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Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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August 22, 2023

The Honorable Jim Jordan
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan:

I write to you regarding the amicus brief you filed before the U.S. Court of Appeals for the Fifth Circuit in *Missouri v. Biden*, Case No. 23-30445, on Monday, August 7, 2023.¹

The counsel you retained to file the brief on your behalf appear to have selectively quoted documents produced to the House Judiciary Committee and testimony obtained by the Committee during transcribed interviews. As you are no doubt aware, Rule 11 of the Federal Rules of Civil Procedure requires that attorneys provide facts to the court that they believe are truthful and supported by evidence and that such facts are not provided for frivolous or improper purposes.² Courts have broad discretion to impose sanctions on attorneys for violations of Rule 11.³ Knowingly misrepresenting facts to a United States court as amici directly contradicts the expectation that barred attorneys—who are subject to strict ethical requirements—will act in good faith and remain truthful in any and all advocacy, including amicus briefs. Both the Western District of Louisiana and the Fifth Circuit Court have a long history of imposing, or upholding lower courts' impositions of, Rule 11 sanctions against attorneys who materially misrepresent or omit facts in court proceedings, including monetary sanctions, suspensions, and public reprimands.⁴

¹ Brief of Representatives Jim Jordan, Kelly Armstrong, Andy Biggs, Dan Bishop, Kat Cammack, Russell Fry, Lance Gooden, Harriet Hageman, Mike Johnson, Thomas Massie, Barry Moore, & Elise Stefanik as Amici Curiae Supporting Plaintiffs-Appellees and Affirmance, *Missouri v. Biden*, No. 23-30445 (5th Cir. Aug. 7, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/ab.pdf> [Hereinafter Brief of Jordan et al.].

² Fed. R. Civ. P. 11(b).

³ Fed. R. Civ. P. 11(c).

⁴ See, e.g., *Skidmore Energy, Inc. v. KPMG*, 455 F.3d 564, 568 (5th Cir. 2006); see also *White v. Reg'l Adjustment Bureau, Inc.*, 641 F. App'x 298 (5th Cir. 2015) (upholding the lower court's imposition of Rule 11 sanctions and imposing a suspension of an attorney for one year for his bad faith misrepresentations to the court about relevant damages and his professional background); *Barrett-Bowie v. Select Portfolio Servicing, Inc.*, 631 F. App'x 219 (5th Cir. 2015) (upholding lower court's imposition of Rule 11 sanctions in the form of a reprimand against an attorney

I. Misleading Statements Regarding the FBI’s Foreign Influence Task Force

The brief your counsel submitted misleadingly states that Laura Dehmlow, the head of the Federal Bureau of Investigation’s (FBI’s) Foreign Influence Task Force, relayed an incident in which an FBI employee confirmed to a Twitter employee that “the laptop was real,” implying that the FBI had authenticated the so-called Hunter Biden laptop and that the FBI “knew the laptop was not Russian disinformation.”⁵ This is false. In fact, Ms. Dehmlow made clear that she was not directly quoting that employee and could not recall whether she had been present for the exchange, that “real” was not actually the language used, and that when she herself used the term “real” she just meant that a laptop “existed,” not that it had been authenticated in any way.⁶ She even expressly stated that she had no knowledge of whether the laptop was authentic and that anyone who said otherwise would be “misrepresenting what [she] said.”⁷

Minority Counsel. So if someone were to leave here today, were to leave this interview and were to suggest or imply or state that when you said “the laptop was real,” that it meant that the FBI had affirmatively determined in October 2020 that the laptop belonged to Hunter Biden, that the contents belonged to Hunter Biden, that the contents had not been manipulated in some way, they would be misrepresenting what you said, correct?

Ms. Dehmlow. They would be misrepresenting what I said because I don’t have much knowledge of that.⁸

Indeed, throughout her interview, Ms. Dehmlow pushed back against attempts to mischaracterize her testimony:

Majority Counsel. Just to clarify, when you say the laptop was real, you mean it was, like, a real laptop or that it belonged to Hunter Biden or what exactly?

Ms. Dehmlow. Since I wasn’t -- I don’t recall the specifics. I think my understanding is generally we confirmed the existence of the laptop.⁹

for failing to withdraw frivolous claims); *Jenkins v. Methodist Hosps. of Dallas, Inc.*, 478 F.3d 255 (5th Cir. 2007) (upholding the lower court’s *sua sponte* public-reprimand sanctions against plaintiff’s attorney for a misrepresentation in his brief where he falsely inserted the racially-charged word “Boy” at the beginning of a relevant statement); *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018 (5th Cir. 1994) (upholding lower court’s imposition of Rule 11 sanctions in the form of \$30,000 against an attorney for not conducting reasonable inquiry into facts underlying his client’s allegations related to an insurance claim).

⁵ Brief of Jordan et al., at 18-19.

⁶ Interview with Laura Dehmlow, at 35-36 (Jul. 17, 2023) (transcript on file with the Comm.).

⁷ *Id.*, at 55.

⁸ *Id.*

⁹ *Id.*, at 31.

Mr. Jordan. You said – that’s the word you used. You said the agent said the laptop was real. Is that right?

Ms. Dehmlow. He confirmed at some point that the laptop existed, yes. But, again, I don’t recall the specific language, and I wasn’t there.¹⁰

Majority Counsel. To the agent who said that the laptop was real, was that -- was the individual who said that information one of the agents who would regularly attend these bilateral calls?

Ms. Dehmlow. So, again, I want to be crystal clear about what I know about that, and it was essentially a confirmation that the laptop existed. I don’t know if the wording was specifically the laptop was real.¹¹

The fact that a laptop existed is hardly news. In fact, Robert Costello, an attorney for Rudy Giuliani—who himself has claimed credit for bringing the laptop to light as part of “an extension of his years-long efforts to work with Ukrainians to dig up dirt on the Bidens”¹²—told Fox News in October 2020 “that an Apple MacBook Pro alleged to have belonged to the younger Biden was disassembled and an external hard drive was turned over to the FBI in December – after the computer repair shop owner in Biden’s home state of Delaware notified federal investigators about their existence.”¹³

To date, you have yet to produce any evidence showing that the FBI confirmed, internally or externally, that the laptop in their possession was authenticated as truly belonging to Hunter Biden as of October 2020. Further, the amicus brief claims that after meeting with Twitter, “the FBI had its story straight” in a meeting with Facebook and did not comment on the alleged Hunter Biden laptop.¹⁴ In fact, documents your counsel declined to include in the brief show that the FBI did in fact confirm the existence of a laptop to Facebook in October 2020, but Facebook did not receive any information about the laptop’s authenticity or ownership—exactly the same information that Ms. Dehmlow stated was provided to Twitter.¹⁵

¹⁰ *Id.*, at 35-36.

¹¹ *Id.*, at 40-41.

¹² Asawin Suebsaeng & Erin Banco, *Rudy: Only ‘50/50’ Chance I Worked With a ‘Russian Spy’ to Dig Dirt on Bidens and Ukraine*, DAILY BEAST (Oct. 17, 2020), <https://www.thedailybeast.com/rudy-giuliani-says-theres-only-5050-chance-i-worked-with-a-russian-spy-to-dig-dirt-on-bidens>.

¹³ Hollie McKay & Mike Emanuel, *Giuliani’s lawyer says he has hard drive with Hunter Biden texts, emails, videos of ‘compromising positions’*, FOX NEWS (Oct. 14, 2020), <https://www.foxnews.com/politics/hunter-biden-hard-drive-giuliani-attorney-texts-emails-videos-very-compromising-positions>.

¹⁴ Brief of Jordan et al., at 19.

¹⁵ Facebook policy manager, “Facts about the Laptop” (Oct. 15, 2020) (on file with the Comm.).

Facts about the Laptop

1. FBI confirmed that they have one or more laptops in their custody
2. It was allegedly dropped off at a repair shop in Delaware
3. No evidence that this is Hunter Biden's laptop save some stickers
4. Hunter Biden moved to Los Angeles in 2018, a fact that the NY Post also reported on previously
5. Shop owner allegedly did not know who dropped it off, but then produced a receipt for Hunter Biden
6. The shop owner allegedly alerted the FBI to the existence of the laptop
7. The shop owner allegedly made copied of the contents of the computer for Rudy Giuliani's lawyer (this likely violates the shop owner's responsibility to safeguard this private data)
8. The grand jury subpoena for the laptop does not connect the laptop to Hunter Biden
9. **These are private communications that - if authentic - belong to the person who owns the laptop**
10. **The repair guy disclosed those communications to third parties without approval of the owner (his own claims)**
11. **Those communications were further disseminated by individuals also without approval of the owner (their own claims)**
12. The disinfo research community is broadly concerned that this pattern of dissemination (seed compromising and possibly forged material with an ideologically aligned cutout, then get that information published in a less-than-reputable press outlet)
13. The content from the laptop itself is unverified and exists in image form. Some analysts have alleged there may be evidence of photoshop or manipulation, including image file metadata showing it was processed in photoshop before being turned into an image file.
14. Biden had White House scheduled events at the same time as alleged "meeting."
15. The Post said Giuliani gave it a copy of the drive on Sunday, nearly a year after his lawyer was said to have been given a copy of it.

Internal documents also show that Facebook had "Medium Confidence" that the laptop source documents were manipulated to facilitate the narrative of an influence operation.¹⁶

¹⁶ Facebook policy manager, "Five Factors - Hack/Leak Policy Assessment - Laptop 1," at 4-5 (Oct. 20, 2020) (on file with the Comm.).

CONTENT FACTORS

5. Do we or other experts have clear evidence that the source documents are manipulated to facilitate the narrative of an influence operation?

Medium Confidence

	Source	Primary Sources	Intel	Relevant Links
1	Thomas Rid	Metadata	PDF/image metadata is suspicious - seems to be recently created.	https://twitter.com/RidT/status/1316441781043712005
2	The Daily Beast	Metadata	metadata on the PDF files purporting to show Hunter Biden’s emails published by the <i>NYPost</i> suggest they were created on a Mac laptop on September 29 and October 10, 2019. However, Sen. Ron Johnson (R-WI) and his staff told other lawmakers on Wednesday that they had received materials related to the contents of the <i>Post</i> story on September 25, the day after the publishing of his team’s Hunter Biden report....The timing of the creation of those PDF files—several months after Biden allegedly dropped off his laptop at the PC repair store in April 2019—raises questions about how and when Giuliani came into possession of the purported emails.”	https://www.thedailybeast.com/trump-knew-for-weeks-that-rudy-giuliani-hit-on-hunter-biden-was-coming
3	Business Insider Investigations Team	Metadata	The metadata that Poulsen tweeted indicated that the PDF of the May 2014 email was created on October 10, 2019, and that the PDF of the April 2015 email was produced on September 28, 2019.	https://www.businessinsider.com/new-york-post-hunter-joe-biden-giuliani-red-flags-disinformation-2020-10
4	Business Insider Investigations Team	Repair shop owner	The owner of the repair shop said that he wasn't sure the laptop belonged to Hunter Biden but that the machine had a sticker from the Beau Biden Foundation	https://www.businessinsider.com/new-york-post-hunter-joe-biden-giuliani-red-flags-disinformation-2020-10
5	Business Insider Investigations Team	Leaked content vs. Biden schedule	In the alleged April 2015 email, Pozharskiy thanked Hunter Biden for inviting him to Washington, DC, to meet with Joe Biden. But there's no evidence Pozharskiy actually met the former vice president. The Biden campaign said in a statement that it "reviewed Joe Biden's official schedules from the time and no meeting, as alleged by the New York Post, ever took place."	https://www.businessinsider.com/new-york-post-hunter-joe-biden-giuliani-red-flags-disinformation-2020-10
6	NY Times, NY Post, other publications	Photos, quotes, interviews	Hunter Biden moved to Los Angeles in 2018.	https://www.nytimes.com/2020/02/28/arts/design/hunter-biden-art.html
7	The Washington Post	wide variety of sources, quotes, interviews	Numerous previously-debunked theories included in NY Post article	https://www.washingtonpost.com/politics/2019/09/23/fact-checking-trumps-latest-claims-biden-ukraine/
8	NY Mag Intelligencer	metadata	Hunter Biden’s “emails” were created 3 months before Rudy Giuliani was supposedly told of their existence, raising questions of who exactly created these files in the first place.	https://twitter.com/ccallahan1988/status/1316618582269276160
9	n/a	metadata	Pozharskiy's name is spelled wrong consistently in the "email" and the Metadata . Vadym Pozharskiy vs. Vadim Pozharskiy = Ukrainian vs. Russian spelling	
10	SiriusXM	Giuliani	"was left by Hunter Biden, in an inebriated, heavily inebriated state with the merchant." in contrast to the story initially told by the repair shop owner	https://twitter.com/IsaacDovere/status/1316787994414796800?s=20
11	The Daily Beast	Repair shop owner	Shop owner alleges the FBI called him for tech support and for advice on which cord to use with the laptop	https://www.thedailybeast.com/man-who-reportedly-gave-hunters-laptop-to-rudy-speaks-out-in-bizarre-interview
12	n/a	email content analysis	In the "emails," the upper right hand corner has a "VP". That would indicate the person signed in to Gmail is VP (Vadym). When you receive an email from Gmail, this does not show up. So this is the SENT version of the email. This is NOT the received version. If you	https://twitter.com/BigotedVsBigots/status/1316427768519892992?s=20

Source	Primary Sources	Intel	Relevant Links	
		print a received version of an email from Gmail on a PC, you don't even get the initials. If this was copied off of Hunter's computer and he is using a company email address then Google wouldn't be the provider, but that really looks like a Google icon.		
13	n/a	email content analysis	Also, all of this is based upon someone taking a hard drive out of a computer and putting it into another computer. This would mean they were able to get a PST or OST file, meaning it would not be gmail, which is cloud-based. As we are seeing Gmail, this has to be fake.	https://twitter.com/amadeov/status/1316449438416744450?s=20
14	n/a	email content analysis	some content analysis indicates that the gmail icon is a different resolution than the rest of the text -- analysis shows how these emails would look normally	https://eddiekrassenstein.medium.com/alleged-hunter-biden-email-from-giuliani-appears-forged-2d55b08140cc
15	The Washington Post	email content analysis	An Eastern European expert in digital forensics who has examined some of the Ukrainian documents leaked to the New York Post told me he found anomalies — such as American-style capitalization of the names of ministries — that suggest fakery.	https://www.washingtonpost.com/opinions/the-truth-behind-the-hunter-biden-non-scandal/2020/10/16/798210bc-0fd1-11eb-8074-0e943a91bf08_story.html
16	TechCrunch	Analysis	The serial number of the laptop suggests it was a 2017 MacBook Pro, probably running Mojave. Every Mac running Lion or later has easily enabled built-in encryption. It would be unusual for anyone to provide a laptop for repair that had no password or protection whatsoever on its files.	https://techcrunch.com/2020/10/14/suspect-provenance-of-hunter-biden-data-cache-prompts-skepticism-and-social-media-bans/
17	Dustin Miller, data engineer	alleged repair shop documents	Docs show the laptop was dropped on Apr 12, 2019. They also show an external drive and its serial number. Western Digital's web site says that drive's **3-year** warranty expires Apr 18, 2022...meaning it was manufactured Apr *18* , 2019.	https://twitter.com/spdustin/status/1316621229751762945?s=21
18	Mediaite	two sources familiar with the matter	Fox News passed on this story over credibility concerns. according to two sources familiar with the matter, the lack of authentication of Hunter Biden's alleged laptop, combined with established concerns about Giuliani as a reliable source and his desire for unvetted publication, led the network's news division to pass.	https://www.mediaite.com/tv/exclusive-fox-news-passed-on-hunter-biden-laptop-story-over-credibility-concerns/
19	The Daily Beast	Giuliani	Trump personal attorney Rudy Giuliani argued on Tuesday that the American public deserved to see reports based off material from Hunter Biden's laptop "even if it isn't accurate."	https://www.thedailybeast.com/giuliani-says-even-if-hunter-laptop-story-isnt-accurate-americans-are-entitled-to-know-it

The brief your counsel submitted claims that the FBI's actions intentionally caused the censorship of an October 14, 2020, *New York Post* story that reported on emails that allegedly came from this laptop.¹⁷ Not only is there no evidence of this intentional action by the FBI, but there is also no evidence that Facebook treated the *New York Post* story with any prejudice in its policy enforcement. Notwithstanding this "Medium Confidence" assessment, Facebook only demoted the *New York Post* story for seven days—the same automatic temporary demotion that was applied to every piece of content sent to third-party fact checkers.¹⁸ As the head of misinformation policy at Meta (formerly known as Facebook)¹⁹ explained:

¹⁷ Brief of Jordan et al., at 21.

¹⁸ Interview with a Meta content policy director, at 97 (Jul. 25, 2023) (transcript on file with the Comm.).

¹⁹ The company Facebook, which owned the Facebook, Instagram, and WhatsApp products, became Meta on October 28, 2021. Press Release, *Introducing Meta: A Social Technology Company*, META (Oct. 28, 2021), <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>; Chris Stokel-Walker, *Why has Facebook changed its name to Meta and what is the metaverse?*, NEW SCIENTIST (Oct. 29, 2021), <https://www.newscientist.com/article/2295438-why-has-facebook-changed-its-name-to-meta-and-what-is-the->

Minority Counsel. And when the story was demoted, that was pursuant to, I guess, then-Facebook's general policy of demoting content while it was being fact checked.

The Witness. That's correct –

Minority Counsel. At the time.

The Witness. -- the policy that we would temporarily demote content to give fact checkers the opportunity to investigate and determine whether to rate and review content.

Minority Counsel. And so every piece of content that was fact checked would be demoted in that same way?

The Witness. The content that our systems sent to fact checkers would've been demoted in the same way.

Minority Counsel. And so this wasn't treated any differently -- the Hunter Biden story wasn't treated any differently than other content that was sent to the fact checkers.

The Witness. That's correct.

Minority Counsel. And, as you mentioned, it was still available on the platform?

The Witness. That's correct.

Minority Counsel. It would still show up in people's news feeds, just lower?

The Witness. That's correct. And people could share the story if they chose. It was always available.²⁰

In just the two days after the *New York Post* story's publication, the story was still shared on Facebook nearly 400,000 times and posts containing a link to the story generated nearly 1.5 million interactions.²¹ After the seven-day fact checking period, no third-party fact checker had rated the content on Facebook, so Facebook ceased demotion of the *New York Post* story.²²

metaverse/. This letter largely involves events predating the rebranding, and therefore primarily refers to Facebook, but current employees of the company are referred to as Meta employees.

²⁰ Interview with a Meta content policy director, at 108-109 (Jul. 25, 2023) (transcript on file with the Comm.).

²¹ Paige Leskin, *The New York Post's dubious Hunter Biden article was shared 300,000 times on Facebook even after the company said it limited its reach*, BUS. INSIDER (Oct. 15, 2020), <https://www.businessinsider.com/facebook-new-york-post-hunter-biden-shared-thousands-after-restrictions-2020-10>.

²² Interview with a Meta content policy director, at 97-98 (Jul. 25, 2023) (transcript on file with the Comm.).

II. Misrepresentations of Key Witness Testimony About Facebook Policy Development

Likewise, the brief that your counsel filed misrepresents the testimony of David Agranovich, Meta’s Director for Global Threat Disruption, and Nathaniel Gleicher, Meta’s Head of Security Policy. The amicus brief cites their testimony to the Committee in support of the claim that Facebook’s hack and leak policy was developed in response to questions from the FBI about whether they had such a policy.²³ But the witnesses said no such thing. In fact, both of these witnesses—who personally worked on the development of Facebook’s hack and leak policy—said that they did *not* recall discussing the policy with the U.S. government. In the portion of the interview transcript your counsel attached to the brief as Exhibit 15, Mr. Agranovich testified as follows:

Majority Counsel. And did you ever consult with the government regarding your -- or regarding Meta's hack and leak policy?

Mr. Agranovich. I recollect that we discussed the fact of us working on hack and leak issues in meetings with the government, but I don’t believe we consulted with the government on the policy itself.

Majority Counsel. Okay. Did the government ever contact you to comment on your hack and leak policy?

Mr. Agranovich. Not to my recollection.²⁴

In a portion of the interview that your counsel omitted from the brief, Mr. Agranovich testified even more clearly that Facebook did not discuss its hack and leak policy with the government:

Minority Counsel. And [hack and leak] was an issue that I believe you stated you discussed in some of your meetings with government agencies.

Mr. Agranovich. That's correct.

Minority Counsel. Okay. And to be clear, you discussed the hack and leak context generally and the need to guard against hack and leak.

Mr. Agranovich. That's my recollection, in particular the need for the broader society, industry, government to be aware of the risk of hack and leak operations.

²³ Brief of Jordan et al., at 17-18.

²⁴ Interview with David Agranovich, at 43-44 (May 16, 2023) (transcript on file with the Comm.).

Minority Counsel. Okay. And to be clear, you did not discuss with the government what Meta's hack and leak policy should be.

Mr. Agranovich. That's correct.²⁵

Mr. Agranovich's testimony contradicts the claim that Facebook adopted its hack and leak policy in response to pressure from the FBI. The only other evidence your counsel cite in support of this claim is the testimony of Mr. Gleicher.²⁶ But the portion of the transcript that your counsel included in the brief as evidence says nothing about the FBI at all:

Majority Counsel. You mentioned the community standards. Is the hack and leak policy separate from the CIB [coordinated inauthentic behavior] policy?

Mr. Gleicher. Yes.

Majority Counsel. Can you state again if your team has primary responsibility for the enforcement of the hack and leak policy?

Mr. Gleicher. Yes.

Majority Counsel. Do you know when that policy was first adopted?

Mr. Gleicher. I believe it was adopted -- I don't remember the exact date but it was sort of mid-2020.

Majority Counsel. Did you work on the development of that policy?

Mr. Gleicher. Yes.

Majority Counsel. And do you recall which other teams, if any, from Facebook were involved in the development of that policy?

Mr. Gleicher. I don't know about specific teams. But within [Meta's Vice President of Content Policy]'s org, there were a number of people thinking about issues around the 2020 elections at that time.

Majority Counsel. So is it concern about the 2020 elections that led Facebook to adopt a hack and leak policy?

Mr. Gleicher. In part, yes.

Majority Counsel. What specifically about the 2020 election?

²⁵ *Id.*, at 63-64.

²⁶ Brief of Jordan et al., at 18 n.41.

Mr. Gleicher. As we were preparing for the 2020 elections, we identified that one of the likely risks it was important to prepare for was a hack and leak campaign from a foreign threat actor like Russia.

Majority Counsel. And by “we,” do you mean Facebook?

[Discussion off the record.]

Mr. Gleicher. My apologies. Could you say that again?²⁷

The exhibit your counsel submitted omits the subsequent portion of the transcript where Mr. Gleicher answered Majority Counsel’s question with “yes,” explaining that the “we” in his answer about identifying risks to the 2020 election was a reference to Facebook:

Majority Counsel. In your previous answer you mentioned "we." Did you mean, when you say "we," are you referring to the company? ... Your team.

Mr. Gleicher. We -- in reference to what? My apologies. What did I say "we" in reference to?

Majority Counsel. You said it was with reference to the 2020 election and that you -- "we" had identified that it was likely -- there was likely a risk relating to hack and leak. Who is doing the identifying?

Mr. Gleicher. "We" is the company, yes.²⁸

Nor does the amicus brief include the following exchange, which was the only time Mr. Gleicher was asked about whether anyone outside of Facebook played a role in the development of the hack and leak policy:

Majority Counsel. Okay. Did anyone on your team, when developing the Facebook's hack and leak operations, ever consult with external partners when developing that policy?

Mr. Gleicher. I don't recall if that happened.²⁹

There is no evidence—not in the documents that were submitted to the Fifth Circuit Court, not in the more than 55,000 pages of documents produced to the Committee, and not in the testimony from ten different Meta employees—that Facebook’s adoption of a hack and leak

²⁷ Interview with Nathaniel Gleicher, at 18-19 (Jun. 21, 2023) (transcript on file with the Comm.).

²⁸ *Id.*, at 19-20.

²⁹ *Id.* at 33.

policy was a response to actions by the FBI. Yet the brief your counsel submitted makes this unsupported claim, citing to evidence that contradicts it.

The amicus brief's reference to Facebook's hack and leak policy is in the context of its discussion of the October 14, 2020, *New York Post* story.³⁰ What the brief fails to mention, though, is that, after thorough assessment,³¹ Facebook ultimately determined that the hack and leak policy did not apply to the *New York Post* story,³² so Facebook only temporarily demoted the story pursuant to other existing policies.³³ Not only is there no evidence that Facebook's policy was developed in response to the FBI, but the hack and leak policy that your counsel claim was initiated by the government was not even applied to the brief's key example of so-called "censorship."

III. Misleading Statements Regarding COVID-Related Communications

The brief submitted by your counsel claims that "the documents obtained thus far confirm that the companies censored information and altered their content moderation policies because of pressure from the Biden Administration to rid their platforms of 'misinformation.'"³⁴ In support of this statement, your counsel cite to certain internal Facebook documents. Your counsel have misrepresented these documents through both substantive omissions and factual misstatements.

For example, the amicus brief claims that Facebook demoted a Tucker Carlson video about the COVID vaccine "to appease the Administration."³⁵ This is false. The email chain that your counsel appended to the brief as Exhibit 3 explains that the Tucker Carlson "video is receiving 50% demotion for seven days as it is in the queue to be fact checked."³⁶ Meta employees have testified that such demotion was an automatic procedure that applied to any content that the company determined should be sent to fact checkers to give those third parties "the opportunity to investigate and determine whether to rate and review content."³⁷ The Committee has not received any evidence indicating that that the video was ever removed from Facebook, and it remains on Facebook today.³⁸ In fact, the email chain that your counsel included as Exhibit 3 shows that the company had expressly determined *not* to remove this post.³⁹ In that email chain, a Facebook employee explains that the video would not be removed

³⁰ Brief of Jordan et al, at 17-21.

³¹ Facebook policy manager, "Five Factors - Hack/Leak Policy Assessment - Laptop 1" (Oct. 20, 2020).

³² Interview with David Agranovich, at 74-75 (May 16, 2023) (transcript on file with the Comm.); Interview with Nathaniel Gleicher, at 67-68 (Jun. 21, 2023) (transcript on file with the Comm.).

³³ Interview with a Meta content policy director, at 97 (Jul. 25, 2023) (transcript on file with the Comm.).

³⁴ Brief of Jordan et al., at 6-7.

³⁵ *Id.*, at 8.

³⁶ Email from Brian Rice to Nick Clegg et al. (Apr. 17, 2021, 6:37 PM).

³⁷ Interview with a Meta content policy director at 109 (Jul. 25, 2023) (transcript on file with the Comm.); *see also* Interview with a Meta content policy director at 99 (Jul. 25, 2023) (transcript on file with the Comm.) ("[O]ur approach under our misinformation policies would be to send the content to fact-checkers and defer to them to investigate the facts.").

³⁸ Tucker Carlson Tonight, *J&J Vaccine Paused Over Blood Clot Concerns*, FACEBOOK (Apr. 13, 2021), <https://www.facebook.com/watch/?v=1145773552514245>.

³⁹ Email from Brian Rice to Nick Clegg et al. (Apr. 17, 2021, 6:37 PM).

because “it does not violate [Facebook’s] policies.”⁴⁰ Likewise, the Committee has received no evidence suggesting that this post was demoted beyond the company’s automatic seven-day fact checking period. In reality, therefore, this Tucker Carlson video is an example of Facebook acting independently and pursuant to its own policies—not pursuant to government coercion.

Your counsel further misrepresented evidence in the allegation that “a White House official questioned whether Facebook could ‘change [its] algorithm’” to promote more authoritative news sources.⁴¹ In truth, the notes from the call between White House and Facebook employees, Exhibit 5 to the brief, show White House staff seeking data or information that would help assess the effect of online misinformation on users’ real world attitudes and behavior.⁴² Specifically, the staff sought information about whether Facebook had “a mechanism to check the material impact” of different algorithmic feeds—far different than affirmatively asking the company to change its algorithms.⁴³

The overarching falsehood in the brief submitted by your counsel is that the federal government coerced Facebook into taking any specific action related to COVID-19 content moderation. While the amicus brief cites emails and meeting notes about the White House’s comments on Facebook’s content moderation decisions, it fails to produce any reliable evidence that these communications caused Facebook to take action on any particular piece of content beyond its usual procedures. For example, the brief your counsel filed cites an email that refers to a “vaccine discouraging humorous meme” that the White House asked Facebook to remove.⁴⁴ However, Facebook did not remove the meme, and another policy executive explained that the meme “shouldn’t be removed as it’s humorous/satirical and arguably true.”⁴⁵ In fact, neither Facebook nor Meta ever removed the meme from its platforms, directly contradicting your counsel’s allegation that a White House advisor’s disapproval of the meme was part of a “successful months-long campaign to censor views expressing or supporting vaccine hesitancy.”⁴⁶ These facts likewise refute your counsel’s accusation that Facebook’s handling of the meme, which is still publicly available today,⁴⁷ was an example of how “the Biden Administration showed disdain and contempt for the First Amendment.”⁴⁸

Similarly, while the brief your counsel submitted references requests from the federal government, it fails to acknowledge that Facebook took no content policy enforcement actions based on the cited requests and often expressly disagreed with them. For instance, your counsel claim in the brief that documents “show that the Biden Administration pressured Facebook to

⁴⁰ *Id.*

⁴¹ Brief of Jordan et al., at 9.

⁴² Facebook employee’s notes of a call between White House personnel and Facebook employees on April 14, 2021.

⁴³ *Id.*, at -0053292.

⁴⁴ Brief of Jordan et al., at 8. The brief submitted by your counsel presents the email as a message that was sent to Facebook executives, when in reality, the email shows an earlier draft of a message addressed to the company’s leadership. (*Id.*; E-mail from Facebook employee to Facebook employees (Apr. 27, 2021, 11:58 AM).) The Committee has yet to see evidence of whether or not that draft message was actually sent to Facebook executives.

⁴⁵ Email from Facebook employee to Nick Clegg et al. (Apr. 28, 2021, 4:27 PM) (on file with the Committee).

⁴⁶ Brief of Jordan et al., at 7-8.

⁴⁷ Timothy McComas, FACEBOOK (Apr. 4, 2021), <https://www.facebook.com/td mcomas/posts/4106421952731017>.

⁴⁸ Brief of Jordan et al., at 12.

ensor information about the COVID vaccine’s side effects, even if the information was true,”⁴⁹ but do not explain that the cited internal emails actually demonstrate that Facebook employees did not agree with this suggestion and expressly stated, “We do not recommend pursuing this practice.”⁵⁰ To date, the Committee has received no evidence showing that Facebook or Meta censored information about vaccine side effects as a result of federal government coercion.

Moreover, your counsel failed to note that among the 55,000 pages of documents produced by Meta are numerous examples of the social media company *declining* to take action in response to requests from the government.⁵¹ For example, after the President’s official Instagram account was unintentionally not recommended to users for two weeks due to a technical issue, the White House asked if Instagram could promote the account as remediation.⁵² A Facebook employee responded, “we cannot boost your account in our recommendations.”⁵³ In another instance, a White House advisor said that it would be helpful if Facebook provided “a commitment” about the way certain vaccine news would spread on the platform to avoid promoting vaccine hesitancy and misinformation.⁵⁴ Facebook would not provide such a commitment and instead reiterated the company’s goal “to ensure that people have access to authoritative info about the vaccine.”⁵⁵

In two instances, the brief your counsel submitted links changes in Facebook’s content policies to external influence without appropriate context. First, your counsel claim that Facebook removed claims that COVID-19 was man-made or manufactured in response to pressure by the Biden Administration.⁵⁶ However, the amicus brief fails to include that a broad swath of outside stakeholders raised this issue with Facebook, and Facebook made its decision to remove content regarding COVID-19 being man-made or manufactured “following consultations with leading health organizations, including the World Health Organization.”⁵⁷ In addition, the brief omits that Facebook changed its policy to stop removing claims about virus’s origins in May 2021 “in light of ongoing investigations into the origin of COVID-19 and in consultation

⁴⁹ *Id.*, at 11.

⁵⁰ Email from Facebook employee to Nick Clegg (Jul. 21, 2021, 8:35 PM).

⁵¹ Note that the vast majority of communications between Facebook and government entities obtained by the Committee do not include specific requests about content moderation policy or enforcement, but rather are best described as informational exchanges showing Facebook seeking information from the government and sharing information with government entities as it did with other external stakeholders. Even in these interactions, the communications show that Facebook routinely withheld internal company data and declined to provide information in response to questions from government entities. *See, e.g.*, Email from Facebook employee to federal government employees (May 13, 2021, 11:59 AM) (on file with the Committee) (stating that Facebook “cannot share official metrics on WhatsApp users in the United States” about race); Email from Brian Rice to Rob Flaherty (Mar. 15, 2021, 6:42 PM) (on file with the Committee) (explaining there are internal research projects that Facebook would not share externally).

⁵² Email from Facebook employee to White House employees (Aug. 2, 2021, 1:14 PM) (on file with the Committee).

⁵³ *Id.*

⁵⁴ Email from Rob Flaherty to Brian Rice & Courtney Rowe (Apr. 13, 2021, 1:33 PM) (on file with the Committee).

⁵⁵ Email from Brian Rice to Rob Flaherty & Courtney Rowe (Apr. 13, 2021, 11:29 PM) (on file with the Committee).

⁵⁶ Brief of Jordan et al., at 7.

⁵⁷ Guy Rosen, *An Update on Our Work to Keep People Informed and Limit Misinformation About COVID-19*, META (Apr. 16, 2020, updated Feb. 8, 2021), <https://about.fb.com/news/2020/04/covid-19-misinfo-update/#removing-more-false-claims>.

with public health experts.”⁵⁸ It is clear both from Facebook’s public statements and from internal documents and witness testimony reviewed by the Committee that the social media company was consulting experts across disciplines to develop content policies that best upheld the company’s mission while responding to the ever-changing landscape of the COVID-19 pandemic in 2020 through 2022.

Second, the brief your counsel submitted cites a single reference to “the administration” in one email as evidence that COVID misinformation policies that Facebook adopted in August 2021 were a response to federal government coercion.⁵⁹ In fact, the full email chain and additional documents produced to the Committee show that Facebook engaged in lengthy internal discussions, including receiving feedback from multiple teams, before instituting the August 2021 policies.⁶⁰ For example, employees considered at least seven COVID misinformation policy ideas contained in an internal brainstorming document, including some which would have recommended the removal of false content, which Facebook did not ultimately adopt.⁶¹ In fact, though your counsel allege that the government pressured Facebook “to remove more COVID-19 vaccine discouraging content,”⁶² none of the policies adopted in August 2021 referenced by your counsel in the brief involved removing content from the platform.⁶³ As a Trust and Safety Policy executive explained, while Meta considers a wide range of external stakeholders’ perspectives as part of a lengthy process to examine possible gaps in its policies, the company’s decisions about content policy formulation, adoption, and enforcement are made independently and without coercion.⁶⁴ The policy executive testified:

Minority Counsel. So this example and the other examples that are in your community standards that deal with content moderation, is it fair to say that all of these are meant by Meta to prevent some kind of harm to your platform users. Is that correct?

The Witness. That's a fair statement. Maybe to take a slight step back, as we think about the community standards, we develop those standards to promote -- really to uphold marksmanship for the company, and that's to give the people the power to build community and make the world a more connected place.

We find that through expression, you know, for our users, that is the way that we can help build community, make that world more connected. And we hear often from our

⁵⁸ Guy Rosen, *An Update on Our Work to Keep People Informed and Limit Misinformation About COVID-19*, META (Apr. 16, 2020, updated May 26, 2021), <https://about.fb.com/news/2020/04/covid-19-misinfo-update/>.

⁵⁹ Brief of Jordan et al., at 10-11.

⁶⁰ *E.g.*, Email from Facebook employee to Facebook employees (Aug. 6, 2021, 7:13:48 PM).

⁶¹ Facebook employees, Working document of policy options regarding COVID and vaccine misinformation (Aug. 6, 2021) (on file with the Comm.).

⁶² Brief of Jordan et al., at 8 (emphasis in original).

⁶³ E-mail from Nick Clegg to Facebook employees (Aug. 19, 2021, 5:25 PM).

⁶⁴ Interview with a Meta Trust and Safety Policy executive, at 42-46, 50-51, 57, 117 (Jul. 26, 2023) (transcript on file with the Comm.).

users, from people who are allowed to have partnerships with us and advise us in the case of civil society, academics who help give us input on our policies, as well as our advertisers -- and advertising is a huge component part to our revenue -- of what type of environment they feel is best on our platform.

We don't -- we make our decisions. We own our policies. We own our decisions. But we use that as signal.

And so to your point, yes, the idea behind these community standards are to give people the wide range of expression and allow people to engage in that expression but also to have some limits around things like safety, privacy, authenticity, dignity, make sure that we have some bounds. And we found out that this has been a very productive way to go about business for us.

Minority Counsel. And I think you said "we use that as signal." Are those the words that you used?

The Witness. I did.

Minority Counsel. And tell me about that. What do you mean? What are you looking to as a signal when you come up with your content moderation policy or other community standards at Meta? Where's the signal coming from?

The Witness. Sure. Our policies take a -- we're very deliberate in our policy development, looking for how content may appear on our platform, looking at trends that are happening on other spaces on the internet, trends that may be happening offline, and then trying to map those to our platform and how that content manifests.

So signal for this, we may have an idea about a policy like, okay, we want you to perhaps remove adult nudity and sexualization. We're agreed that that is something that we do not want on our platform for all the variety of reasons I mentioned before. We'll have people who are under 18 and certain cultures that may be more problematic, brand safety for both our brand, for our advertisers' brands. Maybe they don't want to appear next to that similar type of content.

We'll then create a policy line or get draft lines through a number of group -- working groups within my content

policy team. And then we have folks on our team that also do stakeholder engagement, so they will talk to academics, people who are well versed in freedom of expression, advocates for freedom of expression, but also advocates for safety to see if we're drawing those lines in the correct place.

After, you know, multiple conversations on any given policy, we will then make a recommendation based off of their input, our analysis of that input, also the analysis of what we think the content on our platform is at that time.

So are we seeing a high prevalence, a high amount, high volume of a certain type of content and will this actually have an impact? Or if we move the line a certain direction, it will have no impact. And if that's the case, do we actually need to do it?

So those are the types of questions and the signal that we are taking when we try to go through that balancing of freedom of expression, safety, making sure that we draw the correct line that promotes both of those on our platform that ultimately serves our users.⁶⁵

IV. False statements Regarding Section 230

The brief your counsel submitted notes that “the district court found that the federal government ‘threat[ened]’ Big Tech with the repeal of Section 230 to induce compliance with its censorship campaign,” a reference to 47 U.S.C. § 230, which immunizes platforms from liability for third-party content published on their websites.⁶⁶ The district court opinion your counsel reference in the brief, however, cites to a White House press conference that never occurred and quotes a White House staffer who never actually said the cited comments.⁶⁷ The amicus brief further claims, “Internal documents show that Facebook executives feared that the Biden Administration would retaliate against the company for not censoring enough.”⁶⁸ The Committee has seen no documents that show that Facebook executives feared government retaliation in response to their content moderation policies, and the email chain your counsel cite in the brief makes no reference to Section 230 reform or any other fear of adverse government action.⁶⁹ In fact, the only instance in which a Facebook employee originally references Section 230 in the internal documents produced to the Committee occurs in one email that references Meta CEO Mark Zuckerberg’s testimony before Congress about Section 230.⁷⁰ In that email, a Facebook

⁶⁵ *Id.*, at 42-44.

⁶⁶ Brief of Jordan et al., at 13.

⁶⁷ Philip Bump, *A deeply ironic reinforcement of right-wing misinformation*, WASH. POST (Jul. 5, 2023), <https://www.washingtonpost.com/politics/2023/07/05/social-media-biden-ruling/>.

⁶⁸ Brief of Jordan et al., at 13.

⁶⁹ Email from Facebook employee to Facebook employees (Jul. 22, 2021, 12:17:53 PM).

⁷⁰ Email from Facebook employee to Facebook employees (Jul. 21, 2021, 9:18 PM).

employee actually suggests language *supportive* of increased regulation, stating: “[W]e also think that democratic governments should be doing more to regulate content moderation online and to ensure that companies like Facebook follow best practices.”⁷¹

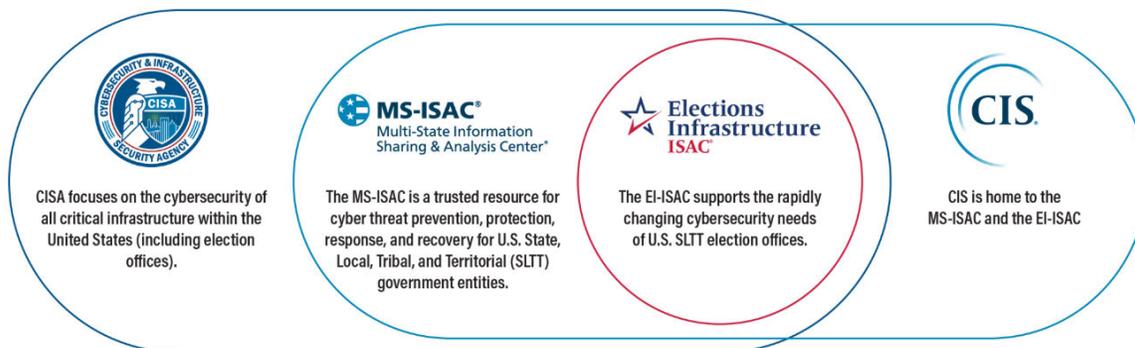
V. Misrepresentations Regarding the Cybersecurity and Infrastructure Security Agency

The brief your counsel submitted alleges that the Cybersecurity and Infrastructure Security Agency (CISA)—a component of the Department of Homeland Security (DHS) that is tasked with, among other things, protecting election infrastructure—“funded and utilized third parties” to help it achieve its purported content moderation aims.⁷² Among other misleading statements, the amicus brief alleges that CISA “utilized” the Center for Internet Security (CIS), a cybersecurity nonprofit organization that also houses the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC), to collect and forward alleged misinformation to social media platforms.⁷³

The brief your counsel submitted correctly states that the EI-ISAC is funded by CISA and is a division of CIS.⁷⁴ In support of this assertion, your counsel include in the brief a graphic from the EI-ISAC website and quotes part of the paragraph preceding that graphic.⁷⁵ However, your counsel omit the second sentence in that paragraph, which reads, “The EI-ISAC is autonomously guided by the Executive Committee and member organizations.”⁷⁶ In other words, the amicus brief omits the language showing that the EI-ISAC is an independent entity and not under the control of CISA to support your counsel’s false allegation of government coercion.

CIS is home to the EI-ISAC

The EI-ISAC is federally funded by CISA and a division of the Center for Internet Security (CIS). The EI-ISAC is autonomously guided by the Executive Committee and member organizations.



⁷¹ *Id.*

⁷² Brief of Jordan et al., at 24.

⁷³ *Id.*, at 24-25; Center for Internet Security, *About us*, <https://www.cisecurity.org/about-us> (last visited Aug. 16, 2023).

⁷⁴ Brief of Jordan et al., at 25.

⁷⁵ *Id.*; Center for Internet Security, *Elections Infrastructure Information Sharing & Analysis Center*, <https://www.cisecurity.org/ei-isac> (last visited Aug. 16, 2023).

⁷⁶ Center for Internet Security, *Elections Infrastructure Information Sharing & Analysis Center*, <https://www.cisecurity.org/ei-isac> (last visited Aug. 16, 2023).

The brief submitted by your counsel likewise fails to note that EI-ISAC membership “is open to all state, local, tribal, and territorial government organizations that support the elections officials of the United States of America, and associations thereof.”⁷⁷ Alex Stamos, the director of the Stanford Internet Observatory, explained during his interview with the Committee that the EI-ISAC is a nonprofit collective premised around information sharing by the members themselves—in other words, the state, local, tribal, and territorial organizations who support elections—the vast majority of whom “do not have the capacity or expertise to manage complex cyber issues by themselves.”⁷⁸

Majority Counsel. And what does EI-ISAC do?

Mr. Stamos. So the ISACs are nonprofits that coordinate security inside of a sector, often a critical infrastructure sector. The ISACs have been around for a while, this idea. I believe the first ones were designated by an executive order. The canonical one that everybody uses as an example is FS-ISAC, the Financial Services ISAC, where you have thousands of banks -- big ones, small ones -- sharing real time information about bad things happening, and then the big banks providing support to the little ones.

And so the idea of an ISAC is collective defense, that you're in better shape if one person gets an attack, that they tell all of their friends "I'm getting an attack from this IP address" or "I just saw this piece of malware or "I find this vulnerability in this product; we should get this fixed," that you work together in the ISAC to get that kind of support.

So the EI-ISAC is a similar thing. I believe the central management of it is by the Center for Internet Security, which is a nonprofit that actually runs the kind of coordination, but most of the work is then done by the members themselves who are sharing with one another.⁷⁹

Speakers at the most recent ISAC Annual Meeting, hosted by CIS, included the Republican Lieutenant Governor of Utah, representatives from the Texas Department of Information Resources, and a representative from the Montana Association of Counties, among others.⁸⁰ CIS is likewise an “independent, mission-driven, nonprofit organization.”⁸¹ To date, the Committee has received no information suggesting that CIS is under the control of CISA in any way. The brief your counsel submitted to the Fifth Circuit Court omitted this context.

⁷⁷ Center for Internet Security, *Join the EI-ISAC – Free for U.S. Elections Organizations*, <https://learn.cisecurity.org/ei-isac-registration> (last visited Aug. 16, 2023).

⁷⁸ Interview with Alexander Stamos, at 8-9 (Jun. 23, 2023) (transcript on file with the Comm.).

⁷⁹ *Id.*, at 44-45.

⁸⁰ *2023 ISAC Annual Meeting Speakers*, ISAC ANNUAL MEETING, <https://na.eventsclooud.com/website/55419/speakers/> (last visited Aug. 16, 2023).

⁸¹ Center for Internet Security, *About us*, <https://www.cisecurity.org/about-us> (last visited Aug. 16, 2023).

In addition, the amicus brief claims that CISA has focused on “so-called ‘malinformation,’” or information “based on fact, but used out of context to mislead, harm, or manipulate.”⁸² The brief submitted by your counsel fails to note, however, that multiple witnesses told the Committee that “malinformation” is not actually a term in regular use. Mr. Stamos testified, “Malinformation is a term I try not to use because it doesn't really have any kind of reasonable academic definition.”⁸³ Dr. Kate Starbird, Co-Founder of the University of Washington’s Center for an Informed Public, was also asked for her definition of “malinformation.”⁸⁴ She responded, “I don’t use that term myself very much,” and, “I think it’s murky.”⁸⁵ Dr. Starbird also served on a CISA advisory subcommittee and explained to the Committee that when the advisory subcommittee “gave recommendations” to CISA, they “tried to take malinformation off of the recommendations and just make recommendations about mis- and disinformation.”⁸⁶

Finally, the brief your counsel submitted identifies an email from “a state government official working for Pennsylvania’s Secretary of State, a Democrat” identifying a post in which Senator Ted Cruz, “a Republican, asked: ‘Why is it only Democrat blue cities that take “days” to count their votes? The rest of this country manages to get it done on election night.’”⁸⁷ As a preliminary matter, there is no evidence that Facebook or Meta took action against this post, and in fact it remains available on Facebook today.⁸⁸ More importantly, the identification of the post as coming from “a Democrat” and questioning “a Republican” suggests that EI-ISAC’s forwarding of these reports was political in nature and purports to evidence your counsel’s contention that “claims of ‘misinformation’ are inherently political.”⁸⁹ But in fact, the Committee has reviewed dozens of emails showing that false or misleading information identified by Republican election officials was also passed along to Facebook,⁹⁰ including the report of an Instagram post from Hillary Clinton.⁹¹

⁸² Brief of Jordan et al., at 23.

⁸³ Interview with Alexander Stamos, at 15-16 (Jun. 23, 2023) (transcript on file with the Comm.)

⁸⁴ Interview with Kate Starbird, at 15 (Jun. 6, 202) (transcript on file with the Comm.).

⁸⁵ *Id.*, at 15-16.

⁸⁶ *Id.*, at 23.

⁸⁷ Brief of Jordan et al., at 25-26.

⁸⁸ Ted Cruz, FACEBOOK (Oct. 27, 2022),

<https://www.facebook.com/tedcruzpage/posts/pfbid0hGVnZAX6uqspQuAVCRSeDszwyVabVJBUVuxd7mmKhrspvF9yRn3Tr7ViapH2j74ul>.

⁸⁹ Brief of Jordan et al., at 25-26.

⁹⁰ *See, e.g.*, Email from misinformation@cisecurity.org to Facebook employee (Nov. 4, 2022, 7:45:39 PM) (on file with the Comm.) (forwarding a report from Polk County, Missouri); Email from misinformation@cisecurity.org to Facebook employee et al. (Oct. 24, 2022, 10:03:48 AM) (on file with the Comm.) (forwarding a report of misinformation from Butler County, Oregon); Email from misinformation@cisecurity.org to Facebook employee (Oct. 13, 2022, 1:12:35 PM) (on file with the Comm.) (forwarding a report from Grayson County, Texas); Email from Facebook employee to misinformation@cisecurity.org et al. (Feb. 19, 2021, 7:06:29 AM) (on file with the Comm.) (confirming receipt of a report from Lake County, Florida); Email from Facebook employee to misinformation@cisecurity.org et al. (Nov. 9, 2020, 4:16:45 PM) (on file with the Comm.) (confirming receipt of a misinformation report from Monona County, Iowa); Email from Facebook employee to misinformation@cisecurity.org et al. (Nov. 5, 2020, 10:25:18 AM) (confirming closure of a misinformation report from Greene County, MO).

⁹¹ Email from Facebook employee to Brian Scully and Facebook employees (Oct. 5, 2020, 12:44:08) (on file with the Comm.) (confirming engagement on report of an Instagram post from Hillary Clinton).

EI-ISAC passed all the reports it received along to social media companies, regardless of which entity submitted it. In fact, any person can report abusive or false content to Facebook.⁹² Multiple Meta employees testified that the company sends all such reports to policy enforcement teams, who evaluate all submissions independently, regardless of their origin.⁹³ This is further evidenced by multiple documents that the Committee has received showing social media companies expressly declining to take action on reports from local election officials through EI-ISAC.⁹⁴ The allegation in the amicus brief that CISA, independently or through third parties, coerced Facebook into removing election-related information is not supported by the evidence that the Committee has reviewed.

VI. Misrepresentations Regarding the Election Integrity Partnership

The brief your counsel filed contains multiple allegations concerning the Election Integrity Partnership (EIP),⁹⁵ which the Stanford Internet Observatory (SIO) organized in advance of the 2020 election in collaboration with the University of Washington’s Center for an Informed Public; Graphika, a social media analytics firm; and the Atlantic Council’s Digital Forensic Research Lab.⁹⁶ The EIP was primarily an academic collaboration staffed by student researchers with the goal of studying the flow of rumors online in advance of the 2020 election.⁹⁷

The brief your counsel submitted fundamentally misrepresents the purpose and function of the EIP. Notably, the brief your counsel submitted failed to include key portions from the Committee’s interview with Alex Stamos, the director of the SIO at Stanford University who organized and helped lead the EIP, and Dr. Kate Starbird, a University of Washington professor who led the Center for an Informed Public’s work with the Partnership. Both expressed serious concern about the way this Committee’s investigation and other entities have “grossly mischaracterized” the EIP’s work,⁹⁸ and their testimony to Committee clearly reflects that: (1) The EIP was primarily an academic venture designed to track the flow of rumors online during the 2020 election; (2) the EIP only forwarded content to social media companies when that content appeared on its face to violate the companies’ own policies and did not make content moderation decisions. In all cases, it was up to social media companies themselves to determine

⁹² See, e.g., *Report Content on Facebook*, FACEBOOK, <https://www.facebook.com/help/1380418588640631> (last visited Aug. 16, 2023); *How do I mark a Facebook post as false news?*, FACEBOOK, <https://www.facebook.com/help/572838089565953> (last visited Aug. 16, 2023).

⁹³ See, e.g., Interview with a Meta External Affairs manager, at 16-17 (May 22, 2023) (transcript on file with the Comm.); Interview with a former Meta former Partner Manager, at 32-33 (May 23, 2023) (transcript on file with the Comm.); Interview with a Meta Programs and Partnerships team lead, at 37 (May 31, 2023) (transcript on file with the Comm.); Interview with a Meta Trust and Safety Policy executive, at 111-113 (Jul. 26, 2023) (transcript on file with the Comm.).

⁹⁴ See, e.g., Email from Facebook employee to state election official (Oct. 27, 2022, 7:51:12 PM) (on file with the Comm.); Email from a Facebook employee to a state election official (Nov. 20, 2020, 9:51:50 AM) (on file with the Comm.); Email from misinformation@cisecurity.org to election officials (Oct. 21, 2020, 10:14 AM) (on file with the Comm.) (quoting a Facebook employee).

⁹⁵ See Brief of Jordan et al., at 26-30.

⁹⁶ Election Integrity P’ship, *Announcing the EIP* (Jul. 27, 2020), <https://www.eipartnership.net/2020/announcing-the-eip>.

⁹⁷ Interview with Alexander Stamos, at 8 (Jun. 23, 2023) (transcript on file with the Comm.).

⁹⁸ *Id.*, see Interview with Kate Starbird, at 137-38 (Jun. 6, 2023) (transcript on file with the Comm.).

whether to take any action with respect to content, and in fact the companies typically did not tell the EIP what decision had been made—EIP analysts determined the final outcomes through their own research.⁹⁹ In addition, Mr. Stamos provided testimony showing that the EIP was not closely intertwined with CISA. Finally, Mr. Stamos noted that, contrary to the claim made in the amicus brief that the EIP might continue its work in 2024, this Committee’s investigation has almost certainly ensured that the EIP does *not* do this work going forward.¹⁰⁰ Dr. Starbird likewise noted that this investigation has discouraged researchers writ large from continuing to study disinformation.¹⁰¹

A. The EIP’s primary purpose was to document the spread of narratives online for research purposes and to make state and local election workers aware of the spread of such narratives.

The amicus brief your counsel submitted suggests that the EIP was established in coordination with CISA.¹⁰² In fact, Mr. Stamos told the Committee that he first began thinking about ways to study the 2020 election in 2019 and that the EIP was primarily an academic research venture:

Minority Counsel. You said in the earlier hour that, even before the EIP, you at SIO had been talking about ways to study the 2020 election, right?

Mr. Stamos. Yes.

Minority Counsel. Do you have an estimate on when you first started thinking about studying the 2020 election?

Mr. Stamos. Probably right when we started SIO in 2019. I mean, it was clearly going to be the next -- it was the next Presidential election after 2016. It was going to be the most important online information event of possibly our lifetimes.

Minority Counsel. Okay. And -- sorry. You said it was going to be possibly the most important information event of your lifetimes. Why did you feel that way?

Mr. Stamos. Because the 2016 election -- the activity that the Russians did, as I talked with [Majority Counsel], may or may not have had a real impact on the outcome. That's a very difficult question to ask -- answer. I'm sorry.

⁹⁹ *E.g.*, Interview with Alexander Stamos, at 140-41 (Jun. 23, 2023) (transcript on file with the Comm.).

¹⁰⁰ *Id.*, at 217-18.

¹⁰¹ Interview with Kate Starbird, at 138 (Jun. 6, 2023) (transcript on file with the Comm.).

¹⁰² Brief of Jordan et al., at 26.

But the coverage of it meant that anything that was happening online would immediately be seen in the frame of foreign interference and that what the Russians had done was advertise out a capability that we knew lots of other countries would want to utilize. Like I said, China was specifically the country that reacted the most to what the Russians did and to their own internal problems to build up this capability.

So I believe I used the term multiple times that this could be the Super Bowl of disinformation and that it seemed likely there were going to be many different groups who were trying to manipulate the election.

Minority Counsel. And is it fair to say that, in your role as head of SIO, your interest in looking at the 2020 election was primarily academic in nature? It was primarily for research purposes?

Mr. Stamos. Yes.¹⁰³

The EIP's primary goals were to track online narratives for further research and "to provide local and state election officials with a window into what was happening online in their jurisdictions."¹⁰⁴ This work was largely conducted by student researchers, and the EIP worked to be as transparent as possible in its work, including by making its final findings available online.¹⁰⁵ Mr. Stamos explained:

The EIP had about 100 contributors from four institutions. About half of the overall workforce came from Stanford, and 42 of our 50 contributors were student research assistants.

The majority of those students were undergraduates, mostly ages 18 to 23, studying computer science, political science, and other subjects. To be clear, the vast majority of the analysis for both the EIP and VP [Virality Project] was performed by student researchers.

The EIP operated transparently and openly, publishing numerous blog posts, holding regular video briefings, and documenting our work in a 274-page final report and multiple peer-reviewed articles. As part of our work, the EIP invited multiple groups, including the Republican National Committee, for example, to submit reports about potentially false or misleading social media posts around the

¹⁰³ Interview with Alexander Stamos, at 60-61 (Jun. 23, 2023) (transcript on file with the Comm.).

¹⁰⁴ *Id.*, at 8.

¹⁰⁵ Center for an Informed Public, Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory, *The Long Fuse: Misinformation and the 2020 Election* (2021), <https://purl.stanford.edu/tr171zs0069>.

operation of the election for us to include in the work, although in that case the RNC did not respond to our invitation.¹⁰⁶

Mr. Stamos further explained to the Committee that the goal of “documenting” online narratives—in other words, making a record of what narratives were spreading on the internet—was to create a historical record “that would allow both history to know what happened but then for us to do our own research and for our partners to do their own research.”¹⁰⁷ He testified:

Minority Counsel. So, again, one of the major goals of the EIP was research-based. Is that fair?

Mr. Stamos. Yes. Absolutely. Both the research we did specifically in the EIP, and then to support further research because one of the things I saw coming out of 2016 -- when I got to Stanford, I talked to a lot of people about what happened in 2016. Real political scientists. I'm not a political scientist. But political scientists who study democracy. Frank Fukuyama. Larry Diamond.

And if you talk to them about, what do you think this important question of, did [online information campaigns in] 2016 change the results, what most of them will say is: We don't know because nobody was watching.

And so one of the things I wanted to change for 2020 is, if something big happened, either in the election or afterwards, that we had a real historical record that did not exist in 2016 that would allow both history to know what happened but then for us to do our own research and for our partners to do their own research.¹⁰⁸

Dr. Starbird explained that the University of Washington focused on conducting data analysis on the spread of rumors and then publicly communicating that information:

So the UW's role was specifically around analysis and communication. And communication for us really meant public communication. So we would do social media data analysis.

When we would become aware through the system that we have -- we'll probably talk about it -- become aware through the system that we had that there was a specific kind of rumor, we would do this data analysis based on the methods that my team's been using for now almost a decade of, like, tracking how that rumor

¹⁰⁶ Interview with Alexander Stamos, at 8 (Jun. 23, 2023) (transcript on file with the Comm.).

¹⁰⁷ *Id.*, at 74.

¹⁰⁸ *Id.*, see *id.*, at 40.

was spreading, to see which audiences it's spreading, how far, is it worth sort of writing about or communicating about.

And then we would do public communication. We create visualizations. We create tweet threads, blogs, and eventually research papers based on analysis of the data that was -- based on the analyses that we would do of those false, misleading, or unsubstantiated claims.¹⁰⁹

The EIP also focused on providing clear and accurate counter messaging, meaning providing additional speech that would offer *more* information to the public—the exact opposite of censorship.¹¹⁰ Mr. Stamos described to the Committee:

Minority Counsel. So the second goal listed under “what we did” in that paragraph [of the EIP 2020 election report] is: Share clear and accurate counter messaging. What does countermessaging mean here?

Mr. Stamos. So countermessaging would be providing accurate information to people. And the way we did that was both ourselves, mostly on our blog, of saying, “This is some claim that's going viral, and here's the truth that we could find,” or by providing knowledge to those State officials local and State officials who then could do their own local messaging.

Minority Counsel. So, with respect to the State and locals first, would an example of that be, if there was a claim made about how long polls were open, and it was false, you would let the State or local know so they could put something on their website potentially to make it abundantly clear --

Mr. Stamos. Yes. And that's something that happened multiple times, where people shared the incorrect dates or times of voting so that they could then do their own tweet or their own post or go to the local media and say: Hey, tell people the polls are still open, for example.

Minority Counsel. Okay. And then you said, with respect to the EIP specifically, you might post things on your blog about inaccuracies. Is that right?

Mr. Stamos. Yes. Yes. We posted -- for narratives that got lots of traction or seemed to be really important, we would do our

¹⁰⁹ Interview with Kate Starbird, at 73 (Jun. 6, 2023) (transcript on file with the Comm.).

¹¹⁰ Center for an Informed Public, Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory, *The Long Fuse: Misinformation and the 2020 Election*, at vi, 6 (2021), <https://purl.stanford.edu/tr171zs0069>.

own write-ups of both analyzing how it was going as well as linking to any fact checks or any information we could find about the base truth.

Minority Counsel. Did you ever affirmatively create social media content for the platforms? In other words, would you create content for Facebook to counter a post that might be misleading?

Mr. Stamos. No. No. We had our own Twitter account where we'd speak as ourselves, but we did not create any content for the platforms.

Minority Counsel. Okay. And countermessaging, to be clear, it doesn't actually involve removing content, right? It's just pushing more information out that's accurate?

Mr. Stamos. That's correct, yes.¹¹¹

In addition, the brief your counsel submitted failed to note that the EIP's research was limited in scope. The EIP's 2020 election report explains that its researchers were tasked only with identifying election-related content that might lead to procedural interference, participation interference, fraud, or delegitimization of the election results.¹¹² Mr. Stamos elaborated that procedural interference referred to "Misinformation related to actual election procedures. So telling people [that] you have to have a passport to vote would be an example of attempting to interfere procedurally by lying to people about something they have to do to vote."¹¹³ Mr. Stamos described that the EIP defined participation interference as:

content that includes intimidation to personal safety or deterrence to participation in the election process. So an example of that that we had in our database was saying: A bomb threat has been called into this precinct. Don't go. Don't go vote. There's a bomb threat. And there was no bomb threat.¹¹⁴

The EIP defined fraud as "content that encourages people to misrepresent themselves to affect the electoral process or to illegally cast or destroy ballots. So it is effectively people calling on others to help them fraudulently throw the election."¹¹⁵ And finally, the EIP defined delegitimization of election results as "content aiming to delegitimize election results on the basis of false or misleading claims."¹¹⁶

¹¹¹ Interview with Alexander Stamos, at 72-73 (Jun. 23, 2023) (transcript on file with the Comm.).

¹¹² Center for an Informed Public, Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory, *The Long Fuse: Misinformation and the 2020 Election*, at vi (2021), <https://purl.stanford.edu/tr171zs0069>.

¹¹³ Interview with Alexander Stamos, at 70 (Jun. 23, 2023) (transcript on file with the Comm.).

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at 71.

¹¹⁶ Center for an Informed Public, Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory, *The Long Fuse: Misinformation and the 2020 Election*, at vi (2021), <https://purl.stanford.edu/tr171zs0069>.

The brief your counsel submitted likewise omits key context about why the EIP was so focused on misleading and fraudulent information about the time, place, and manner of voting. Dr. Starbird explained that this type of misleading information could actually disenfranchise voters:

Minority Counsel. Would you agree that, if somebody was impersonating an official account, it could potentially harm the process?

Dr. Starbird. Absolutely. I think one of the most acute worries in the election context -- the first and foremost one is that false information about when and where to vote can confuse people and can disenfranchise voters. And that can be accidental false information.

So one of the things that happens in online spaces -- because we have 3,600 different jurisdictions or something close to that -- that the rules in one place are not the same as rules in others. Times are different, when your mail in ballots are due are different, those kinds of things. And so information that's true in one place may be false in another.

And so just, like, accidentally seeing the information about another State and then thinking, "Oh, my ballot doesn't count anymore because I sent it in too late," when really, in your State, it did still count, is actually a potential for disenfranchisement.

We've also seen people intentionally mislead about when and where to vote. Sometimes they say it's a joke, but in other cases, there have been, like, intentional efforts to disenfranchise people through false information as well. And so that's one -- certainly an acute threat in that space.

And there's others as well of just sort of -- eroding trust in the processes and procedures and results can have sort of meta level effects on trust in democracy.

Minority Counsel. And I think you used the example of Sharpiegate earlier?

Dr. Starbird. Yeah.

Minority Counsel. And ... if people used the wrong type of pen because they believed the rumor that Sharpies didn't work, then that actually could ruin the ballot, right? Or make it unreadable?

Dr. Starbird.

Right. So a couple of different things on the Sharpiegate.

So using -- using the wrong pen -- so using an ink pen at home didn't matter because it had time to dry before it got mailed in. So it really doesn't matter what pen you used at home.

But, on Election Day, in the election facilities, if you feed those things into the election -- you fill out your ballot and feed it in, it could -- if you use the wrong pen, it could harm the reader -- the optical reader of the ballot. And so Sharpie pens were recommended in Arizona -- not recommended. They were -- Sharpie or felt tip pens were the pens that you were supposed to use in the election facilities.

What happened was a rumor that the ballots weren't counting because they were bleeding through -- the Sharpies did bleed through, and that was concerning to the people that were voting, especially people that thought that they might be -- they heard that they could be cheated. And so they were kind of predisposed to kind of interpreting this: Oh, this is a problem. You know, this isn't going to work. Maybe I'm being cheated.

And so there was sort of this misinterpretation that happened based on that, which became really acute. We could actually see it -- it goes into a second stage the next day where people start going online to check the status of their ballot, and it says that it's canceled, and all these people begin to share "my ballot is canceled," except when you look at it, it's actually the status of their mail in ballot, which was canceled when they went to vote in person. But, again, they misinterpreted that as having their ballots canceled.

And so these people really did begin to -- and you can see that they're feeling anxiety, and they're very upset because they really did think that their ballots didn't count. And that led to a lot of consternation, as you can imagine, from people who really care about the democratic process. Yeah.

Minority Counsel.

And that could lead people to potentially lose faith in the democratic process?

Dr. Starbird

Absolutely, yeah. Lose faith in the process.

On Election Day in Arizona, it led people to going into the facilities and demanding to use and to bring their own pens, which were potentially harmful to the system, which could have caused downstream effects. We actually -- there's also a possibility that the problems in 2020 caused Maricopa County to use thicker printed -- thicker paper in 2022, which caused a whole other set of problems. And so they're even worse off this year because then the paper didn't print properly, and they didn't -- it has downstream effects.

So, actually, those rumors can make the process less secure and less -- you know, less functional, where false rumors begin to pick at how things work.¹¹⁷

The EIP did not address this type of false rumor through any type of censorship, but rather worked to ensure that state and local election officials were aware of such online narratives so that they could provide accurate information to the public and protect our nation's elections.¹¹⁸ Dr. Starbird explained that making the local jurisdiction at issue aware of a viral rumor could allow officials could "get ahead" of it,¹¹⁹ which unfortunately did *not* happen in Maricopa County in 2020:

And so the trick is, like, how do we help these local and State election officials identify that quickly on election day as it's happening? People were getting really upset. There was confrontations at the polls. People were bringing other pens in.

They start to have these confrontations at the polls. And so if the local and State election officials have been able to sort of get ahead of that and say, "No, we designed them that way and that you can't bring your other pen because these pens don't dry fast enough" -- well, this [referring to a pen in the interview room] is actually a felt tip pen.

But if it was an ink pen, the ink pens don't dry fast enough and they smear the readers when you put them in there. And so the ink pens actually cause another problem.

But they weren't able to understand that this was happening and communicate fast enough.¹²⁰

¹¹⁷ Interview with Kate Starbird, at 48-51 (Jun. 6, 2023) (transcript on file with the Comm.).

¹¹⁸ See, e.g., Interview with Alexander Stamos, at 66-67, 72 (Jun. 23, 2023) (transcript on file with the Comm.).

¹¹⁹ Interview with Kate Starbird, at 30 (Jun. 6, 2023) (transcript on file with the Comm.).

¹²⁰ *Id.*

Mr. Stamos additionally provided context about why the EIP was concerned with content that might delegitimize election results, and he made it clear that the EIP’s focus was on tracking and studying these narratives—not “censoring” them.¹²¹ He explained:

Minority Counsel. So, to the extent that you can recall, what did “content that would delegitimize election results without evidence” refer to?

Mr. Stamos. Right. So, in this case, we were looking for claims of the election being stolen or of being rigged in such that was not based upon an evidentiary basis.

Minority Counsel. Okay. Why was that something that EIP chose to include as part of its research?

Mr. Stamos. So, by the summer of 2020, it became clear that the kind of traditional outlines of election disinformation were going to be pushed. By that summer, President Trump had already started laying the groundwork to deny that he had lost the election.

Minority Counsel. And why was it of concern -- was it of concern to you if the election result might be delegitimized?

Mr. Stamos. Yes. We have -- we had a very long history of peaceful transfers of power in this country. That's one of the things that makes us the city on the hill, as Reagan might say. It's one of the things that makes us special.

And one of my fears, personally, has been that we will end up becoming a pseudo democracy where people never believe the election. They always believe the election was stolen. I believe that that's actually something we're trending to on a bipartisan basis.

And one of the things we wanted to understand was, what were the lies that might be driving those beliefs during that year, and to come up with -- both for us to -- as it says here, in some cases to publish and to demonstrate what is being said, and then, kind of on a longer term, to understand how can we restore trust back in the voting system.

Minority Counsel. So your goal in looking at that was to assess how these narratives spread. Is that fair to say?

¹²¹ See, e.g., Interview with Alexander Stamos, at 150, 204-05 (Jun. 23, 2023) (transcript on file with the Comm.).

Mr. Stamos. It's to see what the narratives were, how they were spread, who spread them, and in what situations did specific features of different platforms -- we call those affordances. How would certain platform affordances affect this issue? That's actually one of the key things SIO works on.¹²²

Despite your counsel suggesting otherwise in the amicus brief, flagging potentially violative content for social media companies was not one of the EIP's main goals, as Mr. Stamos explained:

Minority Counsel. Was content moderation the primary goal of the EIP?

Mr. Stamos. No.

Minority Counsel. Okay. And, in fact, an example like this where the ticket was not where -- sorry -- where the information was flagged for a social media company but it was not actually taken down by the social media company, would this still be of use to EIP for your research purposes?

Mr. Stamos. Yes. So we were able to archive this and then include it in our analysis of the different narratives that were being spread.

Minority Counsel. Okay. And it's because EIP was, by and large, a research project. Right?

Mr. Stamos. Yes. The fact that 65 percent of the time steps were not taken does not mean the project was a failure. In fact, I think it was a success because of the research we did.¹²³

B. The EIP shared limited content with social media platforms and did so only when that content appeared to violate the companies' own policies—and the platforms independently decided whether to take action on that content.

While the brief your counsel submitted focuses heavily on reports of misleading or false content that the EIP organized in Jira tickets,¹²⁴ it fails to note that the Committee received evidence and testimony showing that the EIP only forwarded content to social media companies when that content appeared on its face to violate the companies' own rules.

For example, Mr. Stamos said, “When content clearly violated the policies of social media platforms, we could refer it to the companies so they could make their own

¹²² *Id.*, at 65-66.

¹²³ *Id.*, at 147.

¹²⁴ Brief of Jordan et al., at 27-30.

determinations.”¹²⁵ He testified to the Committee that for content to be shared with a social media platform, “it had to be obviously violative of the policies” of that platform.¹²⁶ He elaborated:

Mr. Stamos. So we had during our operation in situations where there were egregious violations of the policies that the platforms have already put out which we then provided -- we both provided a public analysis and we had an internal tracker of the what the policy's were per platform. We could then refer to those to the platforms.

In which case they would get an email from us that would say saying something like we believe these five URLs might violate policies on fraud. And then the platforms themselves could make a determination themselves could make a determination of whether or not that was true.

Minority Counsel. Okay. So I want to emphasize that. You sent this information to the platforms. And after it left your hands, you had no control over what a platform did with it?

Mr. Stamos. That's right. They had to make the determination, it's the same as if you went into Twitter right now and you clicked and said report, it's essentially the same function.

Minority Counsel. And anybody can do that. Right? Anybody can go on Twitter and report a post? Right?

Mr. Stamos. Anybody can report a post. And I know there are, multiple organizations that email people. As somebody who comes from a platform, you get email all day, every day of things that people think should be taken down. In our case, we believed we were reporting things that were violative of their policies around election operations specifically. But people do it all the time for all kinds of reasons.

Minority Counsel. Okay. And it's the same thing with Facebook. Right? Once if you were to report something to Facebook as potentially in violation of their policies, once it left your hands it was up to Facebook to decide what to do with it. Right?

Mr. Stamos. That's correct, yes.

¹²⁵ Interview with Alexander Stamos, at 9 (Jun. 23, 2023) (transcript on file with the Comm.).

¹²⁶ *Id.*, at 107.

Minority Counsel. And you had no control over how Facebook applied its policies to particular posts. Correct?

Mr. Stamos. We had no control over what they did, no.¹²⁷

During his interview, Mr. Stamos walked through multiple instances of social media platforms declining to take action on content identified in Jira tickets. On one occasion, for example, a student researcher forwarded a Facebook post that falsely claimed it was possible to cancel votes after they were cast in Oregon and Washington state.¹²⁸ Facebook responded, “Thanks for flagging this content, after a thorough review of the content, we can confirm that it doesn’t violate our community standards as it relates to Voter Suppression.”¹²⁹ In fact, that particular post remains available online today.¹³⁰

The brief your counsel filed omits this example and many others.¹³¹ Your counsel also failed to include testimony from Mr. Stamos explaining that allegations that the EIP or the Stanford Internet Observatory pressured platforms into removing content were baseless. He testified to the Committee:

Minority Counsel. Some activists have claimed that SIO cajoled or pressured social media companies to take certain actions. Are you familiar with those allegations?

Mr. Stamos. Yes, I have seen those allegations.

Minority Counsel. And are those allegations accurate?

Mr. Stamos. No.

Minority Counsel. Okay. And can you explain that?

Mr. Stamos. We would send URLs to platforms [if] we thought they clearly violated the policies. If you look into the tickets themselves, there was not a “take this down or else” or a demand. I’m not sure how we would demand. We’re an academic research project. We have no coercive power in any way. All we could do is refer these to them and then

¹²⁷ *Id.*, at 84-85.

¹²⁸ EIP 2020 Jira Ticket Data (produced to the Comm. on Jun. 21, 2023) (on file with the Comm.).

¹²⁹ *Id.*

¹³⁰ Gateway Pundit, FACEBOOK (Oct. 18, 2020), <https://www.facebook.com/gatewaypundit/posts/10158591211100575>; Interview with Alexander Stamos, at 146-47 (Jun. 23, 2023) (transcript on file with the Comm.).

¹³¹ *See, e.g.*, EIP 2020 Jira Ticket Data (produced to the Comm. on Jun. 14, 2023) (on file with the Comm.) (showing a comment from a Facebook employee that reads, “Our team has done an in depth investigation of the profile in question, but has not found any content violating our Community Standards.”); EIP 2020 Jira Ticket Data (produced to the Comm. on Jun. 21, 2023) (on file with the Comm.) (showing a comment from a Facebook employee that reads, “We will not be removing these videos at this time.”).

document the outcomes of what was going on in the election.

Minority Counsel. And, just by way of example, how many people total were involved in the EIP?

Mr. Stamos. A little over 100, I believe.

Minority Counsel. How many employees does Facebook have, if you know?

Mr. Stamos. Over I think 60,000.

Minority Counsel. Okay. So EIP is kind of a small fish? Right?

Mr. Stamos. All of EIP is smaller than just the team I supervised [when I worked at] at Facebook, yes.

Minority Counsel. Thank you for that context. Did EIP have a blacklist of accounts that it had – that it kept track of?

Mr. Stamos. No, absolutely not.

Minority Counsel. Do you at SIO keep a blacklist of accounts?

Mr. Stamos. No.¹³²

Out of 639 Jira tickets that the EIP found to be in scope, only 158 tickets were ever shared with Facebook for appearing to clearly violate the platform's policies.¹³³ Further, the EIP found that social media platforms declined to take any action on 65% of the links that EIP analysts flagged for them.¹³⁴ With respect to the remaining 35% of flagged links, the most common action taken by social media companies was adding a label to the content—*not* removing it.¹³⁵ Mr. Stamos explained:

Mr. Stamos. [W]e, in fact, have hard empirical evidence on this, in that we went -- for the 4,000 some URLs that were sent to any platform that we went and checked them after the election of what had happened to them, and we found that in only 35 percent of the time had they made any decision, which is what you would expect if they were making their own determination per their policies of what they should do.

¹³² Interview with Alexander Stamos, at 150-51 (Jun. 23, 2023) (transcript on file with the Comm.).

¹³³ Center for an Informed Public, Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory, *The Long Fuse: Misinformation and the 2020 Election*, at 37-38 (2021), <https://purl.stanford.edu/tr171zs0069>.

¹³⁴ *Id.*, at 40.

¹³⁵ *Id.*

Minority Counsel. Sorry. So in only 35 percent of the time had they make any decision, meaning that --

Mr. Stamos. I'm sorry. Did they take any actions on anything we referred to them.

Minority Counsel. So in -- sorry. So in 65 percent -- am I doing the math right? In 65 percent of the time, they just didn't do anything with it at all?

Mr. Stamos. That is yes. That is what we saw. And the most common action -- and so I'm now looking at pages 39 and 40 of the report.

So of the 35 percent, the way that breaks down is 21 percent of all the URLs that were reported were labeled. 13 percent were [re]moved, and one was called soft blocked, which means it wasn't removed, but it was hard to get to.

Minority Counsel. Okay.

Mr. Stamos. So the vast majority of time -- first, the majority of time they did not take any action on our report. And when they did, the majority of the time, almost two thirds of the time, their action was to label it. And generally the labels here were pretty generic. It was something like: Elections are complicated. Here's a link to our platforms' information, or our voting center, or something like that.¹³⁶

Mr. Stamos further clarified that "it's almost certainly an overestimation" to conclude that the EIP's report led to platforms taking action on 35% of the links that the EIP flagged for them.¹³⁷ Your counsel exclude this explanation:

Minority Counsel. And the 65 percent of the time, that's only of the things that were actually raised to the attention of social media companies. Right?

Mr. Stamos. That's two things. One, it's only things that were raised to their attention. Two, that is a conservative estimate. Because when we looked later, content could have been taken down by individuals or the entire accounts taken down by one of these platforms for their violations without us having any part to do with it. So 35 percent is the

¹³⁶ Interview with Alexander Stamos, at 140-41 (Jun. 23, 2023) (transcript on file with the Comm.).

¹³⁷ *Id.*, at 147-48.

absolutely high watermark of actions that could have been taken based upon our referrals.

Minority Counsel. Okay. So it's potentially an overestimation actually?

Mr. Stamos. It's almost certainly an overestimation. It's the best we could do for our research.¹³⁸

Your counsel's omissions from the amicus brief also serve to imply that the platforms regularly reported back to the EIP with their decisions, suggesting that they felt accountable to the EIP.¹³⁹ In reality, the platforms would rarely provide information about their final enforcement decision to the EIP.¹⁴⁰ In fact, the Partnership had to develop a specialized software tool to check each flagged URL to determine whether it was still available on a particular platform in order to provide the 35% figure for the EIP's final report.¹⁴¹ Mr. Stamos testified:

Minority Counsel. Okay. And you didn't have any insight into why they took particular actions with respect to any particular tweet?

Mr. Stamos. No. If they got back to us, sometimes they would say: We determine this is not violative of policy. And that's I think the most we would generally ever here. We had to make this table by going -- we built software that went and checked every single URL to see how it was being treated at that time.¹⁴²

C. The EIP was not closely intertwined with CISA.

The brief your counsel submitted states that the "EIP was thoroughly intertwined with CISA."¹⁴³ The evidence the Committee has received does not support this statement. Notably, Mr. Stamos explained:

[T]he accusation that's have been made in front of a committee that, unfortunately, none of your members corrected repeatedly is that CISA was telling us to censor tweets. And that turns out to be false on multiple levels. We did no censorship, we had no power to have censorship, and we did not have CISA sending us those requests.¹⁴⁴

Mr. Stamos confirmed that the EIP was his idea, and that no CISA employees asked him to create the partnership:

¹³⁸ *Id.*

¹³⁹ Brief of Jordan et al., at 30.

¹⁴⁰ See Interview with Alexander Stamos, at 140 (Jun. 23, 2023) (transcript on file with the Comm.).

¹⁴¹ Center for an Informed Public, Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory, *The Long Fuse: Misinformation and the 2020 Election*, at 39-40 (2021), <https://purl.stanford.edu/tr171zs0069>.

¹⁴² Interview with Alexander Stamos, at 141 (Jun. 23, 2023) (transcript on file with the Comm.).

¹⁴³ Brief of Jordan et al., at 28.

¹⁴⁴ Interview with Alexander Stamos, at 222 (Jun. 23, 2023) (transcript on file with the Comm.).

Minority Counsel. Did CISA ever ask SIO to create the EIP?

Mr. Stamos. I don't recall if they ever asked us to do anything. The EIP was my idea, and we approached them with the proposal.

Minority Counsel. Okay. So it wasn't like the Department -- did anybody else at the Department of Homeland Security ask SIO to create the EIP?

Mr. Stamos. No. This was my idea.¹⁴⁵

He explained that the EIP's interactions with CISA were primarily limited to the early stages of the formation of the EIP in the summer of 2020, during which time the EIP was working to compile contact information for state and local election officials so that information could be shared with those officials.¹⁴⁶ In June of that year, the decision was made to have EI-ISAC coordinate and share information between local and state election officials and the EIP, because it would not have been feasible for the EIP itself to compile and authenticate contacts for the "thousands and thousands of people" who work for local election authorities.¹⁴⁷

Beyond those interactions in the initial stages of the EIP, CISA played virtually no role in the EIP's work:

Majority Counsel. So you have contacted CISA, CISA introduces you to EI-ISAC. And we are still in the summer of 2020, to the best of your recollection?

Mr. Stamos. Okay.

Majority Counsel. What roles did CISA play, if any, after that?

Mr. Stamos. In the EIP they had no official role. They did not have the ability to report things directly to us. We would take things from EI-ISAC. I don't believe anything that EI-ISAC sent us came from CISA employees themselves. And they were not part of our day-to-day operations or our analysis. So they had very little role, if none in EIP.¹⁴⁸

¹⁴⁵ *Id.*, at 62.

¹⁴⁶ *Id.*, at 43-44, 47-48.

¹⁴⁷ *Id.*, at 93-94, 131-32.

¹⁴⁸ *Id.*, at 96.

D. This Committee’s harassment and intimidation have discouraged the EIP and other data scientists from pursuing further work in this field.

The brief your counsel filed claims that the “EIP recreated itself for the 2022 election and may again for the 2024 election,” seemingly as fearmongering tactic.¹⁴⁹ However, the excerpt of Mr. Stamos’s testimony that your counsel appended to the brief contradicts these speculations about the EIP in 2024:

Majority Counsel. Are there plans to -- you mentioned that EIP -- obviously, this is the 2020 iteration. In 2022, you said there were some differences. Are there any plans to have some continuation of the partnership for the 2024 election?

Mr. Stamos. That’s an interesting question. I’m going to have to have a discussion with Stanford’s leadership. Since this investigation has cost the university now approaching seven figures legal fees, it’s been pretty successful I think in discouraging us from making it worthwhile for us to do a study in 2024.¹⁵⁰

Dr. Starbird was also asked if her experience with this investigation would limit her willingness to do this type of work going forward.¹⁵¹ She confirmed that it is having a serious chilling effect:

Minority Counsel. Do you think the fact that you've been -- that your work has been misrepresented, that you have been brought into this investigation, for example, do you think that might limit your willingness to do public facing work in the future?

Dr. Starbird I mean, quite frankly, I don't have kids. If I did, I would no longer be doing this work. I'm worried about my students. I know they're worried about doing this kind of work because of these kinds of threats and what they see that I'm going through. And, at the same time, I just think the work is so important, and I want to make sure it keeps going. So I don't -- I don't want to step off that stage. I don't want -- I think we have, like, special skills that can be really useful and helpful and help make our country stronger and but this is having a chilling effect, and it's not just me. Other researchers are experiencing the same thing.¹⁵²

¹⁴⁹ Brief of Jordan et al., at 30.

¹⁵⁰ Interview with Alexander Stamos, at 217-18 (Jun. 23, 2023) (transcript on file with the Comm.).

¹⁵¹ Interview with Kate Starbird, at 138 (Jun. 6, 2023) (transcript on file with the Comm.).

¹⁵² *Id.*

These witnesses' testimony demonstrates that your harassment of private individuals and entities has discouraged important academic research. Your continued intimidation of academics and companies could be viewed as coercion to ensure that foreign actors are permitted to wage information campaigns against Americans to influence elections in 2024 without impediment.

VII. Omission of Key Testimony Showing That Meta Did Not Experience Coercion

The brief submitted by your counsel also fails to note that the Committee has obtained extensive testimony from Meta employees stating that they never experienced any type of coercion or undue pressure from the government and did not make content moderation decisions or change Facebook or Meta policies in response to pressure from the government.

For example, Brian Rice, Meta's Vice President for Public Policy, plainly stated that he had not been subject to government coercion and did not take down content because of government pressure:

Minority Counsel. You talked about the frustration that certain officials at the White House expressed over what Meta's policies covered and Meta's enforcement of those policies. Did anyone in the White House or any government official coerce you or force you to remove or try to remove a piece of content, an account -- I mean, you -- I'm sorry, Meta, or the company. I'm going to follow your lead and call it the company since it changed names -- from the company's platforms?

Mr. Rice. No.

Minority Counsel. And you were asked earlier about consequences that you expected to face if -- or that Meta expected to face, or the company, if it did not align its policies with what those who were frustrated wanted. Did anyone in the U.S. Government threaten to retaliate if the company did not broaden its policies or enforce them more aggressively as you were asked?

Mr. Rice. No, not to my awareness.

Minority Counsel. And, to your knowledge, did the company change its policies in response to pressure from the U.S. Government?

Mr. Rice. Not to my knowledge, no.

Minority Counsel. And, to your knowledge, did the company enforce its policies, take down any content, make any decisions because of or at the request of or because of pressure from the U.S. Government?

Mr. Rice. No, not to my knowledge.¹⁵³

A Meta Programs and Partnerships team lead,¹⁵⁴ whose partner manager portfolio included a variety of U.S. government entities,¹⁵⁵ similarly testified that nobody from the White House, Centers for Disease Control and Prevention (CDC), or Department of Health and Human Services (HHS) ever ordered or coerced the company to take down content:

Minority Counsel. But did anyone at the White House ever order you or try to coerce you into taking down content based on the nature of the content itself, not [because it was someone inauthentic] who posted it? And I'm talking about a particular piece of content.

The Witness. I don't recall anything like that happening.

Minority Counsel. And did anyone at the CDC ever try to coerce you into taking down a particular piece of content?

The Witness. No, I don't recall anything like that happening.

Minority Counsel. And what about with HHS?

The Witness. No.¹⁵⁶

David Agranovich, Meta's Director of Global Threat Disruption, stated that he had no knowledge of any government agency ordering, coercing, or pressuring Meta to take down accounts or content:

Minority Counsel. To your knowledge, has anyone in the FBI or the State Department or any other government agency ordered Meta to take down an account, page, or other content?

Mr. Agranovich. Not to my knowledge.

Minority Counsel. And to your knowledge, has anyone in the FBI or any other government agency tried to coerce or pressure Meta into taking an account down or other content?

¹⁵³ Interview with Brian Rice, at 43-44 (Jun. 20, 2023) (transcript on file with the Comm.).

¹⁵⁴ Due to privacy concerns, this letter only identifies witnesses by name if Chairman Jordan's amicus brief has already so identified them. In other instances, witnesses are identified by a description of their role and the date of their testimony.

¹⁵⁵ Interview with a Meta Programs and Partnerships team lead, at 7-8, 14-15 (May 31, 2023) (transcript on file with the Comm.).

¹⁵⁶ *Id.*, at 74.

Mr. Agranovich. Again, not to my knowledge.¹⁵⁷

A manager in Meta's External Affairs division that led a U.S.-focused regional team¹⁵⁸ likewise testified that they had no recollection of any federal official ordering, pressuring, or coercing Meta into removing content:

Minority Counsel. To your knowledge, has any Federal official or agency ordered Meta, or Facebook, when it was known as Facebook, to remove an account, page, or any other content?

The Witness. Not to my recollection.

Minority Counsel. And to your recollection, has any official or agency ever tried to coerce or pressure Meta, or then, Facebook, into removing a page, account, or other content?

The Witness. Not to my recollection.

Minority Counsel. And to your knowledge, has any Federal official threatened Meta with any adverse consequences, or Facebook -- I'm sorry -- if it did not remove a page, account, or other content?

The Witness. Not to my recollection.

Minority Counsel. And have you ever personally felt pressured by any Federal officials or agencies to remove content on Meta or then Facebook's platforms?

The Witness. I have not, no.¹⁵⁹

A subject matter expert on "elections and related issues" in Meta's Trust and Safety Policy division¹⁶⁰ testified that they felt no pressure to conform to a particular partisan ideology:

Minority Counsel. Does Meta favor any particular ideology with respect to elections?

The Witness. No.

Minority Counsel. And was any of your work partisan in nature as you were promoting elections?

¹⁵⁷ Interview with David Agranovich, at 54-55 (May 16, 2023) (transcript on file with the Comm.).

¹⁵⁸ Interview with a Meta External Affairs manager, at 11-12 (May 22, 2023) (transcript on file with the Comm.).

¹⁵⁹ *Id.*, at 43.

¹⁶⁰ Interview with a Meta Trust and Safety Policy manager, at 7 (Jun. 14, 2023) (transcript on file with the Comm.).

The Witness. No.

Minority Counsel. Did anyone from Meta try to pressure you in any way that you would consider partisan?

The Witness. No.

Minority Counsel. And did anyone from outside of Meta try to pressure you in your role at Meta to effect a partisan outcome?

The Witness. I don't know the motives of external folks. I felt no pressure.¹⁶¹

The elections expert also stated that all their interactions with DHS, CISA, and other government actors were “entirely” voluntary and noncoercive and nature,¹⁶² and that while CISA offered Meta information, it never demanded anything from the company:

Minority Counsel. I mean, to your knowledge, has any Federal official or agency ever tried to coerce or pressure Meta into any particular action with respect to its con -- with respect to its content by threatening them, say, for example, with antitrust legislation or some other kind of lever that the government might have over Meta?

The Witness. I can only speak to I have never felt pressured there, but I do not deal with formal process. There are divisions within the company that receive subpoenas, child safety related, et cetera.

Minority Counsel. Understood. Okay. So fair to say that in the interactions that you've described here so far with CISA or other government actors, it's been voluntary, conciliatory, and noncoercive on the part of the government. Is that fair to say?

The Witness. Entirely, in my view.

Minority Counsel. And they've offered you information but not demanded things from you. Is that fair to say?

The Witness. Yes.¹⁶³

¹⁶¹ *Id.*, at 43-44.

¹⁶² *Id.*, at 81.

¹⁶³ *Id.*, at 80-81.

Nathaniel Gleicher, Meta's Head of Security Policy, testified that no U.S. Government Agency has ever ordered, coerced, or pressured Meta into taking down user accounts:

Minority Counsel. To your knowledge, has anyone in any government agency ordered Meta to take down an account or page that it believed was violating your policies against influence operations or CIB [coordinated inauthentic behavior]?

Mr. Gleicher. You mean a U.S. Government agency?

Minority Counsel. U.S. Government agency, correct.

Mr. Gleicher. No.

Minority Counsel. And, to your knowledge, has any U.S. Government agency -- anyone in a U.S. Government agency ever tried to coerce or pressure Meta into taking down an account that it believed violated Meta's policies against foreign interference or CIB?

Mr. Gleicher. No.

Minority Counsel. And those are policies that you deal with, correct?

Mr. Gleicher. Correct.

Minority Counsel. And, to your knowledge, has anyone in the government threatened Meta with any adverse consequences if it did not take down accounts that it thought violated Meta's policies against foreign influence?

Mr. Gleicher. No.¹⁶⁴

Mr. Gleicher also explained that all of Meta's interactions with the FBI's Foreign Influence Task Force are entirely voluntary in nature:

Minority Counsel. Do you know, when did Meta start communicating with the Foreign Influence Task Force?

Mr. Gleicher. I don't remember the exact -- I don't remember when we started communicating with them.

Minority Counsel. Do you remember if you were engaging with them before the -- before President Biden was inaugurated?

¹⁶⁴ Interview with Nathaniel Gleicher, at 63 (Jun. 21, 2023) (transcript on file with the Comm.).

Mr. Gleicher. Was inaugurated?

Minority Counsel. Yeah.

Mr. Gleicher. Certainly, yes.

Minority Counsel. Okay. So that relationship began at least during the Trump administration or was active during the Trump administration.

Mr. Gleicher. My memory is that that relationship began around when the [FBI's Foreign Influence] task force was created.

Minority Counsel. And do you know when that was?

Mr. Gleicher. I don't remember exactly, but it was during the Trump administration, yes.

Minority Counsel. Thank you. And Meta's communication with the task force and relationship with the task force is a voluntary choice that Meta makes, correct?

Mr. Gleicher. Yes.

Minority Counsel. You could choose not to receive information from them if you wanted to.

Mr. Gleicher. True.

Minority Counsel. And you could choose not to have members of your team attend their meetings.

Mr. Gleicher. Correct.

Minority Counsel. And did any government official ever tell Meta that it was required to work with or communicate with the task force?

Mr. Gleicher. No.

Minority Counsel. Why did Meta choose to work with the task force?

Mr. Gleicher. We generally look to receive information from external parties. We would much rather get information than not get it so that we can then subsequently conduct our own

investigation. And if we identify something that violates our policies, we then take action.¹⁶⁵

Mr. Gleicher likewise explained that the social media company's relationships with the Department of State's Global Engagement Center and CISA are wholly voluntary:

- Minority Counsel.** You talked about communications with the State Department's Global Engagement Center. Do you know when that relationship with Meta began?
- Mr. Gleicher.** I don't remember the -- when it began, no.
- Minority Counsel.** But do you remember communicating with them in 2020?
- Mr. Gleicher.** Yes.
- Minority Counsel.** And, again, that was during the Trump administration.
- Mr. Gleicher.** Yes.
- Minority Counsel.** And as with the Foreign Influence Task Force, Meta's communication with the Global Engagement Center is entirely voluntary.
- Mr. Gleicher.** Yes.
- Minority Counsel.** You could choose to cut off that line of communication at any time.
- Mr. Gleicher.** Yes.
- Minority Counsel.** But you prefer to keep it open because, as you said, it's important to Meta to identify as many of these networks as possible.
- Mr. Gleicher.** Yes. And I would rather we get the information and be able to conduct the investigation ourselves.
- Minority Counsel.** And you talked about Meta's relationship with CISA and the industry working group meetings.
- Mr. Gleicher.** Yes.
- Minority Counsel.** That also is a voluntary relationship?

¹⁶⁵ *Id.* at 57-59.

Mr. Gleicher. Yes.

Minority Counsel. You could choose not to participate at any time?

Mr. Gleicher. Yes.

Minority Counsel. But you choose to participate?

Mr. Gleicher. We do.¹⁶⁶

Finally, Mr. Gleicher repeatedly clarified that with respect to all allegations of coordinated inauthentic behavior, Meta takes action only following its own independent investigation and does not act based solely on tips from FBI or any other partners.¹⁶⁷ For example, he testified:

Minority Counsel. And when Meta receives the tips, specific tips about operations, whether it's from the FBI or other nongovernmental partners, you don't just act, correct?

Mr. Gleicher. No.

Minority Counsel. Meta conducts its own internal investigation.

Mr. Gleicher. Correct. Whenever we receive information from any third party, whether government or nongovernment, we conduct our own investigation based on what they share with us.

If we ultimately identify assets on our platform that violate our policies, we then take the decision to take action, but only based on our own independent investigation.

Minority Counsel. And based on your own independent determination that --

Mr. Gleicher. Yes.

Minority Counsel. -- the information uncovered by the investigation violates Meta's community standards.

Mr. Gleicher. Correct. In fact, often the information received isn't about our platform. So it might be an awareness that there are websites that may be controlled by Russian actors that we can't even act on that directly. We run our own investigation. And if based on that information we identify

¹⁶⁶ *Id.*, at 59-60.

¹⁶⁷ *E.g., id.*, at 29-31.

assets on our platform, we take the decision whether or not to act depending on if they violate our policies ...

Minority Counsel. ... So when an account is taken down for violating Meta's policies against CIB or foreign influence, it's not because the government wanted an account or a page removed, correct?

Mr. Gleicher. Correct.

Minority Counsel. It's because Meta made the decision.

Mr. Gleicher. When we take action on a piece of content under our CIB policies or other policies, it's because we make that determination.

Minority Counsel. And, if you do not take action --

Mr. Gleicher. It's also because we make that determination.¹⁶⁸

The omission of this testimony, combined with the misstatements and misleading information outlined above, raises serious concerns that your outside counsel may not have been entirely candid with the U.S. Court of Appeals for the Fifth Circuit. I therefore urge you to work with your counsel as soon as possible to correct this record and ensure that the Fifth Circuit Court and the American public have a true and accurate account of what this investigation has in fact found to date.

Sincerely,



Jerrold Nadler
Ranking Member
House Committee on the Judiciary

¹⁶⁸ *Id.*, at 60-62.