No. 23A-243

IN THE SUPREME COURT OF THE UNITED STATES

VIVEK H. MURTHY, U.S. SURGEON GENERAL, ET AL.,
APPLICANTS

v.

MISSOURI, ET AL.

AMICUS BRIEF BY INTERESTED PARTY ATTORNEY MICHAEL E. REZNICK RE RELATED CASE CAPTIONED *RICHARD JACKSON, ET AL. v. TWITTER, INC., ET AL.*, (USDC CASE NO. 2:22 – cv-09438 (AB)) (Central District of California filed December 29, 2023) IN SUPPORT OF OPPOSITIONS FILED BY RESPONDENTS THE STATES OF MISSOURI AND LOUISIANA AND OTHER AMICA CURIAE TO THE APPLICANTS' PETITION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA ON JULY 4, 2023, AS MODIFIED BY THE FIFTH CIRCUIT ON OCTOBER 3, 2023 [REPLACING REJECTED"NOTICE OF INTENT, ETC."]

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Interested Party and **Former** Counsel of Record for Plaintiffs in Related Case captioned *Richard Jackson, et al. v. Twitter, Inc., et al*., USDC Case No. 2:22 – cv-09438 (AB) ("*Jackson v. Twitter*")

Hearing and Oral Argument on Former Counsel's Application to Substitute into *Jackson v. Twitter* as Pro Per Party and Other Related Issues Continued by Court to October 13, 2023

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA AND TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on December 29, 2023, Richard Jackson, Julie Briggs and Gregory Buchwalter filed a "putative" Class Action Complaint captioned RICHARD JACKSON, JULIE BRIGGS, and GREGG BUCHWALTER, Individually And On Behalf Of All Others Similarly Situated, Plaintiffs v. TWITTER, INC., a Delaware corporation; GOOGLE, LLC, a limited liability company; ALPHABET, INC., a Delaware corporation; FACEBOOK, INC., a Delaware corporation; INSTAGRAM, INC., a Delaware corporation; AMAZON INC. a Delaware corporation; YOU TUBE, INC., a Delaware corporation; APPLE, INC., a Delaware corporation; AMERICAN FEDERATION OF TEACHERS; NATIONAL EDUCATION ASSOCIATION; NATIONAL SCHOOL BOARD ASSOCIATION; [and] DNC SERVICES CORPORATION, a corporation doing business nationwide as "THE DEMOCRATIC NATIONAL COMMITTEE," Defendants, USDC Case No. 2:22-cv-09438 (AB) (the "Jackson Complaint") (hereinafter "*Jackson v. Twitter*").

INTEREST OF AMICA AND RULE 37.6 DISCLOSURE

Amica Curiae Michael E. Reznick ("Reznick") is a citizen of the United States of America, an attorney, social media user and reader and concerned parent of public school children. Reznick is also a member of the Bar of the Supreme Court (since September 2, 2011) and former counsel of record for the Plaintiffs in *Jackson v. Twitter.* Reznick has applied to substitute into *Jackson v. Twitter* "pro per" as a party-litigant and thus has a direct stake in the outcome of the case pending before this Court. [1]

ARGUMENT

The Jackson Complaint, the Plaintiffs and I all assert alleged civil rights claims for election interference and unconstitutional censorship against the "private party" defendants on the grounds that they were and still are acting as actual and ostensible agents for the federal government in banning

[1] No party's counsel authored this brief in whole or part; and no person other than this amica contributed money intended to fund this brief.

disfavored (mostly) conservative (protected) speech under the guise of "misinformation" "disinformation"" and "mal-information," in violation of Plaintiffs' First Amendment and other constitutional rights

Plaintiffs allege that Defendants - aided, abetted, directed, instructed, coerced, encouraged and induced by the Biden Administration – created tailor-made algorithms that they incorporated into their social media platforms and government software to purposely limit conservative speech, limited or excluded the types of books, computers and other products that can be purchased by Americans over the internet from internet retailers, stifled and censored conservative speech, opinions, views and demands made by concerned parents at taxpayer-funded public school board meetings, threatening them with arrest and prosecution by the US Department of Justice ("DOJ") if they did not tow the Democratic Party line and dogma (actually arresting and prosecuting some parents), and enacted and implemented national school policy favoring mandated, useless paper face masks for children and massive state-wide school shut-downs that the US Center for Disease Control ("CDC") and its leaders, including Dr. Stephen Fauci ("Dr. Fauci"), knew or should have known harmed children but myopically approved and adopted anyway despite undisputed contrary evidence pursuant to directions from the US Department of Education ("DOE") and high-ranking Biden Administration officials, including U.S. Surgeon General Vivek H. Murthy and the President himself.

Plaintiffs further allege that the avowed purpose of Defendants' unconstitutional censorship and election interference was and is to corrupt and control what has become the "Town Square" by stifling and censoring any speech that the Democratic Party's Progressive Left does not like or is not consistent with their ideology. (See Complaint, Pacer Dkt. No. 1).

IF THIS COURT GRANTS CERTIORARI IT SHOULD ALSO ORDER THE PENDING JACKSON CASE TO BE CONSOLIDATED WITH THIS CASE SO THE SUPREME COURT CAN ALSO RESOLVE ALL OUTSTANDING ISSUES PERTAINING TO "PRIVATE PARTY" AGENTS OF THE GOVERNMENT - LIKE THE DEFENDANTS IN JACKSON v. TWITTER

The Honorable Supreme Court and parties herein should note that *Jackson v. Twitter* is clearly a "related case" – as defined by the federal rules – to *State of Missouri, et al. v. Joseph R. Biden Jr., et al*., Case No. 3:22-cv-01213, Terry A. Dougherty, Judge Presiding ("*Missouri v. Biden*")).

Among other things, the documentary and other evidence relied upon by Plaintiffs in *Jackson v. Twitter* and cited by Plaintiffs in the Jackson Complaint is the same evidentiary material that convinced and persuaded Honorable Terry A. Dougherty to issue his July 4, 2023 nationwide injunction that gave rise to the Biden Administration's appeal to the Fifth Circuit, the instant Application and this Court's 10-day "Administrative Stay" of the Fifth Circuit's Opinion.

Similarly, the material facts and evidence alleged in the Jackson Complaint are the same material facts and evidence that the Fifth Circuit relied upon in issuing its September 8, 2023 Per Curium Opinion that spurred on the Biden Administration's Application for a Stay. See *Missouri v. Biden*, No. 23-30445 (Fifth Cir. Filed September 8, 2023).

Under this Court's nexus test for "state action," if the government coerces or significantly encourages "a private party to censor speech or take other action," *Norwood v. Harrison*, 413 U.S. 455, 465 (1973), then the private party's action "must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1991). While the significant legal and constitutional issues at stake and decided by Judge Dougerty and the Fifth Circuit are virtually identical to the legal and constitutional issues at stake in *Jackson v. Twitter*, both the injunction and Opinion are silent and vague with respect to the scope and reach of the injunction and in particular, whether the injunction reaches private party agents of the State like the Defendants identified and named in the Jackson Complaint.

Jackson v. Twitter and the Jackson Complaint provide this Court that critical missing link and an opportunity to decide this issue. The Jackson Complaint alleges and establishes by the evidence that the

"private-party" Defendants named therein in fact were and still are directed, instructed, encouraged, coerced, cajoled, persuaded and demanded by the Biden Administration and its managers to act as actual or ostensible agents on behalf of the federal government and/or its various alphabet agencies, like the FBI, CDC and DOJ, to silence the Biden Administration's critics or otherwise do its bidding to violate the constitutional rights of Plaintiffs and other conservative-leaning speakers.

The Plaintiffs in *Jackson v. Twitter* also seek the same remedy as the States of Missouri and Louisiana, namely the imposition of a nationwide injunction or consent decree as an equitable remedy to stop for Defendants' unconstitutional conduct.

The equitable relief sought by Plaintiffs in *Jackson v. Twitter* is firmly grounded on the Constitutional Law principle that private-parties – like the private-party Defendants named in the Jackson Complaint (but omitted as parties in the Biden Administration's appeal of the Judge Dougherty's injunction) and other similarly situated "bad actors," including the so-called "Legacy Media" (also controlled by the Democratic Party) -- cannot engage in illegal or unconstitutional activities as actual or ostensible agents, or on behalf of, the federal government.

Stated another way, private parties cannot engage in or continue to engage in illegal activities on behalf of the Biden Administration that the Biden Administration could not and cannot do for itself -- namely, unconstitutionally censoring and stifling conservative speech through computer or electronic programs and algorithms designed to root out speech they do that they do not like or disfavor at the request or on behalf of the federal government to create Progressive Left policy for the American People that is being implemented by individuals nobody voted for.

Accordingly, to the extent this Court accepts Certiorari or otherwise seeks to address and ultimately resolve *Missouri v. Biden*, the Court should also order that *Jackson v. Twitter* – a clearly "related case" that if left undecided will result in an open question about whether the scope of the injunction also reaches private parties like the Defendants identified in the Jackson Complaint - be decided at the same time.

Both cases: 1) involve the same acts or transactions connected with or constituting a part of a common conspiracy, scheme or plan; 2) arise out of the same operative set of facts, behavioral episodes or course of conduct; and 3) arise out of the same investigation into the same set of facts and have temporal proximity to each other.

Moreover, virtually all of the documentary and other evidence that Plaintiffs rely on to support their claims in *Jackson v. Twitter* was obtained from the documentary evidence that Plaintiffs obtained from the Biden Administration pursuant to the expedited discovery the Court ordered in *Missouri v. Biden.* The evidence is "hyperlinked" in the Complaint to the documents themselves for ease of reading (cites to the "URL's"). The evidentiary admissions include the now publicly available (but infamous) letter from Attorney General Merritt Garland to the National School Board Association ("NSBA") (a defendant in *Jackson v. Twitter*) in support of the NSBA's stifling and censoring of conservative-leaning parents' speech at school board meetings, treating our children's parents as "domestic terrorists.".

Since *Jackson v. Twitter* is a "related case" to the instant case, the interests of justice and judicial economy and efficiency favor this Honorable Court also deciding *Jackson v. Twitter* on the merits at the same time.

THE STAY REQUEST SHOULD BE DENIED BECAUSE IT WOULD NOT MAINTAIN THE STATUS QUO BUT RATHER ALLOW DEFENDANTS TO CONTINUE TO INTERFERE WITH THE 2024 ELECTION BY ILLEGAL "VIEWPOINT SUPPRESSION" UNDER THE GUISE OF "MISINFORMATION"

After *de novo* review (twice), the Fifth Circuit found in favor of the Plaintiffs in this case and concluded that "numerous federal officials coerced social-media platforms into censoring certain social-media content, in violation of the First Amendment," affirming for the most part the injunction against "viewpoint suppression" issued by the United States District Court on July 4, 2023.

Despite this landmark First Amendment decision, the Biden Administration's third

supplemental memorandum and requested stay asks the Supreme Court to let the administration and its purported private party agents to continue to "conduct business as usual."

Adding insult to injury, the Biden Administration claims that the Plaintiffs have not established any "irreparable harm."

Where First Amendment interests are at stake, irreparable harm is presumed. (See *Missouri v. Biden*, Slip Opinion October 3, 2023).

As the Fifth Circuit correctly observed, "business as usual" by the Biden Administration and its agents looks like a horror story:

> "For the past few years – at least since the 2020 presidential transition – a group of federal officials has been in regular contact with nearly every American social medial company about the spread of "misinformation" on their platforms. In their concern, those officials – hailing from the White House, the CDC, the FBI, and a few other agencies – urged the platforms to remove disfavored content and accounts from their sites. And, the platforms seemingly complied. They gave the officials access to an expedited reporting system, downgraded or removed flagged posts, and deplatformed users. The platforms also changed their internal policies to capture more flagged content and sent steady reports on their moderation activities to the officials. That went on through the COVID-19 pandemic, the 2022 congressional election ***and continues to this day***. . . . .
>
> "The [*Missouri v. Biden*] Plaintiffs – three doctors, a news website, a healthcare activist and two states – had posts and stories removed or downgraded by the platforms. Their content touched on a host of divisive

> topics like the COVID-19 lab-leak theory, pandemic lockdowns, vaccine side-effects, election fraud, and the Hunter Biden laptop story. The Plaintiffs maintain that although the platforms stifled their speech, the government officials were the ones pulling the strings – they 'coerced, threatened, and pressured [the] social-media platforms to censor [them]' through private communications and legal threats."

(*Missouri v. Biden*, Slip Opinion at pp. 2-3) (Fifth Circuit filed October 3, 2023) (Emphasis Added).

Both the Fifth Circuit's detailed discussion of the evidence in support of the injunction (and the Jackson Complaint) read like George Orwell's "1984." The supporting evidence demonstrates just how pervasive and far-reaching the Biden Administration's censorship scheme was and what it will look like if this Court grants the Applicant's requested stay.

The Fifth Circuit opinion also describes how deftly the Biden Administration used and will continue to use its allies in the private sector if its censorship scheme is left unchecked by this Court – private parties whom the Plaintiffs in *Jackson v. Twitter* are also seeking to enjoin.

Thus, permitting the Biden Administration and the *Jackson v. Twitter* Defendants to continue to conduct "business as usual" while the *Missouri v. Biden* case is still pending before this Court will not only irreparably harm the Plaintiffs and all those similarly situated in *Jackson v. Twitter*, but also 75 million citizens of the United States of America who did not vote for the Biden Administration and simply want to decide for themselves who to vote for without further "gaslighting," viewpoint suppression and election interference by the Biden Administration and its private party cohorts.

And in fairness, why should the Biden Administration and its private party allies get a

pass or the benefit of the doubt in this case? Both the United States District Court and Fifth Circuit found irreparable harm and a reasonable probability of success on the merits. Simply stated, the Biden Administration lost the battle and the war. The People won.

Moreover, contrary to the Applicant's assertion that the Fifth Circuit's October 3, 2023 decision "relies on the same flawed conception of the state-action doctrine to extend injunctive relief to yet another set of government defendants" (Application at page 2), the Fifth Circuit considered and soundly rejected the government's arguments in concluding that Judge Doughty's reasoning was not flawed in any respect. To the contrary, the Fifth Circuit agreed with Judge Doughty's finding that equitable relief was warranted, justified and appropriate at this time to redress the Plaintiffs' grievances in *Missouri v. Biden.*

The Fifth Circuit's and Judge Doughty's factual findings are not only sound and reasonable they shock the conscience. If this Court allows the Biden Administration and its private party allies to continue to conduct "business as usual," the decision would at best "chill" conservative viewpoints and speakers from freely speaking their minds and at worst decide the 2024 election in favor of those who are trying to suppress conservative speech under the misleading and insulting guise of "misinformation."

Finally, the Fifth Circuit's opinion has already modified the July 4, 2023 injunction to deal with many of the government's stated concerns.

For each and all of the foregoing reasons, this Court should deny in its entirety the Biden Administration's request for a stay of the modified injunction pending a review of and decision of the government's Petition for Writ of Certiorari. If this Court grants Certiorari, it should also make clear in the interim that the Jackson Case is a "related case" under the federal rules and that the injunction issued on July 4, 2023 (as modified) also includes within its scope

the named private party Defendants in the related case - *Jackson v. Twitter*.

DATED: October 17, 2023

/s/ Michael E. Reznick
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Interested Party, Amica Curiae and Former Counsel of Record for Plaintiffs in Related Case captioned *Richard Jackson, et al. v. Twitter, Inc., et al*., USDC Case No. 2:22 - cv- 09438

Hearing and Oral Argument on Application to Substitute into Case *Pro Per* as Party and Other Related Issues Continued by Court to January 12, 2024

/s/ Michael E. Reznick
Michael E. Reznick

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2023, I electronically filed the foregoing document entitled:

AMICUS BRIEF BY INTERESTED PARTY ATTORNEY MICHAEL E. REZNICK RE RELATED CASE CAPTIONED *RICHARD JACKSON, ET AL. v. TWITTER, INC., ET AL.*, (USDC CASE NO. 2:22 – cv-09438 (AB)) (Central District of California filed December 29, 2023) IN SUPPORT OF OPPOSITIONS FILED BY RESPONDENTS THE STATES OF MISSOURI AND LOUISIANA AND OTHER AMICA CURIAE TO THE APPLICANTS' PETITION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA ON JULY 4, 2023, AS MODIFIED BY THE FIFTH CIRCUIT ON OCTOBER 3, 2023 [REPLACING REJECTED"NOTICE OF INTENT, ETC."]

with the Clerk of the Court for the United States Supreme Court, 1 1st Streeet NE, Washington, D.C. 20543, by using the CM/ECF system.

I certify that all parties of record to this appeal either are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on October 17, 2023 at Oak Park, California.

/s/ Michael E. Reznick
Michael E. Reznick