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A Tremendous Victory for Free Speech

BY  BROWNSTONE INSTITUTE SEPTEMBER 10, 2023 LAW 5 MINUTE READ

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Censorship is not just an attack on the free speech rights of the speaker; it is a coordinated effort against you, the citizen, and your right to information. It aims to perpetuate power by silencing dissent and destroying opposition.

The Fifth Circuit Court of Appeals reaffirmed this principle on Friday night when it [ruled](#) that the White House, the FBI, and the CDC violated the First Amendment by encouraging and coercing social media companies to suppress free speech.

“The officials have engaged in a broad pressure campaign designed to coerce social-media companies into suppressing speakers, viewpoints, and content disfavored by the government,” a three-judge panel wrote in *Missouri v. Biden*. “The harms that radiate from such conduct extend far beyond just the Plaintiffs; it impacts every social-media user.”

The judges partly upheld a preliminary injunction from July, clarifying and narrowing an order designed to redress repeated and ongoing First Amendment violations. Their opinion outlines the federal bureaucracy’s efforts to silence critics of the White House’s Covid policies and to deny Americans the right to hear opposing viewpoints; efforts they describe as “unrelenting pressure” that likely “had the intended result of suppressing millions of protected free speech postings by American citizens.”

While government officials told the press that their “content moderation policies” were “public health” initiatives, the legal case reveals their true motivation: to deny you the right to know their crimes, discuss their incompetence, or protest their policies.

The public is always the target of censorship, even if individuals suffer the consequences more directly. [Julian Assange](#) isn’t in jail for jumping bail. He is a political prisoner locked in solitary confinement for telling you the truth of American foreign policy. Edward Snowden wasn’t banished from his homeland for computer hacking. He is a citizen in exile because he exposed our leaders’ deceit and assaults on our Fourth Amendment liberties to the public.

White House Director of Digital Strategy [Rob Flaherty](#) doesn’t care about virology or epidemiology; he’s concerned with power. He didn’t approach social media companies with the Biden

Administration's latest statement on Covid; he launched threats as if he were a mobster.

"We are gravely concerned that your service is one of the top drivers of vaccine hesitancy—period," he [wrote](#) to a Facebook executive. "We want to know that you're trying, we want to know how we can help, and we want to know that you're not playing a shell game. . . . This would all be a lot easier if you would just be straight with us."

At other times he was more direct in calling for suppression of political opponents' speech. "Are you guys fucking serious?" Flaherty [asked](#) Facebook after the company failed to censor critics of the Covid vaccine. "I want an answer on what happened here and I want it today." He called for censorship of true but inconvenient information, which the White House dubbed "malinformation."

The Fifth Circuit explained that no injunction prevents the Biden Administration from exercising its own free speech rights. "The government can speak for itself, which includes the right to advocate and defend its own policies," the court held.

But the case was never about the White House's public statements. It concerns attacks on the essence of democratic government. If the ruling class can control your information, then you don't live in a free country. *Missouri v. Biden* reveals how the government launched an unprecedented censorship campaign under the pretext of "public health."

"The Supreme Court has rarely been faced with a coordinated campaign of this magnitude orchestrated by federal officials that jeopardized a fundamental aspect of American life," the Fifth Circuit held.

The plaintiffs in the case reflect how the censorship attacked the foundations of American civic engagement. Doctors Jay Bhattacharya, Martin Kulldorff, and Aaron Kheriaty authored critiques of Covid lockdowns and policies. Jill Hines is a political activist who organized the "Reopen Louisiana" campaign. Jim Hoft is a journalist who owns the [Gateway Pundit](#). Missouri and Louisiana sued on behalf of their citizens' right to "the free flow of information."

Taken together, the Biden Administration's targets were medical freedom, political liberty, a free press, and federalism. Each of those pillars of liberty is a direct threat to their aim of centralized control. They sought to create an informational monopoly to serve their own interests in blatant disregard for the Constitution they swore an oath to uphold.

Friday's decision provides a crucial step in fighting against that informational totalitarianism. The Fifth Circuit issued an injunction that prohibits the Biden Administration from taking actions, "to coerce or significantly encourage social-media companies to remove, delete, suppress, or reduce, including through altering their algorithms, posted social-media content containing protected free speech."

The decision is not just a victory for the plaintiffs. It is part of a necessary process to come to terms with the lies, the despotism, and the lawless evil that engulfed our country beginning in March 2020.

True, the injunction does not go far enough. It leaves too many agencies untouched. It has too many exceptions and loopholes. It also does nothing to compensate the victims or repair the egregious damage from the control of the public mind over the last three and a half years. But in times when we

are clawing back rights and liberties we once took for granted, it is an excellent beginning. There is much more to do in every area of life.

Jan Jekielek  
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"Yesterday, the 3-judge panel...upheld that injunction against the gov't. They ruled that the White House, the Surgeon General, the CDC & the FBI, were clearly in violation of 1st Amendment rights when they pressured social media companies."

[@AaronKheriatyMD](#) on 5th Circ decision.

[Watch on Twitter](#)



Case: 23-30445 Document: 238-1 Page: 1 Date Filed: 09/08/2023

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 8, 2023

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Clerk

No. 23-30445

STATE OF MISSOURI; STATE OF LOUISIANA; AARON KHERIATY;
MARTIN KULLDORFF; JIM HOFT; JAYANTA BHATTACHARYA;
JILL HINES,

Plaintiffs—Appellees,

versus

JOSEPH R. BIDEN, JR.; VIVEK H. MURTHY; XAVIER BECERRA;
DEPARTMENT OF HEALTH & HUMAN SERVICES; ANTHONY
FAUCI; ET AL.,

Defendants—Appellants.

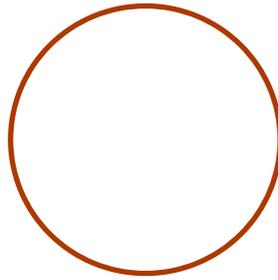
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:22-CV-1213

Before CLEMENT, ELROD, and WILLETT, *Circuit Judges.*

PER CURIAM:

A group of social-media users and two states allege that numerous federal officials coerced social-media platforms into censoring certain social-media content, in violation of the First Amendment. We agree, but only as to some of those officials. So, we AFFIRM in part, REVERSE in part, VACATE the injunction in part, and MODIFY the injunction in part.

Author



Brownstone Institute

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