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## The National Security State's War on The First Amendment

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An especially ugly development taking place in the United States lies with the intelligence agencies and the FBI using social media platforms and other private organizations to stifle criticism of U.S. foreign policy or the conduct of policymakers. The standard argument has long been that violations of the First Amendment take place only when a governmental entity suppresses the expression of views of its people. Since Facebook, Twitter, Google, et al. are private corporations, the logic goes, the First Amendment's prohibition of censorship does not apply beyond the government, no matter how annoying the ideological bias evident on their sites might be.

Defenders of the status quo fail to address the problem that occurs when a government agency or official colludes with or pressures a private actor to suppress certain information or viewpoints.

Yet that is what has been taking place with greater frequency and severity. Government seduction is corrupting enough, but the evidence is mounting that key agencies are moving into direct interference and issuing orders. Such government censorship by proxy poses a severe, perhaps mortal, threat to the First Amendment.

An investigative report by Ken Klippenstein and Lee Fang published in the October 31, 2022, issue of *The Intercept* reveals that the Department of Homeland Security (DHS) "is quietly broadening its efforts to curb speech it considers dangerous." The lengthy *Intercept* report confirmed that there is even "a formalized process for government officials to directly flag content on Facebook or Instagram and request that it be throttled or suppressed through a special Facebook portal that requires a government or law enforcement email to use."

The nearly all-purpose justification for such actions is to combat "disinformation." As Klippenstein and Fang note: "How disinformation is defined by the government has not been clearly articulated, and the inherently subjective nature of what constitutes disinformation provides

a broad opening for DHS officials to make politically motivated determinations about what constitutes dangerous speech.” The same is true of other portions of the government that endeavor to suppress criticism.

Two episodes in 2020 illustrate the potential for abuse and the resulting destructive consequences when government officials collude with or pressure private media organizations. One was the campaign to bar “disinformation” about Covid-19, even eliminating analyses arguing that the virus may have originated from a lab leak in China instead of spreading from bats to humans. The corrosive consequences of suppressing debate on that issue became apparent when the Biden administration reluctantly ordered a review by the intelligence agencies, who subsequently conceded that the lab leak theory could not be ruled out.

An even worse abuse may have occurred when the FBI worked to discredit the *New York Post*’s blockbuster story on Hunter Biden’s laptop. Facebook CEO Mark Zuckerberg later reported that FBI officials had approached him with a warning that Russia was conducting a concerted disinformation campaign during the 2020 U.S. election cycle, just as the Kremlin did in 2016. It was hard to miss the implication that the laptop probably was part of the latest disinformation effort, and that Facebook should take down posts or algorithmically throttle such news, contending that revelations contained in the files were genuine.

The extent of the FBI’s overreach is now evident since both the *Washington Post* and the *New York Times* have authenticated at least some of the files. The FBI’s pressure was an essential factor in a chilling debate on what might have become a highly relevant issue in the closing weeks of the 2020 presidential election campaign.

Revelations about censorship by proxy concerning those and other episodes that had the potential to embarrass or discredit political and foreign policy elites are only the most recent manifestations of official misconduct. With respect to foreign policy and national security, “requests” from the White House, the Justice Department, DHS, or the intelligence agencies frequently amount to outright orders, and the abuses have been building for years.

The FBI took a major step toward intervention against dissenting views on social media in October 2017. FBI leaders created a new Foreign Influence Task Force (FITF) in the bureau’s Counterintelligence Division. The FBI subsequently considered any effort by states designated by the Department of Defense as major adversaries (Russia, China, Iran, and North Korea) to influence American public opinion as a threat to U.S. national security. Targets for suppression were not confined to publications and outlets that were indisputably under the control of one of those hostile powers. In one case, the FBI pressured media platforms to ban a foreign policy journal, even though the editor was Canadian and the publication featured primarily western (including American) analysts.

Moves toward censorship by proxy grew steadily over the next few years. As investigative journalist Jim Bovard noted, “Congress created a new federal agency in 2018—the Cybersecurity Infrastructure Security Agency (CISA) in the Department of Homeland Security (DHS). CISA was purportedly intended to fight foreign threats to election security and U.S. infrastructure. But the agency quickly shifted its target to American citizens.”

The overall rationale for suppressing targeted outlets for alleged foreign influence was especially ominous. At a conference on election security on February 24, 2020, David K. Porter, Assistant Section Chief of the FBI's Foreign Influence Task Force, defined as "malign foreign influence activity" actions by a foreign power "to influence U.S. policy, distort political sentiment and public discourse"—an imprecise and thoroughly subjective standard.

Porter further described unlawful foreign propaganda as measures "designed to undermine public confidence in the credibility of free and independent news media." Agents of influence who practice that technique, he said, seek to "push consumers to alternative news sources," where "it's much easier to introduce false narratives" and thus "sow doubt and confusion about the true narratives by exploiting the media landscape to introduce conflicting story lines."

Such an attitude reflected an unmistakable bias in favor of conventional (and more likely to be pro-government, or at least less negative) sources and outlets. Worse, it conveyed a disturbing official hostility toward any alternative media that questioned government motives or performance, even if that media entity was owned and operated by Americans and featured accounts from American analysts. Merely expressing views similar to those held by one of Washington's designated foreign adversaries might put a publication or outlet in jeopardy.

The "disinformation" rationale for suppressing speech is becoming all too common, as the Biden administration's abortive attempt to establish a Disinformation Governance Board earlier this year confirmed. It is a worrisome, open-ended justification, and it threatens dissent on both foreign policy and domestic issues. For example, the administration and other supporters of Ukraine in its war against Russia routinely accuse critics of being "Putin's puppets" or "Russian agents." Pentagon spokesman John Kirby used that tactic when he dismissed questions about whether Moscow was really responsible for the bombing of the Nord Stream pipelines, as echoing "Russian propaganda and disinformation." It is a relatively small step to move from such smears to using censorship by proxy against targeted individuals. It certainly was not reassuring for the future of debate on Ukraine and Russia issues when Nina Jankowicz, the person appointed to head the Disinformation Governance Board, was a longtime, rabid partisan of Ukraine.

Censorship by proxy is more subtle (or insidious) than direct government action to curb unorthodox views, but it is no less dangerous. We must not be lulled into complacency by accepting official rationales that even when a government agency or individual approaches a media platform about excluding an article, speech, or report, it is merely a "request" that editors are free to disregard. Such an argument is utterly disingenuous. Requests from powerful government officials are akin to a "request" from Michael Corleone or Tony Soprano. Given the enormous power of government entities—especially those in the national security bureaucracy—only the boldest or most reckless individual would dismiss the request. The entire arrangement poses a menace to the First Amendment.

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