

United States Senate

WASHINGTON, DC 20510

October 8, 2024

Director Easterly
Cybersecurity & Infrastructure Security Agency
1100 Hampton Park Blvd.
Capitol Heights, MD
20743 – 0630

Director Easterly:

We write to request information regarding Cybersecurity and Infrastructure Security Agency’s (CISA) preparations for the elections this November. We are particularly interested in the ways in which CISA is working to avoid past mistakes that put the agency in direct conflict with the First Amendment. Indeed, the PRC-sponsored Volt Typhoon hacker group demonstrates the pressing need for the agency to focus resources on its core mission to protect the nation’s critical infrastructure, not censoring lawful speech. As documented in two recent reports from the House Committee on the Judiciary¹ in the 2020 election cycle CISA leadership engaged in censorship of American citizens that was breathtaking in its scale and scope.

According to the House Judiciary Committee, CISA worked with the so-called Election Integrity Partnership (EIP) to strong arm social media and other internet platforms into censoring American citizens. The EIP was “a consortium of “disinformation” academics led by the Stanford Internet Observatory (SIO). These academics worked directly with the CISA and the Global Engagement Center, a multiagency entity housed within the U.S. Department of State.² CISA played a vital role in the EIP. Indeed, there is evidence that the group was founded “at the request” of agency leadership.³ Working with EIP partners, CISA engaged in flagging and “switchboarding”⁴ online

¹ “*The Weaponization of “Disinformation” Pseudo-Experts and Bureaucrats: How the Federal Government Partnered with Universities to Censor Americans’ Political Speech*”, Interim Staff Report of the Committee on the Judiciary and the Select Committee on the Weaponization of the Federal Government, U.S. House of Representatives, November 6, 2023; and “*The Weaponization Of CISA: How A “Cybersecurity” Agency Colluded with Big Tech And “Disinformation” Partners To Censor Americans*”, Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, U.S. House of Representatives, June 26, 2023.

² “*The Weaponization of “Disinformation” Pseudo-Experts and Bureaucrats: How the Federal Government Partnered with Universities to Censor Americans’ Political Speech*”, Interim Staff Report of the Committee on the Judiciary and the Select Committee on the Weaponization of the Federal Government, U.S. House of Representatives, November 6, 2023, p. 1.

³ *Id.*, p. 1, footnote 3.

⁴ “Switchboarding” describes the federal government’s practice of referring requests for the removal of content on social media from state and local election officials to the relevant platforms. *Id.* p. 13.

content it deemed to be misinformation to social media platforms.⁵ At one point, CISA even gave serious consideration to a “misinformation reporting portal” to be funded by the non-profit Center for Internet Security (CIS), which received funding from the agency.⁶ The EIP and CISA did not distinguish between domestic and foreign speech for the purposes of content flagging and switchboarding. In fact, as recently as 2022, CISA’s website described how “Foreign and *domestic* threat actors use [misinformation] campaigns to cause chaos, confusion, and division. These malign actors are seeking to interfere with and undermine our democratic institutions and national cohesiveness.”⁷

CISA officials have argued that the agency did not engage in censorship since it outsourced content moderation to social media platforms and other websites. In contrast to CISA, the House Judiciary Committee refers to the EIP’s conduct and CISA’s role in it as a “pattern of unconstitutional outsourcing.”⁸ It is no defense that actors other than CISA completed the content removals from their websites since, in the words of the Supreme Court, the government may not “induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”⁹ A senior CISA official has confirmed in sworn testimony that CISA was aware that switchboarding online content between the agency and social media companies would trigger content moderation and that there was a coercive component to its content flagging.¹⁰ In public facing communications, CISA even provided increasingly lengthy disclaimers seeking to defend its use of switchboarding, an admission that the agency knew it was on thin ice with respect to constitutional norms.¹¹

The First Amendment prohibits the government from “abridging freedom of speech” and the Supreme Court has recognized that for “core political speech” “the importance of First Amendment protections is at its zenith.”¹² In today’s world, “core political speech” is often found on social media platforms. Instead of respecting these long-standing norms, CISA has in the past worked with partners to violate them, thus undermining trust in the agency for many Americans. To quote the Supreme Court, “if there is a fixed star in our constitutional constellation, it is that

⁵ *Id.* p. 12.

⁶ *Id.* p. 24; *see also* p. 30 (“CISA and CIS caused the social media companies to seriously question and entertain the proposal for a misinformation reporting portal, although the portal was not ultimately established.”).

⁷ “*The Weaponization Of CISA: How A “Cybersecurity” Agency Colluded with Big Tech And “Disinformation” Partners to Censor Americans*”, Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, U.S. House of Representatives, June 26, 2023, at 33.

⁸ “*The Weaponization Of CISA: How A “Cybersecurity” Agency Colluded with Big Tech And “Disinformation” Partners to Censor Americans*”, Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, U.S. House of Representatives, June 26, 2023, at 21.

⁹ *Norwood v. Harrison*, 413 U.S. 455, 465 (1973).

¹⁰ *Scully Dep.* 17:15-18:1, *Missouri v. Biden*, No 3:22-cv-01213 (W.D. La. 2022) ECF No. 209.

¹¹ “*The Weaponization Of CISA: How A “Cybersecurity” Agency Colluded with Big Tech And “Disinformation” Partners to Censor Americans*”, Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government, U.S. House of Representatives, June 26, 2023, at 12.

¹² *Meyer v. Grant*, 486 U.S. 414, 420, 425 (1988).

no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”¹³ This is why we are writing to discourage CISA from prescribing what is favored and disfavored speech going forward. Millions of Americans expect nothing less from their government.

We are mindful that DHS officials have given assurances to Congress that switchboarding is no longer practiced by CISA. However, it would be helpful to have a response in writing to the questions below to ensure that CISA’s prior assurances are honored as we enter the last weeks of the 2024 election cycle. If we are to restore and maintain trust in our elections for all Americans, the time to act is now.

We request a response to these questions no later than COB on October 22, 2024.

1. Please confirm that DHS and/or CISA do not intend to engage in switchboarding activity as described in the House Judiciary Committee reports identified above.
2. Please confirm that DHS and/or CISA do not intend to establish a misinformation reporting portal as described above.
3. Please confirm that DHS and/or CISA no longer partner with the following USG or quasi-USG entities with respect to moderation of First Amendment protected speech:
 - a. The Election Integrity Project;
 - b. The EI-ISAC;
 - c. The State Department Global Engagement Center;
 - d. The FBI;
 - e. The State Department.
4. Please confirm that DHS and/or CISA no longer contracts or partners with the following for profit entities with respect to moderation of First Amendment protected speech:
 - a. Twitter (now X.com);
 - b. Google;
 - c. Graphika;
 - d. Facebook/META;
 - e. TikTok;
 - f. YouTube;
 - g. Reddit.
5. Please confirm that DHS and/or CISA no longer contracts or partners with the following for profit entities with respect to moderation of First Amendment protected speech:
 - a. The Stanford Internet Observatory at Stanford University;
 - b. The Atlantic Council’s Digital Forensic Research Lab (DFRLab);
 - c. The University of Washington Center for an Informed Public;
 - d. The Center for Internet Security (CIS).

¹³ W. Va. State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

6. Please confirm that DHS and/or CISA do not plan to contract with the UK-based company Logically AI with respect to moderation of First Amendment protected speech.¹⁴

Respectfully—



Roger Marshall, M.D.
United States Senator



Bill Hagerty
United States Senator



Eric Schmitt
United States Senator

¹⁴ British AI Firm Helped Censor Activists and Journalists, Poised to Shape 2024 U.S. Elections, Lee Fang, January 26, 2024.