

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 2251

To improve the cybersecurity of the Federal Government,
and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. PAUL

Viz:

1 At the end, add the following:

2 **TITLE III—FREE SPEECH**
3 **PROTECTION ACT**

4 **SEC. 301. SHORT TITLE.**

5 This title may be cited as the “Free Speech Protec-
6 tion Act”

7 **SEC. 302. DEFINITIONS.**

8 In this title:

9 (1) COVERED INFORMATION.—The term “cov-
10 ered information” means information relating to—

11 (A) a phone call;

1 (B) any type of digital communication, in-
2 cluding a post on a covered platform, an e-mail,
3 a text, and a direct message;

4 (C) a photo;

5 (D) shopping and commerce history;

6 (E) location data, including a driving route
7 and ride hailing information;

8 (F) an IP address;

9 (G) metadata;

10 (H) search history;

11 (I) the name, age, or demographic infor-
12 mation of a user of a covered platform; and

13 (J) a calendar item.

14 (2) COVERED PLATFORM.—The term “covered
15 platform” means—

16 (A) an interactive computer service, as
17 that term is defined in section 230(f) of the
18 Communications Act of 1934 (47 U.S.C.
19 230(f)); and

20 (B) any platform through which a media
21 organization disseminates information, without
22 regard to whether the organization disseminates
23 that information—

24 (i) through broadcast or print;

25 (ii) online; or

1 (iii) through any other channel.

2 (3) DIRECTOR.—The term “Director” means
3 the Director of the Office of Management and Budg-
4 et.

5 (4) EMPLOYEE.—

6 (A) IN GENERAL.—Except where otherwise
7 expressly provided, the term “employee”—

8 (i) means an employee of an Execu-
9 tive agency; and

10 (ii) includes—

11 (I) an individual, other than an
12 employee of an Executive agency,
13 working under a contract with an Ex-
14 ecutive agency; and

15 (II) the President and the Vice
16 President.

17 (B) RULE OF CONSTRUCTION.—With re-
18 spect to an individual described in subpara-
19 graph (A)(ii)(I), solely for the purposes of this
20 Act, the Executive agency that has entered into
21 the contract under which the employee is work-
22 ing shall be construed to be the Executive agen-
23 cy employing the employee.

24 (5) EXECUTIVE AGENCY.—The term “Executive
25 agency”—

1 (A) has the meaning given the term in sec-
2 tion 105 of title 5, United States Code; and

3 (B) includes the Executive Office of the
4 President.

5 (6) PROVIDER.—The term “provider” means a
6 provider of a covered platform.

7 **SEC. 303. FINDINGS.**

8 Congress finds the following:

9 (1) The First Amendment to the Constitution
10 of the United States guarantees—

11 (A) freedoms concerning religion, expres-
12 sion, assembly, and petition of the government;

13 (B) the freedom of expression by prohib-
14 iting the government from restricting the press
15 or the right of an individual to speak freely;
16 and

17 (C) the right of an individual to assemble
18 peaceably and to petition the government.

19 (2) Freedom of speech is an essential element
20 of liberty that restrains tyranny and empowers indi-
21 viduals.

22 (3) Writing in support of a Bill of Rights,
23 Thomas Jefferson stated that “[t]here are rights
24 which it is useless to surrender to the government,
25 and which yet, governments have always been fond

1 to invade. These are the rights of thinking and pub-
2 lishing our thoughts by speaking or writing.”.

3 (4) The Supreme Court of the United States
4 (referred to in this section as the “Court”) has
5 upheld the right to speak free from governmental in-
6 terference as a fundamental right.

7 (5) The Court, in *Palko v. Connecticut*, 302
8 U.S. 319 (1937), wrote that freedom of thought and
9 speech “is the matrix, the indispensable condition, of
10 nearly every other form of freedom”.

11 (6) In *Turner Broadcasting System, Inc. v.*
12 *Federal Communications Commission*, 512 U.S. 622
13 (1994), the Court stated the following: “At the heart
14 of the First Amendment lies the principle that each
15 person should decide for himself or herself the ideas
16 and beliefs deserving of expression, consideration,
17 and adherence. Our political system and cultural life
18 rest upon this ideal. Government action that stifles
19 speech on account of its message, or that requires
20 the utterance of a particular message favored by the
21 Government, contravenes this essential right . . .
22 [and poses] the inherent risk that Government seeks
23 not to advance a legitimate regulatory goal, but to
24 suppress unpopular ideas or manipulate the public
25 debate through coercion rather than persuasion.

1 These restrictions ‘rais[e] the specter that the Gov-
2 ernment may effectively drive certain ideas or view-
3 points from the marketplace.’ For these reasons, the
4 First Amendment, subject only to narrow and well-
5 understood exceptions, does not countenance govern-
6 ment control over the content of messages expressed
7 by private individuals.”.

8 (7) In *R.A.V. v. City of St. Paul*, 505 U.S. 377
9 (1992), the Court explained that the First Amend-
10 ment to the Constitution of the United States “gen-
11 erally prevents government from proscribing speech,
12 or even expressive conduct, because of disapproval of
13 the ideas expressed. Content-based restrictions are
14 presumptively invalid.”.

15 (8) The case of *Brandenburg v. Ohio*, 395 U.S.
16 444 (1969), stands for the proposition that speech
17 can be suppressed only if the speech is intended, and
18 is likely to produce, imminent lawless action.

19 (9) Justice William Brennan, in his majority
20 opinion for the Court in *Texas v. Johnson*, 491 U.S.
21 397 (1989), asserted that “[i]f there is a bedrock
22 principle underlying the First Amendment, it is that
23 the government may not prohibit the expression of
24 an idea simply because society finds the idea itself
25 offensive or disagreeable.”.

1 (10) Justice Neil Gorsuch, in his majority opin-
2 ion for the Court in 303 Creative LLC v. Elenis,
3 _____ U.S. _____ (2023), stated, “The First
4 Amendment envisions the United States as a rich
5 and complex place where all persons are free to
6 think and speak as they wish, not as the government
7 demands.”.

8 (11) As evidenced in disclosures from various
9 social media companies, Federal officials in recent
10 years have sought to censor legal speech on plat-
11 forms operated by those companies by using the
12 power of their offices to influence what opinions,
13 views, and other content that users of those plat-
14 forms may disseminate.

15 (12) White House officials and officials of Ex-
16 ecutive agencies sought to silence narratives on so-
17 cial media platforms on issues relating to the
18 COVID–19 pandemic.

19 (13) The Centers for Disease Control and Pre-
20 vention engaged with officials at Facebook and Twit-
21 ter to request that certain posts be flagged as
22 “disinformation” and held regular meetings with
23 those companies to share instances of what govern-
24 ment officials determined to be “misinformation”
25 about the COVID–19 pandemic that had been

1 spread on the platforms operated by those compa-
2 nies.

3 (14) In the midst of the 2020 election cycle, the
4 Federal Bureau of Investigation communicated with
5 high-level technology company executives and sug-
6 gested that a New York Post story regarding the
7 contents of Hunter Biden’s laptop were part of a
8 “hack and leak” operation.

9 (15) On April 27, 2022, the Department of
10 Homeland Security announced the creation of a
11 Disinformation Governance Board (referred to in
12 this paragraph as the “Board”). The Director of the
13 Board, Nina Jankowicz, sought to establish an
14 “analytic exchange” with “industry partners”. In
15 congressional testimony, Secretary of Homeland Se-
16 curity Alejandro Mayorkas provided misleading testi-
17 mony about the actions of the Board.

18 (16) Since 2020, 2 nonprofit organizations af-
19 filiated with the Global Disinformation Index (re-
20 ferred to in this paragraph as “GDI”) have received
21 a total of \$330,000 in grants from Federal agencies.
22 GDI maintains a list of “global news publications
23 rated high risk for disinformation”. Major adver-
24 tising companies seek guidance from this purported
25 “nonpartisan” group to determine where advertising

1 money should be spent. Despite the self-proclaimed
2 “nonpartisan” nature of the list, GDI includes a
3 host of reputable media outlets, such as Reason,
4 RealClearPolitics, and the New York Post.

5 **SEC. 304. EMPLOYEE PROHIBITIONS.**

6 (a) PROHIBITIONS.—

7 (1) IN GENERAL.—An employee acting under
8 official authority or influence may not—

9 (A) use any form of communication (with-
10 out regard to whether the communication is
11 visible to members of the public) to direct, co-
12 erce, compel, or encourage a provider to take,
13 suggest or imply that a provider should take, or
14 request that a provider take any action to cen-
15 sor speech that is protected by the Constitution
16 of the United States, including by—

17 (i) removing that speech from the ap-
18 plicable covered platform;

19 (ii) suppressing that speech on the ap-
20 plicable covered platform;

21 (iii) removing or suspending a par-
22 ticular user (or a class of users) from the
23 applicable covered platform or otherwise
24 limiting the access of a particular user (or
25 a class of users) to the covered platform;

1 (iv) labeling that speech as
2 disinformation, misinformation, or false, or
3 by making any similar characterization
4 with respect to the speech; or

5 (v) otherwise blocking, banning, delet-
6 ing, deprioritizing, demonetizing,
7 deboosting, limiting the reach of, or re-
8 stricting access to the speech;

9 (B) direct or encourage a provider to share
10 with an Executive agency covered information
11 containing data or information regarding a par-
12 ticular topic, or a user or group of users on the
13 applicable covered platform, including any cov-
14 ered information shared or stored by users on
15 the covered platform;

16 (C) work, directly or indirectly, with any
17 private or public entity or person to take an ac-
18 tion that is prohibited under subparagraph (A)
19 or (B); or

20 (D) on behalf of the Executive agency em-
21 ploying the employee—

22 (i) enter into a partnership with a
23 provider to monitor any content dissemi-
24 nated on the applicable covered platform;
25 or

1 (ii) solicit, accept, or enter into a con-
2 tract or other agreement (including a no-
3 cost agreement) for free advertising or an-
4 other promotion on a covered platform.

5 (2) EXCEPTION.—Notwithstanding subpara-
6 graph (B) of paragraph (1), the prohibition under
7 that subparagraph shall not apply with respect to an
8 action by an Executive agency or employee pursuant
9 to a warrant that is issued by—

10 (A) a court of the United States of com-
11 petent jurisdiction in accordance with the proce-
12 dures described in rule 41 of the Federal Rules
13 of Criminal Procedure; or

14 (B) a State court of competent jurisdic-
15 tion.

16 (3) EMPLOYEE DISCIPLINE.—

17 (A) IN GENERAL.—Notwithstanding any
18 provision of title 5, United States Code, and
19 subject to subparagraph (B), the head of an
20 Executive agency employing an employee who
21 violates any provision of paragraph (1) (or, in
22 the case of the head of an Executive agency
23 who violates any provision of paragraph (1), the
24 President) shall impose on that employee—

1 (i) disciplinary action consisting of re-
2 moval, reduction in grade, suspension, or
3 debarment from employment with the
4 United States;

5 (ii) a civil penalty in an amount that
6 is not less than \$10,000;

7 (iii) ineligibility for any annuity under
8 chapter 83 or 84 of title 5, United States
9 Code; and

10 (iv) permanent revocation of any ap-
11 plicable security clearance held by the em-
12 ployee.

13 (B) SPECIFIC CONTRACTOR DISCIPLINE.—

14 In the case of an employee described in section
15 2(4)(A)(ii)(I) who violates any provision of
16 paragraph (1), in addition to any discipline that
17 may be applicable under subparagraph (A) of
18 this paragraph, that employee shall be barred
19 from working under any contract with the Fed-
20 eral Government.

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) IN GENERAL.—A person, the account, con-
23 tent, speech, or other information of which has been
24 affected in violation of this section, may bring a civil
25 action in the United States District Court for the

1 District of Columbia for reasonable attorneys' fees,
2 injunctive relief, and actual damages against—

3 (A) the applicable Executive agency; and

4 (B) the employee of the applicable Execu-
5 tive agency who committed the violation.

6 (2) PRESUMPTION OF LIABILITY.—In a civil ac-
7 tion brought under paragraph (1), there shall be a
8 rebuttable presumption against the applicable Exec-
9 utive agency or employee if the person bringing the
10 action demonstrates that the applicable employee
11 communicated with a provider on a matter relating
12 to—

13 (A) covered information with respect to
14 that person; or

15 (B) a statement made by that person on
16 the applicable covered platform.

17 **SEC. 305. REPORTING REQUIREMENTS.**

18 (a) IN GENERAL.—Not later than 90 days after the
19 date of enactment of this Act, and not less frequently than
20 once every 90 days thereafter, the head of each Executive
21 agency shall submit to the Director and the chair and
22 ranking member of the Committee on Homeland Security
23 and Governmental Affairs of the Senate, the Committee
24 on the Judiciary of the Senate, the Committee on Over-
25 sight and Accountability of the House of Representatives,

1 and the Committee on the Judiciary of the House of Rep-
2 resentatives a report that discloses, for the period covered
3 by the report, each communication between a representa-
4 tive of a provider and an employee of that Executive agen-
5 cy—

6 (1) including any such communication that con-
7 stitutes a violation of section 4(a)(1); and

8 (2) not including any such communication that
9 relates to combating child pornography or exploi-
10 tation, human trafficking, or the illegal transporting
11 or transacting in controlled substances.

12 (b) CONTENTS.—Each report submitted under sub-
13 section (a) shall include, with respect to a communication
14 described in that subsection—

15 (1) the name and professional title of each em-
16 ployee and each representative of a provider engaged
17 in the communication; and

18 (2) if the communication constitutes a violation
19 of section 4(a)(1)—

20 (A) a detailed explanation of the nature of
21 the violation; and

22 (B) the date of the violation.

23 (c) PUBLICATION.—

1 (1) IN GENERAL.—Not later than 5 days after
2 the date on which the Director receives a report
3 under subsection (a), the Director shall—

4 (A) collect the report and assign the report
5 a unique tracking number; and

6 (B) publish on a publicly accessible and
7 searchable website the contents of the report
8 and the tracking number for the report.

9 (2) SUBJECT OF REPORT.—With respect to a
10 report submitted pursuant to subsection (a) of which
11 an individual is a subject, not later than the end of
12 the business day following the business day on which
13 the report is submitted, the Director shall make a
14 reasonable effort to contact any person or entity di-
15 rectly affected by a violation of this Act described in
16 the report to inform that person of the report.

17 **SEC. 306. CYBERSECURITY INFRASTRUCTURE AND SECU-**
18 **RITY AGENCY REPORT.**

19 Not later than 180 days after the date of enactment
20 of this Act, the Secretary of Homeland Security shall sub-
21 mit to the Director and the chair and ranking member
22 of the Committee on Homeland Security and Govern-
23 mental Affairs of the Senate and the Committee on Over-
24 sight and Accountability of the House of Representatives

1 a report that discloses any action of an employee of the
2 Cybersecurity and Infrastructure Security Agency that—

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

5 (2) would have been in violation of section
6 4(a)(1).

7 **SEC. 307. TERMINATION OF DISINFORMATION GOVERN-**
8 **ANCE BOARD.**

9 (a) **TERMINATION.**—The Disinformation Governance
10 Board established by the Department of Homeland Secu-
11 rity, if in existence on the date of enactment of this Act,
12 is terminated.

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

18 **SEC. 308. PROHIBITION ON MISINFORMATION AND**
19 **DISINFORMATION GRANTS.**

20 The head of an Executive agency may not award a
21 grant relating to programming on misinformation or
22 disinformation.

23 **SEC. 309. GRANT TERMS.**

24 (a) **CERTIFICATION.**—The recipient of a grant award-
25 ed by an Executive agency on or after the date of enact-

1 ment of this Act shall certify to the head of the Executive
2 agency that the recipient or a subgrantee of the recipient,
3 during the term of the grant, will not designate any cre-
4 ator of news content, regardless of medium, as a source
5 of misinformation or disinformation.

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

11 (c) PENALTY.—Upon a determination by the head of
12 an Executive agency that a recipient or subgrantee of a
13 recipient has violated the certification of the recipient
14 under subsection (a), the recipient or subgrantee, respec-
15 tively, shall—

16 (1) repay the grant associated with the certifi-
17 cation; and

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

20 **SEC. 310. PRESIDENTIAL WAR POWERS UNDER THE COM-**
21 **MUNICATIONS ACT OF 1934.**

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

24 (1) by striking subsections (c) through (g); and

1 (2) by redesignating subsection (h) as sub-
2 section (c).

3 (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

4 Section 309(h) of the Communications Act of 1934 (47
5 U.S.C. 309(h)) is amended—

6 (1) by inserting “and” before “(2)”; and

7 (2) by striking “Act;” and all that follows
8 through the period at the end and inserting the fol-
9 lowing: “Act.”.

10 **SEC. 311. APPLICABILITY OF FOIA.**

11 (a) **DEFINITION.**—In this section, the term “agency”
12 has the meaning given the term in section 551 of title 5,
13 United States Code.

14 (b) **APPLICABILITY.**—Notwithstanding any provision
15 of section 552 of title 5, United States Code, any request
16 made to an agency pursuant to that section for records
17 relating to communication between an employee and a rep-
18 resentative of a provider—

19 (1) shall be granted by the agency without re-
20 gard to any exemption under subsection (b) of that
21 section, except the agency may not release any iden-
22 tifying information of a user of a covered platform
23 without express written consent granted by the user
24 to the agency; and

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