

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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August 17, 2023

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Director Wray:

The Committee on the Judiciary (Committee) is conducting oversight of how and the extent to which the Executive Branch has coerced and colluded with companies and other intermediaries to censor speech.¹ To develop effective legislation, such as the possible enactment of new statutory limits on the Executive Branch's ability to work with social media platforms and other companies to restrict the circulation of content and deplatform users, the Committee on the Judiciary must first understand the nature of this collusion and coercion. To this end, we have asked for communications between the Federal Bureau of Investigation (FBI), private companies, and other third-party groups such as nonprofit organizations, in addition to other information.² Your response without compulsory process has, to date, been woefully inadequate.

The Committee's investigation, along with other public reporting, and publicized discovery in an ongoing federal court case, *Missouri v. Biden*, have exposed how the federal government has pressured and colluded with Big Tech and other intermediaries to censor certain viewpoints on social and other media in ways that undermine First Amendment principles.³ The First Amendment prohibits government officials from imposing viewpoint-based censorship restrictions. State action doctrine stands for the proposition that government officials may not circumvent constitutional strictures by using private actors—whether through coercion,

¹ See Rep. Jim Jordan (@Jim_Jordan), Twitter (July 27, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684595375875760128.

² Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., to Director Christopher Wray (Apr. 18, 2023).

³ See, e.g., Ryan Tracy, *Facebook Bowed to White House Pressure, Removed Covid Posts*, Wall St. J. (July 28, 2023); Rep. Jim Jordan (@Jim_Jordan), Twitter (July 28, 2023, 12:03 PM), https://twitter.com/Jim_Jordan/status/1684957660515328001; Rep. Jim Jordan (@Jim_Jordan), Twitter (Aug. 3, 2023, 11:00 AM), https://twitter.com/Jim_Jordan/status/1687116316073930752.

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encouragement, entwinement, or joint participation—to accomplish what the government cannot directly.⁴

Numerous documents that have been made publicly available reflect the weaponization of the federal government’s power to censor speech online directly and by proxy. It is necessary for Congress to gauge the extent to which FBI agents coerced, pressured, worked with, or relied upon social media and other tech companies in order to censor speech. The scope of the Committee’s investigation includes understanding the extent and nature of the FBI’s involvement in this censorship.

On April 18, the Committee wrote to you seeking your voluntary cooperation with our oversight.⁵ Among other things, we asked for communications between FBI employees and private companies, internal communications, and communications between the FBI and other third parties discussing content moderation. To date, the FBI has produced only a single document: a publicly available transcript of a civil deposition of Federal Bureau of Investigation Assistant Special Agent in Charge Elvis Chan from *Missouri v. Biden*. Through its investigation, the Committee has uncovered evidence that contradicts several statements in Agent Chan’s deposition, particularly as they relate to his communications with social media platforms.⁶

This production is woefully inadequate and omits voluminous responsive material, including communications between FBI and tech companies, internal communications, and communications between FBI and other executive branch entities.

Indeed, on July 4, the court in *Missouri v. Biden* enjoined the FBI from communicating with tech companies for the purpose of influencing their content moderation policies.⁷ The court found that, along with other government defendants, the FBI, Agent Chan, and Agent Laura Dehmlow:

“jointly participated” with the social-media companies to such an extent that [they] have become “pervasively entwined” in the private companies’ workings to such an extent as to blur the line between public and private action. Therefore, Plaintiffs are likely to succeed on the merits that the government Defendants are responsible for the private social media companies’ decisions to censor protected content on social media platforms.⁸

⁴ See *Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (“[i]t is ... axiomatic that a state may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”).

⁵ Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., to Director Christopher Wray (Apr. 18, 2023).

⁶ Rep. Jim Jordan (@Jim_Jordan), Twitter (Aug. 7, 2023, 10:11 AM), https://twitter.com/Jim_Jordan/status/1688553339624042496.

⁷ See *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), Dkt. 294 (order and judgment granting preliminary injunction). While the U.S. Court of Appeals for the Fifth Circuit administratively stayed the injunction, such a ruling is not based on the merits of the case. “Entering temporary administrative stays so that a panel may consider expedited briefing in emergency cases is routine practice in our court.” *In re Abbott*, 800 F.App’x 296, 298 (5th Cir. 2020).

⁸ *Id.*, Dkt. 293 (memorandum ruling on request for preliminary injunction) at 117.

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In other words, a federal judge has found that the FBI's communications with social media platforms very likely violated Americans' First Amendment rights, including through joint participation and by use of deception.⁹ Yet you have produced nothing of substance in response to the Committee's request, which hinders the Committee's ability to fulfill its constitutional oversight obligations. The Committee has engaged with the FBI in identifying the Committee's highest priority documents and information in both letters to you and during calls with Committee staff.¹⁰

Pursuant to the Rules of the House of Representatives, the Committee has jurisdiction to conduct oversight of matters concerning "civil liberties" to inform potential legislative reforms.¹¹ In addition, H. Res. 12 authorized the Committee's Select Subcommittee on the Weaponization of the Federal Government to investigate "issues related to the violation of the civil liberties of citizens of the United States."¹²

Accordingly, given the FBI's inadequate voluntary compliance, even after the Committee identified the highest priority documents and information, please find attached a subpoena for the Committee's highest priority documents and information.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

⁹ *Id.* at 106-07.

¹⁰ *See, e.g.*, Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., to Director Christopher Wray (July 20, 2023); August 8, 2023 Telephone Call between Committee Staff and FBI and Dep't of Justice Personnel.

¹¹ Rules of the House of Representatives R. X (2023).

¹² H. Res. 12 § 1(b)(1).