Dissenting Views

> *[F]oreign nations continue to use influence measures in social and traditional media in an effort to sway U.S. voters' preferences and perspectives, to shift U.S. policies, to increase discord and to undermine confidence in our democratic process. . . The American public has a role to play in securing the election, particularly in maintaining vigilance against foreign influence. At the most basic level, we encourage Americans to consume information with a critical eye, check out sources before reposting or spreading messages, practice good cyber hygiene and media literacy, and report suspicious election-related activity to authorities.*[1]
>
> *William Evanina, Director, National Counterintelligence and Security Center, Office of the Director of National Intelligence.*

It is well recognized that the threat of foreign influence on United States elections and disinformation campaigns using social media is real. Moreover, the evidence demonstrates that all users, including veterans, are targets of such disinformation campaigns. The evidence also demonstrates that the veteran community is targeted by criminals using social media platforms to carry out fraud schemes.

Democrats and Republicans alike have expressed frustration and anger towards the social media platforms, albeit, at times, for different reasons. While we largely agree with the Majority's recommendations to improve awareness and communication between the social media platforms and the veteran community, most of the Majority's recommendations in this report go well beyond the Committee's jurisdiction and expertise. The Majority wades into issues regarding how the platforms should operate, suggests changes to federal data privacy laws, and what information should be available to law enforcement. These issues are not the providence of the Committee on Veterans' Affairs and are being considered by other committees. We are concerned that some of the recommendations have constitutional and privacy implications that the Majority has not fully considered. Finally, by entering debates on how to address spoofing and disinformation on these platforms, we move away from the Committee's core focus of improving the quality of VA healthcare, benefits, and services.

While we appreciate the Majority's efforts to educate the veteran community on the disinformation and fraud threats they face while using social media, for the reasons outlined below, we must depart from the Majority on this report.

This is Not a Bipartisan Report

As an initial matter, the Majority's report was conceived as and has remained a Majority product. We expect that before announcing a bipartisan investigation, the Majority and Minority staffs would discuss the objectives and scope of the investigation. We also expect that a bipartisan investigation would include an invitation to participate in all witness interviews. Finally, we

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[1] *See* https://www.dni.gov/index.php/newsroom/press-releases/item/2135-statement-by-ncsc-director-william-evanina-100-days-until-election-2020

expect that the parties would discuss the findings of the investigation and the objective of the report before drafting it. Unfortunately, none of those things occurred.

On March 5, 2019, Chairman Takano issued a press release announcing the investigation. Minority staff was informed of the investigation the day it was announced but was not involved in the discussions about the investigation's objectives or scope prior to the announcement. The Majority invited Minority staff to participate in a meeting with the Vietnam Veterans of America (VVA) to review its report. Minority staff raised concerns over the Committee's lack of jurisdiction over several findings and recommendations in VVA's report.[2] Minority staff participated in meetings with Facebook to discuss some of the concerns raised by VVA. Both staffs worked with Facebook to address VVA's concerns and helped facilitate Facebook's verification of additional Veteran Service Organizations (VSO) Facebook pages. The Committee held a hearing on the topic in November 2019 and held a briefing with law enforcement in January 2020. The report cites to witness interviews with Twitter on September 10, 2019, and October 17, 2019, and with Graphika on September 25, 2019, interviews in which the Minority was not invited to participate.[3]

The Minority was not consulted in the outlining or drafting of the report. Rather, the Majority presented its report in August and solicited Minority staff comments. After sharing concerns with the Majority, the Majority said that the report would be released informally as a Majority staff report. That plan changed in October 2020, when the Majority advised us that the Committee would be voting to mark-up the report in late November or early December. The Majority shared the final draft with all committee members on November 19, 2020, just days before members went home for the Thanksgiving holiday. The Majority's report was conceived as and has remained a Majority product.

The Recommendations Pose a Potential Threat to Free Speech

We agree with the Majority that the United States must combat foreign interference in our elections. The Majority's report, however, unnecessarily inserts the Committee into political and policy debates that are beyond the jurisdiction and expertise of this Committee. Moreover, we are concerned that the recommendations, in an effort to combat spoofing and misinformation, may undermine free speech.

On October 6, 2020, Republican members of the House Judiciary Committee issued a staff report detailing the silencing of conservative viewpoints by Big Tech companies, including the social media platforms (hereinafter, "Censorship Report").[4] The Censorship Report cited examples where conservative voices, including the voices of Members of Congress, were silenced. We are

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[2] In April of 2018, VVA raised its findings regarding veterans being targeted on social media prior to the House Energy and Commerce Committee's April 11, 2018 hearing on Facebook's transparency and use of consumer data. *See* http://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-20180411-SD014.pdf

[3] The report identifies interviews with Twitter on September 10, 2019, and October 17, 2019 (*see* FNs 203 & 207). The report identifies interview with Graphika on November 5, 2019 (*see* FN 137)

[4] https://republicans-judiciary.house.gov/wp-content/uploads/2020/10/2020-10-06-Reining-in-Big-Techs-Censorship-of-Conservatives.pdf

concerned that the Majority's report and recommendations could further fuel the silencing of conservative voices on social media platforms.

For instance, the Majority draws on examples of content associated with conservative views to demonstrate how spoofers use social media to push "political propaganda & socially divisive content" to drive engagement or push disinformation. In that section, the Majority uses memes – one from "Vets for Trump" and another from "Vietnam Veterans" – that juxtapose Colin Kaepernick, the former NFL player who kneeled during the National anthem in protest of police brutality and racial disparities, and former NFL players Pat Tillman and Glen Coffee who left the NFL to join the Army, with Pat Tillman making the ultimate sacrifice. The Majority states that, "These are examples of socially divisive images being used to place veterans and 'heroes' on one side and those protesting police brutality, or supporting Black Lives Matter, on the other."

Colin Kaepernick started kneeling during the National Anthem on September 1, 2016.[5] President Obama defended Mr. Kaepernick's protest on September 5, 2016.[6] On September 12, then presidential candidate Donald Trump weighed into the debate and voiced his opposition to the protest.[7] The kneeling debate is legitimate and even the veteran community is divided over the issue.[8, 9] Accepting that the examples used in the report were posted by non-U.S. actors between March and August 2019, the debate on kneeling during the National Anthem predated the posting by the foreign actors.[10] Similar messages appear to have been posted outside the period the legitimate owners lost control. Thus, we are concerned with the Majority's characterization of this debate as "political propaganda and socially divisive content" with the implication being that it should be moderated to address spoofing could unintentionally undermine free speech.

Fear of censorship by the social media platforms is not imagined. On October 14, 2020, Facebook and Twitter limited the sharing of New York Post articles that alleged corruption by Hunter Biden, the son of Democratic presidential nominee Joe Biden.[11] In response, the Senate Committee on Commerce, Science, and Transportation held a hearing on October 28, 2020, to examine Section 230 of the Communication Decency Act and whether it needs modification.[12] Political drama ran high during the hearing with a Republican senator chastising the social media platform representatives while a Democrat senator claimed the hearing was "a sham."[13]

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[5] https://www.sportingnews.com/us/nfl/news/colin-kaepernick-kneeling-protest-timeline/xktu6ka4diva1s5jxaylrcsse
[6] *Id.*
[7] *Id.*
[8] https://www.bostonglobe.com/metro/2017/09/25/military/MLjykBWSTbMlWqbaVUAGzI/story.html
[9] https://www.tennessean.com/story/news/politics/2017/09/28/kneeling-anthem-veterans-opinions-nfl/709488001/
[10] According to a news report, the "Vets for Trump" Facebook page was started in 2015 by two Americans, including a Navy veteran. Individuals from North Macedonia highjacked the page between March and August 2019. *See*: https://www.washingtonpost.com/technology/2019/09/17/popular-facebook-page-vets-trump-seemed-be-place-former-military-months-macedonians-controlled-it/. However, the content of the "Vets for Trump" page outside the six months the page was highjacked is consistent with material that the Majority labels as "divisive."
[11] https://www.wsj.com/articles/facebook-twitter-limit-sharing-of-new-york-post-articles-that-biden-disputes-11602736535
[12] https://www.commerce.senate.gov/2020/10/does-section-230-s-sweeping-immunity-enable-big-tech-bad-behavior
[13] https://www.cnn.com/2020/10/28/tech/section-230-senate-hearing-wednesday/index.html

On November 17, 2020, the Senate Judiciary Committee held a similar hearing titled, *Breaking the News: Censorship, Suppression, and the 2020 Election,* to examine censorship by social media platforms and whether Congress needs to modify Section 230 of the Communication Decency Act.[14]

Another example from the report that poses a potential threat to free speech can be found in the Majority's commentary on Twitter's October 2019 decision to stop all paid political advertising. In that section the Majority states:

> Twitter's decision to ban paid political advertisements has been roundly commended. However, there are still loopholes which facilitate the promotion of political agendas without conflicting with the ad ban. Messages can be crafted around political issues without naming specific candidates, parties, or outcomes.

In the next section titled, "Is Twitter Doing Enough?" the Majority identifies one of the perceived loopholes. Specifically, the report states:

> Twitter continues to monitor and enforce political accounts for compliance with its Rules on Platform Manipulation. This was recently enforced against the campaign of Michael Bloomberg in the Democratic primaries, resulting in the suspension of seventy accounts for coordinated behavior. However, opportunities remain for spoofers to exploit gaps between these policies, for example, by using divisive content that does not meet the threshold of paid political advertising, but serves similar purposes. *For example, Twitter still allows ads related to social causes such as climate change, gun control, and abortion, but organizations cannot advocate for or against a specific political, judicial, legislative, or regulatory outcome related to those matters.*

(*emphasis added*)

Implicit in the Majority's commentary is that Twitter is not doing enough to prevent what the Majority considers to be divisive content from being posted to the platforms. The Majority's solution appears to be to ban all paid advertising on social media that touches upon any matter of political consequence that someone could find divisive regardless of where it originates. This is concerning because not all ads related to social causes are placed by spoofers. Thus, the impact could be that legitimate advocacy of conservative positions is stifled. The silencing of voices is consistent with the findings of the Censorship Report. Specifically, the Censorship Report found that, "When there is conflict over contentious issues, the trend is to silence and suppress disfavored views rather than address reasonable arguments that best enrich America's civic discourse."[15]

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[14] https://www.judiciary.senate.gov/meetings/breaking-the-news-censorship-suppression-and-the-2020-election

[15] https://republicans-judiciary.house.gov/wp-content/uploads/2020/10/2020-10-06-Reining-in-Big-Techs-Censorship-of-Conservatives.pdf at 1.

In addition, the Majority's report highlights problems with the social media platforms' fact checking operations which further amplify the risk of content moderation based on viewpoint. In its analysis of Facebook under the heading, "Is Facebook Doing Enough?" the Majority states:

> Facebook has continued to draw attention and a measure of criticism for its decisions to allow certain doctored content on its platform that some users decry as deliberately misleading or fake news. Compounding the problem, Facebook partners with third-party fact-checkers to assess the veracity of content and identify misinformation, but defers substantially to the discretion of those external parties as to what content is actually fact-checked. Thus, even content that Facebook asserts is "eligible" to be fact-checked may not in actuality be examined unless a third-party partner specifically selects that content for review. The practical implication of this structure is that Facebook is able to shift accountability away from itself by pointing to its external fact-checking partners, but then it does not appear to provide sufficient guidelines on what content those partners must review – thereby significantly eroding the efficacy of its fact checking operations.

These conditions, in our opinion, are ripe for fostering censorship.

We believe in the free exchange of ideas, regardless of political ideology, even if those ideas make some uncomfortable. We believe that by framing the issue of social media spoofing and disinformation as a veterans' issue the Majority inserts the Committee into a political debate for which it has no jurisdiction. Given recent examples of the silencing of conservative voices, as well as concerns regarding content moderation, it is important to inform veterans of the real threat of social media disinformation campaigns without potentially undermining legitimate free speech.

We Cannot Support Five of the Seven Recommendations

The Majority offers seven recommendations broken into two categories: (1) Improving Awareness, and (2) Strengthened Prevention and Enforcement Methods. While we support recommendations one and three, we respectfully disagree with the Majority on the remaining recommendations.

Recommendation 1 – Improve Awareness through a Public Service Announcement Campaign

Veterans, like all social media users, could benefit from a campaign to improve public awareness about how to protect themselves online. As the report notes, "The FBI representatives mentioned that one of the surest ways to limit the reach of spoofers is to improve cyber-hygiene, or the practices and precautions that users of computers and social media should take to maintain system health and improve online security." To that end we support Recommendation 1, which would improve awareness of the risks associated with the use of social media platforms through the social media platforms, media outlets, and federal agencies.

The veteran community has a role to play in addressing this issue as well. We commend Vietnam Veterans of America on its recent efforts to partner with the Department of Homeland Security's

Cybersecurity and Infrastructure Security Agency, to develop and promote cyber-hygiene materials to the veteran community.[16, 17]

Recommendation 2 – Develop Cyber-hygiene Training

Recommendation 2 states that "VA and Department of Defense should develop robust and comprehensive cyber-hygiene training" that goes beyond basic information provided by a PSA. We are concerned that VA may lack the expertise and resources to "develop robust and comprehensive cyber-hygiene training" which is not currently part of VA's mission.

While it is unclear how this recommendation would be turned into action, we note that Chairman Takano offered an amendment to the House Fiscal Year 2021 National Defense Authorization Act which would establish within the Department of Veterans Affairs a new Office of Cyber Engagement to develop and provide cyber-hygiene services to veterans.[18] This new office would be headed by a member appointed to the Senior Executive Service and report directly to the Deputy Secretary or Secretary. The Committee has no legislative record to evaluate whether VA has the existing expertise and resources to stand up this new office and create cyber hygiene training.

Additionally, other federal agencies like the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigations have roles in election security, combating disinformation campaigns, or prosecuting fraud.[19] These agencies have developed cyber-hygiene training materials.[20] Before recommending that VA develop its own cyber-hygiene office and products, we believe the Committee should evaluate how best to leverage existing expertise and resources to address the goal of educating veterans on cyber security risks.

Recommendation 3 – Strengthen Partnership Between Social Media Platforms and VSOs

We support Recommendation 3, which would encourage the social media platforms to partner with VSOs to address the concerns of the veteran community. In early 2019, following meetings with the Majority and Minority staff, Facebook worked with the Committee to verify VSO Facebook pages to address very real concerns that fraudsters were using fake VSO pages to sell merchandise or disseminate information. Although we were not included in the Majority's interviews with Twitter, the report indicates that "Twitter has informed HVAC that all VSOs with Twitter accounts have now been verified, and has committed to working with the committee to ensure that congressionally-chartered VSOs, and their affiliated chapters, continue to be verified." These examples demonstrate that by enhancing communication and partnerships

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[16] https://www.cisa.gov/news/2020/10/23/cisa-and-vietnam-veterans-america-partner-raise-awareness-about-threat
[17] https://vva.org/protect2020/
[18] *See* Section 1802 of H.R. 6395; https://www.congress.gov/bill/116th-congress/house-bill/6395 /
[19] On March 19, 2019, a bipartisan group of members, including two on the Veterans' Affairs Committee, sent FBI Director Chris Wray a letter, as head of "the federal law enforcement agency responsible for criminal and counterintelligence investigations," requesting the FBI to investigate VVA's findings. *See*: https://cisneros.house.gov/media/press-releases/bipartisan-veterans-demand-investigation-suspicious-vso-social-media-accounts
[20] https://www.fbi.gov/investigate/counterintelligence/foreign-influence/protected-voices

between the social media platforms and veteran community, opportunities are created to understand and address the VSO community's concerns.

Recommendation 4 – Improve Reviews of Accounts by Social Media Platforms

Recommendation 4 calls for the social media platforms to "implement stronger reviews of accounts that pose substantial risk of spoofing," the adoption of industry-developed best practices involving accounts that control groups or pages with high follower threshold, and official verification of such groups or pages with ownership and geolocation information made publicly available for all users.

As the Majority's report notes, Facebook already implements "higher standards of verification, visibility, and transparency for pages that exceed a threshold for large numbers of followers, political advertisers, and certain commercial pages." The report then adds that Facebook private groups are one way that inauthentic users avoid transparency. Recognizing that Facebook already does what the Majority is advocating for to an extent, we have privacy concerns related to the proposed expansion.

First, this recommendation does not differentiate between U.S. citizens or foreign actors. We are concerned that there may be U.S.-based accounts with a large following that could be captured by this recommendation. As discussed in our response to Recommendation 7, we are concerned that the call to verify all accounts over a defined threshold of followers, collect geolocation information, and make the information publicly available *for all users* could undermine free speech and raises privacy concerns. We share the desire to protect and empower the veteran community, but we do not believe this Committee has the jurisdiction or expertise to wrestle with these complex and sensitive issues.

Recommendation 5 – Consider Legislative Reforms to Facilitate Sharing Information

Recommendation 5 suggests that Congress should "consider appropriate modifications to the federal laws that the social media platforms currently construe as limiting their ability to freely share data with law enforcement agencies or other peer platforms in order to detect, prevent, or remove fraudulent or spoofed content." The Majority specifically calls for an amendment to the Electronic Communications Protection Act (ECPA) to facilitate the social media platforms' sharing of information with law enforcement.

The jurisdiction of House committees is established by the Rules of the House.[21] The Committee on Veterans' Affairs' jurisdiction broadly concerns veterans matters. The House Judiciary Committee was the committee of jurisdiction that reported the Electronic Communications Protection Act of 1986 (P.L 99-508).[22] As such, the House Committee on Veterans' Affairs lacks the jurisdiction and expertise in the nuances and operation of the ECPA and federal laws regulating data sharing by social media platforms.

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[21] *See* Rules of the House of Representatives, 116th Congress, Rule X, Clause 1(s)
[22] *See* https://www.congress.gov/bill/99th-congress/house-bill/4952

We recognize that members of this Committee may have ideas on how to improve the ECPA and other data sharing laws affecting the social media platforms. However, "appropriate modifications" is vague. We note that the report refers to the ECPA as an "impediment" to combating spoofing, but we are unwilling to join our colleagues in recommending that a change to the ECPA is appropriate because this is outside our expertise. Rather, we defer to our colleagues in the committee of jurisdiction who have the expertise to evaluate proposed changes to ECPA.

Recommendation 6 – Increase Data Sharing on Fraudulent Accounts

Recommendation 6 suggests that social media platforms improve their sharing of fraudulent and spoofed accounts to the extent permissible under current statutes, and that they develop more consistent protocols regarding sharing this information with other platforms and law enforcement should be established.

We appreciate the Majority's recognition that Recommendation 6 comes with privacy and civil rights concerns and we echo those concerns. While we agree on the need to protect our elections from foreign interference and veterans from spoofing, there are important privacy and civil rights concerns at issue in this recommendation. Therefore, we disagree with the Majority's recommendation and defer to expertise of the committee of jurisdiction.

Recommendation 7 – Improve Identity Verification and Geolocation Identification

Recommendation 7 suggests that social media platforms should "improve their verification of identities, affiliations, and geolocation for all accounts" and make this readily available to users and law enforcement.

With an average of over 2 billion daily users across the Facebook's platforms alone, the breadth of this recommendation is extensive. Moreover, the Majority's recommendation makes no distinction between a U.S. citizen or a foreign actor and calls for sensitive information to be collected and made readily available *for all users and law enforcement*. The Majority notes that some platforms, like Facebook, have already taken steps to verify certain accounts and make that geolocation information available publicly. We are unprepared, however, to join the Majority in this wholesale approach out of concern of its impact on privacy and free speech of Americans.

The tradition of anonymous political debate is as old as the United States. Courts have recognized the value of anonymity in political debate. We are concerned with the potential impact of the recommendations. For example, if the social media platforms were to publish the identity, geolocation, and affiliations information of all accounts – including the accounts of American citizens engaging in protected debate – such publication could undermine free speech. Moreover, we are concerned about the privacy implications of making this information available to law enforcement.

Assessing whether data privacy laws need to be updated or whether the tools and information available to law enforcement are adequate to address the realities of social media are important matters that are currently being debated by the committees of jurisdiction. They are not, however, matters within the expertise or jurisdiction of this Committee.

Conclusion

Foreign adversaries like Russia, China, and Iran use social media to sow division. They target many groups including the veteran community. Scammers also use social media to perpetrate fraud against the veteran community. We support the Majority's recommendations to improve awareness of these issues among the veteran community and foster cooperation between the social media platforms and the veteran community. However, we do not believe that a single hearing, a non-transcribed brief from DOJ and the FBI, and staff interviews with the social media platforms, some of which were not bipartisan, gives the Committee on Veterans' Affairs the jurisdiction or expertise necessary to wade into these complex and sensitive issues. Therefore, we dissent to the Majority's report.

For the Minority,

David P. Roe, M.D.
Ranking Member

The Republican Committee Members listed below concur with this dissent but were precluded from signing it due to the ongoing national emergency:

The Honorable Gus M. Bilirakis

The Honorable Amata C. Radewagen, Vice Ranking Member

The Honorable Mike Bost

The Honorable Neal Dunn

The Honorable Jack Bergman

The Honorable Jim Banks

The Honorable Andy Barr

The Honorable Dan Meuser

The Honorable Chip Roy