

118TH CONGRESS
2D SESSION

H. R. 8838

To prohibit agencies from taking certain action relating to social media companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2024

Mr. CLYDE introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Oversight and Accountability, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit agencies from taking certain action relating to social media companies, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The First Amendment guarantees freedoms
9 concerning religion, expression, assembly, and peti-

1 tion of the government. The First Amendment guar-
2 antees the freedom of expression by prohibiting the
3 government from restricting the press or the right of
4 an individual to speak freely. The First Amendment
5 also guarantees the right of an individual to assem-
6 ble peaceably and to petition the government.

7 (2) The Fourth Amendment states that each in-
8 dividual is secure from unreasonable searches and
9 seizures of property by the government. The Fourth
10 Amendment protects against arbitrary arrests, wire-
11 taps, and other forms of surveillance conducted with-
12 out a search warrant.

13 (3) In July 2021, the White House press sec-
14 retary, Jen Psaki, admitted that the White House
15 was working with social media companies to identify
16 “misinformation”.

17 (4) Specifically, Psaki said, “[W]e’re regularly
18 making sure social media platforms are aware of the
19 latest narratives, dangerous to public health that we
20 and many other Americans are seeing across all of
21 social and traditional media.” Psaki also said, “[W]e
22 work to engage with them to better understand the
23 enforcement of social media platform policies.”

24 (5) 286 pages of documents produced in July
25 2022 by the Centers for Disease Control and Pre-

1 vention, in response to a Freedom of Information
2 Act request submitted by the America First Legal
3 Foundation, revealed shocking information, includ-
4 ing the following:

5 (A) The Centers for Disease Control and
6 Prevention sent to officials of Twitter a chart
7 of tweets that the Centers for Disease Control
8 and Prevention determined to be “misinforma-
9 tion”.

10 (B) The Centers for Disease Control and
11 Prevention held regular BOLO (Be On The
12 Lookout) meetings in which the Centers for
13 Disease Control and Prevention would share
14 with social media companies, including Twitter
15 and Facebook, what the Centers for Disease
16 Control and Prevention determined to be “mis-
17 information”. In the meetings, the Centers for
18 Disease Control and Prevention would provide
19 slide decks requesting, among other things,
20 “[p]lease do not share outside your trust and
21 safety teams”.

22 (C) The Centers for Disease Control and
23 Prevention recommended to Twitter that infor-
24 mation about the Vaccine Adverse Event Re-
25 porting System be added to tweets.

1 (D) Officials from the Centers for Disease
2 Control and Prevention directly engaged with
3 Facebook, requesting that Facebook flag cer-
4 tain posts as disinformation and ensure that
5 “verifiable information sources” were not
6 blocked because posts on Facebook by State
7 Health Departments were being blocked as vac-
8 cine misinformation.

9 (E) The Centers for Disease Control and
10 Prevention created a COVID–19 Misinforma-
11 tion Reporting Channel for the Centers for Dis-
12 ease Control and Prevention and the Census
13 Bureau to make reports to Facebook and held
14 a “training meeting” about the Misinformation
15 Reporting Channel.

16 (F) \$15,000,000 of Facebook advertising
17 credits were provided to the Centers for Disease
18 Control and Prevention and the Department of
19 Health and Human Services as a “non-mone-
20 tary gift” to promote vaccines, social
21 distancing, travel, and priority communication
22 messages, which may have violated the limita-
23 tion on voluntary services described in section
24 1342 of the Antideficiency Act (31 U.S.C.
25 1342).

1 (6) The Secretary of Homeland Security,
2 Alejandro Mayorkas, failed to provide clear answers
3 to Congress about the purpose of the Disinformation
4 Governance Board and the selection of Nina
5 Jankowicz to lead the Disinformation Governance
6 Board.

7 (7) Revealing whistleblower documents uncov-
8 ered by Senators Josh Hawley and Chuck Grassley
9 show the shocking extent to which the
10 Disinformation Governance Board was willing to spy
11 on Americans, without a warrant, and flag posts for
12 social media companies as so-called
13 “disinformation”.

14 **SEC. 3. SENSE OF CONGRESS.**

15 It is the sense of Congress that:

16 (1) The records produced by the Centers for
17 Disease Control and Prevention in response to the
18 Freedom of Information Act request described in
19 section 2(5) reveal the extent to which the Biden
20 Administration is willing to engage in unconstitu-
21 tional and otherwise unlawful activities in total dis-
22 regard of the rights of the American people.

23 (2) Secretary Mayorkas, in congressional com-
24 mittee testimony, failed to provide clear answers to

1 Congress about the purpose of the Disinformation
2 Governance Board.

3 (3) The antidote to “misinformation” and
4 “disinformation” is not censorship but more infor-
5 mation, so the American people can make informed
6 decisions independently.

7 (4) The Federal Government should not be al-
8 lowed to circumvent the Constitution of the United
9 States through intermediaries and third parties to
10 violate the rights of the American people to informa-
11 tion and freedom from intrusion by the Federal Gov-
12 ernment, even if the information is not consistent
13 with the views of officials in the Federal Govern-
14 ment.

15 **SEC. 4. PROHIBITION AGAINST FEDERAL REGULATION OF**
16 **SOCIAL MEDIA COMPANIES.**

17 (a) PROHIBITION AGAINST REGULATION.—

18 (1) PROHIBITION.—Except as provided in para-
19 graph (2), the head of an agency may not direct or
20 encourage a social media company to—

21 (A) remove or suspend a user from the so-
22 cial media platform of the social media com-
23 pany;

24 (B) label content on the social media plat-
25 form of the social media company as informa-

1 tion, disinformation, true, false, or any other
2 similar characterization; or

3 (C) share with the agency data or informa-
4 tion about a particular topic or group of users
5 on the social media platform of the social media
6 company, including—

7 (i) the name, age, or demographic of
8 the users; and

9 (ii) the content such users share on
10 the social media platform of the social
11 media company.

12 (2) EXCEPTIONS.—The prohibitions described
13 in subparagraphs (A) and (C) of paragraph (1) do
14 not apply to an action taken by the head of an agen-
15 cy—

16 (A) pursuant to a warrant—

17 (i) issued by a Federal court of com-
18 petent jurisdiction in accordance with the
19 procedures described in rule 41 of the Fed-
20 eral Rules of Criminal Procedure; or

21 (ii) issued by a State court of com-
22 petent jurisdiction; or

23 (B) pursuant to a criminal investigation
24 into, or in response to, an immediate threat to
25 public safety, including—

- 1 (i) child exploitation;
- 2 (ii) human trafficking;
- 3 (iii) active streaming of a crime in
4 progress or another immediate threat to
5 public safety; or
- 6 (iv) activity by a foreign terrorist or-
7 ganization (as designated by the Secretary
8 of State, in consultation with the Secretary
9 of the Treasury and the Attorney General,
10 under section 219(a) of the Immigration
11 and Nationality Act (8 U.S.C. 1189(a))).

12 (b) PROHIBITION AGAINST PUBLIC-PRIVATE PART-
13 NERSHIPS.—

14 (1) PROHIBITION.—The head of an agency may
15 not enter into a public-private partnership with a so-
16 cial media company to monitor any content dissemi-
17 nated on the social media platform of the social
18 media company.

19 (2) EXCEPTION.—The prohibition described in
20 paragraph (1) does not apply to a public-private
21 partnership between an agency and a social media
22 platform relating to addressing immediate threats to
23 public safety.

24 (3) TERMINATION OF EXISTING PUBLIC-PRI-
25 VATE PARTNERSHIPS.—Any public-private partner-

1 ship described in paragraph (1), if in existence on
2 the date of the enactment of this Act, is terminated.

3 (c) PROHIBITION AGAINST FEDERAL FUNDING.—

4 Federal funds may not be used to fund any entity that—

5 (1) classifies or facilitates the classification of
6 any communication as information, misinformation,
7 malinformation, disinformation, or any other similar
8 designation; or

9 (2) instructs, influences, directs, or recommends
10 that private companies engage in any censorship,
11 prohibition, or obstruction of lawful and constitu-
12 tionally protected speech on a social media platform,
13 including by—

14 (A) terminating an account of a user;

15 (B) temporarily or permanently suspending
16 an account of a user;

17 (C) imposing a warning or strike against
18 an account of a user to chill or deter future
19 speech;

20 (D) shadowbanning, or in any way manip-
21 ulating the audience or reach of, a user;

22 (E) demonetizing a type of user or content;

23 (F) adjusting algorithms to suppress or de-
24 emphasize user-generated content;

25 (G) deboosting a type of content or user;

- 1 (H) promoting or demoting content;
- 2 (I) placing a warning label or explanatory
3 note on any content;
- 4 (J) suppressing content in the feed of a
5 user;
- 6 (K) promoting negative comments about a
7 type of disfavored content;
- 8 (L) requiring an additional click-through
9 to access content;
- 10 (M) deplatforming any content or user; or
11 (N) any other such method.

12 (d) PROHIBITION AGAINST SOLICITING OR ACCEPT-
13 ING FREE OR REDUCED-COST SOCIAL MEDIA ADVER-
14 TISING.—

15 (1) IN GENERAL.—An agency employee acting
16 in an official capacity may not solicit or accept, or
17 enter into a contract or other agreement (including
18 a no-cost agreement) for, free or reduced-cost adver-
19 tising or other promotion on the social media plat-
20 form of a social media company.

21 (2) EXCEPTION.—

22 (A) IN GENERAL.—The prohibition de-
23 scribed in paragraph (1) does not apply to an
24 action taken by an agency employee to address

1 a natural disaster or another immediate threat
2 to public safety.

3 (B) EXCLUSION.—The exception described
4 in subparagraph (A) does not include a public
5 health emergency.

6 (3) LIMITATION ON FUNDS.—No Federal funds
7 may be obligated or expended to—

8 (A) enter into a contract or other agree-
9 ment (including a no-cost agreement) for free
10 or reduced-cost advertising or other promotion
11 on behalf of the Federal Government on the so-
12 cial media platform of a social media company;
13 or

14 (B) pay the salary or expenses of any
15 agency employee to solicit or accept free or re-
16 duced-cost advertising or other promotion on
17 behalf of the Federal Government on the social
18 media platform of a social media company.

19 (e) ADDITIONAL LIMITATIONS FOR SENIOR FEDERAL
20 OFFICIALS.—

21 (1) IN GENERAL.—No senior Federal official
22 may solicit, accept, or use, in their personal capac-
23 ity, any advertising from a social media company
24 that is provided free of charge or at a reduced rate
25 or are otherwise gratuitous.

1 (2) EXCEPTION.—Except for a public health
2 emergency, the prohibition described in paragraph
3 (1) shall not apply in circumstances where the
4 United States Government is legally authorized to
5 accept free or subsidized advertising on social media
6 platforms, including any instance described in sub-
7 section (a)(2)(B)(iii), or for public safety announce-
8 ments, as determined by the relevant agency head,
9 in consultation with the Office of Government Eth-
10 ics.

11 (f) PENALTIES FOR AGENCY EMPLOYEES AND SEN-
12 IOR FEDERAL OFFICIALS.—An agency employee or senior
13 Federal official who knowingly and willfully violates sub-
14 section (d) or subsection (e), respectively, shall be fined
15 not more than \$5,000, imprisoned for not more than 2
16 years, or both.

17 (g) PRIVATE RIGHT OF ACTION.—An individual
18 whose account, content, or information on the social media
19 platform of a social media company has been affected in
20 violation of this Act may file a civil action against the
21 United States in the United States District Court for the
22 District of Columbia for reasonable attorneys' fees, injunc-
23 tive relief, and actual damages.

24 (h) REPORT.—Not later than 240 days after the date
25 of the enactment of this section, and annually thereafter

1 through the tenth subsequent year, the Attorney General,
2 in consultation with the Assistant Attorney General for
3 Civil Rights and the Office of Special Counsel, shall sub-
4 mit to the appropriate congressional committees a report
5 evaluating the compliance by agencies with this Act, in-
6 cluding a description of any action by the head of an agen-
7 cy to—

8 (1) consult with a social media company about
9 labeling content on the social media platform of the
10 social media company as described in subsection
11 (a)(1)(B);

12 (2) consult with any third party about censor-
13 ship by an agency employee; or

14 (3) engage in any other prohibited activity
15 under this Act.

16 (i) SEVERABILITY.—If any provision of this Act, or
17 the application of any such provision to any person or cir-
18 cumstance, is held to be unconstitutional, the remainder
19 of this Act, and the application of such provision to any
20 other person or circumstance, shall not be affected by the
21 holding.

22 **SEC. 5. DEFINITIONS.**

23 In this Act:

1 (1) AGENCY.—The term “agency” has the
2 meaning given such term in section 551 of title 5,
3 United States Code.

4 (2) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term “appropriate congressional com-
6 mittees” means—

7 (A) the Committee on the Judiciary and
8 the Committee on Oversight and Reform of the
9 House of Representatives; and

10 (B) the Committee on the Judiciary and
11 the Committee on Homeland Security and Gov-
12 ernmental Affairs of the Senate.

13 (3) PUBLIC-PRIVATE PARTNERSHIP.—The term
14 “public-private partnership” means a cooperative ar-
15 rangement between 1 or more agencies and an exter-
16 nal organization, in which the arrangement is di-
17 rectly involved in monitoring content for public safe-
18 ty purposes.

19 (4) SENIOR FEDERAL OFFICIAL.—The term
20 “senior Federal official” means any agency em-
21 ployee, including any member of the uniformed serv-
22 ices (as that term is defined in section 101 of title
23 37, United States Code), whose basic rate of pay is
24 at or above the rate of basic pay for level V of the

1 Executive Schedule under section 5316 of title 5,
2 United States Code.

3 (5) SOCIAL MEDIA COMPANY.—The term “social
4 media company” means a company that provides, in
5 or affecting interstate or foreign commerce, a social
6 media platform.

7 (6) SOCIAL MEDIA PLATFORM.—The term “so-
8 cial media platform”—

9 (A) means a website or internet medium
10 that—

11 (i) permits a person to become a reg-
12 istered user, establish an account, or create
13 a profile for the purpose of allowing users
14 to create, share, and view user-generated
15 content through such an account or profile;

16 (ii) primarily serves as a medium for
17 users to interact with content generated by
18 other users of the medium; and

19 (iii) enables one or more users to gen-
20 erate content that can be viewed by other
21 users of the medium; and

22 (B) does not include—

23 (i) an email program, email distribu-
24 tion lists, multi-person text message

1 groups, or a website that is primarily for
2 the purpose of internet commerce;

3 (ii) a private platform or messaging
4 service used by an entity solely to commu-
5 nicate with others employed by or affiliated
6 with such entity; or

7 (iii) an internet-based platform whose
8 primary purpose is—

9 (I) to allow users to post product
10 reviews, business reviews, travel infor-
11 mation and reviews; or

12 (II) to provide news or entertain-
13 ment content, but that may also in-
14 clude a comment section for users to
15 discuss such news or entertainment
16 content.

17 (7) STATE.—The term “State” means each
18 State of the United States, the District of Columbia,
19 each commonwealth, territory, or possession of the
20 United States, and each federally recognized Indian
21 Tribe.

○