

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND
MARK ZUCKERBERG IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY
WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY

July __, 2023.—Referred to the House Calendar and ordered to be printed

R E P O R T

together with

VIEWS

The Committee on the Judiciary, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Committee on the Judiciary would recommend to the House of Representatives citing Meta’s Chief Executive Officer Mark Zuckerberg for contempt of Congress pursuant to this Report is as follows:

Resolved, That Mark Zuckerberg shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on the Judiciary, detailing the refusal of Mark Zuckerberg to produce documents to the Committee on the Judiciary as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Zuckerberg be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

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EXECUTIVE SUMMARY

Meta and its Chief Executive Officer Mark Zuckerberg have willfully refused to comply in full with a congressional subpoena directed to Mr. Zuckerberg stemming from an investigation conducted by the House Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government into the Executive Branch’s coordination with social media companies and other third parties to censor free speech on digital platforms. This censorship by proxy is a serious threat to fundamental American civil liberties. A federal court recently described this conduct as “arguably the most massive attack against free speech in United States history” and concluded that “the United States Government seems to have assumed a role similar to an Orwellian ‘Ministry of Truth.’”¹

Congress has an important interest in protecting and advancing fundamental free speech principles consistent with the First Amendment. To develop effective legislation, such as the possible enactment of new statutory limits on the Executive Branch’s ability to work with technology companies to restrict the circulation of content and deplatform users, Congress and the Committee must first understand how and to what extent the Executive Branch coerced and colluded with companies and other intermediaries to censor speech. From information available

¹ Missouri v. Biden, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293 at 118, 154 (memorandum ruling granting preliminary injunction).

to the Committee, Meta has played a central role in this censorship scheme, frequently acquiescing and catering to the government’s censorship requests and demands.

The Committee’s subpoena to Meta, issued on February 15, 2023, requires, among other things, that Meta produce material concerning its engagement with the Executive Branch and Meta’s decisions and policies regarding content moderation. Although directly responsive to the Committee’s subpoena, Meta has failed to produce nearly all of the relevant documents internal to the company. To date, Meta has produced only documents between Meta and external entities and a small subset of relevant internal documents. The Committee has a particular need for Meta’s internal documents, which would shed light on how Meta understood, evaluated, and responded to the Executive Branch’s requests or directives to censor content, as well as Meta’s decision-making process to censor viewpoints in the modern town square.

Having exhausted all available options in obtaining timely compliance, the Chairman of the Committee and the Select Subcommittee recommends that, pursuant to 2 U.S.C. § 192, the House finds Chief Executive Officer Mark Zuckerberg in contempt of Congress for his failure to comply with the subpoena issued to him.

AUTHORITY AND PURPOSE

It is well established that Congress’s “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”² Because Congress “cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change, and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.”³ The Supreme Court has repeatedly noted that Congress’s power to conduct investigations is “broad” and “inherent in the legislative process.”⁴

The Committee on the Judiciary is a standing committee of the House of Representatives established in accordance with the Rules of the House of Representatives. The House adopted these rules pursuant to the Rulemaking Clause of the Constitution.⁵ Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary has jurisdiction to conduct oversight over matters concerning “civil liberties” to inform potential legislative reforms.⁶ In addition, H. Res. 12, as adopted by the House, authorizes 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.”⁷

House Judiciary Committee Rule IV states that a “subpoena may be authorized and issued by the Chair, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities within the

² *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

³ *Id.*

⁴ *Watkins v. United States*, 354 U.S. 178, 187 (1957).

⁵ U.S. Const., art. I, § 5, cl. 2.

⁶ Rules of the House of Representatives R. X (2023).

⁷ H. Res. 12 § 1(b)(1).

jurisdiction of the Committee, following consultation with the Ranking Minority Member.”⁸ The subpoena issued to Meta’s Chief Executive Officer Mark Zuckerberg—as well as all other subpoenas issued in this investigation—were done so pursuant to the Chair’s authority in accordance with the House Rules.

The oversight and legislative purpose of the investigation and this subpoena is (1) to determine how and to what extent the Executive Branch has coerced and colluded with companies and other intermediaries to censor speech; and (2) to develop effective legislation that will protect and advance Americans’ constitutionally protected rights to free speech, expression and association.

BACKGROUND ON THE COMMITTEE’S INVESTIGATION

On February 6, 2023, the Committee wrote to Meta requesting information about the company’s coordination with the Executive Branch to censor free speech online.⁹ The letter reiterated and incorporated by reference requests first made in December 2022.¹⁰ On February 10, Meta produced 216 pages of responsive material; however, the production did not include any internal communications related to Meta’s interactions with the Executive Branch.¹¹

Due to the inadequacy of Meta’s production, on February 15, 2023, Chairman Jordan issued a subpoena to Meta for documents related to the company’s interactions with the Executive Branch, including the company’s internal documents.¹² The subpoena set a return date of March 23, 2023.¹³

On March 9, 2023, the Committee held a hearing entitled “Hearing on the Weaponization of the Federal Government on the Twitter Files,” during which witnesses and members discussed the Executive Branch’s requests for the removal of content on Meta’s platforms.¹⁴ The Committee held another hearing on the government’s censorship by proxy on March 30, 2023. Meta’s interactions with the Executive Branch were likewise discussed during this hearing, which focused on litigation brought by two state attorneys and private plaintiffs general regarding censorship.¹⁵

⁸ Rules of the House of Representatives R. IV (a) (2023).

⁹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Zuckerberg, CEO, Meta Platforms, Inc. (Feb. 6, 2023).

¹⁰ In the fall of 2022, members of the House Committee on the Judiciary began investigating the Executive Branch’s role in the suppression of lawful speech on social media platforms, including those operated by Meta. On December 14, 2022, then-Ranking Member Jordan sent a letter to Meta’s CEO Mark Zuckerberg requesting documents related to Meta’s interactions with the Executive Branch and internal discussions related thereto. In response, Meta provided only publicly available information.

¹¹ See letter from Reginald J. Brown to Jim Jordan, Chairman, H. Comm. on the Judiciary (Feb. 10, 2023).

¹² Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Zuckerberg, CEO, Meta Platforms, Inc. (Feb. 15, 2023).

¹³ *Id.*

¹⁴ *Hearing on the Weaponization of the Federal Government: Hearing Before the Select Subcomm. on the Weaponization of the Federal Government of the H. Comm. on the Judiciary*, 118th Cong. (Mar. 9, 2023).

¹⁵ *Hearing on the Weaponization of the Federal Government: Hearing Before the Select Subcomm. on the Weaponization of the Federal Government of the H. Comm. on the Judiciary*, 118th Cong. (Mar. 30, 2023).

Meta did not complete its production of documents by the subpoena’s deadline of March 23, 2023. Instead, Meta produced a limited number of external communications with the Executive Branch and accompanying documents, many of which contained redactions of key information.

On May 19, 2023, almost two months after the subpoena’s return date, Chairman Jordan sent a letter to counsel for Meta enumerating the specific deficiencies of Meta’s productions to the Committee.¹⁶ One such deficiency identified was Meta’s refusal to produce “an appreciable volume of relevant internal communications,” despite counsel’s acknowledgement “to the Committee, [that] Meta likely possesses internal communications among Meta employees ‘referring or relating to any documents or communications from the Executive Branch of the United States Government.’”¹⁷

As of July 19, 2023, the Committee has conducted transcribed interviews of nine current and former Meta employees. Several of those interviews corroborated the existence of these internal communications, as the witnesses confirmed that they communicated in writing with other Meta employees about the company’s interactions with the Executive Branch.¹⁸ On July 24, 2023, Meta made available a small subset of internal documents totaling fewer than 40 pages.

In its productions since February 15, Meta has produced communications between Meta and external entities and fewer than 40 pages of internal documents. Despite clear instructions in the Committee’s subpoena and repeated requests from Committee staff, Meta has thus far failed to produce nearly all of the requested internal communications related to its Executive Branch interactions.

The Committee has published two reports based on other information available to the Committee that describe Meta’s role in government-induced censorship efforts. On June 26, 2023, the Committee issued a report entitled “The Weaponization of CISA: How a ‘Cybersecurity’ Agency colluded with Big Tech and ‘Disinformation’ Partners to Censor Americans.”¹⁹ On July 10, 2023, the Committee issued a second staff report entitled “The FBI’s Collaboration with a Compromised Ukrainian Intelligence Agency to Censor American Speech,” which revealed that the FBI sent Meta numerous requests for the removal of content on behalf of the Security Service of Ukraine (SBU). As stated in the report:

Due to the limited nature of Meta’s productions to the Committee to date—which do not contain an appreciable volume of internal communications within Meta—it is unclear how Meta employees reacted internally to the requests from the FBI to censor Americans. For similar reasons, it is also not immediately apparent to what

¹⁶ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Zuckerberg, CEO, Meta Platforms, Inc. (May 19, 2023).

¹⁷ *Id.*

¹⁸ *See, e.g.*, House Judiciary Committee’s Transcribed Interview of David Agranovich (May 16, 2023), at 112–113; House Judiciary Committee’s Transcribed Interview of Carrie Adams (May 31, 2023), at 32–33.

¹⁹ STAFF OF SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE WEAPONIZATION OF CISA: HOW A “CYBERSECURITY” AGENCY COLLUDED WITH BIG TECH AND “DISINFORMATION” PARTNERS TO CENSOR AMERICANS (Comm. Print 2023).

extent Meta agreed to the FBI's and SBU's demands or what vetting Meta may have conducted internally.²⁰

The Committee's investigation into the coercive effects of government requests and pressure on a company's internal policies necessitates an evaluation of how Meta interpreted and acted upon the government's requests and pressure.

THE COMMITTEE'S SUBPOENA TO META AND ENFORCEMENT THEREOF

On February 15, 2023, the Committee issued a subpoena to Meta's Chief Executive Officer Mark Zuckerberg, compelling the production of documents related to Meta's interactions with the Executive Branch, including documentation of internal discussions related to these interactions with the government.²¹ The subpoena was issued following Meta's repeated refusal to produce documents responsive to the Committee's December 14, 2022 request.

On May 19, 2023, Chairman Jordan sent a letter to Meta detailing categories of documents that Meta has failed to produce in response to the subpoena.²² In discussions with Meta's counsel and upon Meta's counsel's request, Committee staff provided specific topics of interest in order to give Meta categories of internal documents to prioritize for production. Yet, despite these efforts, Meta has failed to provide nearly all of its responsive internal communications, thereby obstructing the Committee's constitutional oversight responsibilities.

In the course of working with Meta in its compliance with the subpoena, the Committee has made several efforts at accommodation. Committee staff have engaged with Meta's counsel numerous times in phone conversations to clarify the Committee's expectations and priorities related to its requests and the subpoena. The Committee has been flexible by permitting piecemeal productions of documents well beyond the subpoena's deadline; accepting document productions in a number of different formats; and narrowing the scope of the Committee's subpoena in direct response to concerns raised by counsel for Meta regarding the breadth of the Committee's initial request.

In spite of the Committee's accommodations to Meta and in defiance of the legally binding terms of the Committee's subpoena, Meta has failed to produce broad categories of internal documents. In so doing, Meta has also failed to provide a privilege log justifying its failure to turn over certain classes of documents, notwithstanding the subpoena's explicit requirement that it do so. Meta's counsel initially provided a variety of reasons why Meta would not fully comply. Following the Chairman's May 19 letter, Meta's counsel requested that the Committee identify which sets of internal documents that Meta should prioritize. The Committee, over the course of several calls, identified these priorities and did not receive any indication from counsel that the priority requests were objectionable. Later in the summer, Meta

²⁰ STAFF OF SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., THE FBI'S COLLABORATION WITH A COMPROMISED UKRAINIAN INTELLIGENCE AGENCY TO CENSOR AMERICAN SPEECH (Comm. Print 2023), at 17.

²¹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Zuckerberg, CEO, Meta Platforms, Inc. (Feb. 15, 2023).

²² Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Zuckerberg, CEO, Meta Platforms, Inc. (May 19, 2023).

changed its position, arguing that entire sets of internal documents, namely any internal documents involving Meta's content moderators, would not be produced because doing so would change Meta's "business model." The Committee negotiated extensively, offering significant accommodations, to try to reach an agreement. Counterproposals from the Committee were rejected by Meta. Meta offered a paltry production of internal documents on July 24.

The status of Meta's compliance with the Committee's subpoena has proven to be woefully inadequate. The internal documents sought by the Committee's subpoena are necessary for the Committee to fulfill its ongoing oversight obligations and inform potential legislative reforms to protect Americans' civil liberties. Meta does not claim that the documents are privileged. Meta's arguments against production lack any legal merit and, accordingly, its refusal to comply with the subpoena violates federal law.

As discussed individually below, Meta has not substantially complied with most of the categories on the subpoena's schedule. The subpoena requires the production of all documents and communications from January 1, 2020 to the present, in the following categories:

1. *All documents and communications between or among Meta and the Executive Branch of the United States Government referring or relating to the moderation, deletion, suppression, restriction, or reduced circulation of content.*

Meta has produced documents in this category.

2. *All documents and communications referring or relating to any documents or communications from the Executive Branch of the United States Government, whether public or non-public, referring or relating to the moderation, deletion, suppression, restriction, or reduced circulation of content.*

Despite producing tens of thousands of pages chronicling Meta's extensive interactions with Executive Branch entities, including countless instances that Meta witnesses have testified would have generated internal correspondence, Meta has failed to produce nearly all of the internal communications "referring or relating to any documents or communications from the Executive Branch of the United States Government . . . referring or relating to the moderation, deletion, suppression, restriction, or reduced circulation of content."

3. *Documents sufficient to show the employees or individuals who are or have been responsible for developing, applying, or executing Meta's policies referring or relating to the moderation, deletion, suppression, restriction, or reduced circulation of content.*

As a consequence of its failure to produce most of the internal documents, Meta has not substantially complied with this category. Meta has so far produced documents sufficient to show only the employees or individuals who are or have been responsible for communicating with the Executive Branch. For any employee or individual who has not interacted directly with the Executive Branch but has been responsible for developing, applying, or executing Meta's content moderation policies, Meta has not produced

documents sufficient to show the identities of these employees. These individuals, many of whom were responsible for implementing, at a practical level, the government's requests and demands, have therefore not been made available to the Committee for transcribed interviews. In fact, the Committee has learned the identities of some of these individuals only through transcribed interviews with other employees.

4. *Documents sufficient to show the employees or individuals who communicated with, or had or have the responsibility of communicating with, the Executive Branch of the United States Government regarding Meta's decisions or policies referring or relating to the moderation, deletion, suppression, restriction, or reduced circulation of content.*

Meta has produced documents in this category.

5. *All documents and communications referring or relating to Meta's communications with any person(s) outside the Executive Branch of the United States Government regarding the making of decisions or policies referring or relating to the moderation, deletion, suppression, restriction, or reduced circulation of content.*

Although Meta has produced some documents in this category, the Committee is in possession of a significant volume of communications, received from other custodians, involving Meta employees and non-governmental third-party entities "relating to the moderation, deletion, suppression, restriction, or reduced circulation of content," that Meta has not produced to the Committee. As such, Meta cannot be said to be in substantial compliance with this section of the subpoena's schedule.

In the months following the Committee's subpoena to Meta, Committee staff have frequently and consistently engaged with Meta's counsel in an effort to obtain compliance. Committee staff has participated in meetings with Meta's counsel on March 1, March 8, twice on March 14, March 31, twice on April 3, April 5, April 17, April 28, May 12, May 18, June 1, twice on June 5, June 12, June 16, June 28, June 29, June 30, July 7, July 8, July 10, July 14, July 19, July 20, twice on July 23, and July 24. The four meetings from June 29 to July 8 alone took over an hour and a half cumulatively. These meetings are in addition to the numerous emails and text messages sent to staff.

In particular, the June 5, July 7, July 10, July 23, and July 24 meetings, along with many of the above meetings, involved discussions specifically related to the production of internal documents. This list of meetings does not include a significant number of in-person conversations between Meta's counsel and Committee staff before and after transcribed interviews with current and former Meta employees. Many of these conversations, including a conversation after the May 31, 2023, transcribed interview of a Meta employee, likewise involved discussion of the production of internal communications.

The Committee has repeatedly stated its priorities regarding the internal communications of interest and has made a significant number of accommodations in the production process, including, *inter alia*, (1) (with the exception of this report) keeping private the names of current

and former Meta employees invited to testify before the Committee; and (2) redacting Meta employees' names in documents revealed in the Committee's staff reports.

Mark Zuckerberg has willfully failed to comply with the Committee's subpoena for documents. The subpoena's schedule and the instructions appended thereto make clear that Mark Zuckerberg is obligated to produce Meta's internal communications to the Committee. Meta has failed to timely comply with the Committee's subpoena, leaving the Committee no choice but to proceed with the use of its enforcement mechanisms.

META'S ROLE IN THE GOVERNMENT'S CENSORSHIP ENTERPRISE

Meta's complicity in the government-tech censorship enterprise can hardly be overstated. At the government's behest, Meta has removed specific posts and accounts, demoted certain types of content, and changed its policies in order to accommodate the government's censorship demands. This has been particularly true when it comes to censorship of content related to COVID-19 and the COVID vaccines, as well as content related to elections and election integrity. Those who have questioned the safety or efficacy of lockdowns, masks, and vaccines have often found themselves suspended from the platform or had posts removed from Meta's platforms.²³ In other words, in response to government interactions, Meta has censored individuals who questioned the federal government's position.²⁴

In some cases, Meta capitulated to bullying from the White House, usually conveyed through former Director of Digital Strategy for the White House Robert Flaherty or Senior Advisor to the Covid-19 Response Coordinator in the Biden Administration Andrew Slavitt.²⁵ In one communication with Meta, Flaherty's ominously warned Meta that his concern about the company's inadequate censorship came from "the highest (and I mean highest) levels of the [White House]."²⁶

During a transcribed interview with the Committee, Brian Rice of Meta described tense meetings with White House staff, including Flaherty, due to "frustration and disagreements over what should be on the platform with respect to Covid vaccine information" because Flaherty "thought that . . . they should cover more in terms of what content should be removed or acted upon with respect to COVID vaccine information."²⁷ Rice described how Slavitt was likewise frustrated.²⁸ In her transcribed interview, Carrie Adams, Rice's subordinate, corroborated Rice's articulated impressions, explaining that Flaherty and Slavitt "communicated that they would like

²³ Allysia Finley, "Officials Neglect Covid Vaccines' Side Effects," THE WALL STREET JOURNAL (May 12, 2023).

²⁴ See *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293 at 154 (order and judgment granting preliminary injunction) ("Opposition to COVID-19 vaccines; opposition to COVID-19 masking and lockdowns; opposition to the lab-leak theory of COVID-19; opposition to the validity of the 2020 election; opposition to President Biden's policies; statements that the Hunter Biden laptop story was true; and opposition to policies of the government officials in power. All were suppressed. It is quite telling that each example or category of suppressed speech was conservative in nature. This targeted suppression of conservative ideas is a perfect example of viewpoint discrimination of political speech. American citizens have the right to engage in free debate about the significant issues affecting the country.").

²⁵ *Id.* at 18, 24.

²⁶ *Id.* at 23, 27.

²⁷ House Judiciary Committee's Transcribed Interview of Brian Rice (June 20, 2023), at 24.

²⁸ *Id.* at 30.

to see more removal” and the White House subjected Meta to “pushback and criticism of our policies and enforcement.”²⁹

Presently available information demonstrates that the White House’s strongarming tactics succeeded. For example, following the contentious meetings depicted by Rice and Adams, Facebook (a Meta subsidiary), noted in an email that in response to White House demands, the platform was censoring, removing, and reducing the virality of content discouraging vaccines even if such content did not “contain actionable misinformation.”³⁰ That content included First Amendment-protected speech about vaccination, speech discussing the choice to vaccinate in the context of civil liberties, and concerns related to mistrust in institutions or individuals.³¹ Facebook repeatedly complied with White House orders to report the steps it was taking to “reduc[e] virality of vaccine hesitancy content.” The company was even cowed into removing and demoting the accounts and posts of specific individuals such as Tucker Carlson and the “disinformation dozen,” a group which included Robert F. Kennedy, Jr., by the White House’s threats of regulation and other adverse consequences.³²

Meta appeared to serve willingly as a partner in the censorship regime.³³ The company was in constant touch with the Centers for Disease Control and Prevention (CDC) throughout the COVID pandemic, frequently attending meetings with the agency, including meetings termed “Be on the Lookout [for misinformation].”³⁴ These “BOLO” meetings provided Meta the opportunity to give reports and updates about the content and accounts Meta was censoring in accordance with the CDC’s orders.³⁵ Meta also changed its content moderation policies to require the suppression of content that the CDC deemed false and provided a special portal through which the CDC and other agencies, including the Census Bureau, could—and did—report purported “misinformation.”³⁶ As the federal court in *Missouri v. Biden* recently put it, the CDC became the “determiner of truth” for Meta, significantly encouraging the suppression of free speech and thereby turning the company’s censorship into state action.³⁷

However, the full picture of the government’s involvement of Meta’s censorship remains incomplete. While significant circumstantial and some direct evidence exists that Meta changed its policies *and* ramped up enforcement of existing policies due to pressure and threats from the Executive Branch, only the companies’ internal communications can establish the degree to which the Executive Branch drove or influenced Meta’s censorship.

²⁹ House Judiciary Committee’s Transcribed Interview of Carrie Adams (May 31, 2023), at 54, 59.

³⁰ See *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293 at 14–17 (memorandum ruling granting preliminary injunction).

³¹ *Id.* at 17.

³² *Id.* at 17, 22–23, 34–37.

³³ Of course, any apparent cooperation should be interpreted against the backdrop of the White House’s threats and other coercive tactics.

³⁴ *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293 at 38–49 (memorandum ruling granting preliminary injunction).

³⁵ See *Id.*

³⁶ *Id.* at 42.

³⁷ *Id.* at 105.

A parallel example from the social media platform Twitter shows why this is the case. Former *New York Times* journalist Alex Berenson was removed from Twitter despite promises from company executives in the summer of 2021 that his account was not in jeopardy.³⁸ Through discovery in his own lawsuit as well as information revealed through the Twitter files, Berenson obtained communications between Twitter employees discussing the pressure the company faced from the White House, and buttressing his allegation that he was removed from the platform because of the Executive Branch’s demands.³⁹ For apparent self-preservation reasons, Meta does not want to disclose all of the internal communications demonstrating the degree to which it too served as an arm of the Executive Branch in the censorship enterprise.

Whether Meta colluded or cooperated with the Executive Branch, or succumbed to coercion, it enabled the federal government’s First Amendment violative conduct, as a federal court recently recognized.⁴⁰ Carefully analyzing state action jurisprudence, the court concluded that the White House and numerous federal agencies “‘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.”⁴¹ For these reasons, it is critical that the Committee obtain access to internal and other communications that Meta has so far withheld.

HISTORICAL PERSPECTIVES ON CONTEMPT

The Supreme Court recognizes that citizens have a duty to cooperate with Congress “in its efforts to obtain the facts needed for intelligent legislative action.”⁴² To this end, “[i]t is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation.”⁴³

Congress is not without recourse when individuals fail to comply with their above-described obligations: the federal constitution has long been understood to authorize Congress to hold individuals in contempt when they prevent it from effectuating its legislative obligations.⁴⁴ Following British Parliamentary precedent, Congress traditionally held people in contempt for such offenses as attempting to bribe a member of the legislature or refusing to answer congressional inquiries. For example, Congress first used its contempt power in 1795 against two businessmen who tried to secure a land deal by bribing House members.⁴⁵

³⁸ *Berenson v. Biden, Jr.*, No. 1:23-cv-03048 (S.D.N.Y. Apr. 12, 2023), ECF No. 1 at 20–22 (complaint).

³⁹ Vivek Ramaswamy and Jed Rubenfeld, *Twitter Becomes a Tool of Government Censorship*, WALL STREET JOURNAL (Aug. 17, 2022).

⁴⁰ *Missouri v. Biden*, No. 3:22-cv-01213 (W.D. La. Jul. 4, 2023), ECF No. 293 (memorandum ruling granting preliminary injunction).

⁴¹ *Id.* at 117.

⁴² *Watkins v. United States*, 354 U.S. 178, 188 (1957).

⁴³ *Id.* at 188–89.

⁴⁴ *See, e.g., Marshall v. Gordon*, 243 U.S. 521 (1917) (“in virtue of the grant of legislative authority, there would be a power implied to deal with contempt insofar as that authority was necessary to preserve and carry out the legislative authority given.”).

⁴⁵ Todd Garvey and Alissa M. Dolan, Cong. Rsch. Serv., RL34097, *Congress’s Contempt Power: Law, History, Practice & Procedure* 4–5 (2008).

In the modern era, individuals are usually held in contempt of Congress for obstructing a congressional investigation by refusing to appear or given testimony or to comply with subpoenas. The Supreme Court has made clear that the Constitution grants Congress use of the contempt power in such situations. In *In re Chapman*, 166 U.S. 661 (1897), the Court upheld a contempt conviction based on refusal to answer questions in a congressional investigation into corruption charges among several senators. In *Jurney v. MacCracken*, 294 U.S. 125, 151-52 (1935), the Court affirmed Congress's power to charge with contempt a witness who had removed and destroyed papers he had been subpoenaed to produce.

In March 2016, the Senate voted unanimously to seek judicial enforcement of a subpoena to Carl Ferrer, Chief Executive Officer of the classified ad website Backpage.com, despite arguments that the Senate subpoena violated the First Amendment.⁴⁶ The Committee Chairman described Backpage's arguments that the congressional inquiry violated the company's First Amendment rights as "nonsense."⁴⁷ Backpage's arguments failed in federal district court and both the Court of Appeals and the Supreme Court denied applications for a stay pending appeal.⁴⁸

CONCLUSION

The Committee will continue to conduct its oversight of how and to what extent the Executive Branch coerced and colluded with companies and other intermediaries to censor speech. The Committee's subpoena imposes legal obligations on Mark Zuckerberg to comply and produce responsive Meta's internal documents. Meta's refusal to comply with this part of the subpoena impedes the Committee's oversight. After months of the Committee's persistent efforts at accommodation and attempts to work with Meta in good faith, the Committee has exhausted all avenues for obtaining information. Therefore, to enforce its subpoena issued to Mr. Zuckerberg, the Committee is necessitated to initiate criminal contempt proceedings pursuant to 2 U.S.C. § 192, for Mr. Zuckerberg's failure to comply with the subpoena issued to him.

COMMITTEE CONSIDERATION

On July __, 2023, the Committee met in open session and ordered the Report favorably reported with an amendment in the nature of a substitute, by a recorded vote of __ to __, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the Committee states that the following recorded votes occurred during the Committees consideration of the Report:

COMMITTEE OVERSIGHT FINDINGS

⁴⁶ 162 CONG. REC. S1568 (daily ed. Mar. 17, 2016).

⁴⁷ Dustin Volz, *U.S. Senate holds Backpage.com in contempt over sex trafficking ads*, REUTERS (Mar. 17, 2016).

⁴⁸ Todd Ruger, *Supreme Court Allows Senate Subpoena for Sex Trafficking Probe*, ROLL CALL (Sept. 13, 2016).

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The Committee finds the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the *Congressional Budget Act of 1974*, and the requirements of clause 3(c)(3) of rule XIII and section 402 of the *Congressional Budget Act of 1974*, to be inapplicable to this Report. Accordingly, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the Report.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of this Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, this Report is to enforce the Committee's authority to subpoena and obtain documents related to determining how and to what extent the Executive Branch has coerced and colluded with companies and other intermediaries to censor speech, in order to develop effective legislation that will protect and advance Americans' constitutionally protected rights to free speech, expression and association.

ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, this Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.