

May 22, 2024

Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
300 7th St SW  
Washington, DC 20024

Christopher Wray  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue NW  
Washington, DC 20535

Dear Secretary Mayorkas and Director Wray,

I write today in disbelief that your agencies have reprised efforts with social media companies to remove the speech of American citizens on various websites in anticipation of the 2024 election.<sup>1</sup> This activity between the government and social media companies runs contrary to the fundamental beliefs of our nation. Without remorse for this Administration's past unconstitutional actions or detailing any new protections for the rights of American citizens, senior officials have announced that this Administration will once again revive its vast censorship enterprise "with intensity."<sup>2</sup> Resuming this egregious practice demonstrates this Administration's insatiable desire to stop at nothing to trample the free speech rights of millions of Americans in order to maintain power.

As Missouri's Attorney General, I filed a lawsuit against the Biden Administration to protect free speech against the vast censorship enterprise spearheaded by this Administration. The freedom to share ideas and debate opinions about the major issues of the day is a bedrock principle of our country. This exchange of opinions in the town square or virtual town square is a foundational element of what it means to be an American and critical to an informed electorate.

However, it appears this Administration fears free and open debate by American citizens. It is well documented that government bureaucrats previously targeted conservative-leaning speech on various topics, including presidential elections, COVID-19 origins, mask and vaccine

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<sup>1</sup> David DiMolfetta, CISA, FBI resuming talks with social media firms over disinformation removal, Senate Intel chair says, Nextgov/FCW (May 7, 2024), <https://www.nextgov.com/cybersecurity/2024/05/cisa-fbi-resuming-talks-social-media-firms-over-disinformation-removal-senate-intel-chair-says/396360/>.

<sup>2</sup> Josh Meyer, Exclusive: Homeland Security ramping up 'with intensity' to respond to election threats, *USA Today* (May 8, 2024).

efficacy, and election integrity. Government officials used nebulous concepts of disinformation and misinformation, terms that can only be described in Justice Potter Stewart’s famous words as “I know it when I see it.” Or, as this Administration has likely rephrased this statement: “the Administration knows disinformation when it sees conservative speech it doesn’t agree with.”

Now, it is well known that the scale of government officials, spanning all the way up to the White House, ordered social media companies to remove posts and deplatform users, all under the guise of combatting disinformation.<sup>3</sup> In reality, this was a centralized campaign to silence conservatives and others the Biden Administration disagrees with. Biden officials pressured employees at social media companies to alter their content moderation policies, and in response, the social media companies censored lawful speech to “stay in the official’s good graces.”<sup>4</sup> Often, social media platforms removed or demoted posts that did not even violate the platform’s own standards.<sup>5</sup>

One of the most concerning threats to free speech and our democracy concerned the Election Integrity Project (EIP). Formed just 100 days before the November 2020 election, the EIP worked with government bureaucrats to flag social media posts related to election misinformation on Facebook, Instagram, YouTube, and other platforms.<sup>6</sup> The EIP, in partnership with the Cybersecurity and Infrastructure Security Agency (CISA), flagged over twenty million posts on Twitter alone, and the EIP alleged that twenty-one accounts, all conservative leaning or supportive of President Trump’s campaign, were “responsible for the most widely spread of false or misleading information in our data set.”<sup>7</sup> A deposition of the senior leadership of EIP noted that the EIP “was not targeting foreign disinformation, but rather ‘domestic speakers,’” and that only one percent of flagged issues related to “foreign interference.”<sup>8</sup>

This Administration went into overdrive to censor free speech during the 2022 congressional elections. The full number of removed posts commenting on election fraud or deplatformed accounts remarking on election security will truly never be known. What is known is the federal government significantly entangled itself to influence and pressure social media companies’ decisions.<sup>9</sup> Before the 2022 congressional election, the Federal Bureau of Investigations (FBI) established a “command” process in which it would flag posts and content that it deemed disinformation with social media companies.<sup>10</sup> These efforts were not limited to foreign actors, but often targeted the voices of American citizens and their posts about the 2022 election.<sup>11</sup> CISA also participated in censoring Americans during an election cycle. CISA established a “switchboarding” operation, which they alleged would simply transfer flagged social media posts from election officials to platforms.<sup>12</sup> However, CISA used this operation to

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<sup>3</sup> Missouri v. Biden, No. 23-30445 (5th Cir. 2023).

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 7-8.

<sup>6</sup> Mem. Ruling on Req. for Prelim. Inj., Missouri v. Biden, 3:22-cv-01213, 81 (W.D. La. July 4, 2023).

<sup>7</sup> *Id.* at 81-82.

<sup>8</sup> *Id.* at 80-83.

<sup>9</sup> No. 23-30445 at 56.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 59.

pressure platforms to adopt restrictive policies relating to political speech and to determine whether the speech was true or false.<sup>13</sup>

While your agencies once again ramp up massive censorship campaigns, this Administration has essentially admitted it will use this unlawful power to manipulate the 2024 election. On one of the first days in office,, this Administration flagged and requested that a tweet from a political opponent in the 2024 election be “removed ASAP.”<sup>14</sup> The Department of Homeland Security will use the powers of the federal government to monitor and respond to the “threat of disinformation,” often only listing conservative-leaning speech as a threat.<sup>15</sup> Further, the Department has advanced CISA’s Election Infrastructure Information Sharing and Analysis Center, which is being promoted to provide “real-time intelligence about specific threat information and ways to combat it to 3,700 local and state election entities.”<sup>16</sup> The actions taken by this Center appear concerningly similar to CISA’s switchboarding activities in 2020, and I remain perplexed that this Administration fails to detail any protections for constitutionally protected speech.

For this Administration to resume efforts with social media companies to control constitutionally protected speech months before the 2024 election is beyond comprehension, especially as the U.S. Supreme Court considers the preliminary injunction granted by the United States Fifth Circuit Court of Appeals. As a reminder, the White House, the FBI, and other government officials are enjoined from continuing to violate the First Amendment rights of Americans. Under this injunction, this Administration is to take no actions “to coerce or significantly encourage social-media companies to remove, delete, suppress, or reduce, including through altering their algorithms, posted social-media content containing protected free speech.”<sup>17</sup>

In order to conduct proper oversight on behalf of my constituents and on behalf of the Americans that this Administration will likely recklessly censor, please provide answers to the following questions no later than June 3, 2024:

- Please provide the exact date when the Administration resumed conversations with social media companies.
- Please provide all and any safeguards established by the Administration to protect the First Amendment rights of American citizens.
- Please provide any and all safeguards established by the Administration to protect the political speech of potential political opponents of President Biden.
- Please provide a copy of all written communications between the Administration and social media companies.
- Please provide a list of all the names of individuals in the Administration who have contact with social media companies.

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<sup>13</sup> *Id.*

<sup>14</sup> Mem. Ruling on Req. for Prelim. Inj., *Missouri v. Biden*, 3:22-cv-01213, 9 (W.D. La. July 4, 2023).

<sup>15</sup> See Meyer, *supra* note 2.

<sup>16</sup> *Id.*

<sup>17</sup> No. 23-30445 at 71.

- Please provide a list of topics that the Administration deems misinformation or disinformation.
- Please provide any procedures that the Administration has devised in order to allow American citizens know that their protected speech has been censored.
- Please detail protections devised in the Election Infrastructure Information Sharing and Analysis Center to ensure it does not directly or indirectly censor the speech of American citizens.

I will not stand idly by while this Administration—which has previously outsourced its censorship to remove lawful and constitutionally protected speech—violates the First Amendment rights of American voters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric S. Schmitt", written over a horizontal line.

Eric S. Schmitt  
United States Senator