called "harmful bias" and "inequity" or address "algorithmic discrimination." And Congress should not pass legislation enacting an AI regulatory scheme similar to the EU's AI Act, which gives bureaucrats the ability to regulate or ban AI models based on their perceived "risk."[89]

The Committee passed the Censorship Accountability Act, which allows Americans to hold accountable public officials who work with tech companies to censor their First Amendment protected speech—including AI-generated speech.[90] In addition, the Free Speech Protection Act requires federal agencies to regularly publish all content moderation-related communications between federal employees and tech companies, including discussions about AI model inputs or outputs.[91] Congress should pass these important bills and continue to work to safeguard Americans' right to think and speak freely in the digital town square.

23, 2024); *see also* Lee Fang, *Logically.AI of Britain and the Expanding Global Reach of Censorship*, REALCLEARINVESTIGATIONS (Jan. 25, 2024).

[85] *See generally Artificial Intelligence, Free Speech, and the First Amendment*, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION, https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment (last accessed Aug. 23, 2024); J.D. Tuccille, *E.U.'s Digital Services Act Threatens Americans' Free Speech*, REASON (June 5, 2023) (describing how legislative changes in the United States similar to the EU's Digital Services Act "would run afoul of the First Amendment").

[86] *Hearing on the Weaponization of the Federal Government Before the Select Subcomm. on the Weaponization of the Fed. Gov't of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 6, 2024) (testimony of Greg Lukianoff).

[87] *Id.*

[88] *Id.*

[89] *AI Act*, EUROPEAN COMM'N, https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai (last accessed Aug. 23, 2024).

[90] Censorship Accountability Act, H.R. 4848, 118th Cong. (2023).

[91] Free Speech Protection Act, H.R. 4791, 118th Cong. (2023).