



CRITICAL INFRASTRUCTURE SUBSECTOR SUBJECT	Election Systems
	Government-Sponsored Disinformation
COMPONENT SCOPE	Election Management Systems
RISK LEVEL	High
ELECTION RECORDS IMPACTED	All Election Records

## 1 Introduction

On November 6, 2023, the U.S. House Judiciary Committee and Select Subcommittee on the Weaponization of the Federal Government released an interim staff report examining collaboration between federal agencies and non-government entities to monitor and moderate online speech related to elections. The report raised concerns about potential First Amendment implications of these partnerships and their impact on public discourse.

The report detailed how certain government agencies worked with academic institutions and social media platforms to identify and address what they deemed election-related misinformation. While aiming to protect election integrity, these efforts also led to the removal of some factual information and political opinions from social media platforms.

This advisory will examine key findings from the congressional report and offer balanced recommendations for government officials navigating the complex landscape of online election-related speech. The goal is to promote transparency, protect free expression, and maintain public trust in electoral processes.

## 2 Background

The report portrays various activities as a coordinated effort by government agencies and private partners to circumvent First Amendment protections and censor Americans' political speech, particularly conservative viewpoints.

### 2.1 CISA Role

CISA (Cybersecurity and Infrastructure Security Agency) played a significant role in creating the Election Integrity Partnership (EIP), which was used to censor Americans' political speech leading up to the 2020 election.

### 2.2 Election Integrity Partnership Role

The EIP was established as a workaround to circumvent First Amendment restrictions on government censorship. It allowed the federal government to indirectly flag content for removal by social media companies.

### 2.3 Switchboarding

CISA engaged in "switchboarding" - referring content removal requests from state/local officials to social media platforms. Internal documents show CISA knew there were serious legal and constitutional concerns with this practice.

### 2.4 Federal Threats

CISA's disclaimers on switchboarding emails actually highlighted how multiple government agencies could potentially retaliate against social media companies if they didn't comply with removal requests.



## 2.5 Conservatives and Republicans Targeted Disproportionately

The EIP disproportionately targeted conservatives and Republican politicians for censorship, including President Trump, but also censored true information, jokes, satire, and political opinions across the political spectrum.

## 2.6 Reporting Systems

CISA worked closely with universities, non-profits, and social media companies to establish reporting systems for alleged misinformation, which were used to censor protected speech.

## 2.7 Active Federal Government Participation

Internal documents contradict public statements by CISA officials claiming they played a passive role. The evidence shows CISA actively participated in content moderation decisions.

## 2.8 Resistance to Transparency

Stanford University initially resisted providing full data on the EIP's activities to Congress, only complying after threats of contempt charges.

# 3 Impact

The collusion between the federal government and various non-government entities poses several risks to election integrity:

## 3.1 Government Overreach and First Amendment Concerns

The primary risk is the potential violation of First Amendment rights through government-influenced censorship. When federal agencies pressure or collude with social media platforms to suppress certain content, it raises serious constitutional concerns. This can lead to the silencing of legitimate political speech and debate, which is crucial for a healthy constitutional republic.

## 3.2 Biased Information Control

There's a risk of selective enforcement of content moderation policies that could favor one political perspective over others. Evidence suggests that censorship efforts have disproportionately targeted conservative voices and news stories that could be damaging to certain political figures. This uneven application of rules can skew public discourse and potentially influence election outcomes.

## 3.3 Undermining Public Trust

When the public becomes aware of such collusion, it can severely erode trust in both government institutions and media platforms. This loss of trust can extend to the electoral process itself, with citizens questioning the fairness and integrity of elections.

## 3.4 Spread of Misinformation About Misinformation

Overzealous efforts to combat "misinformation" can often lead to the suppression of truthful information. For example, the censorship of the Hunter Biden laptop story, which was later verified as authentic, demonstrates how legitimate news can be incorrectly labeled as misinformation.

## 3.5 Lack of Transparency

The opaque nature of these collaborations between government agencies, tech companies, and other organizations makes it difficult for the public to understand how decisions about content moderation are being made. This lack of transparency can fuel conspiracy theories and further erode public trust.



### 3.6 Potential for Abuse

The centralization of power to determine what constitutes "misinformation" creates the potential for abuse. Government officials or other influential actors could potentially use these systems to suppress information that is politically inconvenient or damaging to their interests.

### 3.7 Chilling Effect on Free Speech

The knowledge that government agencies are involved in content moderation decisions can create a chilling effect on free speech. Users may self-censor out of fear that their posts could be flagged or their accounts suspended.

### 3.8 Interference with Democratic Processes

By potentially influencing what information voters have access to, these collaborations could interfere with the democratic process of free and fair elections. Voters may be making decisions based on an incomplete or biased information landscape.

## 4 Risk Mitigation Strategy

Based on the information provided, several risk mitigation steps are recommended to address potential threats to election integrity from collusion between government entities and non-government organizations:

### 4.1 Equal Access

Provide the general public with equal access to election records currently only accessible to government and NGO's ostensibly working on their behalf. This privileged access is often leveraged as a tool to assert one-sided narratives not subject to open, public scrutiny. Equal access would eliminate this bias and ensure access to information that might contradict the official narrative.

This equal access should include access to the following election records as a minimum:

- Voter roll records
- Voter roll transaction logs
- Pollbook records
- Tabulator-specific cast vote records
- Election database transaction logs
- Network activity logs
- Electronic voting system certification standards and test results

### 4.2 Increased Transparency

Increase transparency and oversight of interactions between government agencies and social media companies, universities, and media outlets regarding content moderation and information sharing. This could include:

- Requiring detailed public reporting on communications and meetings
- Establishing clear guidelines on appropriate vs. inappropriate government involvement
- Creating independent oversight bodies to review these interactions

### 4.3 Strengthen Legal Protections

Strengthen legal protections against government censorship, including indirect censorship through pressure on private companies. This may involve:

- Passing legislation to prohibit government officials from coercing or colluding with private entities to suppress protected speech



- Clarifying First Amendment protections against government-directed censorship

#### 4.4 Strict Protocols

Implement strict protocols for election-related information sharing between government agencies and tech platforms. For example:

- Limiting communications to verifiable foreign interference threats only
- Requiring multi-agency approval for any election-related requests to social media companies
- Mandating transparency on all such communications

#### 4.5 Enhance State Control

Enhance state control over election procedures and resist federal overreach into state election administration. This could include:

- Passing state laws to prohibit last-minute changes to election rules
- Restricting private funding of elections or election offices
- Strengthening state legislature authority over election procedures

#### 4.6 Improve Public Education

Improve public education on identifying misinformation and evaluating sources critically. This may involve:

- Developing media literacy programs for schools
- Creating public awareness campaigns on responsible social media use
- Encouraging platforms to provide more context on information sources

#### 4.7 Content Moderation Policies

Establish clear, viewpoint-neutral content moderation policies for social media platforms and enforce them consistently. This could include:

- Developing transparent, publicly-available moderation guidelines
- Implementing appeals processes for content removal decisions
- Conducting regular audits to ensure unbiased enforcement

## 5 Conclusion

The activities of the Election Integrity Partnership exposed by Congress highlight the potential for government-linked efforts to monitor and restrict online speech to be misused for political purposes, threatening Americans' fundamental rights. This underscores the importance of safeguarding citizens' ability to freely access and share information about their government. Implementing robust oversight, transparency, and constitutional protections around any collaboration between government agencies and private entities on content moderation is critical to preserving election integrity and democratic discourse. By enacting appropriate guardrails and accountability measures, the risks of improper censorship or manipulation of political speech can be significantly mitigated.