No. 23-411

# In the Supreme Court of the United States

VIVEK H. MURTHY, SURGEON GENERAL, ET AL.,
PETITIONERS

*v.*

STATE OF MISSOURI, ET AL.

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

**JOINT APPENDIX**


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**PETITION FOR WRIT OF CERTIORARI FILED: SEPT. 14, 2023**
**CERTIORARI GRANTED: OCT. 20, 2023**


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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 23-30445

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

*v.*

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

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

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Filed: Oct. 3, 2023

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**OPINION**

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Before: CLEMENT, ELROD, AND WILLETT, *Circuit Judges*.

PER CURIAM:

The petition for panel rehearing is GRANTED. We WITHDRAW our previous opinion and substitute the following.

* * * * *

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.

**I.**

For the last few years—at least since the 2020 presidential transition—a group of federal officials has been in regular contact with nearly every major American social-media 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.

Enter this lawsuit. The Plaintiffs—three doctors, a news website, a healthcare activist, and two states[1]—

[1] Specifically, the Plaintiffs are (1) Jayanta Bhattacharya and Martin Kulldorff, two epidemiologists who co-wrote the Great Barrington Declaration, an article criticizing COVID-19 lockdowns; (2) Jill Hines, an activist who spearheaded "Reopen Louisiana"; (3) Aaron Kheriaty, a psychiatrist who opposed lockdowns and vaccine mandates; (4) Jim Hoft, the owner of the Gateway Pundit, a

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. So, they sued the officials[2] for

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once-deplatformed news site; and (5) Missouri and Louisiana, who assert their sovereign and quasi-sovereign interests in protecting their citizens and the free flow of information. Bhattacharya, Kulldorff, Hines, Kheriaty, and Hoft, collectively, are referred to herein as the "Individual Plaintiffs." Missouri and Louisiana, together, are referred to as the "State Plaintiffs."

[2] The defendant-officials include (1) the President; (2) his Press Secretary; (3) the Surgeon General; (4) the Department of Health and Human Services; (5) the HHS's Director; (6) Anthony Fauci in his capacity as the Director of the National Institute of Allergy and Infectious Diseases; (7) the NIAID; (8) the Centers for Disease Control; (9) the CDC's Digital Media Chief; (10) the Census Bureau; (11) the Senior Advisor for Communications at the Census Bureau; (12) the Department of Commerce; (13) the Secretary of the Department of Homeland Security; (14) the Senior Counselor to the Secretary of the DHS; (15) the DHS; (16) the Cybersecurity and Infrastructure Security Agency; (17) the Director of CISA; (18) the Department of Justice; (19) the Federal Bureau of Investigation; (20) a special agent of the FBI; (21) a section chief of the FBI; (22) the Food and Drug Administration; (23) the Director of Social Media at the FDA; (24) the Department of State; (25) the Department of Treasury; (26) the Department of Commerce; and (27) the Election Assistance Commission. The Plaintiffs also sued a host of various advisors, officials, and deputies in the White House, the FDA, the CDC, the Census Bureau, the HHS, and CISA. Note that some of these officials were not enjoined and, therefore, are not mentioned again in this opinion.

First Amendment violations and asked the district court to enjoin the officials' conduct. In response, the officials argued that they only "sought to mitigate the hazards of online misinformation" by "calling attention to content" that violated the "platforms' policies," a form of permissible government speech.

The district court agreed with the Plaintiffs and granted preliminary injunctive relief. In reaching that decision, it reviewed the conduct of several federal offices, but only enjoined the White House, the Surgeon General, the CDC, the FBI, the National Institute of Allergy and Infectious Diseases (NIAID), the Cybersecurity and Infrastructure Security Agency (CISA), and the Department of State. We briefly review—per the district court's order and the record—those officials' conduct.

**A.**

Considering their close cooperation and the ministerial ecosystem, we take the White House and the Surgeon General's office together. Officials from both offices began communicating with social media companies—including Facebook, Twitter (now known as "X"), YouTube, and Google—in early 2021. From the outset, that came with requests to take down flagged content. In one email, a White House official told a platform to take a post down "ASAP," and instructed it to "keep an eye out for tweets that fall in this same [] genre" so that they could be removed, too. In another, an official told a platform to "remove [an] account immediately"—he could not "stress the degree to which this needs to be resolved immediately." Often, those requests for removal were met.

But, the White House officials did not only flag content. Later that year, they started monitoring the platforms' moderation activities, too. In that vein, the officials asked for—and received—frequent updates from the platforms. Those updates revealed, however, that the platforms' policies were not clear-cut and did not always lead to content being demoted. So, the White House pressed the platforms. For example, one White House official demanded more details and data on Facebook's internal policies at least twelve times, including to ask what was being done to curtail "dubious" or "sensational" content, what "interventions" were being taken, what "measurable impact" the platforms' moderation policies had, "how much content [was] being demoted," and what "misinformation" was not being downgraded. In one instance, that official lamented that flagging did not "historically mean[] that [a post] was removed." In another, the same official told a platform that they had "been asking [] pretty directly, over a series of conversations" for "what actions [the platform has] been taking to mitigate" vaccine hesitancy, to end the platform's "shell game," and that they were "gravely concerned" the platform was "one of the top drivers of vaccine hesitancy." Another time, an official asked why a flagged post was "still up" as it had "gotten pretty far." The official queried "how does something like that happen," and maintained that "I don't think our position is that you should remove vaccine hesitant stuff," but "slowing it down seems reasonable." Always, the officials asked for more data and stronger "intervention[s]."

From the beginning, the platforms cooperated with the White House. One company made an employee "available on a regular basis," and another gave the

officials access to special tools like a "Partner Support Portal" which "ensure[d]" that their requests were "prioritized automatically." They all attended regular meetings. But, once White House officials began to demand more from the platforms, they seemingly stepped-up their efforts to appease the officials. When there was confusion, the platforms would call to "clear up" any "misunderstanding[s]" and provide data detailing their moderation activities. When there was doubt, they met with the officials, tried to "partner" with them, and assured them that they were actively trying to "remove the most harmful COVID-19 misleading information." At times, their responses bordered on capitulation. One platform employee, when pressed about not "level[ing]" with the White House, told an official that he would "continue to do it to the best of [his] ability, and [he will] expect [the official] to hold [him] accountable." Similarly, that platform told the Surgeon General that "[w]e're [] committed to addressing the [] misinformation that you've called on us to address." The platforms were apparently eager to stay in the officials' good graces. For example, in an effort to get ahead of a negative news story, Facebook preemptively reached out to the White House officials to tell them that the story "doesn't accurately represent the problem or the solutions we have put in place."

The officials were often unsatisfied. They continued to press the platforms on the topic of misinformation throughout 2021, especially when they seemingly veered from the officials' preferred course. When Facebook did not take a prominent pundit's "popular post[]" down, a White House official asked "what good is" the reporting system, and signed off with "last time we did this dance, it ended in an insurrection." In another

message, an official sent Facebook a Washington Post article detailing the platform's alleged failures to limit misinformation with the statement "[y]ou are hiding the ball." A day later, a second official replied that they felt Facebook was not "trying to solve the problem" and the White House was "[i]nternally . . . considering our options on what to do about it." In another instance, an official—demanding "assurances" that a platform was taking action—likened the platform's alleged inaction to the 2020 election, which it "helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform."

To ensure that problematic content was being taken down, the officials—via meetings and emails—pressed the platforms to change their moderation policies. For example, one official emailed Facebook a document recommending changes to the platform's internal policies, including to its deplatforming and downgrading systems, with the note that "this is circulating around the building and informing thinking." In another instance, the Surgeon General asked the platforms to take part in an "all-of-society" approach to COVID by implementing stronger misinformation "monitoring" programs, redesigning their algorithms to "avoid amplifying misinformation," targeting "repeat offenders," "[a]mplify[ing] communications from trusted . . . experts," and "[e]valuat[ing] the effectiveness of internal policies."

The platforms apparently yielded. They not only continued to take down content the officials flagged, and provided requested data to the White House, but they also changed their moderation policies expressly in accordance with the officials' wishes. For example, one platform said it knew its "position on [misinformation] continues to be a particular concern" for the White

House, and said it was "making a number of changes" to capture and downgrade a "broader set" of flagged content. The platform noted that, in line with the officials' requests, it would "make sure that these additional [changes] show results—the stronger demotions in particular should deliver real impact." Another time, a platform represented that it was going to change its moderation policies and activities to fit with express guidance from the CDC and other federal officials. Similarly, one platform noted that it was taking down flagged content which seemingly was not barred under previous iterations of its moderation policy.

Relatedly, the platforms enacted several changes that coincided with the officials' aims shortly after meeting with them. For example, one platform sent out a post-meeting list of "commitments" including a policy "change[]" "focused on reducing the virality" of anti-vaccine content even when it "does not contain actionable misinformation." On another occasion, one platform listed "policy updates . . . regarding repeat misinformation" after meeting with the Surgeon General's office and signed off that "[w]e think there's considerably more we can do in partnership with you and your teams to drive behavior."

Even when the platforms did not expressly adopt changes, though, they removed flagged content that did not run afoul of their policies. For example, one email from Facebook stated that although a group of posts did not "violate our community standards," it "should have demoted them before they went viral." In another instance, Facebook recognized that a popular video did not qualify for removal under its policies but promised that it was being "labeled" and "demoted" anyway after the officials flagged it.

At the same time, the platforms often boosted the officials' activities at their request. For example, for a vaccine "roll out," the officials shared "what [t]he admin's plans are" and "what we're seeing as the biggest headwinds" that the platforms could help with. The platforms "welcome[d] the opportunity" to lend a hand. Similarly, when a COVID vaccine was halted, the White House asked a platform to—through "hard . . . intervention[s]" and "algorithmic amplification"—"make sure that a favorable review reaches as many people" as possible to stem the spread of alleged misinformation. The officials also asked for labeling of posts and a 24-hour "report-back" period to monitor the public's response. Again, the platforms obliged—they were "keen to amplify any messaging you want us to project," *i.e.*, "the right messages." Another time, a platform told the White House it was "eager" to help with vaccine efforts, including by "amplify[ing]" content. Similarly, a few months later, after the White House shared some of the "administration's plans" for vaccines in an industry meeting, Facebook reiterated that it was "committed to the effort of amplifying the rollout of [those] vaccines."

Still, White House officials felt the platforms were not doing enough. One told a platform that it "remain[ed] concerned" that the platform was encouraging vaccine hesitancy, which was a "concern that is shared at the highest (and I mean highest) levels of the [White House]." So, the official asked for the platform's "road map to improvement" and said it would be "good to have from you all . . . a deeper dive on [misinformation] reduction." Another time, the official responded to a moderation report by flagging a user's account and saying it is "[h]ard to take any of this seriously when you're actively promoting anti-vaccine pages." The platform

subsequently "removed" the account "entirely" from its site, detailed new changes to the company's moderation policies, and told the official that "[w]e clearly still have work to do." The official responded that "removing bad information" is "one of the easy, low-bar things you guys [can] do to make people like me think you're taking action." The official emphasized that other platforms had "done pretty well" at demoting non-sanctioned information, and said "I don't know why you guys can't figure this out."

The officials' frustrations reached a boiling point in July of 2021. That month, in a joint press conference with the Surgeon General's office, the White House Press Secretary said that the White House "expect[s] more" from the platforms, including that they "consistently take action against misinformation" and "operate with greater transparency and accountability." Specifically, the White House called on platforms to adopt "proposed changes," including limiting the reach of "misinformation," creating a "robust enforcement strategy," taking "faster action" because they were taking "too long," and amplifying "quality information." The Press Secretary said that the White House "engag[es] with [the platforms] regularly and they certainly understand what our asks are." She also expressly noted that several accounts, despite being flagged by the White House, "remain active" on a few platforms.

The Surgeon General also spoke at the press conference. He said the platforms were "one of the biggest obstacles" to controlling the COVID pandemic because they had "enabled misinformation to poison" public discourse and "have extraordinary reach." He labeled social-media-based misinformation an "urgent public

health threat[]" that was "literally costing . . . lives." He asked social-media companies to "operate with greater transparency and accountability," "monitor misinformation more closely," and "consistently take action against misinformation super-spreaders on their platforms." The Surgeon General contemporaneously issued a public advisory "calling out social media platforms" and saying they "have a role to play to improve [] health outcomes." The next day, President Biden said that the platforms were "killing people" by not acting on misinformation. Then, a few days later, a White House official said they were "reviewing" the legal liability of platforms—noting "the president speak[s] very aggressively about" that—because "they should be held accountable."

The platforms responded with total compliance. Their answer was four-fold. First, they capitulated to the officials' allegations. The day after the President spoke, Facebook asked what it could do to "get back to a good place" with the White House. It sought to "better understand . . . what the White House expects from us on misinformation going forward." Second, the platforms changed their internal policies. Facebook reached out to see "how we can be more transparent," comply with the officials' requests, and "deescalate" any tension. Others fell in line, too—YouTube and Google told an official that they were "working on [it]" and relayed the "steps they are currently taking" to do better. A few days later, Facebook told the Surgeon General that "[w]e hear your call for us to do more," and wanted to "make sure [he] saw the steps [it took]" to "adjust policies on what we are removing with respect to misinformation," including "expand[ing] the group of false claims" that it removes. That included the officials'

"specific recommendations for improvement," and the platform "want[ed] to make sure to keep [the Surgeon General] informed of [its] work on each."

Third, the platforms began taking down content and deplatforming users they had not previously targeted. For example, Facebook started removing information posted by the "disinfo dozen"—a group of influencers identified as problematic by the White House—despite earlier representations that those users were not in violation of their policies. In general, the platforms had pushed back against deplatforming users in the past, but that changed. Facebook also made other pages that "had not yet met their removal thresholds[] more difficult to find on our platform," and promised to send updates and take more action. A month later, members of the disinfo dozen were deplatformed across several sites. Fourth, the platforms continued to amplify or assist the officials' activities, such as a vaccine "booster" campaign.

Still, the White House kept the pressure up. Officials continuously expressed that they would keep pushing the platforms to act. And, in the following year, the White House Press Secretary stressed that, in regard to problematic users on the platforms, the "President has long been concerned about the power of large" social media companies and that they "must be held accountable for the harms they cause." She continued that the President "has been a strong supporter of fundamental reforms to achieve that goal, including reforms to [S]ection 230, enacting antitrust reforms, requiring more transparency, and more." Per the officials, their back-and-forth with the platforms continues to this day.

**B.**

Next, we turn to the CDC. Much like the White House officials, the CDC tried to "engage on a [] regular basis" with the platforms. They also received reports on the platforms' moderation activities and policy updates. And, like the other officials, the CDC also flagged content for removal that was subsequently taken down. In one email, an official mentioned sixteen posts and stated, "[W]e are seeing a great deal of misinfo [] that we wanted to flag for you all." In another email, CDC officials noted that flagged content had been removed. And, the CDC actively sought to promote its officials' views over others. For example, they asked "what [was] being done on the amplification-side" of things.

Unlike the other officials, though, the CDC officials also provided direct guidance to the platforms on the application of the platforms' internal policies and moderation activities. They did so in three ways. First, CDC officials authoritatively told the platforms what was (and was not) misinformation. For example, in meetings—styled as "Be On the Lookout" alerts—officials educated the platforms on "misinformation[] hot topics." Second, CDC officials asked for, or at least encouraged, harmonious changes to the platforms' moderation policies. One platform noted that "[a]s soon as the CDC updates [us]," it would change information on its website to comply with the officials' views. In that same email, the platform said it was expanding its "misinfo policies" and it was "able to make this change based on the conversation we had last week with the CDC." In another email, a platform noted "several updates to our COVID-19 Misinformation and Harm policy based on your inputs." Third, through its guidance, the CDC

outright directed the platforms to take certain actions. In one post-meeting email, an official said that "as mentioned on the call, any contextual information that can be added to posts" on some alleged "disinformation" "could be very effective."

Ultimately, the CDC's guidance informed, if not directly affected, the platforms' moderation decisions. The platforms sought answers from the officials as to whether certain controversial claims were "true or false" and whether related posts should be taken down as misleading. The CDC officials obliged, directing the platforms as to what was or was not misinformation. Such designations directly controlled the platforms' decision-making process for the removal of content. One platform noted that "[t]here are several claims that we will be able to remove as soon as the CDC debunks them; until then, we are unable to remove them."

**C.**

Next, we consider the conduct of the FBI officials. The agency's officials regularly met with the platforms at least since the 2020 election. In these meetings, the FBI shared "strategic information with [] social-media companies" to alert them to misinformation trends in the lead-up to federal elections. For example, right before the 2022 congressional election, the FBI tipped the platforms off to "hack and dump" operations from "state-sponsored actors" that would spread misinformation through their sites. In another instance, they alerted the platforms to the activities and locations of "Russian troll farms." The FBI apparently acquired this information from ongoing investigations.

Per their operations, the FBI monitored the platforms' moderation policies, and asked for detailed

assessments during their regular meetings. The platforms apparently changed their moderation policies in response to the FBI's debriefs. For example, some platforms changed their "terms of service" to be able to tackle content that was tied to hacking operations.

But, the FBI's activities were not limited to purely foreign threats. In the build up to federal elections, the FBI set up "command" posts that would flag concerning content and relay developments to the platforms. In those operations, the officials also targeted domestically sourced "disinformation" like posts that stated incorrect poll hours or mail-in voting procedures. Apparently, the FBI's flagging operations across-the-board led to posts being taken down 50% of the time.

**D.**

Next, we look at CISA. CISA—working in close connection with the FBI—held regular industry meetings with the platforms concerning their moderation policies, pushing them to adopt CISA's proposed practices for addressing "mis-, dis-, and mal-information." CISA also engaged in "switchboarding" operations, meaning, at least in theory, that CISA officials acted as an intermediary for third parties by forwarding flagged content from them to the platforms. For example, during a federal election, CISA officials would receive "something on social media that [local election officials] deemed to be disinformation aimed at their jurisdiction" and, in turn, CISA would "share [that] with the appropriate social media compan[y]." But, CISA's role went beyond mere information sharing. Like the CDC for COVID-related claims, CISA told the platforms whether certain election-related claims were true or false. CISA's actions apparently led to moderation policies being

altered and content being removed or demoted by the recipient platforms.

**E.**

Finally, we briefly discuss the remaining offices, namely the NIAID and the State Department. Generally speaking, the NIAID did not have regular contact with the platforms or flag content. Instead, NIAID officials were—as evidenced by internal emails—concerned with "tak[ing] down" (*i.e.*, discrediting) opposing scientific or policy views. On that front, Director Anthony Fauci publicly spoke in favor of certain ideas (*e.g.*, COVID lockdowns) and against others (*e.g.*, the lab-leak theory). In doing so, NIAID officials appeared on podcasts and livestreams on some of the platforms. Apparently, the platforms subsequently demoted posts that echoed or supported the discredited views.

The State Department, on the other hand, communicated directly with the platforms. It hosted meetings that were meant to "facilitate [] communication" with the platforms. In those meetings, it educated the platforms on the "tools and techniques" that "malign" or "foreign propaganda actors" (*e.g.*, terrorist groups, China) were using to spread misinformation. Generally, the State Department officials did not flag content, suggest policy changes, or reciprocally receive data during those meetings.

* * *

Relying on the above record, the district court concluded that the officials, via both private and public channels, asked the platforms to remove content, pressed them to change their moderation policies, and threatened them—directly and indirectly—with legal

consequences if they did not comply. And, it worked—that "unrelenting pressure" forced the platforms to act and take down users' content. Notably, though, those actions were not limited to private actors. Accounts run by state officials were often subject to censorship, too. For example, one platform removed a post by the Louisiana Department of Justice—which depicted citizens testifying against public policies regarding COVID—for violating its "medical misinformation policy" by "spread[ing] medical misinformation." In another instance, a platform took down a Louisiana state legislator's post discussing COVID vaccines. Similarly, one platform removed several videos, namely testimonials regarding COVID, posted by St. Louis County. So, the district court reasoned, the Plaintiffs were "likely to succeed" on their claim because when the platforms moderated content, they were acting under the coercion (or significant encouragement) of government officials, in violation of the First Amendment, at the expense of both private and governmental actors.

In addition, the court found that considerations of equity weighed in favor of an injunction because of the clear need to safeguard the Plaintiffs' First Amendment rights. Finally, the court ruled that the Plaintiffs had standing to bring suit under several different theories, including direct First Amendment censorship and, for the State Plaintiffs, quasi-sovereign interests as well. Consequently, the district court entered an injunction against the officials barring them from an assortment of activities, including "meeting with," "communicat[ing]" with, or "flagging content" for social-media companies "for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression,

or reduction of content containing protected free speech." The officials appeal.

**II.**

We review the district court's standing determination *de novo*. *Freedom Path, Inc. v. Internal Revenue Serv.*, 913 F.3d 503, 507 (5th Cir. 2019). "We review a preliminary injunction for abuse of discretion, reviewing findings of fact for clear error and conclusions of law *de novo*. Whether an injunction fulfills the mandates of Fed. R. Civ. P. 65(d) is a question of law we review *de novo*." *Louisiana v. Biden*, 45 F.4th 841, 845 (5th Cir. 2022) (internal quotation marks and citation omitted).

**III.**

We begin with standing. To establish Article III standing, the Plaintiffs bear the burden to show "[1] an injury in fact [2] that is fairly traceable to the challenged action of the defendant and [3] likely to be redressed by [their] requested relief." *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Because the Plaintiffs seek injunctive relief, the injury-in-fact and redressability requirements "intersect[]" and therefore the Plaintiffs must "demonstrat[e] a continuing injury or threatened future injury," not a past one. *Id.* "At the preliminary injunction stage, the movant must clearly show only that each element of standing is likely to obtain in the case at hand." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (citations omitted). The presence of any *one* plaintiff with standing to pursue injunctive relief as to the Plaintiffs' First-Amendment claim satisfies Article III's case-or-controversy requirement. *Rumsfeld* v. *F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006).

**A.**

An injury-in-fact is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting Lujan, 504 U.S. at 560). "For a threatened future injury to satisfy the imminence requirement, there must be at least a 'substantial risk' that the injury will occur." *Crawford v. Hinds Cnty. Bd. of Supervisors*, 1 F.4th 371, 375 (5th Cir. 2021) (quoting *Stringer*, 942 F.3d at 721). Past harm can constitute an injury-in-fact for purposes of pursuing injunctive relief if it causes "continuing, present adverse effects." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)). Otherwise, "'[p]ast wrongs are evidence' of the likelihood of a future injury but 'do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy.'" *Crawford*, 1 F.4th at 375 (quoting *Lyons*, 461 U.S. at 102–03) (alteration adopted).

Each of the Individual Plaintiffs has shown past injury-in-fact. Bhattacharya's and Kulldorff's sworn declarations allege that their article, the Great Barrington Declaration, which was critical of the government's COVID-related policies such as lockdowns, was "deboosted" in Google search results and removed from Facebook and Reddit, and that their roundtable discussion with Florida Governor Ron DeSantis concerning mask requirements in schools was removed from YouTube. Kulldorff also claimed censorship of his personal Twitter and LinkedIn accounts due to his opinions concerning vaccine and mask mandates; both accounts were suspended (although ultimately restored). Kheriaty, in his sworn declaration, attested to the fact that his

Twitter following was "artificially suppressed" and his posts "shadow bann[ed]" so that they did not appear in his followers' feeds due to his views on vaccine mandates and lockdowns, and that a video of one of his interviews concerning vaccine mandates was removed from YouTube (but ultimately re-posted). Hoft—founder, owner, and operator of news website The Gateway Pundit—submitted a sworn declaration averring that The Gateway Pundit's Twitter account was suspended and then banned for its tweets about vaccine mandates and election fraud, its Facebook posts concerning COVID-19 and election security were either banned or flagged as false or misinformation, and a YouTube video concerning voter fraud was removed. Hoft's declaration included photographic proof of the Twitter and Facebook censorship he had suffered. And Hines's declaration swears that her personal Facebook account was suspended and the Facebook posts of her organization, Health Freedom Louisiana, were censored and removed for their views on vaccine and mask mandates.

The officials do not contest that these past injuries occurred. Instead, they argue that the Individual Plaintiffs have failed to demonstrate that the harm from these past injuries is ongoing or that similar injury is likely to reoccur in the future, as required for standing to pursue injunctive relief. We disagree with both assertions.

All five Individual Plaintiffs have stated in sworn declarations that their prior censorship has caused them to self-censor and carefully word social-media posts moving forward in hopes of avoiding suspensions, bans, and censorship in the future. Kulldorff, for example, explained that he now "restrict[s] what [he] say[s] on social-media platforms to avoid suspension and other

penalties." Kheriaty described how he now must be "extremely careful when posting any information on Twitter related to the vaccines, to avoid getting banned" and that he intentionally "limit[s] what [he] say[s] publicly," even "on topics where [he] ha[s] specific scientific and ethical expertise and professional experience." And Hoft notes that, "[t]o avoid suspension and other forms of censorship, [his website] frequently avoid[s] posting content that [it] would otherwise post on social-media platforms, and [] frequently alter[s] content to make it less likely to trigger censorship policies." These lingering effects of past censorship must be factored into the standing calculus. *See Lyons*, 461 U.S. at 102.

As the Supreme Court has recognized, this chilling of the Individual Plaintiffs' exercise of their First Amendment rights is, itself, a constitutionally sufficient injury. *See Laird v. Tatum*, 408 U.S. 1, 11 (1972). True, "to confer standing, allegations of chilled speech or self-censorship must arise from a fear of [future harm] that is not imaginary or wholly speculative." *Zimmerman v. City of Austin, Tex.*, 881 F.3d 378, 390 (5th Cir. 2018) (internal quotation marks and citation omitted); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) (Plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm"). But the fears motivating the Individual Plaintiffs' self-censorship, here, are far from hypothetical. Rather, they are grounded in the very real censorship injuries they have previously suffered to their speech on social media, which are "evidence of the likelihood of a future injury." *Crawford*, 1 F.4th at 375 (internal quotation marks and citation omitted). Supported by this evidence, the Individual Plaintiffs' self-censorship is a cognizable, ongoing harm resulting

from their past censorship injuries, and therefore constitutes injury-in-fact upon which those Plaintiffs may pursue injunctive relief. *Lyons*, 461 U.S. at 102.

Separate from their ongoing harms, the Individual Plaintiffs have shown a substantial risk that the injuries they suffered in the past will reoccur. The officials suggest that there is no threat of future injury because "Twitter has stopped enforcing its COVID-related misinformation policy." But this does nothing to mitigate the risk of future harm to the Individual Plaintiffs. Twitter continues to enforce a robust general misinformation policy, and the Individual Plaintiffs seek to express views—and have been censored for their views—on topics well beyond COVID-19, including allegations of election fraud and the Hunter Biden laptop story.[3] Plaintiffs use social-media platforms other than Twitter—such as Facebook and YouTube—which still enforce COVID- or health-specific misinformation policies.[4] And most fundamentally, the Individual Plaintiffs are not seeking to enjoin Twitter's content moderation

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[3] Notably, Twitter maintains a separate "crisis misinformation policy" which applies to "public health emergencies." *Crisis misinformation policy*, TWITTER (August 2022), https://help.twitter.com/en/rules-and-policies/crisis-misinformation. This policy would presumably apply to COVID-related misinformation if COVID-19 were again classified as a Public Health Emergency, as it was until May 11, 2023. *See End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 5, 2023), https://www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html.

[4] *Facebook Community Standards: Misinformation*, META, https://transparency.fb.com/policies/community-standards/misinformation/ (last visited August 11, 2023); *Misinformation policies*, YOUTUBE, https://support.google.com/youtube/topic/10833358 (last visited August 11, 2023).

policies (or those of any other social-media platform, for that matter). Rather, as Plaintiffs' counsel made clear at oral argument, what the Individual Plaintiffs are challenging is the government's interference with those social-media companies' independent application of their policies. And there is no evidence to suggest that the government's meddling has ceased. To the contrary, the officials' attorney conceded at oral argument that they continue to be in regular contact with social-media platforms concerning content-moderation issues today.

The officials also contend that future harm is unlikely because "all three plaintiffs who suggested that their social-media accounts had been permanently suspended in the past now appear to have active accounts." But as the Ninth Circuit recently recognized, this fact weighs in *Plaintiffs'* favor. In *O'Handley v. Weber*, considering this issue in the context of redressability,[5] the Ninth Circuit explained:

> Until recently, it was doubtful whether [injunctive] relief would remedy [the plaintiff]'s alleged injuries because Twitter had permanently suspended his account, and the requested injunction [against government-imposed social-media censorship] would not change that fact. Those doubts disappeared in December 2022 when Twitter restored his account.

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[5] When plaintiffs seek injunctive relief, the injury-in-fact and redressability requirements intersect. *Stringer*, 942 F.3d at 720. So, it makes no difference that the Ninth Circuit addressed the issue of reinstated social-media accounts in its redressability analysis while we address it as part of injury-in-fact. The ultimate question is whether there was a sufficient threat of future injury to warrant injunctive relief.

62 F.4th 1145, 1162 (9th Cir. 2023). The same logic applies here. If the Individual Plaintiffs did not currently have active social-media accounts, then there would be no risk of future government-coerced censorship of their speech on those accounts. But since the Individual Plaintiffs continue to be active speakers on social media, they continue to face the very real and imminent threat of government-coerced social-media censorship.

Because the Individual Plaintiffs have demonstrated ongoing harm from their past censorship as well as a substantial risk of future harm, they have established an injury-in-fact sufficient to support their request for injunctive relief.

**B.**

Turning to the second element of Article III standing, the Individual Plaintiffs were also required to show that their injuries were "fairly traceable" to the challenged conduct of the officials. *Stringer*, 942 F.3d at 720. When, as is alleged here, the "causal relation between [the claimed] injury and [the] challenged action depends upon the decision of an independent third party . . . standing is not precluded, but it is ordinarily substantially more difficult to establish." *California v. Texas*, 141 S. Ct. 2104, 2117 (2021) (internal quotation marks and citation omitted). "To satisfy that burden, the plaintiff[s] must show at the least 'that third parties will likely react in predictable ways.'" *Id.* (quoting *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019)).

The officials contend that traceability is lacking because the Individual Plaintiffs' censorship was a result of "independent decisions of social-media companies." This conclusion, they say, is a matter of timing: social-media platforms implemented content-moderation

policies in early 2020 and therefore the Biden Administration—which took office in January 2021—"could not be responsible for [any resulting] content moderation." But as we just explained, the Individual Plaintiffs do not challenge the social-media platforms' content-moderation policies. So, the fact that the Individual Plaintiffs' censorship can be traced back, at least in part, to third-party policies that pre-date the current presidential administration is irrelevant. The dispositive question is whether the Individual Plaintiffs' censorship can also be traced to government-coerced *enforcement* of those policies. We agree with the district court that it can be.

On this issue, *Department of Commerce* is instructive. There, a group of plaintiffs brought a constitutional challenge against the federal government's decision to reinstate a citizenship question on the 2020 census. 139 S. Ct. at 2561. Their theory of harm was that, as a result of this added question, noncitizen households would respond to the census at lower rates than citizen households due to fear of immigration-related consequences, which would, in turn, lead to undercounting of population in certain states and a concomitant diminishment in political representation and loss of federal funds. *Id.* at 2565–66. In response, the government presented many of the same causation arguments raised here, contending that any harm to the plaintiffs was "not fairly traceable to the [government]'s decision" but rather "depend[ed] on the independent action of third parties" (*there*, noncitizens refusing to respond to the census; *here*, social-media companies censoring posts) which "would be motivated by unfounded fears that the Federal Government will itself break the law" (*there*, "using noncitizens' answers against them for law

enforcement purposes"; *here*, retaliatory enforcement actions or regulatory reform). *Id.* But a unanimous Supreme Court disagreed. As the Court explained, the plaintiffs had "met their burden of showing that third parties will likely react in predictable ways to the citizenship question" because evidence "established that noncitizen households have historically responded to the census at lower rates than other groups" and the district court had "not clearly err[ed] in crediting the . . . theory that the discrepancy [was] likely attributable at least in part to noncitizens' reluctance to answer a citizenship question." *Id.* at 2566.

That logic is directly applicable here. The Individual Plaintiffs adduced extensive evidence that social-media platforms have engaged in censorship of certain viewpoints on key issues and that the government has engaged in a years-long pressure campaign designed to ensure that the censorship aligned with the government's preferred viewpoints. The district court did not clearly err in crediting the Individual Plaintiffs' theory that the social-media platforms' censorship decisions were likely attributable at least in part to the platforms' reluctance to risk the adverse legal or regulatory consequences that could result from a refusal to adhere to the government's directives. The Individual Plaintiffs therefore met their burden of showing that the social-media platforms will likely react in a predictable way—*i.e.*, censoring speech—in response to the government's actions.

To be sure, there were instances where the social-media platforms *declined* to remove content that the officials had identified for censorship. But predictability does not require certainty, only likelihood. *See Dep't of Com.*, 139 S. Ct. at 2566 (requiring that third parties

"will *likely* react in predictable ways"). Here, the Individual Plaintiffs presented extensive evidence of escalating threats—both public and private—by government officials aimed at social-media companies concerning their content-moderation decisions. The district court thus had a sound basis upon which to find a *likelihood* that, faced with unrelenting pressure from the most powerful office in the world, social-media platforms did, and would continue to, bend to the government's will. This determination was not, as the officials contend, based on "unadorned speculation." Rather, it was a logical conclusion based directly on the evidence adduced during preliminary discovery.

**C.**

The final element of Article III standing—redressability—required the Individual Plaintiffs to demonstrate that it was "likely, as opposed to merely speculative, that the [alleged] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks and citation omitted). The redressability analysis focuses on "the relationship between the judicial relief requested and the injury" alleged. *California*, 141 S. Ct. at 2115 (internal quotation marks and citation omitted).

Beginning first with the injury alleged, we have noted multiple times now an important distinction between censorship as a result of social-media platforms' *independent* application of their content-moderation policies, on the one hand, and censorship as a result of social-media platforms' *government-coerced* application of those policies, on the other. As Plaintiffs' counsel made clear at oral argument, the Individual Plaintiffs seek to redress the latter injury, not the former.

The Individual Plaintiffs have not sought to invalidate social-media companies' censorship policies. Rather, they asked the district court to restrain the officials from unlawfully interfering with the social-media companies' independent application of their content-moderation policies. As the Ninth Circuit has also recognized, there is a direct relationship between this requested relief and the injury alleged such that redressability is satisfied. *See O'Handley*, 62 F.4th at 1162.

**D.**

We also conclude that the State Plaintiffs are likely to establish direct standing.[6] First, state officials have suffered, and will likely continue to suffer, direct censorship on social media. For example, the Louisiana Department of Justice posted a video showing Louisiana citizens testifying at the State Capitol and questioning the efficacy of COVID-19 vaccines and mask mandates. But one platform removed the video for spreading alleged "medical misinformation" and warned that any subsequent violations would result in suspension of the state's account. The state thereafter modified its practices for posting on social media for fear of future censorship injury.

Similarly, another platform took down a Louisiana state legislator's post discussing COVID vaccines. And several videos posted by St. Louis County showing residents discussing COVID policies were removed, too. Acts of this nature continue to this day. In fact, at oral argument, counsel for the State of Louisiana explained that YouTube recently removed a video of counsel,

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[6] The State Plaintiffs also contend that they have *parens patriae* standing. We do not consider this alternative argument.

speaking in his official capacity, criticizing the federal government's alleged unconstitutional censorship in this case.[7]

These acts of censorship confer standing for substantially the same reasons as those discussed for the Individual Plaintiffs. That is, they constitute an ongoing injury, and demonstrate a likelihood of future injury, traceable to the conduct of the federal officials and redressable by an injunction against them.

The federal officials admit that these instances of censorship occurred but deny that the State Plaintiffs have standing based on the assertion that "the First Amendment does not confer rights on States." But the Supreme Court has made clear that the government (state and otherwise) has a "right" to speak on its own behalf. *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000); *see also Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207–08 (2015). Perhaps that right derives from a state's sovereign nature, rather than from the First Amendment itself. But regardless of the source of the right, the State Plaintiffs sustain a direct injury when the social-media accounts of state officials are censored due to federal coercion.

Federally coerced censorship harms the State Plaintiffs' ability to listen to their citizens as well. This right to listen is "reciprocal" to the State Plaintiffs' right to speak and constitutes an independent basis for the

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[7] These actions are not limited to the State Plaintiffs. On the contrary, other states' officials have offered evidence of numerous other instances where their posts were removed, restricted, or otherwise censored.

State Plaintiffs' standing here. *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 757 (1976).

Officials from the States of Missouri and Louisiana testified that they regularly use social media to monitor their citizens' concerns. As explained by one Louisiana official:

> [M]ask and vaccine mandates for students have been a very important source of concern and public discussion by Louisiana citizens over the last year. It is very important for me to have access to free public discourse on social media on these issues so I can understand what our constituents are actually thinking, feeling, and expressing about such issues, and so I can communicate properly with them.

And a Missouri official testified to several examples of critical speech on an important topic that he was not able to review because it was censored:

> [O]ne parent who posted on nextdoor.com (a neighborhood networking site operated by Facebook) an online petition to encourage his school to remain mask-optional found that his posts were quietly removed without notifying him, and his online friends never saw them. Another parent in the same school district who objected to mask mandates for schoolchildren responded to Dr. Fauci on Twitter, and promptly received a warning from Twitter that his account would be banned if he did not delete the tweets criticizing Dr. Fauci's approach to mask mandates. These examples are just the sort of online speech by Missourians that it is important for me and the Missouri Attorney General's Office to be aware of.

The Government does not dispute that the State Plaintiffs have a crucial interest in listening to their citizens. Indeed, the CDC's own witness explained that if content were censored and removed from social-media platforms, government communicators would not "have the full picture" of what their citizens' true concerns are. So, when the federal government coerces or substantially encourages third parties to censor certain viewpoints, it hampers the states' right to hear their constituents and, in turn, reduces their ability to respond to the concerns of their constituents. This injury, too, means the states likely have standing. *See Va. State Bd. of Pharm.*, 425 U.S. at 757.

* * *

The Plaintiffs have standing because they have demonstrated ongoing harm from past social-media censorship and a likelihood of future censorship, both of which are injuries traceable to government-coerced enforcement of social-media platforms' content-moderation policies and redressable by an injunction against the government officials. We therefore proceed to the merits of Plaintiffs' claim for injunctive relief.[8]

**IV.**

A party seeking a preliminary injunction must establish that (1) they are likely to succeed on the merits, (2) there is a "substantial threat" they will suffer an "irreparable injury" otherwise, (3) the potential injury

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[8] The Individual Plaintiffs' standing and the State Plaintiffs' standing provide independent bases upon which the Plaintiffs' injunctive-relief claim may proceed since there need be only one plaintiff with standing to satisfy the requirements of Article III. *Rumsfeld*, 547 U.S. at 52 n.2.

"outweighs any harm that will result" to the other side, and (4) an injunction will not "disserve the public interest." *Atchafalaya Basinkeeper v. U.S. Army Corps of Eng'rs*, 894 F.3d 692, 696 (5th Cir. 2018) (citing *La Union Del Pueblo Entero v. FEMA*, 608 F.3d 217, 219 (5th Cir. 2010)). Of course, a "preliminary injunction is an extraordinary remedy," meaning it should not be entered lightly. *Id.*

We start with likelihood of success. The Plaintiffs allege that federal officials ran afoul of the First Amendment by coercing and significantly encouraging "social-media platforms to censor disfavored [speech]," including by "threats of adverse government action" like antitrust enforcement and legal reforms. We agree.

**A.**

The government cannot abridge free speech. U.S. Const. amend. I. A private party, on the other hand, bears no such burden—it is "not ordinarily constrained by the First Amendment." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019). That changes, though, when a private party is coerced or significantly encouraged by the government to such a degree that its "choice"—which if made by the government would be unconstitutional, *Norwood v. Harrison*, 413 U.S. 455, 465 (1973)—"must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004

(1982); *Barnes v. Lehman*, 861 F.2d 1383, 1385-36 (5th Cir. 1988).[9] This is known as the close nexus test.[10]

Under that test, we "begin[] by identifying 'the specific conduct of which the plaintiff complains.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (quoting *Blum*, 457 U.S. at 1004 ("Faithful adherence to the 'state action' requirement . . . requires careful attention to the gravamen of the plaintiff's complaint.")). Then, we ask whether the government sufficiently induced that act. Not just any coaxing will do, though. After all, "the government can speak for itself," which includes the right to "advocate and defend its own policies." *Southworth*, 529 U.S. at 229; *see also Walker*, 576 U.S. at 207. But, on one hand there is persuasion, and on the other there is coercion and significant encouragement—two distinct means of satisfying the close nexus test. *See Louisiana Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317, 320 (5th Cir. 2020) (per curiam) ("Responding agreeably to a request and being all but forced by the coercive power of a governmental official are different categories of responses

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[9] That makes sense: First Amendment rights "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960).

[10] Note that, at times, we have called this test by a few other names. *See, e.g., Frazier v. Bd. of Trustees of Nw. Miss. Reg'l Med. Ctr.*, 765 F.2d 1278, 1284 (5th Cir. 1985) ("the fair attribution test"); *Bass v. Parkwood Hosp.*, 180 F.3d 234, 242 (5th Cir. 1999) ("The state compulsion (or coercion) test"). We settle that dispute now—it is the close nexus test. *Am. Mfrs.*, 526 U.S. at 52 (a "close nexus" is required). In addition, some of our past decisions have confused this test with the joint action test, *see Bass*, 180 F.3d at 242, but the two are separate tests with separate considerations.

. . . "). Where we draw that line, though, is the question before us today.

**1.**

We start with encouragement. To constitute "significant encouragement," there must be such a "close nexus" between the parties that the government is practically "*responsible*" for the challenged decision. *Blum*, 457 U.S. at 1004 (emphasis in original). What, then, is a close nexus? We know that "the mere fact that a business is subject to state regulation" is not sufficient. *Id.* (alteration adopted) (citation omitted); *Halleck*, 139 S. Ct. at 1932 ("Put simply, being regulated by the State does not make one a state actor."). And, it is well established that the government's "[m]ere approval of or acquiescence in" a private party's actions is not enough either. *Blum*, 457 U.S. at 1004-05. Instead, for encouragement, we find that the government must exercise some active, meaningful control over the private party's decision.

Take *Blum v. Yaretsky*. There, the Supreme Court found there was no state action because a decision to discharge a patient—even if it followed from the "requir[ed] completion of a form" under New York law—was made by private physicians, not the government. *Id.* at 1006-08. The plaintiff argued that, by regulating and overseeing the facility, the government had "affirmatively command[ed]" the decision. *Id.* at 1005. The Court was not convinced—it emphasized that "physicians, [] not the forms, make the decision" and they do so under "professional standards that are not established by the State." *Id.* Similarly, in *Rendell-Baker v. Kohn* the Court found that a private school—which the government funded and placed students at—was not

engaged in state action because the conduct at issue, namely the decision to fire someone, "[was] not . . . influenced by any state regulation." 457 U.S. 830, 841 (1982).

Compare that, though, to *Roberts v. Louisiana Downs, Inc.*, 742 F.2d 221 (5th Cir. 1984). There, we held that a horseracing club's action was attributable to the state because the Louisiana government—through legal and informal supervision—was overly involved in the decision to deny a racer a stall. *Id.* at 224. "Something more [was] present [] than simply extensive regulation of an industry, or passive approval by a state regulatory entity of a decision by a regulated business." *Id.* at 228. Instead, the stalling decision was made partly by the "racing secretary," a legislatively created position accompanied by expansive supervision from on-site state officials who had the "power to override decisions" made by the club's management. *Id.* So, even though the secretary was plainly a "private employee" paid by the club, the state's extensive oversight—coupled with some level of authority on the part of the state—meant that the club's choice was not fully independent or made wholly subject to its own policies. *Id.* at 227-28. So, this case is on the opposite end of the state-involvement spectrum to *Blum*.

Per *Blum* and *Roberts*, then, significant encouragement requires "[s]omething more" than uninvolved oversight from the government. *Id.* at 228. After all, there must be a "close nexus" that renders the government practically "*responsible*" for the decision. *Blum*, 457 U.S. at 1004. Taking that in context, we find that the clear throughline for encouragement in our caselaw is that there must be *some* exercise of *active* (not passive), *meaningful* (impactful enough to render them

responsible) *control* on the part of the government over the private party's challenged decision. Whether that is (1) entanglement in a party's independent decision-making or (2) direct involvement in carrying out the decision itself, the government must encourage the decision to such a degree that we can fairly say it was the state's choice, not the private actor's. *See id.*; *Roberts*, 742 F.2d at 224; *Rendell-Baker*, 457 U.S. at 841 (close nexus test is met if action is "compelled or [] *influenced*" by the state (emphasis added)); *Frazier*, 765 F.2d at 1286 (significant encouragement is met when "the state has had some affirmative role, albeit one of encouragement short of compulsion," in the decision).[11]

[11] This differs from the "joint action" test that we have considered in other cases. Under that doctrine, a private party may be considered a state actor when it "operates as a 'willful participant in joint activity with the State or its agents.'" *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 296 (2001) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 941 (1982)). The difference between the two lies primarily in the degree of the state's involvement.

Under the joint action test, the level of integration is *very high*—there must be "pervasive entwinement" between the parties. *Id.* at 298. That is integration to such a degree that "will support a conclusion that an ostensibly private organization ought to be charged with a *public character*." *Id.* at 302 (emphasis added) (finding state action by athletic association when public officials served on the association's board, public institutions provided most of the association's funding, and the association's employees received public benefits); *see also Rendell-Baker*, 457 U.S. at 842 (requiring a "symbiotic relationship"); *Frazier*, 765 F.2d at 1288 & n.22 (explaining that although the joint action test involves the government playing a "meaningful role" in the private actor's decision, that role must be part of a "functionally symbiotic" relationship that is so extensive that "*any act* of the private entity will be fairly attributable to the

Take *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, 848 F.2d 544 (5th Cir. 1988). There, a group of onion growers—by way of state picketing laws and local officials—shut down a workers' strike. *Id.* at 548-49. We concluded that the growers' "activity"—axing the strike—"while not compelled by the state, was so *significantly encouraged*, both overtly and covertly, that

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state even if it cannot be shown that the government played a direct role in the *particular* action challenged." (emphases added)).

Under the close nexus test, however, the government is not deeply intertwined with the private actor as a whole. Instead, the state is involved in only one facet of the private actor's operations—its decision-making process regarding the *challenged* conduct. *Roberts*, 742 F.2d at 224; *Howard Gault*, 848 F.2d at 555. That is a much narrower level of integration. *See Roberts*, 742 F.2d at 228 ("We do not today hold that the state and Louisiana Downs are in such a relationship that all acts of the track constitute state action, nor that all acts of the racing secretary constitute state action," but instead that "[i]n the area of stalling, . . . state regulation and involvement is so specific and so pervasive that [such] decisions may be considered to bear the imprimatur of the state."). Consequently, the showings required by a plaintiff differ. Under the joint action test, the plaintiff must prove substantial integration between the two entities *in toto*. For the close nexus test, the plaintiff instead must only show significant involvement from the state in the *particular* challenged action.

Still, there is admittedly some overlap between the tests. *See Brentwood*, 531 U.S. at 303 ("'Coercion' and 'encouragement' are like 'entwinement' in referring to kinds of facts that can justify characterizing an ostensibly private action as public instead. Facts that address any of these criteria are significant, but no one criterion must necessarily be applied. When, therefore, the relevant facts show pervasive entwinement to the point of largely overlapping identity, the implication of state action is not affected by pointing out that the facts might not loom large under a different test."). But, that is to be expected—these tests are not "mechanical[ly]" applied. *Roberts*, 742 F.2d at 224.

the choice must in law be deemed to be that of the state." *Id.* at 555 (alterations adopted) (citation and quotation marks omitted) (emphasis added).[12] Specifically, "[i]t was the heavy participation of state and state officials," including local prosecutors and police officers, "that [brought] [the conduct] under color of state law." *Id.* In other words, the officials were directly involved in carrying out the challenged decision. That satisfied the requirement that, to encourage a decision, the government must exert some meaningful, active control over the private party's decision.

Our reading of what encouragement means under the close nexus test tracks with other federal courts, too. For example, the Ninth Circuit reads the close nexus test to be satisfied when, through encouragement, the government "overwhelm[s] the private party['s]" choice in the matter, forcing it to "act in a certain way." *O'Handley*, 62 F.4th at 1158; *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 751 (9th Cir. 2020) ("A finding that individual state actors or other state requirements literally 'overrode' a nominally private defendant's independent judgment might very well provide

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[12] We note that although state-action caselaw seems to deal most often with § 1983 (*i.e.*, the under-color-of-law prong) and the Fourteenth Amendment, there is no clear directive from the Supreme Court that any variation in the law or government at issue changes the state-action analysis. *See Blum*, 457 U.S. at 1004. In fact, we have expressly rejected such ideas. *See Miller v. Hartwood Apartments, Ltd.*, 689 F.2d 1239, 1243 (5th Cir. 1982) ("Although the *Blum* decision turned on § 1983, we find the determination of federal action to rest on the same general principles as determinations of state action."); *Barnes*, 861 F.2d at 1385 ("The analysis of state action under the Fourteenth Amendment and the analysis of action under color of state law may coincide for purposes of § 1983.").

relevant information.”). That analysis, much like meaningful control, asks whether a decision “was the result of [a party’s] own independent judgment.” *O’Handley*, 62 F.4th at 1159.

**2.**

Next, we take coercion—a separate and distinct means of satisfying the close nexus test. Generally speaking, if the government compels the private party’s decision, the result will be considered a state action. *Blum*, 457 U.S. at 1004. So, what is coercion? We know that simply “being regulated by the State does not make one a state actor.” *Halleck*, 139 S. Ct. at 1932. Coercion, too, must be something more. But, distinguishing coercion from persuasion is a more nuanced task than doing the same for encouragement. Encouragement is evidenced by an exercise of active, meaningful control, whether by entanglement in the party’s decision-making process or direct involvement in carrying out the decision itself. Therefore, it may be more noticeable and, consequently, more distinguishable from persuasion. Coercion, on the other hand, may be more subtle. After all, the state may advocate—even forcefully—on behalf of its positions. *Southworth*, 529 U.S. at 229.

Consider a Second Circuit case, *National Rifle Ass’n v. Vullo*, 49 F.4th 700 (2d Cir. 2022). There, a New York state official “urged” insurers and banks via strongly worded letters to drop the NRA as a client. *Id.* at 706. In those letters, the official alluded to reputational harms that the companies would suffer if they continued to support a group that has allegedly caused or encouraged “devastation” and “tragedies” across the country. *Id.* at 709. Also, the official personally told a few of the companies in a closed-door meeting that she “was less

interested in pursuing the [insurers' regulatory] infractions . . . so long as [they] ceased" working with the NRA. *Id.* at 718. Ultimately, the Second Circuit found that both the letters and the statement did not amount to coercion, but instead "permissible government speech." *Id.* at 717, 719. In reaching that decision, the court emphasized that "[a]lthough she did have regulatory authority over the target audience," the official's letters were written in a "nonthreatening tone" and used persuasive, non-intimidating language. *Id.* at 717. Relatedly, while she referenced "adverse consequences" if the companies did not comply, they were only "reputational risks"—there was no intimation that "punishment or adverse regulatory action would follow the failure to accede to the request." *Id.* (alterations adopted). As for the "so long as" statement, the Second Circuit found that—when viewed in "context"—the official was merely "negotiating[] and resolving [legal] violations," a legitimate power of her office.[13] *Id.* at 718-19. Because she was only "carrying out her regulatory responsibilities" and "engaging in legitimate enforcement action," the official's references to infractions were not coercive. *Id.* Thus, the Second Circuit found that *seemingly* threatening language was actually permissible government advocacy.

That is not to say that coercion is *always* difficult to identify. Sometimes, coercion is obvious. *Take Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). There, the

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[13] Apparently, the companies had previously issued "illegal insurance policies—programs created and endorsed by the NRA"—that covered litigation defense costs resulting from any firearm-related injury or death, in violation of New York law. *Vullo*, 49 F.4th at 718. The court reasoned that the official had the power to bring those issues to a close.

Rhode Island Commission to Encourage Morality—a state-created entity—sought to stop the distribution of obscene books to kids. *Id.* at 59. So, it sent a letter to a book distributor with a list of verboten books and requested that they be taken off the shelves. *Id.* at 61-64. That request conveniently noted that compliance would "eliminate the necessity of our recommending prosecution to the Attorney General's department." *Id.* at 62 n.5. Per the Commission's request, police officers followed up to make sure the books were removed. *Id.* at 68. The Court concluded that this "system of informal censorship," which was "clearly [meant] to intimidate" the recipients through "threat of [] legal sanctions and other means of coercion" rendered the distributors' decision to remove the books a state action. *Id.* at 64, 67, 71–72. Given *Bantam Books*, not-so subtle asks accompanied by a "system" of pressure (e.g., threats and follow-ups) are clearly coercive.

Still, it is rare that coercion is so black and white. More often, the facts are complex and sprawling as was the case in *Vullo*. That means it can be quite difficult to parse out coercion from persuasion. We, of course, are not the first to recognize this. In that vein, the Second Circuit has crafted a four-factor test that distills the considerations of *Bantam Books* into a workable standard. We, lacking such a device, adopt the Second Circuit's approach as a helpful, non-exclusive tool for completing the task before us, namely identifying when the state's messages cross into impermissible coercion.

The Second Circuit starts with the premise that a government message is coercive—as opposed to persuasive—if it "can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's

request." *Vullo*, 49 F.4th at 715 (quotation marks and citation omitted). To distinguish such "attempts to coerce" from "attempts to convince," courts look to four factors, namely (1) the speaker's "word choice and tone"; (2) "whether the speech was perceived as a threat"; (3) "the existence of regulatory authority"; and, "perhaps most importantly, (4) whether the speech refers to adverse consequences." *Id.* (citations omitted). Still, "[n]o one factor is dispositive." *Id.* (citing *Bantam Books*, 372 U.S. at 67). For example, the Second Circuit found in *Vullo* that the state officials' communications were not coercive because, in part, they were not phrased in an intimidating manner and only referenced reputational harms—an otherwise acceptable consequence for a governmental actor to threaten. *Id.* at 717, 719.

The Ninth Circuit has also adopted the four-factor approach and, in doing so, has cogently spelled out the nuances of each factor. Consider *Kennedy v. Warren*, 66 F.4th 1199 (9th Cir. 2023). There, Senator Elizabeth Warren penned a letter to Amazon asking it to stop selling a "false or misleading" book on COVID. *Id.* at 1204. The senator stressed that, by selling the book, Amazon was "providing consumers with false and misleading information" and, in doing so, was pursuing what she described as "an unethical, unacceptable, and potentially unlawful course of action." *Id.* So, she asked it to do better, including by providing a "public report" on the effects of its related sales algorithms and a "plan to modify these algorithms so that they no longer" push products peddling "COVID-19 misinformation." *Id.* at 1205. The authors sued, but the Ninth Circuit found no state action.

The court, lamenting that it can "be difficult to distinguish" between persuasion and coercion, turned to the Second Circuit's "useful non-exclusive" four-factor test. *Id.* at 1207. First, the court reasoned that the senator's letter, although made up of "strong rhetoric," was framed merely as a "request rather than a command." *Id.* at 1208. Considering both the text and the "tenor" of the parties' relationship, the court concluded that the letter was not unrelenting, nor did it "suggest[] that compliance was the only realistic option." *Id.* at 1208-09.

Second, and relatedly, even if she had said as much, the senator lacked regulatory authority—she "ha[d] no unilateral power to penalize Amazon." *Id.* at 1210. Still, the sum of the second prong is more than just power. Given that the overarching purpose of the four-factor test is to ask if the speaker's message can "reasonably be construed" as a "threat of adverse consequences," the lack of power is "certainly relevant." *Id.* at 1209-10. After all, the "absence of authority influences how a reasonable person would read" an official's message. *Id.* at 1210; *see also Hammerhead Enters., Inc. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983) (finding no government coercion where city official lacked "the power to impose sanctions on merchants who did not respond to [his] requests") (citing *Bantam Books*, 372 U.S. at 71). For example, in *Warren*, it would have been "unreasonable" to believe, given Senator Warren's position "as a single Senator" who was "removed from the relevant levers of power," that she could exercise any authority over Amazon. 66 F.4th at 1210.

Still, the "lack of direct authority" is not entirely dispositive. *Id.* Because—per the Second and Ninth Circuits—the key question is whether a message can

"reasonably be construed as coercive," *id.* at 1209,[14] a speaker's power over the recipient need not be clearly defined or readily apparent, so long as it can be reasonably said that there is some tangible power lurking in the background. *See Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003) (finding a private party "could reasonably have believed" it would face retaliation if it ignored a borough president's request because "[e]ven though [he] lacked direct regulatory control," there was an "implicit threat" that he would "use whatever authority he does have . . . to interfere" with the party's cashflow). That, of course, was not present in *Warren*. So, the second prong was easily resolved against state action.

Third, the senator's letter "contain[ed] no explicit reference" to "adverse consequences."[15] 66 F.4th at

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[14] According to the Ninth Circuit, that tracks with its precedent. "[I]n *Carlin Communications, Inc. v. Mountain States Telephone & Telegraph Co.*, 827 F.2d 1291 (9th Cir. 1987), [they] held that a deputy county attorney violated the First Amendment by threatening to prosecute a telephone company if it continued to carry a salacious dial-a-message service." *Warren*, 66 F.4th at 1207. But, "in *American Family Association, Inc. v. City & County of San Francisco*, 277 F.3d 1114 (9th Cir. 2002), [they] held that San Francisco officials did not violate the First Amendment when they criticized religious groups' anti-gay advertisements and urged television stations not to broadcast the ads." *Id.* The rub, per the court, was that "public officials may criticize practices that they would have no constitutional ability to regulate, so long as there is no actual or threatened imposition of government power or sanction." *Id.*

[15] The Ninth Circuit emphasized that officials may advocate for positions, including by "[g]enerating public pressure to motivate others to change their behavior." *Warren*, 66 F.4th at 1208. In that vein, it dismissed any references to "potential legal liability" because those statements do not necessarily "morph an effort to

1211. And, beyond that, no "threat [was] clear from the context." *Id.* To be sure, an "official does not need to say 'or else,'" but there must be some message—even if "unspoken"—that can be reasonably construed as intimating a threat. *Id.* at 1211-12. There, when read "holistically," the senator only implied that Amazon was "morally complicit" in bad behavior, nothing more. *Id.* at 1212.

Fourth, there was no indication that Amazon perceived the message as a threat. There was "no evidence" it "changed its algorithms"—"let alone that it felt compelled to do so"—as a result of the senator's urgings. *Id.* at 1211. Admittedly, it is not required that the recipient "bow[] to government pressure," but courts are more likely to find coercion if there is "some indication" that the message was "understood" as a threat, such as evidence of actual change. *Id.* at 1210-11. In *Warren*, it was apparent (and there was no sense to the contrary) that the minor policy change the company did make stemmed from reputational concerns, not "fears of liability in a court of law." *Id.* at 1211. Considering the above, the court found that the senator's message amounted to an attempt at persuasion, not coercion.

**3.**

To sum up, under the close nexus test, a private party's conduct may be state action if the government coerced or significantly encouraged it. *Blum*, 457 U.S. at 1004. Although this test is not mechanical, *see*

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persuade into an attempt to coerce." *Id.* at 1209 (citing *VDARE Found. v. City of Colo. Springs*, 11 F.4th 1151, 1165 (10th Cir. 2021)). Instead, there must be "clear allegation[s] of legal violations or threat[s] of specific enforcement actions." *Id.*

*Roberts*, 742 F.2d at 224 (noting that state action is "essentially [a] factual determination" made by "sifting facts and weighing circumstances case by case to determine if there is a sufficient nexus between the state and the particular aspect of the private individual's conduct which is complained of" (citation and quotation marks omitted)), there are clear, although not exclusive, ways to satisfy either prong.

For encouragement, we read the law to require that a governmental actor exercise active, meaningful control over the private party's decision in order to constitute a state action. That reveals itself in (1) entanglement in a party's independent decision-making or (2) direct involvement in carrying out the decision itself. *Compare Roberts*, 742 F.2d at 224 (state had such "continuous and intimate involvement" and supervision over horseracing decision that, when coupled with its authority over the actor, it was considered a state action) *and Howard Gault*, 848 F.2d at 555 (state eagerly, and effectively, assisted a private party in shutting down a protest), *with Blum*, 457 U.S. at 1008 (state did not sufficiently influence the decision as it was made subject to independent standards). In any of those scenarios, the state has such a "close nexus" with the private party that the government actor is practically "*responsible*" for the decision, *Blum*, 457 U.S. at 1004, because it has necessarily encouraged the private party to act and, in turn, commandeered its independent judgment, *O'Handley*, 62 F.4th at 1158-59.

For coercion, we ask if the government compelled the decision by, through threats or otherwise, intimating that some form of punishment will follow a failure to comply. *Vullo*, 49 F.4th at 715. Sometimes, that is obvious from the facts. *See, e.g., Bantam Books*, 372 U.S.

at 62–63 (a mafiosi-style threat of referral to the Attorney General accompanied with persistent pressure and follow-ups). But, more often, it is not. So, to help distinguish permissible persuasion from impermissible coercion, we turn to the Second (and Ninth) Circuit's four-factor test. Again, honing in on whether the government "intimat[ed] that some form of punishment" will follow a "failure to accede," we parse the speaker's messages to assess the (1) word choice and tone, including the overall "tenor" of the parties' relationship; (2) the recipient's perception; (3) the presence of authority, which includes whether it is reasonable to fear retaliation; and (4) whether the speaker refers to adverse consequences. *Vullo*, 49 F.4th at 715; *see also Warren*, 66 F.4th at 1207.

Each factor, though, has important considerations to keep in mind. For word choice and tone, "[a]n interaction will tend to be more threatening if the official refuses to take 'no' for an answer and pesters the recipient until it succumbs." *Warren*, 66 F.4th at 1209 (citing *Bantam Books*, 372 U.S. at 62–63). That is so because we consider the overall "tenor" of the parties' relationship. *Id.* For authority, there is coercion even if the speaker lacks present ability to act so long as it can "reasonably be construed" as a threat worth heeding. *Compare id.* at 1210 (single senator had no worthwhile power over recipient, practical or otherwise), *with Okwedy*, 333 F.3d at 344 (although local official lacked direct power over the recipient, company "could reasonably have believed" from the letter that there was "an implicit threat" and that he "would use whatever authority he does have" against it).

As for perception, it is not necessary that the recipient "admit that it bowed to government pressure," nor

is it even "necessary for the recipient to have complied with the official's request"—"a credible threat may violate the First Amendment even if 'the victim ignores it, and the threatener folds his tent.'" *Warren*, 66 F.4th at 1210 (quoting *Backpage.com, LLC v. Dart*, 807 F.3d 229, 231 (7th Cir. 2015)). Still, a message is more likely to be coercive if there is some indication that the party's decision resulted from the threat. *Id.* at 1210-11. Finally, as for adverse consequences, the government need not speak its threat aloud if, given the circumstances, it is fair to say that the message intimates some form of punishment. *Id.* at 1209. If these factors weigh in favor of finding the government's message coercive, the coercion test is met, and the private party's resulting decision is a state action.

**B.**

With that in mind, we turn to the case at hand. We start with "the specific conduct of which the plaintiff complains." *Am. Mfrs.*, 526 U.S. at 51. Here, that is "censor[ing] disfavored speakers and viewpoints" on social media. The Plaintiffs allege that the "Defendants [] coerced, threatened, and pressured social-media platforms"—via "threats of adverse government action" like increased regulation, antitrust enforcement, and changes to Section 230—to make those censorship decisions. That campaign, per the Plaintiffs, was multi-faceted—the officials "publicly threaten[ed] [the] companies" while they privately piled on "unrelenting pressure" via "demands for greater censorship." And they succeeded—the platforms censored disfavored content.

The officials do not deny that they worked alongside the platforms. Instead, they argue that their conduct—asking or trying to persuade the platforms to act—was

permissible government speech. So, we are left with the task of sifting out any coercion and significant encouragement from their attempts at persuasion. Here, there were multiple speakers and messages. Taking that in context, we apply the law to one set of officials at a time, starting with the White House and Office of the Surgeon General.

**1.**

We find that the White House, acting in concert with the Surgeon General's office, likely (1) coerced the platforms to make their moderation decisions by way of intimidating messages and threats of adverse consequences, and (2) significantly encouraged the platforms' decisions by commandeering their decision-making processes, both in violation of the First Amendment.

Generally speaking, officials from the White House and the Surgeon General's office had extensive, organized communications with platforms. They met regularly, traded information and reports, and worked together on a wide range of efforts. That working relationship was, at times, sweeping. Still, those facts alone likely are not problematic from a First-Amendment perspective. But, the relationship between the officials and the platforms went beyond that. In their communications with the platforms, the officials went beyond advocating for policies, *Southworth*, 529 U.S. at 229, or making no-strings-attached requests to moderate content, *Warren*, 66 F.4th at 1209. Their interaction was "something more." *Roberts*, 742 F.2d at 228.

We start with coercion. On multiple occasions, the officials coerced the platforms into direct action via urgent, uncompromising demands to moderate content. Privately, the officials were not shy in their requests—

they asked the platforms to remove posts "ASAP" and accounts "immediately," and to "slow[] down" or "demote[]" content. In doing so, the officials were persistent and angry. *Cf. Bantam Books*, 372 U.S. at 62-63. When the platforms did not comply, officials followed up by asking why posts were "still up," stating (1) "how does something like [this] happen," (2) "what good is" flagging if it did not result in content moderation, (3) " I don't know why you guys can't figure this out," and (4) "you are hiding the ball," while demanding "assurances" that posts were being taken down. And, more importantly, the officials threatened—both expressly and implicitly—to retaliate against inaction. Officials threw out the prospect of legal reforms and enforcement actions while subtly insinuating it would be in the platforms' best interests to comply. As one official put it, "removing bad information" is "one of the easy, low-bar things you guys [can] do to make people like me"—that is, White House officials—"think you're taking action."

That alone may be enough for us to find coercion. Like in *Bantam Books*, the officials here set about to force the platforms to remove metaphorical books from their shelves. It is uncontested that, between the White House and the Surgeon General's office, government officials asked the platforms to remove undesirable posts and users from their platforms, sent follow-up messages of condemnation when they did not, and publicly called on the platforms to act. When the officials' demands were not met, the platforms received promises of legal regime changes, enforcement actions, and other unspoken threats. That was likely coercive. *See Warren*, 66 F.4th at 1211-12.

That being said, even though coercion may have been readily apparent here, we find it fitting to consult the Second Circuit's four-factor test for distinguishing coercion from persuasion. In asking whether the officials' messages can "reasonably be construed" as threats of adverse consequences, we look to (1) the officials' word choice and tone; (2) the recipient's perception; (3) the presence of authority; and (4) whether the speaker refers to adverse consequences. *Vullo*, 49 F.4th at 715; *see also Warren*, 66 F.4th at 1207.

First, the officials' demeanor. We find, like the district court, that the officials' communications—reading them in "context, not in isolation"—were on-the-whole intimidating. *Warren*, 66 F.4th at 1208. In private messages, the officials demanded "assurances" from the platforms that they were moderating content in compliance with the officials' requests, and used foreboding, inflammatory, and hyper-critical phraseology when they seemingly did not, like "you are hiding the ball," you are not "trying to solve the problem," and we are "gravely concerned" that you are "one of the top drivers of vaccine hesitancy." In public, they said that the platforms were irresponsible, let "misinformation [] poison" America, were "literally costing . . . lives," and were "killing people." While officials are entitled to "express their views and rally support for their positions," the "word choice and tone" applied here reveals something more than mere requests. *Id.* at 1207-08.

Like *Bantam Books*—and unlike the requests in *Warren*—many of the officials' asks were "phrased virtually as orders," 372 U.S. at 68, like requests to remove content "ASAP" or "immediately." The threatening "tone" of the officials' commands, as well as of their "overall interaction" with the platforms, is made all the

more evident when we consider the persistent nature of their messages. Generally speaking, "[a]n interaction will tend to be more threatening if the official refuses to take 'no' for an answer and pesters the recipient until it succumbs." *Warren*, 66 F.4th at 1209 (citing *Bantam Books*, 372 U.S. at 62–63). Urgency can have the same effect. *See Backpage.com*, 807 F.3d at 237 (finding the "urgency" of a sheriff's letter, including a follow-up, "imposed another layer of coercion due to its strong suggestion that the companies could not simply ignore" the sheriff), *cert. denied*, 137 S. Ct. 46 (2016). Here, the officials' correspondences were both persistent and urgent. They sent repeated follow-up emails, whether to ask why a post or account was "still up" despite being flagged or to probe deeper into the platforms' internal policies. On the latter point, for example, one official asked at least *twelve* times for detailed information on Facebook's moderation practices and activities. Admittedly, many of the officials' communications are not by themselves coercive. But, we do not take a speaker's communications "in isolation." *Warren*, 66 F.4th at 1208. Instead, we look to the "tenor" of the parties' relationship and the conduct of the government in context. *Id.* at 1209. Given their treatment of the platforms as a whole, we find the officials' tone and demeanor was coercive, not merely persuasive.

Second, we ask how the platforms perceived the communications. Notably, "a credible threat may violate the First Amendment even if 'the victim ignores it, and the threatener folds his tent.'" *Id.* at 1210 (quoting *Backpage.com*, 807 F.3d at 231). Still, it is more likely to be coercive if there is some evidence that the recipient's subsequent conduct is linked to the official's message. For example, in *Warren*, the Ninth Circuit court

concluded that Amazon's decision to stop advertising a specific book was "more likely . . . a response to widespread concerns about the spread of COVID-19," as there was "no evidence that the company changed [course] in response to Senator Warren's letter." *Id.* at 1211. Here, there is plenty of evidence—both direct and circumstantial, considering the platforms' contemporaneous actions—that the platforms were influenced by the officials' demands. When officials asked for content to be removed, the platforms took it down. And, when they asked for the platforms to be more aggressive, "interven[e]" more often, take quicker actions, and modify their "internal policies," the platforms did—and they sent emails and assurances confirming as much. For example, as was common after public critiques, one platform assured the officials they were "committed to addressing the [] misinformation that you've called on us to address" after the White House issued a public statement. Another time, one company promised to make an employee "available on a regular basis" so that the platform could "automatically prioritize" the officials' requests after criticism of the platform's response time. Yet another time, a platform said it was going to "adjust [its] policies" to include "specific recommendations for improvement" from the officials, and emailed as much because they "want[ed] to make sure to keep you informed of our work on each" change. Those are just a few of many examples of the platforms changing—and acknowledging as much—their course as a direct result of the officials' messages.

Third, we turn to whether the speaker has "authority over the recipient." 66 F.4th at 1210. Here, that is clearly the case. As an initial matter, the White House wields significant power in this Nation's constitutional

landscape. It enforces the laws of our country, U.S. CONST. art. II, and—as the head of the executive branch—directs an army of federal agencies that create, modify, and enforce federal regulations. We can hardly say that, like the senator in *Warren*, the White House is "removed from the relevant levers of power." 66 F.4th at 1210. At the very least, as agents of the executive branch, the officials' powers track somewhere closer to those of the commission in *Bantam Books*—they were legislatively given the power to "investigate violations[] and recommend prosecutions." *Id.* (citing *Bantam Books*, 372 U.S. at 66).

But, authority over the recipient does not have to be a clearly-defined ability to act under the close nexus test. Instead, a generalized, non-descript means to punish the recipient may suffice depending on the circumstances. As the Ninth Circuit explained in *Warren*, a message may be "*inherently coercive*" if, for example, it was conveyed by a "law enforcement officer" or "penned by an executive official with unilateral power." *Id.* (emphasis added). In other words, a speaker's power may stem from an inherent authority over the recipient. *See, e.g., Backpage.com*, 807 F.3d 229. That reasoning is likely applicable here, too, given the officials' executive status.

It is not even necessary that an official have direct power over the recipient. Even if the officials "lack[ed] direct authority" over the platforms, the cloak of authority may still satisfy the authority prong. *See Warren*, 66 F.4th at 1210. After all, we ask whether a "reasonable person" would be threatened by an official's statements. *Id.* Take, for example, *Okwedy*. There, a borough president penned a letter to a company—which, per the official, owned a "number of billboards

on Staten Island and derive[d] substantial economic benefits from them"—and "call[ed] on [them] as a responsible member of the business community to please contact" his "legal counsel." 333 F.3d at 342. The Second Circuit found that, even though the official "lacked direct regulatory authority" or control over the company, an "implicit threat" flowed from his letter because he had *some* innate authority to affect the company. *Id.* at 344. The Second Circuit noted that "[a]lthough the existence of regulatory or other direct decisionmaking authority is certainly relevant to the question of whether a government official's comments were unconstitutionally threatening or coercive, a defendant without such direct regulatory or decisionmaking authority can also exert an impermissible type or degree of pressure." *Id.* at 343.

Consider another example, *Backpage.com*. There, a sheriff sent a cease-and-desist letter to credit card companies—which he admittedly "had no authority to take any official action" against—to stop doing business with a website. 807 F.3d at 230, 236. "[E]ven if the companies understood the jurisdictional constraints on [the sheriff]'s ability to proceed against them directly," the sheriff's letter was still coercive because, among other reasons, it "invok[ed] the legal obligations of [the recipients] to cooperate with law enforcement," and the sheriff could easily "refer the credit card companies to the appropriate authority to investigate" their dealings,[16]

[16] This was true even though the financial institutions were large, sophisticated, and presumably understood the federal authorities were unlikely to prosecute the companies. *Backpage.com*, 807 F.3d at 234. As the Seventh Circuit explained, it was still in the credit card companies' financial interests to comply. Backpage's measly $135 million in annual revenue was a drop in the bucket of the

much like a White House official could contact the Department of Justice. *Id.* at 236–37.

True, the government can "appeal[]" to a private party's "interest in avoiding liability" so long as that reference is not meant to intimidate or compel. *Id.* at 237; *see also Vullo*, 49 F.4th at 717-19 (statements were non-coercive because they referenced legitimate use of powers in a nonthreatening manner). But here, the officials' demands that the platforms remove content and change their practices were backed by the officials' unilateral power to act or, at the very least, their ability to inflict "*some form of punishment*" against the platforms.[17] *Okwedy*, 333 F.3d at 342 (citation omitted) (emphasis added). Therefore, the authority factor weighs in favor of finding the officials' messages coercive.

Finally, and "perhaps most important[ly]," we ask whether the speaker "refers to adverse consequences that will follow if the recipient does not accede to the request." *Warren*, 66 F.4th at 1211 (citing *Vullo*, 49 F.4th at 715). Explicit and subtle threats both work—"an official does not need to say 'or else' if a threat is

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financial service companies' combined net revenue of $22 billion. *Id.* at 236. Unlike credit card processors that at least made money servicing Backpage, social-media platforms typically depend on advertisers, not their users, for revenue. *Cf. Wash. Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019) (holding campaign finance regulations on online ads unconstitutional where they "ma[de] it financially irrational, generally speaking, for platforms to carry political speech when other, more profitable options are available").

[17] Or, as the Ninth Circuit put it, "public officials may criticize practices that they would have no constitutional ability to regulate, so long as there is no actual or threatened imposition of *government power or sanction*." *Warren*, 66 F.4th at 1207 (citation omitted) (emphasis added).

clear from the context." *Id.* (citing *Backpage.com*, 807 F.3d at 234). Again, this factor is met.

Here, the officials made express threats and, at the very least, leaned into the inherent authority of the President's office. The officials made inflammatory accusations, such as saying that the platforms were "poison[ing]" the public, and "killing people." The platforms were told they needed to take greater responsibility and action. Then, they followed their statements with threats of "fundamental reforms" like regulatory changes and increased enforcement actions that would ensure the platforms were "held accountable." But, beyond express threats, there was *always* an "unspoken 'or else.'" *Warren*, 66 F.4th at 1212. After all, as the executive of the Nation, the President wields awesome power. The officials were not shy to allude to that understanding native to every American—when the platforms faltered, the officials warned them that they were "[i]nternally . . . considering our options on what to do," their "concern[s] [were] shared at the highest (and I mean highest) levels of the [White House]," and the "President has long been concerned about the power of large social media platforms." Unlike the letter in Warren, the language deployed in the officials' campaign reveals clear "plan[s] to punish" the platforms if they did not surrender. *Warren*, 66 F.4th at 1209. *Compare id.*, *with Backpage.com*, 807 F.3d at 237. Consequently, the four-factor test weighs heavily in favor of finding the officials' messages were coercive, not persuasive.

Notably, the Ninth Circuit recently reviewed a case that is strikingly similar to ours. In *O'Handley*, officials from the California Secretary of State's office allegedly "act[ed] in concert" with Twitter to censor speech on the platform. 62 F.4th at 1153. Specifically, the parties

had a "collaborative relationship" where officials flagged tweets and Twitter "almost invariably" took them down. *Id.* Therefore, the plaintiff contended, when his election-fraud-based post was removed, California "abridged his freedom of speech" because it had "pressured Twitter to remove disfavored content." *Id.* at 1163. But, the Ninth Circuit disagreed, finding the close nexus test was not satisfied. The court reasoned that there was no clear indication that Twitter "would suffer adverse consequences if it refused" to comply with California's request. *Id.* at 1158. Instead, it was a "purely optional," "no strings attached" request. *Id.* Consequently, "Twitter complied with the request under the terms of its own content-moderation policy and using its own independent judgment." *Id.*[18] To the Ninth Circuit, there was no indication—whether via

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[18] The Ninth Circuit insightfully noted the difficult task of applying the coercion test in the First Amendment context:

> [W]e have drawn a sharp distinction between attempts to convince and attempts to coerce. Particularly relevant here, we have held that government officials do not violate the First Amendment when they request that a private intermediary not carry a third party's speech so long as the officials do not threaten adverse consequences if the intermediary refuses to comply. This distinction tracks core First Amendment principles. A private party can find the government's stated reasons for making a request persuasive, just as it can be moved by any other speaker's message. The First Amendment does not interfere with this communication so long as the intermediary is free to disagree with the government and to make its own independent judgment about whether to comply with the government's request.

*O'Handley*, 62 F.4th at 1158. After all, consistent with their constitutional and statutory authority, state "[a]gencies are permitted to communicate in a non-threatening manner with the entities they oversee without creating a constitutional violation." *Id.* at 1163 (citing *Vullo*, 49 F.4th at 714–19).

tone, content, or otherwise—that the state would retaliate against inaction given the insubstantial relationship. Ultimately, the officials conduct was "far from the type of coercion" seen in cases like *Bantam Books*. *Id.* In contrast, here, the officials made clear that the platforms *would* suffer adverse consequences if they failed to comply, through express or implied threats, and thus the requests were not optional.

Given all of the above, we are left only with the conclusion that the officials' statements were coercive. That conclusion tracks with the decisions of other courts. After reviewing the four-factor test, it is apparent that the officials' messages could "reasonably be construed" as threats. *Warren*, 66 F.4th at 1208; *Vullo*, 49 F.4th at 716. Here, unlike in *Warren*, the officials' "call[s] to action"—given the context and officials' tone, the presence of *some* authority, the platforms' yielding responses, and the officials' express and implied references to adverse consequences—"directly suggest[ed] that compliance was the only realistic option to avoid government sanction." 66 F.4th at 1208. And, unlike *O'Handley*, the officials were not simply flagging posts with "no strings attached," 62 F.4th at 1158—they did much, much more.

Now, we turn to encouragement. We find that the officials also significantly encouraged the platforms to moderate content by exercising active, meaningful control over those decisions. Specifically, the officials entangled themselves in the platforms' decision-making processes, namely their moderation policies. See *Blum*, 457 U.S. at 1008. That active, meaningful control is evidenced plainly by a view of the record. The officials had consistent and consequential interaction with the platforms and constantly monitored their moderation

activities. In doing so, they repeatedly communicated their concerns, thoughts, and desires to the platforms. The platforms responded with cooperation—they invited the officials to meetings, roundups, and policy discussions. And, more importantly, they complied with the officials' requests, including making changes to their policies.

The officials began with simple enough asks of the platforms—"can you share more about your framework here" or "do you have data on the actual number" of removed posts? But, the tenor later changed. When the platforms' policies were not performing to the officials' liking, they pressed for more, persistently asking what "interventions" were being taken, "how much content [was] being demoted," and why certain posts were not being removed. Eventually, the officials pressed for outright change to the platforms' moderation policies. They did so privately and publicly. One official emailed a list of proposed changes and said, "this is circulating around the building and informing thinking." The White House Press Secretary called on the platforms to adopt "proposed changes" that would create a more "robust enforcement strategy." And the Surgeon General published an advisory calling on the platforms to "[e]valuate the effectiveness of [their] internal policies" and implement changes. Beyond that, they relentlessly asked the platforms to remove content, even giving reasons as to why such content should be taken down. They also followed up to ensure compliance and, when met with a response, asked how the internal decision was made.

And, the officials' campaign succeeded. The platforms, in capitulation to state-sponsored pressure, changed their moderation policies. The platforms explicitly

recognized that. For example, one platform told the White House it was "making a number of changes"—which aligned with the officials' demands—as it knew its "position on [misinformation] continues to be a particular concern" for the White House. The platform noted that, in line with the officials' requests, it would "make sure that these additional [changes] show results—the stronger demotions in particular should deliver real impact." Similarly, one platform emailed a list of "commitments" after a meeting with the White House which included policy "changes" "focused on reducing the virality" of anti-vaccine content even when it "does not contain actionable misinformation." Relatedly, one platform told the Surgeon General that it was "committed to addressing the [] misinformation that you've called on us to address," including by implementing a set of jointly proposed policy changes from the White House and the Surgeon General.

Consequently, it is apparent that the officials exercised meaningful control—via changes to the platforms' independent processes—over the platforms' moderation decisions. By pushing changes to the platforms' policies through their expansive relationship with and informal oversight over the platforms, the officials imparted a lasting influence on the platforms' moderation decisions without the need for any further input. In doing so, the officials ensured that any moderation decisions were not made in accordance with independent judgments guided by independent standards. *See id.*; *see also Am. Mfrs.*, 526 U.S. at 52 ("The decision to withhold payment, like the decision to transfer Medicaid patients to a lower level of care in Blum, is made by concededly private parties, and 'turns on . . . judgments made by private parties' without 'standards . . . established by

the State.'"). Instead, they were encouraged by the officials' imposed standards.

In sum, we find that the White House officials, in conjunction with the Surgeon General's office, coerced and significantly encouraged the platforms to moderate content. As a result, the platforms' actions "must in law be deemed to be that of the State." *Blum*, 457 U.S. at 1004.

**2.**

Next, we consider the FBI. We find that the FBI, too, likely (1) coerced the platforms into moderating content, and (2) encouraged them to do so by effecting changes to their moderation policies, both in violation of the First Amendment.

We start with coercion. Similar to the White House, Surgeon General, and CDC officials, the FBI regularly met with the platforms, shared "strategic information," frequently alerted the social media companies to misinformation spreading on their platforms, and monitored their content moderation policies. But, the FBI went beyond that—they urged the platforms to take down content. Turning to the Second Circuit's four-factor test, we find that those requests were coercive. *Vullo*, 49 F.4th at 715.

First, given the record before us, we cannot say that the FBI's messages were plainly threatening in tone or manner. *Id.* But, second, we do find the FBI's requests came with the backing of clear authority over the platforms. After all, content moderation requests "might be inherently coercive if sent by . . . [a] law enforcement officer." *Warren*, 66 F.4th at 1210 (citations omitted); *see also Zieper v. Metzinger*, 392 F. Supp. 2d 516,

531 (S.D.N.Y. 2005) (holding that a reasonable jury could find an FBI agent's request coercive when he asked an internet service provider to take down a controversial video that could be "inciting a riot" because he was "an FBI agent charged with investigating the video"); *Backpage*, 807 F.3d at 234 ("[C]redit card companies don't like being threatened by a law-enforcement official that he will sic the feds on them, even if the threat may be empty."). This is especially true of the lead law enforcement, investigatory, and domestic security agency for the executive branch. Consequently, because the FBI wielded *some* authority over the platforms, *see Okwedy*, 333 F.3d at 344, the FBI's takedown requests can "reasonably be construed" as coercive in nature, *Warren*, 66 F.4th at 1210.

Third, although the FBI's communications did not plainly reference adverse consequences, an actor need not express a threat aloud so long as, given the circumstances, the message *intimates* that some form of punishment will follow noncompliance. *Id.* at 1209. Here, beyond its inherent authority, the FBI—unlike most federal actors—also has tools at its disposal to force a platform to take down content. For instance, in *Zieper*, an FBI agent asked a web-hosting platform to take down a video portraying an imaginary documentary showing preparations for a military takeover of Times Square on the eve of the new millennium. 392 F. Supp. 2d at 520–21. In appealing to the platform, the FBI agent said that he was concerned that the video could be "inciting a riot" and testified that he was trying to appeal to the platform's "'good citizenship' by pointing out a public safety concern." *Id.* at 531. And these appeals to the platform's "good citizenship" worked—the platform took down the video. *Id.* at 519. The Southern

District of New York concluded that a reasonable jury could find that statement coercive, "particularly when said by an FBI agent charged with investigating the video." *Id.* at 531. Indeed, the question is whether a message intimates that *some* form of punishment that may be used against the recipient, an analysis that includes means of retaliation that are not readily apparent. *See Warren*, 66 F.4th at 1210.

Fourth, the platforms clearly perceived the FBI's messages as threats. For example, right before the 2022 congressional election, the FBI warned the platforms of "hack and dump" operations from "state-sponsored actors" that would spread misinformation through their sites. In doing so, the FBI officials leaned into their inherent authority. So, the platforms reacted as expected—by taking down content, including posts and accounts that originated from the United States, in direct compliance with the request. Considering the above, we conclude that the FBI coerced the platforms into moderating content. But, the FBI's endeavors did not stop there.

We also find that the FBI likely significantly encouraged the platforms to moderate content by entangling itself in the platforms' decision-making processes. *Blum*, 457 U.S. at 1008. Beyond taking down posts, the platforms also changed their terms of service in concert with recommendations from the FBI. For example, several platforms "adjusted" their moderation policies to capture "hack-and-leak" content after the FBI asked them to do so (and followed up on that request). Consequently, when the platforms subsequently moderated content that violated their newly modified terms of service (*e.g.*, the results of hack-and-leaks), they did not do so via independent standards. *See Blum*, 457 U.S. at

1008. Instead, those decisions were made subject to commandeered moderation policies.

In short, when the platforms acted, they did so in response to the FBI's inherent authority *and* based on internal policies influenced by FBI officials. Taking those facts together, we find the platforms' decisions were significantly encouraged and coerced by the FBI.[19]

**3.**

Next, we turn to the CDC. We find that, although not plainly coercive, the CDC officials likely significantly encouraged the platforms' moderation decisions, meaning they violated the First Amendment.

We start with coercion. Here, like the other officials, the CDC regularly met with the platforms and frequently flagged content for removal. But, unlike the others, the CDC's requests for removal were not coercive—they did not ask the platforms in an intimidating or threatening manner, do not possess any clear authority over the platforms, and did not allude to any adverse consequences. Consequently, we cannot say the platforms' moderation decisions were coerced by CDC officials.

The same, however, cannot be said for significant encouragement. Ultimately, the CDC was entangled in the platforms' decision-making processes, *Blum*, 457 U.S. at 1008.

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[19] Plaintiffs and several *amici* assert that the FBI and other federal actors coerced or significantly encouraged the social-media companies into disseminating information that was favorable to the administration—information the federal officials knew was false or misleading. We express no opinion on those assertions because they are not necessary to our holding here.

The CDC's relationship with the platforms began by defining—in "Be On the Lookout" meetings—what was (and was not) "misinformation" for the platforms. Specifically, CDC officials issued "advisories" to the platforms warning them about misinformation "hot topics" to be wary of. From there, CDC officials instructed the platforms to label disfavored posts with "contextual information," and asked for "amplification" of approved content. That led to CDC officials becoming intimately involved in the various platforms' day-to-day moderation decisions. For example, they communicated about how a platform's "moderation team" reached a certain decision, how it was "approach[ing] adding labels" to particular content, and how it was deploying manpower. Consequently, the CDC garnered an extensive relationship with the platforms.

From that relationship, the CDC, through authoritative guidance, directed changes to the platforms' moderation policies. At first, the platforms asked CDC officials to decide whether certain claims were misinformation. In response, CDC officials told the platforms whether such claims were true or false, and whether information was "misleading" or needed to be addressed via CDC-backed labels. That back-and-forth then led to "[s]omething more." *Roberts*, 742 F.2d at 228.

Specifically, CDC officials directly impacted the platforms' moderation policies. For example, in meetings with the CDC, the platforms actively sought to "get into [] policy stuff" and run their moderation policies by the CDC to determine whether the platforms' standards were "in the right place." Ultimately, the platforms came to *heavily rely* on the CDC. They adopted rule changes meant to implement the CDC's guidance. As one platform said, they "were able to make [changes

to the 'misinfo policies'] based on the conversation [they] had last week with the CDC," and they "immediately updated [their] policies globally" following another meeting. And, those adoptions led the platforms to make moderation decisions based entirely on the CDC's say-so—"[t]here are several claims that we will be able to remove as soon as the CDC debunks them; until then, we are unable to remove them." That dependence, at times, was total. For example, one platform asked the CDC how it should approach certain content and even asked the CDC to double check and proofread its proposed labels.

Viewing these facts, we are left with no choice but to conclude that the CDC significantly encouraged the platforms' moderation decisions. Unlike in *Blum*, the platforms' decisions were not made by independent standards, 457 U.S. at 1008, but instead were marred by modification from CDC officials. Thus, the resulting content moderation, "while not compelled by the state, was so significantly encouraged, both overtly and covertly" by CDC officials that those decisions "must in law be deemed to be that of the state." *Howard Gault*, 848 F.2d at 555 (alterations adopted) (internal quotation marks and citation omitted).

**4.**

Next, we examine CISA. We find that, for many of the same reasons as the FBI and the CDC, CISA also likely violated the First Amendment. First, CISA was the "primary facilitator" of the FBI's interactions with the social-media platforms and worked in close coordination with the FBI to push the platforms to change their moderation policies to cover "hack-and-leak" content. Second, CISA's "switchboarding" operations, which, in

theory, involved CISA merely relaying flagged social-media posts from state and local election officials to the platforms, was, in reality, "[s]omething more." *Roberts*, 742 F.2d at 228. CISA used its frequent interactions with social-media platforms to push them to adopt more restrictive policies on censoring election-related speech. And CISA officials affirmatively *told* the platforms whether the content they had "switchboarded" was true or false. Thus, when the platforms acted to censor CISA-switchboarded content, they did not do so independently. Rather, the platforms' censorship decisions were made under policies that CISA has pressured them into adopting and based on CISA's determination of the veracity of the flagged information. Thus, CISA likely significantly encouraged the platforms' content-moderation decisions and thereby violated the First Amendment. *See Blum*, 457 U.S. at 1008; *Howard Gault*, 848 F.2d at 555.

**5.**

Finally, we address the remaining officials—the NIAID and the State Department. Having reviewed the record, we find the district court erred in enjoining these other officials. Put simply, there was not, at this stage, sufficient evidence to find that it was likely these groups coerced or significantly encouragement the platforms.

For the NIAID officials, it is not apparent that they ever communicated with the social-media platforms. Instead, the record shows, at most, that public statements by Director Anthony Fauci and other NIAID officials promoted the government's scientific and policy views and attempted to discredit opposing ones—quintessential examples of government speech that do

not run afoul of the First Amendment. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009) ("[The government] is entitled to say what it wishes, and to select the views that it wants to express." (quotation marks and citations omitted)); *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring) ("It is the very business of government to favor and disfavor points of view. . . ."). Consequently, with only insignificant (if any) communication (direct or indirect) with the platforms, we cannot say that the NIAID officials likely coerced or encouraged the platforms to act.

As for the State Department, while it did communicate directly with the platforms, so far there is no evidence these communications went beyond educating the platforms on "tools and techniques" used by foreign actors. There is no indication that State Department officials flagged specific content for censorship, suggested policy changes to the platforms, or engaged in any similar actions that would reasonably bring their conduct within the scope of the First Amendment's prohibitions. After all, their messages do not appear coercive in tone, did not refer to adverse consequences, and were not backed by any apparent authority. And, per this record, those officials were not involved to any meaningful extent with the platforms' moderation decisions or standards.

* * *

Ultimately, we find the district court did not err in determining that several officials—namely the White House, the Surgeon General, the CDC, the FBI, and CISA—likely coerced or significantly encouraged social-media platforms to moderate content, rendering

those decisions state actions.[20] In doing so, the officials likely violated the First Amendment.[21]

But, we emphasize the limited reach of our decision today. We do not uphold the injunction against all the officials named in the complaint. Indeed, many of those officials were permissibly exercising government speech, "carrying out [their] responsibilities," or merely "engaging in [a] legitimate [] action." *Vullo*, 49 F.4th at 718–19. That distinction is important because the state-action doctrine is vitally important to our Nation's operation—by distinguishing between the state and the People, it promotes "a robust sphere of individual liberty." *Halleck*, 139 S. Ct. at 1928. That is why the Supreme Court has been reluctant to expand the scope of the doctrine. *See Matal v. Tan*, 582 U.S. 218, 235 (2017) ("[W]e must exercise great caution before extending our government-speech precedents."). If just any relationship with the government "sufficed to transform a private entity into a state actor, a large swath of private entities in America would suddenly be turned into state actors and be subject to a variety of constitutional constraints on their activities." *Halleck*, 139 S. Ct. at 1932. So, we do not take our decision today lightly. But, the

[20] Here, in holding that some of the officials likely coerced or sufficiently encouraged the platforms to censor content, we pass no judgment on any joint actor or conspiracy-based state action theory.

[21] "With very limited exceptions, none applicable to this case, censorship—'an effort by administrative methods to prevent the dissemination of ideas or opinions thought dangerous or offensive,' as distinct from punishing such dissemination (if it falls into one of the categories of punishable speech, such as defamation or threats) after it has occurred—is prohibited by the First Amendment as it has been understood by the courts." *Backpage.com*, 807 F.3d at 235 (citation omitted).

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. Therefore, the district court was correct in its assessment—"unrelenting pressure" from certain government officials likely "had the intended result of suppressing millions of protected free speech postings by American citizens." We see no error or abuse of discretion in that finding.[22]

## V.

Next, we address the equities. Plaintiffs seeking a preliminary injunction must show that irreparable injury is "likely" absent an injunction, the balance of the equities weighs in their favor, and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (collecting cases).

While "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)), "invocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative irreparable injury," *Google, Inc. v. Hood*, 822 F.3d 212, 228 (5th Cir. 2016).

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[22] Our holding today, as is appropriate under the state-action doctrine, is limited. Like in *Roberts*, we narrowly construe today's finding of state action to apply only to the challenged decisions. *See* 742 F.2d at 228 ("We do not doubt that many of the actions of the racetrack and its employees are no more than private business decisions," but "[i]n the area of stalling, [] state regulation and involvement is so specific and so pervasive that [such] decisions may be considered to bear the imprimatur of the state.").

Here, the district court found that the Plaintiffs submitted enough evidence to show that irreparable injury is likely to occur during the pendency of the litigation. In so doing, the district court rejected the officials' arguments that the challenged conduct had ceased and that future harm was speculative, drawing on mootness and standing doctrines. Applying the standard for mootness, the district court concluded that a defendant must show that "it is absolutely clear the alleged wrongful behavior could not reasonably be expected to recur" and that the officials had failed to make such showing here. In assessing whether Plaintiffs' claims of future harm were speculative and dependent on the actions of social-media companies, the district court applied a quasi-standing analysis and found that the Plaintiffs had alleged a "substantial risk" of future harm that is not "imaginary or wholly speculative," pointing to the officials' ongoing coordination with social-media companies and willingness to suppress free speech on a myriad of hot-button issues.

We agree that the Plaintiffs have shown that they are likely to suffer an irreparable injury. Deprivation of First Amendment rights, even for a short period, is sufficient to establish irreparable injury. *Elrod*, 427 U.S. at 373; *Cuomo*, 141 S. Ct. at 67; *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012).

The district court was right to be skeptical of the officials' claims that they had stopped all challenged conduct. *Cf. Speech First, Inc. v. Fenves*, 979 F.3d 319, 328 (5th Cir. 2020) ("[A] defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice, even in cases in which injunctive relief is sought."). But, the

district court's use of a "not imaginary or speculative" standard in the irreparable harm context is inconsistent with binding case law. *See Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on *a possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." (citation omitted) (emphasis added)). The correct standard is whether a future injury is "likely." *Id.* But, because the Plaintiffs sufficiently demonstrated that their First Amendment interests are either threatened or impaired, they have met this standard. *See Opulent Life Church*, 697 F.3d at 295 (citing 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")). Indeed, the record shows, and counsel confirmed at oral argument, that the officials' challenged conduct has not stopped.

Next, we turn to whether the balance of the equities warrants an injunction and whether such relief is in the public interest. Where the government is the opposing party, harm to the opposing party and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The district court concluded that the equities weighed in favor of granting the injunction because the injunction maintains the "constitutional structure" and Plaintiffs' free speech rights. The officials argue that the district court gave short shrift to their assertions that the injunction could limit the Executive Branch's ability to "persuade" the American public, which raises separation-of-powers issues.

Although both Plaintiffs and the officials assert that their ability to speak is affected by the injunction, the government is not permitted to use the government-speech doctrine to "silence or muffle the expression of disfavored viewpoints." *Matal*, 582 U.S. at 235.

It is true that the officials have an interest in engaging with social-media companies, including on issues such as misinformation and election interference. But the government is not permitted to advance these interests to the extent that it engages in viewpoint suppression. Because "[i]njunctions protecting First Amendment freedoms are always in the public interest," the equities weigh in Plaintiffs' favor. *Opulent Life Church*, 697 F.3d at 298 (quotation marks and citations omitted).

While the officials raise legitimate concerns that the injunction could sweep in lawful speech, we have addressed those concerns by modifying the scope of the injunction.

**VI.**

Finally, we turn to the language of the injunction itself. An injunction "is overbroad if it is not 'narrowly tailored to remedy the specific action which gives rise to the order' as determined by the substantive law at issue." *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016) (alterations adopted) (quoting *John Doe #1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004)). This requirement that a "plaintiff's remedy must be tailored to redress the plaintiff's particular injury" is in recognition of a federal court's "constitutionally prescribed role . . . to vindicate the individual rights of the people appearing before it," not "generalized partisan preferences." *Gill v. Whitford*, 138 S. Ct. 1916, 1933-34 (2018).

In addition, injunctions cannot be vague. "Every order granting an injunction . . . must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). The Supreme Court has explained:

> [T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.

*Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (citations omitted).

To be sure, "[t]he specificity requirement is not unwieldy," *Meyer v. Brown & Root Construction Co.*, 661 F.2d 369, 373 (5th Cir. 1981), and "elaborate detail is unnecessary," *Islander E. Rental Program v. Barfield*, No. 96-41275, 1998 WL 307564, at *4 (5th Cir. Mar. 24, 1998). But still, "an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." *Louisiana v. Biden*, 45 F.4th at 846 (citation omitted).

The preliminary injunction here is both vague and broader than necessary to remedy the Plaintiffs' injuries, as shown at this preliminary juncture. As an initial matter, it is axiomatic that an injunction is overbroad if it enjoins a defendant from engaging in legal conduct.

Nine of the preliminary injunction's ten prohibitions risk doing just that. Moreover, many of the provisions are duplicative of each other and thus unnecessary.

Prohibitions one, two, three, four, five, and seven prohibit the officials from engaging in, essentially, any action "for the purpose of urging, encouraging, pressuring, or inducing" content moderation. But "urging, encouraging, pressuring" or even "inducing" action does not violate the Constitution unless and until such conduct crosses the line into coercion or significant encouragement. *Compare Walker*, 576 U.S. at 208 ("[A]s a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position."), *Finley*, 524 U.S. at 598 (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view. . . . "), *and Vullo*, 49 F.4th at 717 (holding statements "encouraging" companies to evaluate risk of doing business with the plaintiff did not violate the Constitution where the statements did not "intimate that some form of punishment or adverse regulatory action would follow the failure to accede to the request"), *with Blum*, 457 U.S. at 1004, *and O'Handley*, 62 F.4th at 1158 ("In deciding whether the government may urge a private party to remove (or refrain from engaging in) protected speech, we have drawn a sharp distinction between attempts to convince and attempts to coerce."). These provisions also tend to overlap with each other, barring various actions that may cross the line into coercion. There is no need to try to spell out every activity that the government could possibly engage in that may run afoul of the Plaintiffs' First Amendment rights as long the unlawful conduct is prohibited.

The eighth, ninth, and tenth provisions likewise may be unnecessary to ensure Plaintiffs' relief. A government actor generally does not violate the First Amendment by simply "following up with social-media companies" about content-moderation, "requesting content reports from social-media companies" concerning their content-moderation, or asking social media companies to "Be on The Lookout" for certain posts.[23] Plaintiffs have not carried their burden to show that these activities must be enjoined to afford Plaintiffs full relief.

These provisions are vague as well. There would be no way for a federal official to know exactly when his or her actions cross the line from permissibly communicating with a social-media company to impermissibly "urging, encouraging, pressuring, or inducing" them "*in any way*." *See Scott*, 826 F.3d at 209, 213 ("[a]n injunction should not contain broad generalities"); *Islander East*, 1998 WL 307564, at *4 (finding injunction against "interfering in any way" too vague). Nor does the injunction define "Be on The Lookout" or "BOLO." That, too, renders it vague. *See Louisiana v. Biden*, 45 F.4th at 846 (holding injunction prohibiting the federal government from "implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in [the challenged Executive Order]" was vague because the injunction did not define the term "Pause" and the parties had each proffered

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[23] While these activities, standing alone, are not violative of the First Amendment and therefore must be removed from the preliminary injunction, we note that these activities *may* violate the First Amendment when they are part of a larger scheme of government coercion or significant encouragement, and neither our opinion nor the modified injunction should be read to hold otherwise.

different yet reasonable interpretations of the Pause's breadth).

While helpful to some extent, the injunction's carveouts do not solve its clarity and scope problems. Although they seem to greenlight legal speech, the carveouts, too, include vague terms and appear to authorize activities that the injunction otherwise prohibits on its face. For instance, it is not clear whether the Surgeon General could publicly urge social media companies to ensure that cigarette ads do not target children. While such a statement could meet the injunction's exception for "exercising permissible public government speech promoting government policy or views on matters of public concern," it also "urg[es] . . . in any manner[] social-media companies to change their guidelines for removing, deleting, suppressing, or reducing content containing protected speech." This example illustrates both the injunction's overbreadth, as such public statements constitute lawful speech, *see Walker*, 576 U.S. at 208, and vagueness, because the government-speech exception is ill-defined, *see Scott*, 826 F.3d at 209, 213 (vacating injunction requiring the Louisiana Secretary of State to maintain in force his "policies, procedures, and directives" related to the enforcement of the National Voter Registration Act, where "policies, procedures, and directives" were not defined). At the same time, given the legal framework at play, these carveouts are likely duplicative and, as a result, unnecessary.

Finally, the fifth prohibition—which bars the officials from "collaborating, coordinating, partnering, switchboar-ding, and/or jointly working with the Election Integrity Partnership, the Virality Project, the Stanford Internet Observatory, or any like project or group" to engage in the same activities the officials are

proscribed from doing on their own—may implicate private, third-party actors that are not parties in this case and that may be entitled to their own First Amendment protections. Because the provision fails to identify the specific parties that are subject to the prohibitions, *see Scott*, 826 F.3d at 209, 213, and "exceeds the scope of the parties' presentation," *OCA-Greater Houston v. Texas*, 867 F.3d 604, 616 (5th Cir. 2017), Plaintiffs have not shown that the inclusion of these third parties is necessary to remedy their injury. So, this provision cannot stand at this juncture. *See also Alexander v. United States*, 509 U.S. 544, 550 (1993) ("[C]ourt orders that actually [] forbid speech activities are classic examples of prior restraints."). For the same reasons, the injunction's application to "all acting in concert with [the officials]" is overbroad.

We therefore VACATE prohibitions one, two, three, four, five, seven, eight, nine, and ten of the injunction.

That leaves provision six, which bars the officials from "threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech." But, those terms could also capture otherwise legal speech. So, the injunction's language must be further tailored to exclusively target illegal conduct and provide the officials with additional guidance or instruction on what behavior is prohibited. To be sure, our standard practice is to remand to the district court to tailor such a provision in the first instance. See Scott, 826 F.3d at 214. But this is far from a standard case. In light of the expedited nature of this appeal, we modify the injunction's remaining provision ourselves.

In doing so, we look to the Seventh Circuit's approach in *Backpage.com*, 807 F.3d at 239. There, the Seventh Circuit held that a county sheriff violated Backpage's First Amendment rights by demanding that financial service companies cut ties with Backpage in an effort to "crush" the platform (an online forum for "adult" classified ads). *Id.* at 230. To remedy the constitutional violation, the court issued the following injunction:

> Sheriff Dart, his office, and all employees, agents, or others who are acting or have acted for or on behalf of him, shall take no actions, formal or informal, to coerce or threaten credit card companies, processors, financial institutions, or other third parties with sanctions intended to ban credit card or other financial services from being provided to Backpage.com.

*Id.* at 239.

Like the Seventh Circuit's preliminary injunction in *Backpage.com*, we endeavor to modify the preliminary injunction here to target the coercive government behavior with sufficient clarity to provide the officials notice of what activities are proscribed. Specifically, prohibition six of the injunction is MODIFIED to state:

> Defendants, and their employees and agents, shall take no actions, formal or informal, directly or indirectly, 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. That includes, but is not limited to, compelling the platforms to act, such as by intimating that some form of punishment will follow a failure to

comply with any request, or supervising, directing, or otherwise meaningfully controlling the social-media companies' decision-making processes.

Under the modified injunction, the enjoined Defendants cannot coerce or significantly encourage a platform's content-moderation decisions. Such conduct includes threats of adverse consequences—even if those threats are not verbalized and never materialize—so long as a reasonable person would construe a government's message as alluding to some form of punishment. That, of course, is informed by context (e.g., persistent pressure, perceived or actual ability to make good on a threat). The government cannot subject the platforms to legal, regulatory, or economic consequences (beyond reputational harms) if they do not comply with a given request. *See Bantam Books*, 372 U.S. at 68; *Okwedy*, 333 F.3d at 344. The enjoined Defendants also cannot supervise a platform's content moderation decisions or directly involve themselves in the decision itself. Social-media platforms' content-moderation decisions must be theirs and theirs alone. *See Blum*, 457 U.S. at 1008. This approach captures illicit conduct, regardless of its form.

Because the modified injunction does not proscribe Defendants from activities that could include legal conduct, no carveouts are needed. There are two guiding inquiries for Defendants. First, is whether their action could be reasonably interpreted as a threat to take, or cause to be taken, an official action against the social-media companies if the companies decline Defendants' request to remove, delete, suppress, or reduce protected free speech on their platforms. Second, is whether Defendants have exercised active, meaningful control over the platforms' content-moderation decisions

to such a degree that it inhibits the platforms' independent decision-making.

To be sure, this modified injunction still "restricts government communications not specifically targeted to particular content *posted by plaintiffs themselves*," as the officials protest. But that does not mean it is still overbroad. To the contrary, an injunction "is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled." *Pro. Ass'n of Coll. Educators, TSTA/NEA v. El Paso Cnty. Cmty. Coll. Dist.*, 730 F.2d 258, 274 (5th Cir. 1984) (citations omitted); *see also Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987). Such breadth is plainly necessary, if not inevitable, here. 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. The harms that radiate from such conduct extend far beyond just the Plaintiffs; it impacts every social-media user. Naturally, then, an injunction against such conduct will afford protections that extend beyond just Plaintiffs, too. *Cf. Feds for Med. Freedom v. Biden*, 63 F.4th 366, 387 (5th Cir. 2023) ("[A]n injunction [can] benefit non-parties as long as that benefit [is] merely incidental." (internal quotation marks and citation omitted)).

As explained in Part IV above, the district court erred in finding that the NIAID Officials and State Department Officials likely violated Plaintiffs' First Amendment rights. So, we exclude those parties from the injunction. Accordingly, the term "Defendants" as used in this modified provision is defined to mean only the

following entities and officials included in the original injunction:

> The following members of the Executive Office of the President of the United States: White House Press Secretary, Karine Jean-Pierre; Counsel to the President, Stuart F. Delery; White House Partnerships Manager, Aisha Shah; Special Assistant to the President, Sarah Beran; Administrator of the United States Digital Service within the Office of Management and Budget, Mina Hsiang; White House National Climate Advisor, Ali Zaidi; White House Senior COVID-19 Advisor, formerly Andrew Slavitt; Deputy Assistant to the President and Director of Digital Strategy, formerly Rob Flaherty; White House COVID-19 Director of Strategic Communications and Engagement, Dori Salcido; White House Digital Director for the COVID-19 Response Team, formerly Clarke Humphrey; Deputy Director of Strategic Communications and Engagement of the White House COVID-19 Response Team, formerly Benjamin Wakana; Deputy Director for Strategic Communications and External Engagement for the White House COVID-19 Response Team, formerly Subhan Cheema; White House COVID-19 Supply Coordinator, formerly Timothy W. Manning; and Chief Medical Advisor to the President, Dr. Hugh Auchincloss, along with their directors, administrators and employees. Surgeon General Vivek H. Murthy; and Chief Engagement Officer for the Surgeon General, Katharine Dealy, along with their directors, administrators and employees. The Centers for Disease Control and Prevention ("CDC"), and specifically the following employees: Carol Y. Crawford, Chief of the Digital Media Branch of the CDC Division of

Public Affairs; Jay Dempsey, Social-media Team Leader, Digital Media Branch, CDC Division of Public Affairs; and Kate Galatas, CDC Deputy Communications Director. The Federal Bureau of Investigation ("FBI"), and specifically the following employees: Laura Dehmlow, Section Chief, FBI Foreign Influence Task Force; and Elvis M. Chan, Supervisory Special Agent of Squad CY-1 in the FBI San Francisco Division. And the Cybersecurity and Infrastructure Security Agency ("CISA"), and specifically the following employees: Jen Easterly, Director of CISA; Kim Wyman, Senior Cybersecurity Advisor and Senior Election Security Leader; and Lauren Protentis, Geoffrey Hale, Allison Snell, and Brian Scully.

## VII.

The district court's judgment is AFFIRMED with respect to the White House, the Surgeon General, the CDC, the FBI, and CISA and REVERSED as to all other officials. The preliminary injunction is VACATED except for prohibition number six, which is MODIFIED as set forth herein. The preliminary injunction is STAYED for ten days following the date hereof. The Clerk is DIRECTED to issue the mandate forthwith.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI ET AL.

*v.*

JOSEPH R. BIDEN, JR, ET AL.

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Filed: July 4, 2023

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**MEMORANDUM RULING ON REQUEST FOR PRELIMINARY INJUNCTION**

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At issue before the Court is a Motion for Preliminary Injunction [Doc. No. 10] filed by Plaintiffs.[24] The Defendants[25] oppose the Motion [Doc. No. 266]. Plaintiffs

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[24] Plaintiffs consist of the State of Missouri, the State of Louisiana, Dr. Aaron Kheriaty ("Kheriaty"), Dr. Martin Kulldorff ("Kulldorff"), Jim Hoft ("Hoft"), Dr. Jayanta Bhattacharya ("Bhattacharya"), and Jill Hines ("Hines").

[25] Defendants consist of President Joseph R Biden ("President Biden"), Jr, Karine Jean-Pierre ("Jean-Pierre"), Vivek H Murthy ("Murthy"), Xavier Becerra ("Becerra"), Dept of Health & Human Services ("HHS"), Dr. Hugh Auchincloss ("Auchincloss"), National Institute of Allergy & Infectious Diseases ("NIAID"), Centers for Disease Control & Prevention ("CDC"), Alejandro Mayorkas ("Mayorkas"), Dept of Homeland Security ("DHS"), Jen Easterly ("Easterly"), Cybersecurity & Infrastructure Security Agency ("CISA"), Carol Crawford ("Crawford"), United States Census Bureau ("Census Bureau"), U. S. Dept of Commerce ("Commerce"),

have filed a reply to the opposition [Doc. No. 276]. The Court heard oral arguments on this Motion on May 26, 2023 [Doc. No. 288]. Amicus Curiae briefs have been filed in this proceeding on behalf of Alliance Defending Freedom, [26] the Buckeye Institute, [27] and Children's Health Defense.[28]

## I. INTRODUCTION

> I may disapprove of what you say, but I would defend to the death your right to say it.
>
> Evelyn Beatrice Hill, 1906, *The Friends of Voltaire*

This case is about the Free Speech Clause in the First Amendment to the United States Constitution. The explosion of social-media platforms has resulted in

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Robert Silvers ("Silvers"), Samantha Vinograd ("Vinograd"), Ali Zaidi ("Zaidi"), Rob Flaherty ("Flaherty"), Dori Salcido ("Salcido"), Stuart F. Delery ("Delery"), Aisha Shah ("Shah"), Sarah Beran ("Beran"), Mina Hsiang ("Hsiang"), U. S. Dept of Justice ("DOJ"), Federal Bureau of Investigation ("FBI"), Laura Dehmlow ("Dehmlow"), Elvis M. Chan ("Chan"), Jay Dempsey ("Dempsey"), Kate Galatas ("Galatas"), Katharine Dealy ("Dealy"), Yolanda Byrd ("Byrd"), Christy Choi ("Choi"), Ashley Morse ("Morse"), Joshua Peck ("Peck"), Kym Wyman ("Wyman"), Lauren Protentis ("Protentis"), Geoffrey Hale ("Hale"), Allison Snell ("Snell"), Brian Scully ("Scully"), Jennifer Shopkorn ("Shopkorn"), U. S. Food & Drug Administration ("FDA"), Erica Jefferson ("Jefferson"), Michael Murray ("Murray"), Brad Kimberly ("Kimberly"), U. S. Dept of State ("State"), Leah Bray ("Bray"), Alexis Frisbie ("Frisbie"), Daniel Kimmage ("Kimmage"), U. S. Dept of Treasury ("Treasury"), Wally Adeyemo ("Adeyemo"), U. S. Election Assistance Commission ("EAC"), Steven Frid ("Frid"), and Kristen Muthig ("Muthig").

[26] [Doc. No. 252]

[27] [Doc. No. 256]

[28] [Doc. No. 262]

unique free speech issues—this is especially true in light of the COVID-19 pandemic. If the allegations made by Plaintiffs are true, the present case arguably involves the most massive attack against free speech in United States' history. In their attempts to suppress alleged disinformation, the Federal Government, and particularly the Defendants named here, are alleged to have blatantly ignored the First Amendment's right to free speech.

Although the censorship alleged in this case almost exclusively targeted conservative speech, the issues raised herein go beyond party lines. The right to free speech is not a member of any political party and does not hold any political ideology. It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market, whether it be by government itself or private licensee. *Red Lion Broadcasting Co., v. F.C.C.*, 89 S. Ct. 1794, 1806 (1969).

Plaintiffs allege that Defendants, through public pressure campaigns, private meetings, and other forms of direct communication, regarding what Defendants described as "disinformation," "misinformation," and "malinformation," have colluded with and/or coerced social-media platforms to suppress disfavored speakers, viewpoints, and content on social-media platforms. Plaintiffs also allege that the suppression constitutes government action, and that it is a violation of Plaintiffs' freedom of speech under the First Amendment to the United States Constitution. The First Amendment states:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise

> thereof: **or abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (emphasis added).

First Amendment, U.S. Const. amend. I.

The principal function of free speech under the United States' system of government is to invite dispute; it may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. *Texas v. Johnson*, 109 S. Ct. 2533, 2542–43 (1989). Freedom of speech and press is the indispensable condition of nearly every other form of freedom. *Curtis Pub. Co. v. Butts*, 87 S. Ct. 1975, 1986 (1967).

The following quotes reveal the Founding Fathers' thoughts on freedom of speech:

> For if men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and dumb and silent we may be led, like sheep, to the slaughter.

George Washington, March 15, 1783.

> Whoever would overthrow the liberty of a nation must begin by subduing the free acts of speech.

Benjamin Franklin, *Letters of Silence Dogwood*.

Reason and free inquiry are the only effectual agents against error.

Thomas Jefferson.

The question does not concern whether speech is conservative, moderate, liberal, progressive, or somewhere in between. What matters is that Americans, despite their views, will not be censored or suppressed by the Government. Other than well-known exceptions to the Free Speech Clause, all political views and content are protected free speech.

The issues presented to this Court are important and deeply intertwined in the daily lives of the citizens of this country.

## II. FACTUAL BACKGROUND

In this case, Plaintiffs allege that Defendants suppressed conservative-leaning free speech, such as: (1) suppressing the Hunter Biden laptop story prior to the 2020 Presidential election; (2) suppressing speech about the lab-leak theory of COVID-19's origin; (3) suppressing speech about the efficiency of masks and COVID-19 lockdowns; (4) suppressing speech about the efficiency of COVID-19 vaccines; (5) suppressing speech about election integrity in the 2020 presidential election; (6) suppressing speech about the security of voting by mail; (7) suppressing parody content about Defendants; (8) suppressing negative posts about the economy; and (9) suppressing negative posts about President Biden.

Plaintiffs Bhattacharya and Kulldorff are infectious disease epidemiologists and co-authors of The Great Barrington Declaration ("GBD"). The GBD was published on October 4, 2020. The GBD criticized lockdown policies and expressed concern about the damaging physical and mental health impacts of lockdowns. They allege that shortly after being published, the GBD was censored on social media by Google, Facebook, Twitter, and others. Bhattacharya and Kulldorff further allege

on October 8, 2020 (four days after publishing the GBD), Dr. Frances Collins, Dr. Fauci, and Cliff Lane proposed together a "take down" of the GBD and followed up with an organized campaign to discredit it.[29]

Dr. Kulldorff additionally alleges he was censored by Twitter on several occasions because of his tweets with content such as "thinking everyone must be vaccinated is scientifically flawed," that masks would not protect people from COVID-19, and other "anti-mask" tweets.[30] Dr. Kulldorff (and Dr. Bhattacharya[31]) further alleges that YouTube removed a March 18, 2021 roundtable discussion in Florida where he and others questioned the appropriateness of requiring young children to wear facemasks.[32] Dr. Kulldorff also alleges that LinkedIn censored him when he reposted a post of a colleague from Iceland on vaccines, for stating that vaccine mandates were dangerous, for posting that natural immunity is stronger than vaccine immunity, and for posting that health care facilities should hire, not fire, nurses.[33]

Plaintiff Jill Hines is Co-Director of Health Freedom Louisiana, a consumer and human rights advocacy organization. Hines alleges she was censored by Defendants because she advocated against the use of masks mandates on young children. She launched an effort called "Reopen Louisiana" on April 16, 2020, to expand Health Freedom Louisiana's reach on social media. Hines alleges Health Freedom Louisiana's social-media

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[29] [Doc. No. 10-3 and 10-4]

[30] [Doc. No. 10-4]

[31] [Doc. No. 10-3]

[32] [Id.]

[33] [Id.]

page began receiving warnings from Facebook. Hines was suspended on Facebook in January 2022 for sharing a display board that contained Pfizer's preclinical trial data.[34] Additionally, posts about the safety of masking and adverse events from vaccinations, including VAERS data and posts encouraging people to contact their legislature to end the Government's mask mandate, were censored on Facebook and other social-media platforms. Hines alleges that because of the censorship, the reach of Health Freedom Louisiana was reduced from 1.4 million engagements per month to approximately 98,000. Hines also alleges that her personal Facebook page has been censored and restricted for posting content that is protected free speech. Additionally, Hines alleges that two of their Facebook groups, HFL Group and North Shore HFL, were deplatformed for posting content protected as free speech.[35]

Plaintiff Dr. Kheriaty is a psychiatrist who has taught at several universities and written numerous articles. He had approximately 158,000 Twitter followers in December 2021 and approximately 1,333 LinkedIn connections. Dr. Kheriaty alleges he began experiencing censorship on Twitter and LinkedIn after posting content opposing COVID-19 lockdowns and vaccine mandates. Dr. Kheriaty also alleges that his posts were "shadow banned," meaning that his tweets did not appear in his follower's Twitter feeds. Additionally, a video of an interview of Dr. Kheriaty on the ethics of vaccine mandates was removed from YouTube.[36]

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[34] [Doc. No. 10-12

[35] [Id.]

[36] [Doc. No. 10-7]

Plaintiff Jim Hoft is the owner and operator of The Gateway Pundit ("GP"), a news website located in St. Louis, Missouri. In connection with the GP, Hoft operates the GP's social-media accounts with Twitter, Facebook, YouTube, and Instagram. The GP's Twitter account previously had over 400,000 followers, the Facebook account had over 650,000 followers, the Instagram account had over 200,000 followers, and the YouTube account had over 98,000 followers.

The GP's Twitter account was suspended on January 2, 2021, again on January 29, 2021, and permanently suspended from Twitter on February 6, 2021. The first suspension was in response to a negative post Hoft made about Dr. Fauci's statement that the COVID-19 vaccine will only block symptoms and not block the infection. The second suspension was because of a post Hoft made about changes to election law in Virginia that allowed late mail-in ballots without postmarks to be counted. Finally, Twitter issued the permanent ban after the GP Twitter account posted video footage from security cameras in Detroit, Michigan from election night 2020, which showed two delivery vans driving to a building at 3:30 a.m. with boxes, which were alleged to contain election ballots. Hoft also alleges repeated instances of censorship by Facebook, including warning labels and other restrictions for posts involving COVID-19 and/or election integrity issues during 2020 and 2021.

Hoft further alleges that YouTube censored the GP's videos. YouTube removed a May 14, 2022 video that discussed voter integrity issues in the 2020 election. Hoft has attached as exhibits copies of numerous GP posts censored and/or fact checked. All of the attached examples involve posts relating to COVID-19 or the 2020 election.

In addition to the allegations of the Individual Plaintiffs, the States of Missouri and Louisiana allege extensive censorship by Defendants. The States allege that they have a sovereign and proprietary interest in receiving the free flow of information in public discourse on social-media platforms and in using social-media to inform their citizens of public policy decisions. The States also claim that they have a sovereign interest in protecting their own constitutions, ensuring their citizen's fundamental rights are not subverted by the federal government, and that they have a quasi-sovereign interest in protecting the free-speech rights of their citizens. The States allege that the Defendants have caused harm to the states of Missouri and Louisiana by suppressing and/or censoring the free speech of Missouri, Louisiana, and their citizens.

The Complaint,[37] Amended Complaint,[38] Second Amended Complaint,[39] and Third Amended Complaint[40] allege a total of five counts. They are:

Count One — Violation of the First Amendment against all Defendants.

Count Two — Action in Excess of Statutory Authority against all Defendants.

Count Three — Violation of the Administrative Procedure Act against HHS, NIAID, CDC, FDA, Peck, Becerra, Murthy, Crawford, Fauci, Galatas, Waldo,

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[37] [Doc. No. 1]

[38] [Doc. No. 45]

[39] [Doc. No. 84]

[40] [Doc. No. 268]

Byrd, Choi, Lambert, Dempsey, Muhammed, Jefferson, Murry, and Kimberly.

Count Four — Violation of the Administrative Procedure Act against DHS, CISA, Mayorkas, Easterly, Silvers, Vinograd, Jankowicz, Masterson, Protentis, Hale, Snell, Wyman, and Scully.

Count Five — Violation of the Administrative Procedure Act against the Department of Commerce, Census Bureau, Shopkorn, Schwartz, Molina-Irizarry, and Galemore.

Plaintiffs also ask for this case to be certified as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). For the reasons discussed herein, it is only necessary to address Count One and the Plaintiffs' request for class action certification in this ruling.

The following facts are pertinent to the analysis of whether or not Plaintiffs are entitled to the granting of an injunction.[41]

Plaintiffs assert that since 2018, federal officials, including Defendants, have made public statements and demands to social-media platforms in an effort to induce them to censor disfavored speech and speakers. Beyond that, Plaintiffs argue that Defendants have threatened adverse consequences to social-media companies, such as reform of Section 230 immunity under the Communications Decency Act, antitrust scrutiny/enforcement,

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[41] The Factual Background is this Court's interpretation of the evidence. The Defendants filed a 723-page Response to Findings of Fact [Doc. No. 266-8] which contested the Plaintiffs' interpretation or characterizations of the evidence. At oral argument, the Defendants conceded that they did not dispute the validity or authenticity of the evidence presented.

increased regulations, and other measures, if those companies refuse to increase censorship. Section 230 of the Communications Decency Act shields social-media companies from liability for actions taken on their websites, and Plaintiffs argue that the threat of repealing Section 230 motivates the social-media companies to comply with Defendants' censorship requests. Plaintiffs also note that Mark Zuckerberg ("Zuckerberg"), the owner of Facebook, has publicly stated that the threat of antitrust enforcement is "an existential threat" to his platform.[42]

**A. White House Defendants**[43]

Plaintiffs assert that by using emails, public and private messages, public and private meetings, and other means, the White House Defendants have "significantly encouraged" and "coerced" social-media platforms to suppress protected free speech posted on social-media platforms.

(1) On January 23, 2021, three days after President Biden took office, Clarke Humphrey ("Humphrey"), who at the time was the Digital Director for the COVID-19 Response Team, emailed Twitter and requested the removal of an anti-COVID-19 vaccine tweet by Robert F. Kennedy, Jr.[44] Humphrey sent a copy of

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[42] [Doc. No. 212-3, citing Doc. No. 10-1, at 202]

[43] White House Defendants consists of President Joseph R. Biden ("President Biden"), White House Press Secretary Karine Jean-Pierre ("Jean-Pierre"), Ashley Morse ("Morse"), Deputy Assistant to the President and Director of Digital Strategy Rob Flaherty ("Flaherty"), Dori Salcido ("Salcido"), Aisha Shah ("Shah"), Sarah Beran ("Beran"), Stuart F. Delery ("Delery"), Mina Hsiang ("Hsiang"), and Dr. Hugh Auchincloss (Dr. Auchincloss")

[44] [Doc. No. 174-1, Exh. A. at 1]

the email to Rob Flaherty ("Flaherty"), former Deputy Assistant to the President and Director of Digital Strategy, on the email and asked if "we can keep an eye out for tweets that fall in this same genre." The email read, "Hey folks-Wanted to flag the below tweet and am wondering if we can get moving on the process of having it removed ASAP."[45]

(2) On February 6, 2021, Flaherty requested Twitter to remove a parody account linked to Finnegan Biden, Hunter Biden's daughter and President Biden's granddaughter. The request stated, "Cannot stress the degree to which this needs to be resolved immediately," and "Please remove this account immediately."[46] Twitter suspended the parody account within forty-five minutes of Flaherty's request.

(3) On February 7, 2021, Twitter sent Flaherty a "Twitter's Partner Support Portal" for expedited review of flagging content for censorship. Twitter recommended that Flaherty designate a list of authorized White House staff to enroll in Twitter's Partner Support Portal and explained that when authorized reporters submit a "ticket" using the portal, the requests are "prioritized" automatically. Twitter also stated that it had been "recently bombarded" with censorship requests from the White House and would prefer to have a streamlined process. Twitter noted that "[i]n a given day last week for example, we had more than four different people within the White House reaching out for issues."[47]

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[45] [Id. at 2]

[46] [Doc. No. 174-1, Exh. A. at 4]

[47] [Doc. No. 174-1 at 3]

(4) On February 8, 2021, Facebook emailed Flaherty, and Humphrey to explain how it had recently expanded its COVID-19 censorship policy to promote authoritative COVID-19 vaccine information and expanded its efforts to remove false claims on Facebook

and Instagram about COVID-19, COVID-19 vaccines, and vaccines in general. Flaherty responded within nineteen minutes questioning how many times someone can share false COVID-19 claims before being removed, how many accounts are being flagged versus removed, and how Facebook handles "dubious," but not "provably false," claims.[48] Flaherty demanded more information from Facebook on the new policy that allows Facebook to remove posts that repeatedly share these debunked claims.

(5) On February 9, 2021, Flaherty followed up with Facebook in regard to its COVID-19 policy, accusing Facebook of causing "political violence" spurred by Facebook groups by failing to censor false COVID-19 claims, and suggested having an oral meeting to discuss their policies.[49] Facebook responded the same day and stated that "vaccine-skeptical" content does not violate Facebook's policies.[50] However, Facebook stated that it will have the content's "distribution reduced" and strong warning labels added, "so fewer people will see the post."[51] In other words, even though "vaccine-skeptical" content did not violate Facebook's policy, the content's distribution was still being reduced by Facebook.

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[48] [Id. at 5-8]

[49] [Id. at 6-8]

[50] [Id.]

[51] [Id.]

Facebook also informed Flaherty that it was working to censor content that does not violate Facebook's policy in other ways by "preventing posts discouraging vaccines from going viral on our platform" and by using information labels and preventing recommendations for

Groups, Pages, and Instagram accounts pushing content discouraging vaccines. Facebook also informed Flaherty that it was relying on the advice of "public health authorities" to determine its COVID-19 censorship policies.[52] Claims that have been "debunked" by public health authorities would be removed from Facebook. Facebook further promised Flaherty it would aggressively enforce the new censorship policies and requested a meeting with Flaherty to speak to Facebook's misinformation team representatives about the latest censorship policies.[53] Facebook also referenced "previous meetings" between the White House and Facebook representatives during the "transition period" (likely referencing the Biden Administration transition).[54]

(6) On February 24, 2021, Facebook emailed Flaherty about "Misinfo Themes" to follow up on his request for COVID and vaccine misinformation themes on Facebook. Some of the misinformation themes Facebook reported seeing were claims of vaccine toxicity, claims about the side effects of vaccines, claims comparing the COVID vaccine to the flu vaccine, and claims downplaying the severity of COVID-19. Flaherty responded by asking for details about Facebook's actual enforcement practices and for a report on misinformation

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[52] [Id.]

[53] [Id. at 6]

[54] [Id. at 5]

that was not censored. Specifically, his email read, "Can you give us a sense of volume on these, and some metrics around the scale of removal for each? Can you also give us a sense of misinformation that might be falling outside your removal policies?"[55] Facebook responded that at their upcoming meeting, they "can definitely go into detail on content that doesn't violate like below, but could 'contribute to vaccine hesitancy.'"[56]

(7) On March 1, 2021, Flaherty and Humphrey (along with Joshua Peck ("Peck"), the Health and Human Services' ("HHS") Deputy Assistant Secretary) participated in a meeting with Twitter about misinformation. After the meeting, Twitter emailed those officials to assure the White House that Twitter would increase censorship of "misleading information" on Twitter, stating "[t]hanks again for meeting with us today. As we discussed, we are building on 'our' continued efforts to remove the most harmful COVID-19 'misleading information' from the service."[57]

(8) From May 28, 2021, to July 10, 2021, a senior Meta executive reportedly copied Andrew Slavitt ("Slavitt"), former White House Senior COVID-19 Advisor, on his emails to Surgeon General Murthy ("Murthy"), alerting them that Meta was engaging in censorship of COVID-19 misinformation according to the White House's "requests" and indicating "expanded penalties" for individual Facebook accounts that share misinformation.[58] Meta also stated, "We think there is considerably

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[55] [Doc. No. 214-9 at 2-3]

[56] [Id.]

[57] [Doc. No. 214-10 at 2, Jones Declaration, #10, Exh. H] SEALED DOCUMENT

[58] [Doc. No. 71-4 at 6-11]

more we can do in '*partnership*' with you and your team to drive behavior."[59]

(9) On March 12, 2021, Facebook emailed Flaherty stating, "Hopefully, this format works for the various teams and audiences within the White House/HHS that may find this data valuable."[60] This email also provided a detailed report and summary regarding survey data on vaccine uptake from January 10 to February 27, 2021.[61]

(10) On March 15, 2021, Flaherty acknowledged receiving Facebook's detailed report and demanded a report from Facebook on a recent Washington Post article that accused Facebook of allowing the spread of information leading to vaccine hesitancy. Flaherty emailed the Washington Post article to Facebook the day before, with the subject line: "You are hiding the ball," and stated "I've been asking you guys pretty directly, over a series of conversations, for a clear accounting of the biggest issues you are seeing on your platform when it comes to vaccine hesitancy and the degree to which borderline content as you define it — is playing a role."[62]

After Facebook denied "hiding the ball," Flaherty followed up by making clear that the White House was seeking more aggressive action on "borderline content."[63] Flaherty referred to a series of meetings with Facebook that were held in response to concerns over "borderline content" and accused Facebook of deceiving

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[59] [Id. at 10] (emphasis added)

[60] [Doc. No. 174-1 at 9]

[61] [Id.]

[62] [Id.at 11]

[63] [Id. at 11-12]

the White House about Facebook's "borderline policies."[64] Flaherty also accused Facebook of being the "top driver of vaccine hesitancy."[65] Specifically, his email stated:

> I am not trying to play 'gotcha' with you. We are gravely concerned that your service is one of the top drivers of vaccine hesitancy-period. I will also be the first to acknowledge that borderline content offers no easy solutions. But 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 with us when we ask you what is going on. This would all be a lot easier if you would just be straight with us.[66]

In response to Flaherty's email, Facebook responded, stating: "We obviously have work to do to gain your trust . . . We are also working to get you useful information that's on the level. That's my job and I take it seriously — I'll continue to do it to the best of my ability, and I'll expect you to hold me accountable."[67]

Slavitt, who was copied on Facebook's email, responded, accusing Facebook of not being straightforward, and added more pressure by stating, "internally, we have been considering our options on what to do about it."[68]

(11) On March 19, 2021, Facebook had an in-person meeting with White House officials, including Flaherty

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[64] [Id.]

[65] [Id. at 11]

[66] [Id. at 11]

[67] [Id. at 11]

[68] [Id. at 10]

and Slavitt.[69] Facebook followed up on Sunday, March 21, 2021, noting that the White House had demanded a consistent point of contact with Facebook, additional data from Facebook, "Levers for Tackling Vaccine Hesitancy Content," and censorship policies for Meta's plat form WhatsApp.[70] Facebook noted that in response to White House demands, it was censoring, removing, and reducing the virality of content discouraging vaccines "that does not contain actionable misinformation."[71] Facebook also provided a report for the White House on the requested information on WhatsApp policies:

> You asked us about our levers for reducing virality of vaccine hesitancy content. In addition to policies previously discussed, these include the additional changes that were approved last week and that we will be implementing over the coming weeks. As you know, in addition to removing vaccine misinformation, we have been focused on reducing the virality of content discouraging vaccines that do not contain actionable misinformation.[72]

On March 22, 2021, Flaherty responded to this email, demanding more detailed information and a plan from Facebook to censor the spread of "vaccine hesitancy" on Facebook.[73] Flaherty also requested more information about and demanded greater censorship by Facebook of "sensational," "vaccine skeptical" content.[74] He also

[69] [Id. at 15]
[70] [Id.]
[71] [Id. at 15]
[72] [Id. at 15]
[73] [Id.]
[74] [Id.]

requested more information about WhatsApp regarding vaccine hesitancy.[75] Further, Flaherty seemingly spoke on behalf of the White House and stated that the White House was hoping they (presumably the White House and Facebook) could be "partners here, even if it hasn't worked so far."[76] A meeting was scheduled the following Wednesday between Facebook and White House officials to discuss these issues.

On April 9, 2021, Facebook responded to a long series of detailed questions from Flaherty about how WhatsApp was censoring COVID-19 misinformation. Facebook stated it was "reducing viral activity on our platform" through message-forward limits and other speech-blocking tech-niques.[77] Facebook also noted it bans accounts that engage in those that seek to exploit COVID-19 misinformation.[78]

Flaherty responded, "I care mostly about what actions and changes you are making to ensure you're not making our country's vaccine hesitancy problem worse," accusing Facebook of being responsible for the Capitol riot on January 6, 2021, and indicating that Facebook would be similarly responsible for COVID-related deaths if it did not censor more information.[79] "You only did this, however, after an election that you helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform."[80]

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[75] [Id.]

[76] [Id. at 14]

[77] [Id. at 17]

[78] [Id. at 17]

[79] [Id. at 17-21]

[80] [Id. at 17]

(12) On April 14, 2021, Flaherty demanded the censorship of Fox News hosts Tucker Carlson and Tomi Lahren because the top post about vaccines that day was "Tucker Carlson saying vaccines don't work and Tomi Lahren stating she won't take a vaccine."[81] Fla

herty stated, "This is exactly why I want to know what 'Reduction' actually looks like — if 'reduction' means 'pumping our most vaccine hesitant audience with Tucker Carlson saying it does not work' . . . then . . . I'm not sure it's reduction!"[82]

Facebook promised the White House a report by the end of the week.[83]

(13) On April 13, 2021, after the temporary halt of the Johnson & Johnson vaccine, the White House was seemingly concerned about the effect this would have on vaccine hesitancy. Flaherty sent to Facebook a series of detailed requests about how Facebook could "amplify" various messages that would help reduce any effects this may have on vaccine hesitancy.[84]

Flaherty also requested that Facebook monitor "misinformation" relating to the Johnson & Johnson pause and demanded from Facebook a detailed report within twenty-four hours. Facebook provided the detailed report the same day.[85] Facebook responded, "Re the J & J news, we're keen to amplify any messaging

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[81] [Id. at 22]

[82] [Id. at 22]

[83] [Id. at 23]

[84] [Id. at 30-31]

[85] [Id. at 31]

you want us to project about what this means for people."[86]

(14) Facebook responded to a telephone call from Rowe about how it was censoring information with a six-page report on censorship with explanations and screen shots of sample posts of content that it does and does not censor. The report noted that vaccine hesitancy content does not violate Facebook's content-moderation policies, but indicated that Facebook still censors this content by suppressing it in news feeds and algorithms.[87] Other content that Facebook admitted did not violate its policy but may contribute to vaccine hesitancy are: a) sensational or alarmist vaccine misrepresentation; b) disparaging others based on the choice to or not to vaccinate; c) true but shocking claims or personal anecdotes; d) discussing the choice to vaccinate in terms of personal or civil liberties; and e) concerns related to mistrust in institutions or individuals.[88] Facebook noted it censors such content through a "spectrum of levers" that includes concealing the content from other users, "de-boosting" the content, and preventing sharing through "friction."[89] Facebook also mentioned looking forward to tomorrow's meeting "and how we can hopefully partner together."[90]

Other examples of posts that did not violate Facebook's policies but would nonetheless be suppressed included content that originated from the Children's

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[86] [Id. at 31-32]

[87] [Id. at 24-25]

[88] [Id.]

[89] [Id. at 24-25]

[90] [Id. at 24]

Health Defense, a nonprofit activist group headed by Robert F. Kennedy, Jr. (labeled by Defendants as one of the "Disinformation Dozen").[91]

(15) On April 14, 2021, Slavitt emailed Facebook executive Nick Clegg ("Clegg") with a message expressing displeasure with Facebook's failure to censor Tucker Carlson. Slavitt stated, "Not for nothing but the

last time we did this dance, it ended in an insurrection."[92] The subject line was "Tucker Carlson anti-vax message."[93] Clegg responded the same day with a detailed report about the Tucker Carlson post, stating that the post did not qualify for removal under Facebook policy but that the video was being labeled with a pointer to authoritative COVID-19 information, not being recommended to people, and that the video was being "*demoted*."[94]

After Brian Rice ("Rice") of Facebook forwarded the same report on the Tucker Carlson post to Flaherty on April 14, 2021, Flaherty responded to Rice wanting a more detailed explanation of why Facebook had not removed the Tucker Carlson video and questioning how the video had been "demoted" since there were 40,000 shares.[95] Flaherty followed up six minutes later alleging Facebook provided incorrect information through Crowd Tangle.[96]

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[91] [Id. at 25-27]

[92] [Id. at 34]

[93] [Id. at 33]

[94] [*Id.* at 36]

[95] [*Id.* at 33-34]

[96] [*Id.*]

Two days later, on April 16, 2021, Flaherty demanded immediate answers from Facebook regarding the Tucker Carlson video.[97] Facebook promised to get something to him that night. Facebook followed up on April 21, 2021, with an additional response in regard to an apparent call from Flaherty ("thanks for catching up earlier").[98] Facebook reported the Tucker Carlson content had not violated Facebook's policy, but Facebook gave the video a 50% demotion for seven days and stated that it would continue to demote the video.[99]

(16) On April 21, 2021, Flaherty, Slavitt, and other HHS officials, met with Twitter officials about "Twitter Vaccine Misinfo Briefing." The invite stated the White House would be briefed by Twitter on vaccine information, trends seen generally about vaccine information, the tangible effects seen from recent policy changes, what interventions were being implemented, previous policy changes, and ways the White House could "partner" in product work.[100]

Twitter discovery responses indicated that during the meeting, White House officials wanted to know why Alex Berenson ("Berenson") had not been "kicked off" Twitter.[101] Slavitt suggested Berenson was "the epicenter of disinfo that radiated outwards to the persuadable public."[102] Berenson was suspended thereafter on July

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[97] [*Id.* at 33]

[98] [*Id.*]

[99] [*Id.* at 33, 36]

[100] [Doc. No. 71-7 at 86]

[101] [Doc. No. 212-14 at 2-5]

[102] [*Id.*]

16, 2021, and was permanently de-platformed on August 28, 2021.[103]

(17) Also on April 21, 2021, Flaherty, Slavitt, and Fitzpatrick had a meeting with several YouTube officials. The invitation stated the purpose of this meeting was for the White House to be briefed by YouTube on general trends seen around vaccine misinformation, the effects of YouTube's efforts to combat misinformation, interventions YouTube was trying, and ways the White House can "partner" in product work.[104]

In an April 22, 2021, email, Flaherty provided a recap of the meeting and stated his concern that misinformation on YouTube was "shared at the highest (and I mean the highest) levels of the White House."[105] Flaherty indicated that the White House remains concerned that YouTube is "funneling people into hesitancy and intensifying people's vaccine hesitancy."[106] Flaherty further shared that "we" want to make sure YouTube has a handle on vaccine hesitancy and is working toward making the problem better.[107] Flaherty again noted vaccine hesitancy was a concern that is shared by the highest ("and I mean the highest") levels of the White House.[108]

Flaherty further indicated that the White House was coordinating with the Stanford Internet Observatory (which was operating the Virality Project): "Stanford"

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[103] [Doc. No. 212-14, Exh. J, at 2–5]

[104] [Doc. No. 212-15, Exh. K, at 1–4] SEALED DOCUMENT

[105] [Doc. No. 174-1 at 39-40]

[106] [*Id.*]

[107] [*Id.*]

[108] [Doc. No. 174-1 at 39-40]

has mentioned that it's recently Vaccine Passports and J&J pause-related stuff, but I'm not sure if that reflects what you're seeing."[109] Flaherty praised YouTube for reducing distribution of content: "I believe you said you reduced watch time by 70% on borderline content, which is impressive."[110] However, Flaherty followed up with additional demands for more information from

YouTube. Flaherty emphasized that the White House wanted to make sure YouTube's work extends to the broader problem of people viewing "vaccine-hesitant content."[111] Flaherty also suggested regular meetings with YouTube ("Perhaps bi-weekly") as they have done with other "platform partners."[112]

(18) On April 23, 2021, Flaherty sent Facebook an email including a document entitled "Facebook COVID-19 Vaccine Misinformation Brief" ("the Brief"), which indicated that Facebook plays a major role in the spread of COVID vaccine misinformation and found that Facebook's policy and enforcement gaps enable misinformation to spread.[113] The Brief recommended much more aggressive censorship of Facebook's enforcement policies and called for progressively severe penalties. The Brief further recommended Facebook stop distributing anti-vaccine content in News Feed or in group recommendations. The Brief also called for "warning screens" before linking to domains known to promote

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[109] [*Id.* at 39]

[110] [*Id.*]

[111] [Doc. No. 214-1 at 39-40]

[112] [*Id.* at 39-40]

[113] [Doc. No. 214-14 at 2-3]

vaccine misinformation.[114] Flaherty noted sending this Brief was not a White House endorsement of it, but "this is circulating around the building and informing thinking."[115]

On May 1, 2021, Facebook's Clegg sent an email to Slavitt indicating Facebook and the White House met recently to "share research work."[116] Clegg apologized for not catching and censoring three pieces of vaccine content that went viral and promised to censor such content more aggressively in the future:

> I wanted to send you a quick note on the three pieces of vaccine content that were seen by a high number of people before we demoted them. Although they don't violate our community standards, we should have demoted them before they went viral, and this has exposed gaps in our operational and technical process.

Notably, these three pieces of information did not violate Facebook's policies. Clegg told Slavitt that Facebook teams had spent the past twenty-four hours analyzing gaps in Facebook and were making several changes next week.[117]

Clegg listed—in bold—demands that the White House had made in a recent meeting and provided a response to each. The demands were: a) address Non-English mis/disinformation circulating without moderation; b) do not distribute or amplify vaccine hesitancy, and Facebook should end group recommendations for groups

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[114] [Id.]

[115] [Doc. No. 214-14 at 2-3, Jones Declaration]

[116] [Doc. No. 214-1]

[117] [Doc. No. 214-1 at ¶ 116]

with a history of COVID-19 or vaccine misinformation; c) monitor events that host anti-vaccine and COVID disinformation; and d) address twelve accounts that were responsible for 73% of vaccine misinformation.[118] Facebook noted that it was scrutinizing these accounts and censoring them whenever it could, but that most of the content did not violate Facebook's policies.[119] Facebook referred to its new policy as their "Dedicated Vaccine

Discouraging Entities."[120] Facebook even suggested that too much censorship might be counterproductive and drive vaccine hesitancy: "Among experts we have consulted, there is a general sense that deleting more expressions of vaccine hesitancy might be more counterproductive to the goal of vaccine uptake because it could prevent hesitant people from talking through their concerns and potentially reinforce the notion that there's a 'cover-up.'"[121]

(19) On May 5, 2021, then-White House Press Secretary Jen Psaki ("Psaki") publicly began pushing Facebook and other social-media platforms to censor COVID-19 misinformation. At a White House Press Conference, Psaki publicly reminded Facebook and other social-media platforms of the threat of "legal consequences" if they do not censor misinformation more aggressively. Psaki further stated: "The President's view is that the major platforms have a responsibility related to the health and safety of all Americans to stop amplifying untrustworthy content, disinformation, and misinformation,

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[118] [Doc. No. 174-1 at 41-42]

[119] [Doc. No. 174-1 at 41-42]

[120] [Id.]

[121] [Id. at 42]

especially related to COVID-19 vaccinations and elections."[122] Psaki linked the threat of a "robust anti-trust program" with the White House's censorship demand. "He also supports better privacy protections and a robust anti-trust program. So, his view is that there's more that needs to be done to ensure that this type of misinformation; disinformation; damaging, sometime life-threatening information, is not going out to the American public."[123]

The next day, Flaherty followed up with another email to Facebook and chastised Facebook for not catching various COVID-19 misinformation. Flaherty demanded more information about Facebook's efforts to demote borderline content, stating, "Not to sound like a broken record, but how much content is being demoted, and how effective are you at mitigating reach, and how quicky?"[124] Flaherty also criticized Facebook's efforts to censor the "Disinformation Dozen": "Seems like your 'dedicated vaccine hesitancy' policy isn't stopping the disinfo-dozen — they're being deemed as not dedicated — so it feels like that problem likely coming over to groups."[125]

Things apparently became tense between the White House and Facebook after that, culminating in Flaherty's July 15, 2021 email to Facebook, in which Flaherty stated: "Are you guys fucking serious? I want an answer on what happened here and I want it today."[126]

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[122] [Doc. No. 266-6 at 374]

[123] [Id.]

[124] [Doc. No. 174-1 at 41]

[125] [Id.]

[126] [Id. at 55]

(20) On July 15, 2021, things became even more tense between the White House, Facebook, and other social-media platforms. At a joint press conference between Psaki and Surgeon General Murthy to announce the Surgeon General's "Health Advisory on Misinformation," [127] Psaki announced that Surgeon General Murthy had published an advisory on health misinformation as an urgent public health crisis.[128] Murthy announced: "Fourth, we're saying we expect more from our technology companies. We're asking them to operate with greater transparency and accountability. We're asking them to monitor misinformation more closely. We're asking them to consistently take action against misinformation super-spreaders on their platforms."[129] Psaki further stated, "We are in regular touch with these social-media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team," and "We're flagging problematic posts for Facebook that spread disinformation."[130]

Psaki followed up by stating that the White House's "asks" include four key steps by which social-media companies should: 1) measure and publicly share the impact of misinformation on their platforms; 2) create a robust enforcement strategy; 3) take faster action against harmful posts; and 4) promote quality information sources in their feed algorithms.[131]

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[127] [Doc. No. 210-1 at 16 (Waldo Depo, Exh. 10]

[128] [Id. at 162]

[129] [Doc. No. 10-1 at 370]

[130] [Id. at 376-77]

[131] [Id. at 377-78]

The next day, on July 16, 2021, President Biden, after being asked what his message was to social-media platforms when it came to COVID-19, stated, "[T]hey're killing people."[132] Specifically, he stated "Look, the only pandemic we have is among the unvaccinated, and that they're killing people."[133] Psaki stated the actions of censorship Facebook had already conducted were "clearly not sufficient."[134]

Four days later, on July 20, 2021, at a White House

Press Conference, White House Communications Director Kate Bedingfield ("Bedingfield") stated that the White House would be announcing whether social-media platforms are legally liable for misinformation spread on their platforms and examining how misinformation fits into the liability protection granted by Section 230 of the Communications Decency Act (which shields social-media platforms from being responsible for posts by third parties on their sites).[135] Bedingfield further stated the administration was reviewing policies that could include amending the Communication Decency Act and that the social-media platforms "should be held accountable."[136]

(21) The public and private pressure from the White House apparently had its intended effect. All twelve members of the "Disinformation Dozen" were censored,

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[132] [Doc. No. 10-1 at 370]

[133] [*Id.* at 436-37]

[134] [Doc. No. 10-1 at 446]

[135] [Doc. No. 10-1 at 477-78]

[136] [Id.]

and pages, groups, and accounts linked to the Disinformation Dozen were removed.[137]

Twitter suspended Berenson's account within a few hours of President Biden's July 16, 2021 comments.[138] On July 17, 2021, a Facebook official sent an email to Anita B. Dunn ("Dunn"), Senior Advisor to the President, asking for ways to "get back into the White House's good graces" and stated Facebook and the White House were "100% on the same team here in fighting this."[139]

(22) On November 30, 2021, the White House's Christian Tom ("Tom") emailed Twitter requesting that Twitter watch a video of First Lady Jill Biden that had been edited to make it sound as if the First Lady were profanely heckling children while reading to them.[140] Twitter responded within six minutes, agreeing to "escalate with the team for further review."[141] Twitter advised users that the video had been edited for comedic effect. Tom then requested Twitter apply a "Manipulated Media" disclaimer to the video.[142] After Twitter told Tom the video was not subject to labeling under its policy, Tom disputed Twitter's interpretation of its own policy and added Michael LaRosa ("LaRosa"), the First Lady's Press Secretary, into the conversation.[143] Further efforts by Tom and LaRosa to censor the video on

[137] [Doc. No. 10-1 at 483-85]

[138] [Doc. No. 214-12 at 2-5]

[139] [Doc. No. 174-1 at 49]

[140] [Doc. No. 174-1 at 59-67]

[141] [Id.]

[142] [Id.]

[143] [Id.]

December 9, 13, and 17 finally resulted in the video's removal in December 2021.[144]

(23) In January 2022, Facebook reported to Rowe, Murthy, Flaherty, and Slavitt that it had "labeled and demoted" vaccine humor posts whose content could discourage vaccination.[145] Facebook also reported to the White House that it "labeled and 'demoted' posts suggesting natural immunity to a COVID-19 infection is superior to vaccine immunity."[146] In January 2022, Jesse Lee ("Lee") of the White House sent an email accusing Twitter of calling the President a liar in regard to a Presidential tweet.[147]

At a February 1, 2022, White House press conference, Psaki stated that the White House wanted every social-media platform to do more to call out misinformation and disinformation, and to uplift accurate information.[148]

At an April 25, 2022, White House press conference, after being asked to respond to news that Elon Musk may buy Twitter, Psaki again mentioned the threat to social-media companies to amend Section 230 of the Communications Decency Act, linking these threats to social-media platforms' failure to censor misinformation and disinformation.[149]

On June 13, 2022, Flaherty demanded Meta continue to produce periodic COVID-19 insight reports to track

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[144] [Id. at 59-67]

[145] [Doc. No. 71-3 at 10-11]

[146] [Doc. No. 71-3 at 10-11]

[147] [Doc. No. 174-1 at 69]

[148] [Doc. No. 10-1 at 501-2]

[149] [Id. at 62-63, ¶¶ 193-197]

COVID-19 misinformation, and he expressed a concern about misinformation regarding the upcoming authorization of COVID-19 vaccines for children under five years of age. Meta agreed to do so on June 22, 2022.[150]

(24) In addition to misinformation regarding COVID-19, the White House also asked social-media companies to censor misinformation regarding climate change, gender discussions, abortion, and economic policy. At an Axios event entitled "A Conversation on Battling Misinformation," held on June 14, 2022, the White House National Climate Advisor Gina McCarthy ("McCarthy") blamed social-media companies for allowing misinformation and disinformation about climate change to spread and explicitly tied these censorship demands with threats of adverse legislation regarding the Communications Decency Act.[151]

On June 16, 2022, the White House announced a new task force to target "general misinformation" and disinformation campaigns targeted at women and LBGTQI individuals who are public and political figures, government and civic leaders, activists, and journalists.[152] The June 16, 2022, Memorandum discussed the creation of a task force to reel in "online harassment and abuse" and to develop programs targeting such disinformation campaigns.[153] The Memorandum also called for the Task Force to confer with technology experts and again

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[150] [Doc. No. 71-3 at 5-6]

[151] [Doc. No. 214-15]

[152] [Doc. No. 214-15[

[153] [Id.]

threatened social-media platforms with adverse legal consequences if the platforms did not censor aggressively enough.[154]

On July 8, 2022, President Biden signed an Executive Order on protecting access to abortion. Section 4(b)(iv) of the order required the Attorney General, the Secretary of HHS, and the Chair of the Federal Trade Commission to address deceptive or fraudulent practices relating to reproductive healthcare services, including those online, and to protect access to accurate information.[155]

On August 11, 2022, Flaherty emailed Twitter to dispute a note added by Twitter to one of President Biden's tweets about gas prices.[156]

(25) On August 23, 2021, Flaherty emailed Facebook requesting a report on how Facebook intended to promote the FDA approval of the Pfizer vaccine. He also stated that the White House would appreciate a "push" and provided suggested language.[157]

**B. Surgeon General Defendants**[158]

Surgeon General Murthy is the Surgeon General of the United States. Eric Waldo ("Waldo") is the Senior Advisor to the Surgeon General and was formerly Chief Engagement Officer for the Surgeon General's office. Waldo's Deposition was taken as part of the allowed

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[154] [Doc. No. 214-16]

[155] [Doc. No. 214-18]

[156] [Doc. No. 174-1 at 68]

[157] [Id.]

[158] Surgeon General Defendants consists of Dr. Vivek H. Murthy ("Murthy") and Katharine Dealy ("Dealy").

Preliminary Injunction-related discovery in this matter.[159]

(1) Waldo was responsible for maintaining the contacts and relationships with representatives of social-media platforms. Waldo did pre-rollout calls with Twitter, Facebook, and Google/YouTube before the Surgeon General's health advisory on misinformation was published on July 15, 2021.[160] Waldo admitted that Murthy used his office to directly advocate for social-media platforms to take stronger actions against health "misinformation" and that those actions involved putting pressure on social-media platforms to reduce the dissemination of health misinformation.[161] Surgeon General Murthy's message was given to social-media platforms both publicly and privately.[162]

(2) At a July 15, 2021 joint press conference between Psaki and Murthy, the two made the comments mentioned previously in II A(19), which publicly called for social-media platforms "to do more" to take action against misinformation super-spreaders.[163] Murthy was directly involved in editing and approving the final work product for the July 15, 2021 health advisory on misinformation.[164] Waldo also admitted that Murthy used his "bully pulpit" to talk about health misinformation and to put public pressure on social-media platforms.[165]

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[159] [Doc. No. 210]

[160] [Doc. No. 210 at 11, 20]

[161] [Id. at 25, 28]

[162] [Id. at 11, 20, 25, 28]

[163] [Id. at 33-35]

[164] [Waldo depo at 14-17]

[165] [Id. at 29]

(3) Waldo's initial rollout with Facebook was negatively affected because of the public attacks by the White House and Office of the Surgeon General towards Facebook for allowing misinformation to spread.[166] Clegg of Facebook reached out to attempt to request "de-escalation" and "working together" instead of the public pressure.[167] In the call between Clegg and Murthy, Murthy told Clegg he wanted Facebook to do more to censor misinformation on its platforms. Murthy also requested Facebook share data with external researchers about the scope and reach of misinformation on Facebook's platforms to better understand how to have external researchers validate the spread of misinformation.[168] "Data about misinformation" was the topic of conversation in this call; DJ Patil, chief data scientist in the Obama Administration, Murthy, Waldo, and Clegg all participated on the call. The purpose of the call was to demand more information from Facebook about moni-toring the spread of misinformation.[169]

(4) One of the "external researchers" that the Office of Surgeon General likely had in mind was Renee DiResta ("DiResta") from the Stanford Internet Observatory, a leading organization of the Virality Project.[170] The Virality Project hosted a "rollout event" for Murthy's July 15, 2021 press conference.[171]

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[166] [Id. at 91-94]

[167] [Doc. No. 210 at 95-98]

[168] [Id.]

[169] [Doc. No. 210 at 95-98]

[170] The Virality Project will be discussed later in greater detail.

[171] [Id. at 36-38]

There was coordination between the Office of the Surgeon General and the Virality Project on the launch of Murthy's health advisory.[172] Kyla Fullenwider ("Fullenwider") is the Office of the Surgeon General's key subject-matter expert who worked on the health advisory on misinformation. Fullenwider works for a non-profit contractor, United States' Digital Response.[173] Waldo, Fullenwider, and DiResta were involved in a conference call after the July 15, 2021 press conference where they discussed misinformation.[174] The Office of the Surgeon General anticipated that social-media platforms would feel pressured by the Surgeon General's health advisory.[175]

(5) Waldo and the Office of the Surgeon General received a briefing from the Center for Countering Digital Hate ("CCDH") about the "Disinformation Dozen." CCDH gave a presentation about the Disinformation Dozen and how CCDH measured and determined that the Disinformation Dozen were primarily responsible for a significant amount of online misinformation.[176]

(6) In his deposition, Waldo discussed various phone calls and communications between Defendants and Facebook. In August of 2021, Waldo joined a call with Flaherty and Brian Rice of Facebook.[177] The call was an update by Facebook about the internal action it was

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[172] [Id. at 38]

[173] [Id. at 39, 59, 85]

[174] [Id.]

[175] [Id. at 39, 59, 85]

[176] [Id. at 43, 47]

[177] [Id. at 66, 124-25]

taking regarding censorship.[178] Waldo was aware of at least one call between Murthy and Facebook in the period between President Biden's election and assuming office, and he testified that the call was about misinformation.[179] Waldo was also aware of other emails and at least one phone call where Flaherty communicated with Facebook.[180]

(7) The first meeting between the Office of the Surgeon General and social-media platforms occurred on May 25, 2021, between Clegg, Murthy, and Slavitt. The purpose of this call was to introduce Murthy to Clegg. Clegg emailed Murthy with a report of misinformation on Facebook on May 28, 2021.[181]

Policy updates about increasing censorship were announced by Facebook on May 27, 2021.[182] The Office of the Surgeon General had a pre-rollout (i.e., before the rollout of the Surgeon General's health advisory on misinformation) call with Twitter and YouTube on July 12 and July 14, 2021.[183] The Office of the Surgeon General had a rollout call with Facebook on July 16, 2021. The July 16 call with Facebook was right after President Biden had made his "[T]hey're killing people" comment (II A (19), above), and it was an "awkward call" according to Waldo.[184]

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[178] [Id. at 66, 124-25]

[179] [Id. at 55-56]

[180] [Id. at 64-65]

[181] [Doc. No. 210-4]

[182] [Id. at 78, Exh. 3]

[183] [Id. at 85]

[184] [Id.]

Another call took place on July 23, 2021, between Murthy, Waldo, DJ Patil, Clegg, and Rice. Clegg shared more about the spread of information and disinformation on Facebook after the meeting. At the meeting, Murthy raised the issue of wanting to have a better understanding of the reach of misinformation and disinformation as it relates to health on Facebook; Murthy often referred to health misinformation in these meetings as "poison."[185] The Surgeon General's health advisory explicitly called for social-media platforms to do more to control the reach of misinformation.[186]

On July 30, 2021, Waldo had a meeting with Google and YouTube representatives. At the meeting, Google and YouTube reported to the Office of the Surgeon General what actions they were taking following the Surgeon General's health advisory on misinformation.[187]

On August 10, 2021, Waldo and Flaherty had a call with Rice calling for Facebook to report to federal officials as to Facebook's actions to remove "disinformation" and to provide details regarding a vaccine misinformation operation Facebook had uncovered.[188]

Another meeting took place between Google/YouTube, Waldo, and Flaherty on September 14, 2021, to discuss a new policy YouTube was working on and to provide the federal officials with an update on YouTube's efforts to combat harmful COVID-19 misinformation on its platform.[189]

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[185] [Id. at 95-98, 101, 105]

[186] [Id. at 107-08]

[187] [Doc. No. 210-4 at 33]

[188] [Id.]

[189] [Id. at 129]

(8) After the meetings with social-media platforms, the platforms seemingly fell in line with the Office of Surgeon General's and White House's requests. Facebook announced policy updates about censoring misinformation on May 27, 2021, two days after the meeting.[190] As promised, Clegg provided an update on misinformation to the Office of Surgeon General on May 28, 2021, three days after the meeting[191] and began sending bi-weekly COVID content reports on June 14, 2021.[192]

On July 6, 2021, Waldo emailed Twitter to set up the rollout call for the Office of the Surgeon General's health advisory on misinformation and told Twitter that Murthy had been thinking about how to stop the spread of health misinformation; that he knew Twitter's teams were working hard and thinking deeply about the issue; and that he would like to chat over Zoom to discuss.[193] Twitter ultimately publicly endorsed the Office of the Surgeon General's call for greater censorship of health misinformation.[194]

Waldo sent an email to YouTube on July 6, 2021, to set up the rollout call and to state that the Office of the Surgeon General's purpose was to stop the spread of misinformation on social-media platforms.[195] YouTube eventually adopted a new policy on combatting COVID-19 misinformation and began providing federal officials

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[190] [Doc. No. 210-1 at 138]

[191] [Doc. No. 210-5 at 1-2]

[192] [Doc. No. 210-6]

[193] [Doc. No. 210-7 at 145-46]

[194] [Id.]

[195] [Doc. No. 210-8]

with updates on YouTube's efforts to combat the misinformation.[196]

(9) At the July 15, 2021 press conference, Murthy described health misinformation as one of the biggest obstacles to ending the pandemic; insisted that his advisory was on an urgent public health threat; and stated that misinformation poses an imminent threat to the nation's health and takes away the freedom to make informed decisions.[197] Murthy further stated that health disinform-ation is false, inaccurate, or misleading, based upon the best evidence at the time.[198]

Murthy also stated that people who question mask mandates and decline vaccinations are following misinformation, which results in illnesses and death.[199] Murthy placed specific blame on social-media platforms for allowing "poison" to spread and further called for an "all-of-society approach" to fight health misinformation.[200] Murthy called upon social-media platforms to operate with greater transparency and accountability, to monitor information more clearly, and to "consistently take action against misinformation super-spreaders on their platforms."[201] Notably, Waldo agreed in his deposition that the word "accountable" carries with it the threat of consequences.[202] Murthy further demanded social-media platforms do "much, much, more" and take "aggressive

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[196] [Doc. No. 210-8].

[197] [Doc. No. 210-11]

[198] [Doc. No. 210-11]

[199] [Doc. No. 210-11]

[200] [Id.]

[201] [Id.]

[202] [Id.]

action" against misinformation because the failure to do so is "costing people their lives."[203]

(10) Murthy's July 15, 2021 health advisory on misinformation blamed social-media platforms for the spread of misinformation at an unprecedented speed, and it blamed social-media features and algorithms for furthering the spread.[204] The health advisory further called for social-media platforms to enact policy changes to reduce the spread of misinformation, including appropriate legal and regulatory measures.[205]

Under a heading entitled "What Technology Platforms Can Do," the health advisory called for platforms to take a series of steps to increase and enable greater social-media censorship of misinformation, including product changes, changing algorithms to avoid amplifying misinformation, building in "frictions" to reduce the sharing of misinformation, and practicing the early detection of misinformation super-spreaders, along with other measures.[206] The consequences for misinformation would include flagging problematic posts, suppressing the spread of the information, suspension, and permanent de-platforming.[207]

(11) The Office of the Surgeon General collaborated and partnered with the Stanford University Internet Observatory and the Virality Project. Murthy participated in a January 15, 2021 launch of the Virality Project. In his comments, Murthy told the group, "We're

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[203] [Id.]

[204] [Doc. No. 210-11]

[205] [Id.]

[206] [Id.]

[207] [Id.]

asking technology companies to operate with great transparency and accountability so that misinformation does not continue to poison our sharing platforms and we knew the government can play an important role, too."[208]

Murthy expressly mentioned his coordination with DiResta at the Virality Project and expressed his intention to maintain that collaboration. He claimed that he had learned a lot from the Virality Project's work and thanked the Virality Project for being such a great "partner."[209] Murthy also stated that the Office of the Surgeon General had been "partnered with" the Stanford Internet Observatory for many months.[210]

(12) After President Biden's "[T]hey're killing people" comment on July 16, 2021, Facebook representatives had "sad faces" according to Waldo. On July 21, 2021, Facebook emailed Waldo and Fullenwider with CrowdTangle data and with "interventions" that created "frictions" with regard to COVID misinformation. The interventions also included limiting forwarding of WhatsApp messages, placing warning labels on fact-checked content, and creating "friction" when someone tries to share these posts on Facebook. Facebook also reported other censorship policy and actions, including censoring content that contributes to the risk of imminent physical harm, permanently banning pages, groups, and accounts that repeatedly broke Facebook's COVID-19 misinformation rules, and reducing the reach of posts, pages, groups, and accounts that share other false

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[208] [Doc. No. 210-13, Doc. No. 210, at 206-07.

[209] [Doc. No. 210-1 at 213]

[210] [Doc. No. 210-1 at 213]

claims "that do not violate our policies but may present misleading or sensationalized information about COVID-19 and vaccines."[211]

On July 16, 2021, Clegg emailed Murthy and stated, "I know our teams met today to better understand the scope of what the White House expects of us on misinformation going forward."[212] On July 18, 2021, Clegg messaged Murthy stating "I imagine you and your team are feeling a little aggrieved—as is the [Facebook] team, it's not great to be accused of killing people—but as I said by email, I'm keen to find a way to deescalate and work together collaboratively. I am available to meet/speak whenever suits."[213] As a result of this communication, a meeting was scheduled for July 23, 2021.[214]

At the July 23, 2021 meeting, the Office of the Surgeon General officials were concerned about understanding the reach of Facebook's data.[215] Clegg even sent a follow-up email after the meeting to make sure Murthy saw the steps Facebook had been taking to adjust policies with respect to misinformation and to further address the "disinfo-dozen."[216] Clegg also reported that Facebook had "expanded the group of false claims that we remove, to keep up with recent trends of misinformation that we are seeing."[217] Further, Facebook

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[211] [Doc. No. 210-15]

[212] [Doc. No. 210-16]

[213] [Doc. No. 210-17]

[214] [Doc. No. 210-18]

[215] [Id.]

[216] [Id. at 4-5]

[217] [Id.]

also agreed to "do more" to censor COVID misinformation, to make its internal data on misinformation available to federal officials, to report back to the Office of the Surgeon General, and to "strive to do all we can to meet our 'shared' goals."[218]

Evidently, the promised information had not been sent to the Office of the Surgeon General by August 6, 2021, so the Office requested the information in a report "within two weeks."[219] The information entitled "How We're Taking Action Against Vaccine Misinformation Superspreaders" was later sent to the Office of the Surgeon General. It detailed a list of censorship actions taken against the "Disinformation Dozen."[220] Clegg followed up with an August 20, 2021 email with a section entitled "Limiting Potentially Harmful Misinformation," which detailed more efforts to censor COVID-19 Misinformation.[221] Facebook continued to report back to Waldo and Flaherty with updates on September 19 and 29 of 2021.[222]

(13) Waldo asked for similar updates from Twitter, Instagram, and Google/YouTube.[223]

(14) The Office of the Surgeon General also collaborated with the Democratic National Committee. Flaherty emailed Murthy on July 19, 2021, to put Murthy in touch with Jiore Craig ("Craig") from the Democratic National Committee who worked on misinformation and

[218] [Id.]

[219] [Doc. No. 210-22 at 1-3]

[220] [Doc. No. 210-21]

[221] [Doc. No. 210-22 at 2]

[222] [Doc. No. 210, Waldo depo. Exh 30, 31]

[223] [Doc. No. 210-22 Waldo depo. At 257-58]

disinformation issues.[224] Craig and Murthy set up a Zoom meeting for July 22, 2021.

(15) After an October 28, 2021 Washington Post article stated that Facebook researchers had deep knowledge about how COVID-19 and vaccine misinformation ran through Facebook's apps, Murthy issued a series of tweets from his official Twitter account indicating he was "deeply disappointed" to read this story, that health misinformation had harmed people's health and cost lives, and that "we must demand Facebook and the rest of the social-media ecosystems take responsibility for stopping health misinformation on their platforms."[225] Murthy further tweeted that "we need transparency and accountability now."[226]

(16) On October 29, 2021, Facebook asked federal officials to provide a "federal health contract" to dictate "what content would be censored on Facebook's platforms."[227] Federal officials informed Facebook that the federal health authority that could dictate what content could be censored as misinformation was the CDC.[228]

(17) Murthy continued to publicly chastise social-media platforms for allowing health misinformation to be spread on their platforms. Murthy made statements on the following platforms: a December 21, 2021 podcast threatening to hold social-media platforms accountable for not censoring misinformation;[229] a January 3, 2022 podcast

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[224] [Doc. No. 210, Exh 22]

[225] [Doc. No. 210, Exh 31]

[226] [Id.]

[227] [Doc. No. 210, Exh 33]

[228] [Id.]

[229] [Doc. No. 210, Exh 38, Audio Transcript, at 7]

with Alyssa Milano stating that "platformers need to step up to be accountable for making their spaces safer";[230] and a February 14, 2022 panel discussion hosted by the Rockefeller Foundation, wherein they discussed that technology platforms enabled the speed, scale, and sophistication with which this misinformation was spreading.[231]

On March 3, 2022, the Office of the Surgeon General issued a formal Request for Information ("RFI"), published in the Federal Register, seeking information from social-media platforms and others about the spread of misinformation.[232] The RFI indicated that the Office of the Surgeon General was expanding attempts to control the spread of misinformation on social media and other technology platforms.[233] The RFI also sought information about censorship policies, how they were enforced, and information about disfavored speakers.[234] The RFI was sent to Facebook, Google/YouTube, LinkedIn, Twitter, and Microsoft[235] by Max Lesko ("Lesko"), Murthy's Chief of Staff, requesting responses from these social-media platforms.[236] Murthy again restated social-media platforms' responsibility to reduce the spread of misinformation in an interview

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[230] [Doc. No. 210-33]

[231] [Doc. No. 210-34]

[232] [Doc. No. 32. Ex. 42, 87 Fed Reg. 12712]

[233] [Id.]

[234] [Id.]

[235] [Id. Exh. 46, 47, 48, 49, 50, 51]

[236] [Id.]

with GQ Magazine.[237] Murthy also specifically called upon Spotify to censor health information.[238]

**C. CDC Defendants[239]**

(1) Crawford is the Director for The Division of Digital Media within the CDC Office of the Associate Director for Communications. Her deposition was taken pursuant to preliminary-injunction related discovery here.[240] The CDC is a component of the Department of Health and Human Services ("HHS"); Xavier Becerra ("Becerra") is the Secretary of HHS.[241] Crawford's division provides leadership for CDC's web presence, and Crawford, as director, determines strategy and objectives and oversees its general work.[242] Crawford was the main point of contact for communications between the CDC and social-media platforms.[243]

Prior to the COVID-19 pandemic, Crawford only had limited contact with social-media platforms, but she began having regular contact post-pandemic, beginning in

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[237] [Id. Exh. 51]

[238] [Exh. 52]

[239] The CDC Defendants consist of the Centers for Disease Control & Prevention, Carol Crawford ("Crawford"), Jay Dempsey ("Dempsey"), Kate Galatas ("Galatas"), United States Census Bureau ("Census Bureau"), Jennifer Shopkorn ("Shopkorn"), the Department of Health and Human Services ("HHS"), Xavier Becerra ("Becerra"), Yolanda Byrd ("Byrd"), Christy Choi ("Choi"), Ashley Morse ("Morse"), and Joshua Peck ("Peck").

[240] [Doc. No. 205-1]

[241] [Doc. No. 266-5 at 57-61]

[242] [Doc. No. 205-1 at 11]

[243] [Id. at 249]

February and March of 2020.[244] Crawford communicated with these platforms via email, phone, and meetings.[245]

(2) Facebook emailed State Department officials on February 6, 2020, that it had taken proactive and reactive steps to control information and misinformation related to COVID-19. The email was forwarded to Crawford, who reforwarded to her contacts on Facebook.[246] Facebook proposed to Crawford that it would create a Coronavirus page that would give information from trusted sources including the CDC. Crawford accepted Facebook's proposal on February 7, 2020, and suggested the CDC may want to address "widespread myths" on the platform.[247]

Facebook began sending Crawford CrowdTangle reports on January 25, 2021. CrowdTangle is a social-media listening tool for Meta, which shows themes of discussion on social-media channels. These reported on "top engaged COVID and vaccine-related content overall across Pages and Groups."[248] This CrowdTangle report was sent by Facebook to Crawford in response to a prior conversation with Crawford.[249] The CDC had privileged access to CrowdTangle since early 2020.[250]

Facebook emailed Crawford on March 3, 2020, that it intended to support the Government in its response to the Coronavirus, including a goal to remove certain

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[244] [Id. at 16-18]

[245] [Id. at 20]

[246] [Doc. No. 205-3 at 3]

[247] [Id. at 1-2]

[248] [Id. at 49-52]

[249] [Doc. No. 205-1, Exh. 6 at 2]

[250] [Id. at 49-52, 146-47]

information.[251] Crawford and Facebook began having discussions about misinformation with Facebook in the Fall of 2020, including discussions of how to combat misinformation.[252]

The CDC used CrowdTangle, along with Meltwater reports (used for all platforms), to monitor social media's themes of discussion across platforms.[253] Crawford recalls generally discussing misinformation with Facebook.[254] Crawford added Census Bureau officials to the distribution list for CrowdTangle reports because the Census Bureau was going to begin working with the CDC on misinformation issues.[255]

(3) On January 27, 2021, Facebook sent Crawford a recurring invite to a "Facebook weekly sync with CDC."[256] A number of Facebook and CDC officials were included in the invite, and the CDC could invite other agencies as needed.[257] The CDC had weekly meetings with Facebook.[258]

(4) On March 10, 2021, Crawford sent Facebook an email seeking information about "Themes that have been removed for misinfo."[259] The CDC questioned if Facebook had info on the types of posts that were removed. Crawford was aware that the White House and

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[251] [Doc. No. 205-4 at 1-2]

[252] [Doc. No. 205-7 at 1-2]

[253] [Doc. No. 205-1 at 154-55]

[254] [Id. at 58]

[255] [Id.]

[256] [Doc. No. 205-1 at 226]

[257] [Doc. No. 205-36]

[258] [Doc. No. 205-1 at 226]

[259] [Doc. No. 205-44 at 2-3]

the HHS were also receiving similar information from Facebook.[260] The HHS was present at meetings with social-media companies on March 1, 2021,[261] and on April 21, 2021.[262]

(5) On March 25, 2021, Crawford and other CDC officials met with Facebook. In an email by Facebook prior to that meeting, Facebook stated it would present on COVID-19 misinformation and have various persons present, including a Misinformation Manager and a Content-Manager official (Liz Lagone).[263] Crawford responded, attaching a PowerPoint slide deck, stating "This is a deck Census would like to discuss and we'd also like to fit in a discussion of topic types removed from Facebook."[264] Crawford also indicated two Census Bureau officials, Schwartz and Shopkorn, would be present, as well as two Census Bureau contractors, Sam Huxley and Christopher Lewitzke.[265]

The "deck" the Census Bureau wanted to discuss contained an overview of "Misinformation Topics" and included "concerns about infertility, misinformation about side effects, and claims about vaccines leading to deaths."[266] For each topic, the deck included sample slides and a statement from the CDC debunking the allegedly erroneous claim.[267]

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[260] [Doc. No. 205-1 at 258-61]

[261] Twitter with White House

[262] Twitter with White House

[263] [Doc. No. 205-1 at 103]

[264] [Id.]

[265] [Doc. No. 205-34 at 3]

[266] [Id. at 4]

[267] [Id. at 6-14]

(6) Crawford admits she began engaging in weekly meetings with Facebook,[268] and emails verify that the CDC and Facebook were repeatedly discussing misinformation back and forth.[269] The weekly meetings involved Facebook's content-mediation teams. Crawford mainly inquired about how Facebook was censoring COVID-19 misinformation in these meetings.[270]

(7) The CDC entered into an Intra-Agency Agreement ("IAA") with the Census Bureau to help advise on misinformation. The IAA required that the Census Bureau provide reports to the CDC on misinformation that the Census Bureau tracked on social media.[271] To aid in this endeavor, Crawford asked Facebook to allow the Census Bureau to be added to CrowdTangle.[272]

(8) After the March 2021 weekly meetings between Facebook, the CDC, and Census Bureau began, Crawford began to press Facebook on removing and/or suppressing misinformation. In particular, she stated, "The CDC would like to have more info . . . about what is being done on the amplification-side," and the CDC "is still interested in more info on how you view or analyze the data on removals, etc."[273] Further, Crawford noted, "It looks like the posts from last week's deck about infertility and side effects have all been removed. Were these evaluated by the moderation team or taken

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[268] [Doc. No. 205-1 at 68-69]

[269] [Doc. No. 205-9 at 1-4]

[270] [Doc. No. 205-1 at 68-69]

[271] [Doc. No. 205-1 at 71–72, 110]

[272] [Doc. No. 205-9 at 1]

[273] [Doc. No. 205-9 at 2]

down for another reason?"[274] Crawford also questioned Facebook about the CrowdTangle report showing local news coverage of deaths after receiving the vaccine and questioned what Facebook's approach is for "adding labels" to those stories.[275]

On April 13, 2021, Facebook emailed Crawford to propose enrolling CDC and Census Bureau officials in a special misinformation reporting channel; this would include five CDC officials and four Census Bureau officials. The portal was only provided to federal officials.[276]

On April 23, 2021, and again on April 28, 2021, Crawford emailed Facebook about a Wyoming Department of Health report noting that the algorithms that Facebook and other social-media networks are using to "screen out postings of sources of vaccine misinformation" were also screening out valid public health messages.[277]

On May 6, 2021, Crawford emailed Facebook a table containing a list of sixteen specific postings on Facebook and Instagram that contained misinformation.[278] Crawford stated in her deposition that she knew when she "flagged" content for Facebook, they would evaluate and possibly censor the content.[279] Crawford stated CDC's goal in flagging information for Facebook was "to be sure that people have credible health information

[274] [Id.]

[275] [Doc. No. 205-9 at 1]

[276] [Doc. No. 205-11 at 2]

[277] [Doc. No. 205-38 at 2]

[278] [Doc. No. 205-10 at 1-3]

[279] [Doc. No. 205-1 at 88]

so that they can make the correct health decisions."[280] Crawford continued to "flag" and send misinformation posts to Facebook, and on May 19, 2021,[281] Crawford provided Facebook with twelve specific claims.

(9) Facebook began to rely on Crawford and the CDC to determine whether claims were true or false. Crawford began providing the CDC with "scientific information" for Facebook to use to determine whether to "remove or reduce and inform."[282] Facebook was relying on the CDC's "scientific information" to determine whether statements made on its platform were true or false.[283] The CDC would respond to "debunk" claims if it had an answer.[284] These included issues like whether COVID-19 had a 99.96% survival rate, whether COVID-19 vaccines cause bells' palsy, and whether people who are receiving COVID-19 vaccines are subject to medical experiments.[285]

Facebook content-mediation officials would contact Crawford to determine whether statements made on Facebook were true or false.[286] Because Facebook's content-moderation policy called for Facebook to remove claims that are false and can lead to harm, Facebook would remove and/or censor claims the CDC itself said were false.[287] Questions by Facebook to the CDC

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[280] [Id.]

[281] [Doc. No. 205-12 at 1]

[282] [Id. at 2]

[283] [Doc. No. 205-1 at 106]

[284] [Id.]

[285] [Doc. No. 205-12 at 1-2]

[286] [Doc. No. 205-12 at 2]

[287] [Doc. No. 205-26 at 1-4]

related to this content-moderation included whether spike proteins in COVID-19 vaccines are dangerous and whether Guillain-Barre Syndrome or heart inflammation is a possible side effect of the COVID-19 vaccine.[288] Crawford normally referred Facebook to CDC subject-matter experts or responded with the CDC's view on these scientific questions.[289]

(10) Facebook continued to send the CDC biweekly CrowdTangle content insight reports, which included trending topics such as Door-to-Door Vaccines, Vaccine Side Effects, Vaccine Refusal, Vaccination Lawsuits, Proof of Vaccination Requirement, COVID-19 and Unvaccinated Individuals, COVID-19 Mandates, Vaccinating Children, and Allowing People to Return to Religious Services.[290]

(11) On August 19, 2021, Facebook asked Crawford for a Vaccine Adverse Event Reporting System ("VAERS") meeting for the CDC to give Facebook guidance on how to address VAERS-related "misinformation."[291] The CDC was concerned about VAERS-related misinformation because users were citing VAERS data and reports to raise concerns about the safety of vaccines in ways the CDC found to be "misleading."[292] Crawford and the CDC followed up by providing written materials for Facebook to use.[293] The CDC eventually had a meeting with Facebook about VAERS-

[288] [Doc. No. 205-18]

[289] [Doc. No. 205-1 at 140]

[290] [Doc. No. 205-20 at 205-20]

[291] [Doc. No. 205-21]

[292] [Doc. No. 205-22]

[293] [Doc. No. 205-21]

related misinformation and provided two experts for this issue.[294]

(12) On November 2, 2021, a Facebook content-moderation official reached out to the CDC to obtain clarity on whether the COVID-19 vaccine was harmful to children. This was following the FDA's emergency use authorization ("EUA") related to the COVID-19 vaccine.[295] In addition to the EUA issue for children, Facebook identified other claims it sought clarity on regarding childhood vaccines and vaccine refusals.[296]

The following Monday, November 8, 2021, Crawford followed up with a response from the CDC, which addressed seven of the ten claims Facebook had asked the CDC to evaluate. The CDC rated six of the claims "False" and stated that any of these false claims could cause vaccine refusal.[297]

The questions the CDC rated as "false" were:

1) COVID-19 vaccines weaken the immune system;
2) COVID-19 vaccines cause auto-immune diseases;
3) Antibody-dependent enhancement ("ADE") is a side effect of COVID-19 vaccines;
4) COVID-19 vaccines cause acquired immunodeficiency syndrome (AIDS);

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[294] [Doc. No. 205-1 at 151-52]

[295] [Doc. No. 205-23 at 1-2]

[296] [Id.]

[297] [Doc. No. 205-24]

5) Breast milk from a vaccinated parent is harmful to babies/children; and

6) COVID-19 vaccines cause multi-system inflammatory syndrome in children (MIS-C).

(13) On February 3, 2022, Facebook again asked the CDC for clarification on whether a list of claims were "false" and whether the claims, if believed, could contribute to vaccine refusals.[298] The list included whether COVID-19 vaccines cause ulcers or neurodegenerative diseases such as Huntington's and Parkinson's disease; the FDA's possible future issuance of an EUA to children six months to four years of age; and questions about whether the COVID-19 vaccine causes death, heart attacks, autism, birth defects, and many others.[299]

(14) In addition to its communications with Facebook, the CDC and Census Bureau also had involvement with Google/YouTube. On March 18, 2021, Crawford emailed Google, with the subject line "COVID Misinfo Project." Crawford informed Google that the CDC was now working with the Census Bureau (who had been meeting with Google regularly) and wanted to set up a time to talk and discuss the "COVID Misinfo Project."[300] According to Crawford, the previous Census project referred to the Census' work on combatting 2020 Census misinformation.[301]

On March 23, 2021, Crawford sent a calendar invite for a March 24, 2021 meeting, which included Crawford and five other CDC employees, four Census Bureau

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[298] [Doc. No. 205-26 at 1]

[299] [Id. at 1-4]

[300] [Doc. No. 205-28]

[301] [Doc. No. 205-1 at 175]

employees, and six Google/YouTube officials.[302] At the March 24, 2021 meeting, Crawford presented a slide deck similar to the one prepared for the Facebook meeting. The slide deck was entitled "COVID Vaccine Misinformation: Issue Overview" and included issues like infertility, side effects, and deaths. The CDC and the Census Bureau denied that COVID-19 vaccines resulted in infertility, caused serious side effects, or resulted in deaths.[303]

(15) On March 29, 2021, Crawford followed up with Google about using their "regular 4 p.m. meetings" to go over things with the Census.[304] Crawford recalled that the Census was asking for regular meetings with platforms, specifically focused on misinformation.[305] Crawford also noted that the reference to the "4 p.m. meeting" refers to regular biweekly meetings with Google, which "continues to the present day."[306] Crawford also testified she had similar regular meetings with Meta and Twitter, and previously had regular meetings with Pinterest. Crawford stated these meetings were mostly about things other than misinformation, but misinformation was discussed at the meetings.[307]

(16) On May 10, 2021, Crawford emailed Facebook to establish "COVID BOLO" ("Be on The Lookout") meetings. Google and YouTube were included.[308] Crawford

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[302] [Doc. No. 214-22 Jones Dec. Exh. T] SEALED DOCUMENT

[303] [Id.] SEALED DOCUMENT

[304] [Doc. No. 205-1 at 179-82]

[305] [Doc. No. 205-1 at 184-85]

[306] [Doc. No. 205-1 at 180]

[307] [Id. at 181]

[308] [Doc. No. 205-40]

ran the BOLO meetings, and the Census Bureau official arranged the meetings and prepared the slide deck for each meeting.[309]

The first BOLO meeting was held on May 14, 2021; the slide deck for the meeting was entitled "COVID Vaccine Misinformation: Hot Topics" and included five "hot topics" with a BOLO note for each topic. The five topics were: the vaccines caused "shedding"; a report made on VAERS that a two-year old child died from the vaccine; other alleged misleading information on VAERS reports; statements that vaccines were bioweapons, part of a depopulation scheme, or contain microchips; and misinformation about the eligibility of twelve to fifteen year old children for the vaccine.[310] All were labeled as "false" by the CDC, and the potential impact on the public was a reduction of vaccine acceptance.

The second BOLO meeting was held on May 28, 2021. The second meeting also contained a slide deck with a list of three "hot topics" to BOLO: that the Moderna vaccine was unsafe; that vaccine ingredients can cause people to become magnetic; and that the vaccines cause infertility or fertility-related issues in men. All were labeled as false by the CDC, and possibly impacted reduced vaccine acceptance.[311]

A third BOLO meeting scheduled for June 18, 2021, was cancelled due to the new Juneteenth holiday. However, Crawford sent the slide deck for the meeting. The hot topics for this meeting were: that vaccine particles

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[309] [Doc. No. 205-1 at 246, 265-66]

[310] [Doc. No. 214-23 at 4-5] SEALED DOCUMENT

[311] [Doc. No. 214-24 at 3-7] SEALED DOCUMENT

accumulate in ovaries causing fertility; that vaccines contain microchips; and because of the risk of blood clots to vaccinated persons, airlines were discussing a ban. All were labeled as false.[312]

The goal of the BOLO meetings was to be sure credible information was out there and to flag information the CDC thought was not credible for potential removal.[313]

On September 2, 2021, Crawford emailed Facebook and informed them of a BOLO for a small but growing area of misinformation: one of the CDC's lab alerts was misinterpreted and shared via social media.[314]

(17) The CDC Defendants also had meetings and/or communications with Twitter. On April 8, 2021, Crawford sent an email stating she was "looking forward to setting up regular chats" and asked for examples of misinformation. Twitter responded.[315]

On April 14, 2021, Crawford sent an email to Twitter giving examples of misinformation topics, including that vaccines were not FDA approved, fraudulent cures, VAERS data taken out of context, and infertility. The list was put together by the Census Bureau team.[316]

On May 10, 2021, Crawford emailed Twitter to print out two areas of misinformation, which included copies of twelve tweets.[317] Crawford informed Twitter about

[312] [Doc. No. 214-25 at 2-7] SEALED DOCUMENT

[313] [Doc. No. 205-1 at 266]

[314] [Doc. No. 205-22]

[315] [Doc. No. 205-1 at 197, 205-33]

[316] [Doc. No. 205-33]

[317] [Doc. No. 205-34]

the May 14, 2021 BOLO meeting and invited Twitter to participate. The examples of misinformation given at the meeting included: vaccine shedding; that vaccines would reduce the population; abnormal bleeding; miscarriages for women; and that the Government was lying about vaccines. In a response, Twitter stated that at least some of the examples had been "reviewed and actioned."[318] Crawford understood that she was flagging posts for Twitter for possible censorship.[319]

Twitter additionally offered to enroll CDC officials in its "Partner Support Portal" to provide expedited review of content flagged for censorship.[320] Crawford asked for instructions of how to enroll in the Partnership Support Portal and provided her personal Twitter account to enroll. Crawford was fully enrolled on May 27, 2021.[321] Census Bureau contractor Christopher Lewitzke ("Lewitzke") also requested to enroll in the Partner Support Portal.[322]

Crawford also sent Twitter a BOLO for the alleged misinterpretation of a CDC lab report.[323]

(18) Crawford testified in her deposition that the CDC has a strong interest in tracking what its constituents are saying on social media.[324] Crawford also expressed concern that if content were censored and removed from social-media platforms, government

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[318] [Id.]

[319] [Doc. No. 205-1 at 211]

[320] [Id. at 211-12]

[321] [Id. at 211-18]

[322] [Doc. No. 201-34 at 2]

[323] [Doc. No. 201-35]

[324] [Doc. No. 201-1 at 57–58]

communicators would not know what the citizen's "true concerns" were.[325]

**D. NIAID Defendants**[326]

The NIAID is a federal agency under HHS. Dr. Fauci was previously the Director of NIAID. Dr. Fauci's deposition was taken as a part of the limited preliminary injunction discovery in this matter.[327]

1) Dr. Fauci had been the director of the NIAID for over thirty-eight years and became Chief Medical Advisor to the President in early 2021.[328] Dr. Fauci retired December 31, 2022.

**1. Lab-Leak Theory**

Plaintiffs set forth arguments that because NIAID had funded "gain-of-function"[329] research at Dr. Fauci's direction at the Wuhan Institute of Virology ("Wuhan lab") in Wuhan, China, Dr. Fauci sought to suppress theories that the SARS-CoV2 virus leaked from the Wuhan lab.[330]

(1) Plaintiffs allege that Dr. Fauci's motive for suppressing the lab-leak theory was a fear that Dr. Fauci and NIAID could be blamed for funding gain-of-function research that created the COVID-19

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[325] [Id. at 75]

[326] The NIAD Defendants consist of the National Institute of Allergy and Infectious Disease and Dr. Hugh Auchincloss ("Dr. Auchincloss").

[327] [Doc. No. 206]

[328] [Doc. No. 206-1 at 10 (Deposition of Dr. Anthony S. Fauci)]

[329] "Gain-of-function" research involves creating a potentially dangerous virus in a laboratory.

[330] [Doc. No. 212-3 at 151–85]

pandemic. Plaintiffs allege Dr. Fauci participated in a secret call with other scientists on February 1, 2020, and convinced the scientists (who were proponents of the lab-leak theory) to change their minds and advocate for the theory that the COVID-19 virus originated naturally.[331] A few days after the February 1, 2020 call, a paper entitled "The Proximal Origin of COVID-19" was published by Nature Medicine on March 17, 2020. The article concludes that SARS-CoV2 was not created in a lab but rather was naturally occurring.

On February 2, 2020, Dr. Fauci told the other scientists that "given the concerns of so many people and the threat of further distortions on social media it is essential that we move quickly. Hopefully, we can get the WHO to convene."[332] Dr. Fauci emailed Dr. Tedros of the WHO and two senior WHO officials, urging WHO to quickly establish a working group to address the lab-leak theory. Dr. Fauci stated they should "appreciate the urgency and importance of this issue given the gathering internet evident in the science literature and in mainstream and social media to the question of the origin of this virus." Dr. Fauci also stated WHO needed to "get ahead of . . . the narrative of this and not reacting to reports which could be very damaging."[333] Numerous drafts of "The Proximal Origin of COVID-19" were sent to Dr. Fauci to review prior to the article being published in Nature Medicine.[334]

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[331] [Id. at 165]

[332] [Doc. No. 206-9 at 2]

[333] [Doc. No. 206-9 at 1]

[334] [Doc. No. 206-13 at 1, 7-8; 206-11 at 2-3; and 206-20]

(2) On February 9, 2020, in a joint podcast with Dr. Peter Daszak of the Eco Health Alliance,[335] both Drs. Fauci and Daszak discredited the lab-leak theory, calling it a "conspiracy theory."[336]

(3) Three authors of "The Proximal Origins of SARS-CoV2," Robert Garry, Kristian Anderson, and Ian Lipkin, received grants from NIH in recent years.[337]

(4) After "The Proximal Origins of SARS-CoV2" was completed and published in Nature Medicine, Dr. Fauci began discrediting the lab-leak theory. "This study leaves little room to refute a natural original for COVID-19." "It's a shining object (lab-leak theory) that will go away in times."[338]

At an April 17, 2020 press conference, when asked about the possibility of a lab-leak, Dr. Fauci stated, "There was a study recently that we can make available to you, where a group of highly qualified evolutionary virologists looked at the sequences there and the sequences in bats as they evolve. And the mutations that it took to get to the point where it is now is totally consistent with jump of a species from animal to a human."[339] "The Proximal Origin of SARS-CoV2" has since become one of the most widely read papers in the history of science.[340]

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[335] [Doc. No. 206-16 at 1]

[336] [Doc. No. 206-16 at 1; 206-17 at 1]

[337] [Doc. No. 214-30]

[338] [Doc. No. 206-27 at 3-4]

[339] (Video of April 17, 2020, White House Coronavirus Task Force Briefing, at https://www.youtube.com/watch? v=brbArPX8=6I)

[340] [Doc. No. 214-30]

(5) Twitter and Facebook censored the lab-leak theory of COVID-19.[341] However, Dr. Fauci claims he is not aware of any suppression of speech about the lab-leak theory on social media, and he claims he does not have a Twitter or Facebook account.[342]

(6) On March 15, 2020, Zuckerberg sent Dr. Fauci an email asking for coordination between Dr. Fauci and Facebook on COVID-19 messaging. Zuckerberg asked Dr. Fauci to create a video to be used on Facebook's Coronavirus Information Hub, with Dr. Fauci answering COVID-19 health questions, and for Dr. Fauci to recommend a "point person" for the United States Government "to get its message out over the platform."[343]

Dr. Fauci responded the next day to Zuckerberg saying, "Mark your idea and proposal sounds terrific," "would be happy to do a video for your hub," and "your idea about PSAs is very exciting." Dr. Fauci did three live stream Facebook Q&A's about COVID-19 with Zuckerberg.[344]

**2. Hydroxychloroquine**

Plaintiffs further allege the NIAID and Dept. of HHS Defendants suppressed speech on hydroxychloroquine. On May 22, 2020, The Lancet published an online article entitled "Hydroxychloroquine or chloroquine with or without a macrolide for treatment of COVID-19: a multi-national registry analysis."[345] The article purported to analyze 96,032 patients to compare persons

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[341] [Doc. No. 206-32 at 1-2; Doc. No. 206-33 at 3]

[342] [Doc. No. 206-1 at 210]

[343] [Doc. No. 206-24 at 3]

[344] [Doc. No. 201-1 at 177]

[345] [Doc. No. 206-36 at 1]

who did and did not receive this treatment. The study concluded that hydroxychloroquine and chloroquine were associated with decreased in-hospital survival and an increased frequency of ventricular arrhythmias when used for treatment of COVID-19.[346]

Dr. Fauci publicly cited this study to claim that "hydroxychloroquine is not effective against coronavirus."[347] He then publicly began to discredit COVID-19 treatment with hydroxychloroquine and stated whether the treatment of COVID-19 by hydroxychloroquine was effective could only be judged by rigorous, randomized, double-blind, placebo-based studies. He testified the same on July 31, 2020, before the House Select Subcommittee on Coronavirus Crisis.[348]

(2) When America's Frontline Doctors held a press conference criticizing the Government's response to the COVID-19 pandemic and spouting the benefits of hydroxychloroquine in treating the coronavirus,[349] Dr. Fauci made statements on Good Morning America[350] and on Andrea Mitchell Reports[351] that hydroxychloroquine is not effective in treating the coronavirus. Social-media platforms censored the America's Frontline Doctors videos. Facebook, Twitter, and YouTube removed the video.[352] Dr. Fauci does not deny that he or his staff at

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346 [Id.]

347 [Doc. No. 206-35 at 1]

348 https://www.youtube.com/watch?v=RUNCSOQD2UE

349 [Doc. No. 207-2 at 5]

350 [Doc. No. 207-1 at 2]

351 [Doc. No. 207-1 at 2-3]

352 [Doc. No. 207-2 at 6]

NIAID may have communicated with social-media platforms, but he does not specifically recall it.[353]

**3. The Great Barrington Declaration**

(1) The GBD was published online on October 4, 2020. The GBD was published by Plaintiffs Dr. Bhattacharja of Stanford and Dr. Kulldorff of Harvard, along with Dr. Gupta of Oxford. The GBD is a one-page treatise opposing reliance on lockdowns and advocating for an approach to COVID-19 called "focused protection."[354] It criticized the social distancing and lockdown approaches endorsed by government experts. The authors expressed grave concerns about physical and mental health impacts of current government COVID-19 lockdown policies and called for an end to lockdowns.[355]

(2) On October 8, 2020, Dr. Francis Collins emailed Dr. Fauci (and Cliff Lane) stating:

> Hi Tony and Cliff, See https://gbdeclaration.org/. This proposal from the three fringe epidemiologists who met with the Secretary seems to be getting a lot of attention — and even a co-signature from Nobel Prize winner Mike Leavitt at Stanford. There needs to be a quick and devastating published take down of its premises. I don't see anything like that online yet- is it underway? Francis.[356]

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[353] [Doc. No. 206-1 at 238]

[354] [Doc. No. 207-5 at 3]

[355] [Id.]

[356] [Doc. No. 207-6]

The same day, Dr. Fauci wrote back to Dr. Collins stating, "Francis: I am pasting in below a piece from Wired that debunks this theory. Best, Tony."[357]

Dr. Fauci and Dr. Collins followed up with a series of public media statements attacking the GBD. In a Washington Post story run on October 14, 2020, Dr. Collins described the GBD and its authors as "fringe" and "dangerous."[358] Dr. Fauci consulted with Dr. Collins before he talked to the Washington Post.[359] Dr. Fauci also endorsed these comments in an email to Dr. Collins, stating "what you said was entirely correct."[360]

On October 15, 2020, Dr. Fauci called the GBD "nonsense" and "dangerous."[361] Dr. Fauci specifically stated, "Quite frankly that is nonsense, and anybody who knows anything about epidemiology will tell you that is nonsense and very dangerous."[362] Dr. Fauci testified "it's possible that" he coordinated with Dr. Collins on his public statements attacking the GBD.[363]

(3) Social-media platforms began censoring the GBD shortly thereafter. In October 2020, Google deboosted the search results for the GBD so that when Google users googled "Great Barrington Declaration," they would be diverted to articles critical of the GBD, and not to the GBD itself.[364] Reddit removed links to

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[357] [Doc. No. 207-7]

[358] [Doc. No. 207-9]

[359] [Doc. No. 206-1 at 272]

[360] [Doc. No. 207-10]

[361] [Doc. No. 207-11 at 1]

[362] [Id. at 3]

[363] [Doc. No. 206-1 at 279]

[364] [Doc. No. 207-12 at 4]

the GBD.[365] YouTube updated its terms of service regarding medical "misinformation," to prohibit content about vaccines that contradicted consensus from health authorities.[366] Because the GBD went against a consensus from health authorities, its content was removed from YouTube. Facebook adopted the same policies on misinformation based upon public health authority recommendations.[367] Dr. Fauci testified that he could not recall anything about his involvement in seeking to squelch the GBD.[368]

(4) NIAID and NIH staff sent several messages to social-media platforms asking them to remove content lampooning or criticizing Dr. Fauci. When a Twitter employee reached out to CDC officials asking if a particular account associated with Dr. Fauci was "real or not,"[369] Scott Prince of NIH responded, "Fake/Imposter handle. PLEASE REMOVE!!!"[370] An HHS official then asked Twitter if it could "block" similar parody accounts: "Is there anything else you can also do to block other variations of his (Dr. Fauci's) name from impersonation so we don't have this occur again?"[371] Twitter replied, "We'll freeze this @handle and some other variations so no one can hop on them."[372]

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[365] [Id. at 4-5]

[366] [Doc. No. 207-13 at 4-5]

[367] [Doc. No. 207-15]

[368] [Doc. No. 206-1 at 251-52, 255-58]

[369] [Doc. No. 207-17 at 2]

[370] [Id.]

[371] [Id. at 1]

[372] [Id.]

On April 21, 2020, Judith Lavelle of NIAID emailed Facebook, copying Scott Prince of NIH and Jennifer Routh ("Routh"), and stated, "We wanted to flag a few more fake Dr. Fauci accounts on FB and IG for you I have reported them from NIAID and my personal FB account."[373] Both Lavelle and Routh are members of Dr. Fauci's communications staff.[374] Six of the eight accounts listed were removed by Facebook on the same day.[375]

(5) On October 30, 2020, a NIAID staffer wrote an email connecting Google/YouTube with Routh, "so that NIAID and the 'Google team' could connect on vaccine communications-specifically misinformation.'"[376] Courtney Billet ("Billet"), director of the Office of Communications and Government Relations of NIAID, was added by Routh, along with two other NIAID officials, to a communications chain with YouTube.[377] Twitter disclosed that Dina Perry ("Perry"), a Public Affairs Specialist for NIAID, communicates or has communicated with Twitter about misinformation and censorship.[378]

(6) Dr. Fauci testified that he has never contacted a social-media company and asked them to remove misinformation from one of their platforms.[379]

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[373] [Doc. No. 207-19 at 3]

[374] [Doc. No. 206-1 at 308]

[375] [Doc. No. 207-19 at 3]

[376] [Doc. No. 207-20 at 1]

[377] [Id.]

[378] [Doc. No. 214-8 at 1]

[379] [Doc. No. 206-1 at 151]

**4. Ivermectin**

(8) On September 13, 2021, Facebook emailed Carol Crawford of the CDC to ask whether the claim that "Ivermectin is effective in treating COVID is false, and if believed, could contribute to people refusing the vaccine or self-medicating."[380] The CDC responded the next day and advised Facebook that the claim that Ivermectin is effective in treating COVID is "NOT ACCURATE."[381] The CDC cited the NIH's treatment guidelines for authority that the claims were not accurate.[382]

**5. Mask Mandates**

(9) Plaintiffs maintain that Dr. Fauci initially did not believe masks worked, but he changed his stance. A February 4, 2020 email, in which Dr. Fauci responded to an email from Sylvia Burwell, stated, "the typical mask you buy in a drugstore is not really effective in keeping out the virus, which is small enough to pass through mankind."[383] Dr. Fauci stated that, at that time, there were "no studies" on the efficacy of masking to stop the spread.[384] On March 31, 2020, Dr. Fauci forwarded studies showing that masking is ineffective.[385]

Plaintiffs allege that Dr. Fauci's position on masking changed dramatically on April 3, 2020, when he became an advocate for universal mask mandates.[386] Dr. Fauci testified his position changed in part because "evidence

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[380] [Doc. No. 207-22 at 2]

[381] [*Id.* at 1]

[382] [*Id.*]

[383] [Doc. No. 206-1 at 314]

[384] [*Id.* at 316]

[385] [*Id.* at 318]

[386] [*Id.* at 317]

began accumulating that masks actually work in preventing acquisition and transmission,"[387] although Dr. Fauci could not identify those studies.[388]

**6. Alex Berenson**

Alex Berenson ("Berenson") was a former New York Times Science reporter and critic of government messaging about COVID-19 vaccines. He was de-platformed from Twitter on August 28, 2021.[389]

Dr. Fauci had previously sought to discredit Berenson publicly during an interview with CNN.[390] Dr. Fauci does not deny that he may have discussed Berenson with White House or federal officials, but does not recall specifically whether he did so.[391]

**E. FBI Defendants[392]**

(1) The deposition of Elvis Chan ("Chan") was taken on November 29, 2021.[393] Chan is the Assistant Special Agent in charge of the Cyber Branch for the San Francisco Division of the FBI.[394] In this role, Chan was one of the primary people communicating with social-media platforms about disinformation on behalf of the FBI. There are also other agents on different cyber

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[387] [*Id.*]

[388] [*Id.* at 318]

[389] [Doc. No. 207-23 at 4]

[390] [Doc. No. 207-24 at 1-2]

[391] [Doc. No. 206-1 at 341-43]

[392] FBI Defendants include Elvis Chan ("Chan"), the Federal Bureau of Investigation ("FBI"), Lauren Dehmlow ("Dehmlow"), and the U.S. Department of Justice ("DOJ").

[393] [Doc. No. 204-1]

[394] [Id. at 8]

squads, along with the FBI's private sector engagement squad, who relay information to social-media platforms.[395]

Chan graduated from the Naval Postgraduate School in 2020 with a M.A. in Homeland Security Studies.[396] His thesis was entitled, "Fighting Bears and Trolls. An Analysis of Social Media Companies and U.S. Government Efforts to Combat Russian Influence Campaigns During the 2020 U.S. Elections."[397] His thesis focuses on information sharing between the FBI, Facebook, Google, and Twitter.[398] Chan relied on research performed by persons and entities comprising the Election Integrity Partnership, including Graphika,[399] and DiResta of the Stanford Internet Observatory. Chan communicated directly with DiResta about Russian disinformation.[400]

Chan also knows Alex Stamos ("Stamos"), the head of the Stanford Internet Observatory, from when Stamos worked for Facebook.[401] Chan and Stamos worked together on "malign-foreign-influence activities, on Facebook."[402]

(2) Chan stated that the FBI engages in "information sharing" with social-media companies about content posted on their platforms, which includes both

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[395] [Id. at 105]

[396] [Id. at 10]

[397] [Doc. No. 204-2 at 1]

[398] [Id. at 18]

[399] [Doc. No. 204-1 at 145]

[400] [Doc. No. 204-1 at 51-52, 85]

[401] [Id. at 54]

[402] [Id at 55]

"strategic-level information" and "tactical information."[403]

(3) The FBI, along with Facebook, Twitter, Google/YouTube, Microsoft, Yahoo!, Wikimedia Foundation, and Reddit, participate in a Cybersecurity and Infrastructure Security Agency ("CISA") "industry working group."[404] Representatives of CISA, the Department of Homeland Security's Intelligence & Analysis Division ("I&A"), the Office of Director of National Intelligence ("ODNI"), the FBI's FITF, the Dept. of Justice National Security Division, and Chan participate in these industry working groups.[405]

Chan participates in the meetings because most social-media platforms are headquartered in San Francisco, and the FBI field offices are responsible for maintaining day-to-day relationships with the companies headquartered in its area of responsibility.[406]

Matt Masterson ("Masterson") was the primary facilitator in the meetings for the 2022 election cycle, and Brian Scully ("Scully") was the primary facilitator ahead of the 2022 election.[407] At the USG-Industry ("the Industry") meetings, social-media companies shared disinformation content, providing a strategic overview of the type of disinformation they were seeing. The FBI would then provide strategic, unclassified

[403] [Id. at 16–19]

[404] [Id. at 18, 23-24]

[405] [Id. at 24, 171]

[406] [Id. at 24]

[407] [Id. at 25-26]

overviews of things they were seeing from Russian actors.[408]

The Industry meetings were "continuing" at the time Chan's deposition was taken on November 23, 2022, and Chan assumes the meetings will continue through the 2024 election cycle.[409]

(4) Chan also hosted bilateral meetings between FBI and Facebook, Twitter, Google/YouTube, Yahoo!/Verizon, Microsoft/LinkedIn, Wikimedia Foundation and Reddit,[410] and the Foreign Influence Task Force.[411] In the Industry meetings, the FBI raised concerns about the possibility of "hack and dump" operations during the 2020 election cycle.[412] The bilateral meetings are continuing, occurring quarterly, but will increase to monthly and weekly nearer the elections.[413]

In the Industry meetings, FBI officials meet with senior social-media platforms in the "trust and safety or site integrity role." These are the persons in charge of enforcing terms of service and content-moderation policies.[414] These meetings began as early as 2017.[415] At the Industry meetings, in addition to Chan and Laura Dehmlow ("Dehmlow"), head of the FITF, between

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408 [Id. at 156-57]
409 [Id. at 285-86]
410 [Id. at 23-24]
411 [Id. at 39]
412 [Id.]
413 [Id. at 40]
414 [Id. at 43-44]
415 [Id. at 87-89]

three and ten FITF officials and as high as a dozen FBI agents are present.[416]

(5) On September 4, 2019, Facebook, Google, Microsoft, and Twitter along with the FITF, ODNI, and CISA held a meeting to discuss election issues. Chan attended, along with Director Krebs, Masterson, and Scully. Social media's trust and safety on content-moderation teams were also present. The focus of the meeting was to discuss with the social-media companies the spread of "disinformation."[417]

(6) Discovery obtained from LinkedIn contained 121 pages of emails between Chan, other FBI officials, and LinkedIn officials.[418] Chan testified he has a similar set of communications with other social-media platforms.[419]

(7) The FBI communicated with social-media platforms using two alternative, encrypted channels, Signal and Teleporter.[420]

(8) For each election cycle, during the days immediately preceding and through election days, the FBI maintains a command center around the clock to receive and forward reports of "disinformation" and "misinformation." The FBI requests that social-media platforms have people available to receive and process the reports at all times.[421]

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[416] [Id. at 109-10]
[417] [Id. at 151]
[418] [Doc. No. 204-3]
[419] Doc. No. 204-1 at 288]]
[420] [Id. at 295-296]
[421] [Id. at 301]

(9) Before the Hunter Biden Laptop story breaking prior to the 2020 election on October 14, 2020, the FBI and other federal officials repeatedly warned industry participants to be alert for "hack and dump" or "hack and leak" operations.[422]

Dehmlow also mentioned the possibility of "hack and dump" operations.[423] Additionally, the prospect of "hack and dump" operations was repeatedly raised at the FBI-led meetings with FITF and the social-media companies, in addition to the Industry meetings.[424]

Social-media platforms updated their policies in 2020 to provide that posting "hacked materials" would violate their policies. According to Chan, the impetus for these changes was the repeated concern about a 2016-style "hack-and-leak" operation.[425] Although Chan denies that the FBI urged the social-media platforms to change their policies on hacked material, Chan did admit that the FBI repeatedly asked the social-media companies whether they had changed their policies with regard to hacked materials[426] because the FBI wanted to know what the companies would do if they received such materials.[427]

(10) Yoel Roth ("Roth"), the then-Head of Site Integrity at Twitter, provided a formal declaration on December 17, 2020, to the Federal Election Commission containing a contemporaneous account of the "hack-leak-

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422 [Doc. No. 204-1 at 172, 232-34]

423 [Id. at 175]

424 [Id. at 177-78]

425 [Id. at 205]

426 [Id. at 206]

427 [Id. at 249]

operations" at the meetings between the FBI, other natural-security agencies, and social-media platforms.[428] Roth's declaration stated:

> Since 2018, I have had regular meetings with the Office of the Director of National Intelligence, the Department of Homeland Security, the FBI, and industry peers regarding election security. During these weekly meetings, the federal law enforcement agencies communicated that they expected "hack-and-leak" operations by state actors might occur during the period shortly before the 2020 presidential election, likely in October. I was told in these meetings that the intelligence community expected that individuals associated with political campaigns would be subject to hacking attacks and that material obtained through those hacking attacks would likely be disseminated over social-media platforms, including Twitter. These expectations of hack-and-leak operations were discussed through 2020. *I also learned in these meetings that there were rumors that a hack-and-leak operation would involve Hunter Biden.*[429]

Chan testified that, in his recollection, Hunter Biden was not referred to in any of the CISA Industry meetings.[430] The mention of "hack-and-leak" operations involving Hunter Biden is significant because the FBI previously received Hunter Biden's laptop on December 9, 2019, and knew that the later-released story

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[428] [Doc. No. 204-5, ¶¶ 10-11, at 2-3]

[429] (emphasis added)

[430] [Doc. No. 204-1 at 213, 227-28].

about Hunter Biden's laptop was not Russian disinformation.[431]

In Scully's deposition,[432] he did not dispute Roth's version of events.[433]

Zuckerberg testified before Congress on October 28, 2020, stating that the FBI conveyed a strong risk or expectation of a foreign "hack-and-leak" operation shortly before the 2020 election and that the social-media companies should be on high alert. The FBI also indicated that if a trove of documents appeared, they should be viewed with suspicion.[434]

(11) After the Hunter Biden laptop story broke on October 14, 2020, Dehmlow refused to comment on the status of the Hunter Biden laptop in response to a direct inquiry from Facebook, although the FBI had the laptop in its possession since December 2019.[435]

The Hunter Biden laptop story was censored on social media, including Facebook and Twitter.[436] Twitter blocked users from sharing links to the New York Post story and prevented users who had previously sent tweets sharing the story from sending new tweets until they deleted the previous tweet.[437] Further, Facebook

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[431] [Doc. No. 106-3 at 5-11]

[432] [Doc. No. 209]

[433] [Id. at 247]

[434] [Doc. 204-6 at 56]

[435] [Doc. No. 204-1 at 215]

[436] [Doc. No. Doc 204-5 at ¶ 17]

[437] [Id.]

began reducing the story's distribution on the platform pending a third-party fact-check.[438]

(12) Chan further testified that during the 2020 election cycle, the United States Government and social-media companies effectively limited foreign influence companies through information sharing and account takedowns.[439] Chan's thesis also recommended standardized information sharing and the establishment of a national coordination center.

According to Chan, the FBI shares this information with social-media platforms as it relates to information the FBI believes should be censored.[440] Chan testified that the purpose and predictable effect of the tactical information sharing was that social-media platforms would take action against the content in accordance with their policies.[441] Additionally, Chan admits that during the 2020 election cycle, the United States Government engaged in information sharing with social-media companies.[442] The FBI also shared "indicators" with state and local government officials.[443]

Chan's thesis includes examples of alleged Russian disinformation, which had a number of reactions and comments from Facebook users, including an anti-Hillary Clinton post, a secure-border post, a Black Lives Matter post, and a pro-Second Amendment post.[444]

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[438] [Doc. No. 204-6 at 2]

[439] [Doc. No. 204-2 at 3]

[440] [Id.]

[441] [Id. at 32-33]

[442] [Id. at 19]

[443] [Id. at 50]

[444] [Id.]

Chan also identified Russian-aligned websites on which articles were written by freelance journalists. A website called NADB, alleged to be Russian-generated, was also identified by the FBI, and suppressed by social-media platforms, despite such content being drafted and written by American users on that site.[445] The FBI identified this site to the social-media companies that took action to suppress it.[446]

(13) "Domestic disinformation" was also flagged by the FBI for social-media platforms. Just before the 2020 election, information would be passed from other field offices to the FBI 2020 election command post in San Francisco. The information sent would then be relayed to the social-media platforms where the accounts were detected.[447] The FBI made no attempt to distinguish whether those reports of election disinformation were American or foreign.[448]

Chan testified the FBI had about a 50% success rate in having alleged election disinformation taken down or censored by social-media platforms.[449] Chan further testified that although the FBI did not tell the social-media companies to modify their terms of service, the FBI would "probe" the platforms to ask for details about the algorithms they were using[450] and what their terms of service were.[451]

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445 [Id. at 144-46]

446 [Doc. No. 204-1 at 141-43]

447 [Id. at 162]

448 [Id. at 163]

449 [Id. at 167]

450 [Id. at 88]

451 [Id. at 92]

(14) Chan further testified the FBI identifies specific social-media accounts and URLs to be evaluated "one to five times a month"[452] and at quarterly meetings.[453] The FBI would notify the social-media platforms by sending an email with a secure transfer application within the FBI called a "Teleporter." The Teleporter email contains a link for them to securely download the files from the FBI.[454] The emails would contain "different types of indicators," including specific social-media accounts, websites, URLs, email accounts, and the like, that the FBI wanted the platforms to evaluate under their content-moderation policies.[455]

Most of the time, the emails flagging the misinformation would go to seven social-media platforms. During 2020, Chan estimated he sent out these emails from one to six times per month and in 2022, one to four times per month. Each email would flag a number that ranged from one to dozens of indicators.[456] When the FBI sent these emails, it would request that the social-media platforms report back on the specific actions taken as to these indicators and would also follow up at the quarterly meetings.[457]

(15) At least eight FBI agents at the San Francisco office, including Chan, are involved in reporting disinformation to social-media platforms.[458] In addition to

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[452] [Id. at 96]

[453] [Id. at 98]

[454] [Id.]

[455] [Id. at 99]

[456] [Id. at 100-01]

[457] [Id. at 102-03]

[458] [Id. at 105-08]

FBI agents, a significant number of FBI officials from the FBI's Foreign Influence Task Force also participate in regular meetings with social-media platforms about disinformation.[459]

Chan testified that the FBI uses its criminal-investigation authority, national-security authority, the Foreign Intelligence Surveillance Act, the PATRIOT Act, and Executive Order 12333 to gather national security intelligence to investigate content on social media.[460]

Chan believes with a high degree of confidence that the FBI's identification of "tactical information" was accurate and did not misidentify accounts operated by American citizens.[461] However, Plaintiffs identified tweets and trends on Twitter, such as #Releasethe Memo in 2019, and indicated that 929,000 tweets were political speech by American citizens.[462]

(16) Chan testified that he believed social-media platforms were far more aggressive in taking down disfavored accounts and content in the 2018 and 2020 election cycles.[463] Chan further thinks that pressure from Congress, specifically the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, resulted in more aggressive censorship policies.[464] Chan also stated that congressional

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[459] [Id. at 108]

[460] [Id. at 111-12]

[461] [Id. at 112]

[462] [Doc. No. 204-2 at 71]

[463] [Id. at 115-16]]

[464] [Id. at 116]

hearings placed pressure on the social-media platforms.[465]

Chan further testified that Congressional staffers have had meetings with Facebook, Google/YouTube, and Twitter and have discussed potential legislation.[466] Chan spoke directly with Roth of Twitter, Steven Slagle of Facebook, and Richard Salgado of Google, all of whom participated in such meetings.[467]

(17) Chan testified that 3,613 Twitter accounts and 825 Facebook accounts were taken down in 2018. Chan testified Twitter took down 422 accounts involving 929,000 tweets in 2019.[468]

(18) Chan testified that the FBI is continuing its efforts to report disinformation to social-media companies to evaluate for suppression and/or censorship.[469] "Post-2020, we've never stopped . . . as soon as November 3 happened in 2020, we just pretty much rolled into preparing for 2022."[470]

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465 [Id. at 117-18]

466 [Id. at 118]

467 [Id. at 123-26]

468 [Id. at 133-34, 149-50]

469 [Doc. No. 204-8 at 2-3]

470 [Doc. No. 204-8 at 2]

**E. CISA Defendants**[471]

The deposition of Brian Scully was taken on January 12, 2023, as part of the injunction-related discovery in this matter.

(1) The CISA regularly meets with social-media platforms in several types of standing meetings. Scully is the chief of CISA's Mis, Dis and Malinformation Team ("MDM Team"). Prior to President Biden taking office, the MDM Team was known as the "Countering Foreign Influence Task Force ("CFITF").[472] Protentis is the "Engagements Lead" for the MDM Team, and she is in charge of outreach and engagement to key stakeholders, interagency partners, and private sector partners, which includes social-media platforms. Scully performed Protentis's duties while she was on maternity leave.[473] Both Scully and Protentis have done extended detail at the National Security Council, where they work on misinformation and disinformation issues.[474]

(2) Scully testified that during 2020, the MDM Team did "switchboard work" on behalf of election officials. "Switchboarding" is a disinformation-reporting system provided by CISA that allows state and local election officials to identify something on social media

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[471] CISA Defendants consist of the Cybersecurity and Infrastructure Security Agency ("CISA"), Jen Easterly ("Easterly"), Kim Wyman ("Wyman"), Lauren Protentis ("Protentis"), Geoffrey Hale ("Hale"), Allison Snell ("Snell"), Brian Scully ("Scully"), the Department of Homeland Security ("DHS"), Alejandro Mayorkas ("Mayorkas"), Robert Silvers ("Silvers"), and Samantha Vinograd ("Vinograd").

[472] [Doc. No. 209-1 at 12]

[473] [Id. at 18-20]

[474] [Id. at 19]

they deem to be disinformation aimed at their jurisdiction. The officials would then forward the information to CISA, which would in turn share the information with the social-media companies.[475]

The main idea, according to Scully, is that the information would be forwarded to social-media platforms, which would make decisions on the content based on their policies.[476] Scully further testified he decided in late April or early May 2022 not to perform switchboarding in 2022. However, the CISA website states the MDM Team serves as a "switchboard for routing disinformation concerns to social-media platforms."[477] The switchboard-ing activities began in 2018.[478]

(3) The MDM Team continues to communicate regularly with social-media platforms in two different ways. The first way is called "Industry" meetings. The Industry meetings are regular sync meetings between government and industry, including social-media platforms.[479] The second type of communication involves the MDM Team reviewing regular reports from social-media platforms about changes to their censorship policies or to their enforcement actions on censorship.[480]

(4) The Industry meetings began in 2018 and continue to this day. These meetings increase in frequency as each election nears. In 2022, the Industry meetings

[475] [Id. at 16-17]

[476] [Id. at 17]

[477] [Doc. No. 209-19 at 3]

[478] [Id.]

[479] [Doc. No. 209-1 at 21]

[480] [Id.]

were monthly but increased to biweekly in October 2022.[481]

Government participants in the USG-Industry meetings are CISA, the Department of Justice ("DOJ"), ODNI, and the Department of Homeland Security ("DHS"). CISA is typically represented by Scully and Hale. Scully's role is to oversee and facilitate the meetings.[482] Wyman, Snell, and Protentis also participate in the meetings on behalf of CISA.[483] On behalf of the FBI, FITF Chief Dehmlow, Chan, and others from different parts of the FBI participate.[484]

In addition to the Industry meetings, CISA hosts at least two "planning meetings:" one between CISA and Facebook and an interagency meeting between CISA and other participating federal agencies.[485] The social-media platforms attending the industry meetings include Facebook, Twitter, Microsoft, Google/YouTube, Reddit, LinkedIn, and sometimes the Wikipedia Foundation.[486] At the Industry meetings, participants discuss concerns about misinformation and disinformation. The federal officials report their concerns over the spread of disinformation. The social-media platforms in turn report to federal officials about disinformation trends, share high-level trend information, and repot the actions they are taking.[487] Scully testified that the

[481] [Id. at 24]

[482] [Id. at 25]

[483] [Id. at 28]

[484] [Id. at 29]

[485] [Id. at 36-37]

[486] [Id. at 39]

[487] [Id. at 39-41]

specific discussion of foreign-originating information is ultimately targeted at preventing domestic actors from engaging in this information.[488]

(5) CISA has established relationships with researchers at Stanford University, the University of Washington, and Graphika.[489] All three are involved in the Election Integrity Partnership ("EIP").[490]

When the EIP was starting up, CISA interns came up with the idea of having some communications with the EIP. CISA began having communications with the EIP, and CISA connected the EIP with the Center for Internet Security ("CIS"). The CIS is a CISA-funded, non-profit that channels reports of disinformation from state and local government officials to social-media platforms. The CISA interns who originated the idea of working with the EIP also worked for the Stanford Internet Observatory, another part of the EIP. CISA had meetings with Stanford Internet Observatory officials, and eventually both sides decided to work together.[491] The "gap" that the EIP was designed to fill concerned state and local officials' lack of resources to monitor and report on disinformation that affects their jurisdictions.[492]

(6) The EIP continued to operate during the 2022 election cycle. At the beginning of (6) The EIP continued to operate during the 2022 election cycle. At the beginning of the election cycle, the EIP gave Scully and

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[488] [Id. at 41]

[489] [Id. at 46, 48]

[490] [Id. at 48]

[491] [Id. at 49-52]

[492] [Id. at 57]

Hale, on behalf of CISA, a briefing in May or June of 2022.[493] In the briefing, DiResta walked through what the plans were for 2022 and some lessons learned from 2020. The EIP was going to support state and local election officials in 2022.

(7) The CIS is a non-profit that oversees the Multi-State Information Sharing and Analysis Center ("MS-ISAC") and the Election Infrastructure Information Sharing and Analysis Center ("EI-ISAC"). Both MS-ISAC and EI-ISAC are organizations of state and/or local government officials created for the purpose of information sharing.[494]

CISA funds the CIS through a series of grants. CISA also directs state and local officials to the CIS as an alternative route to "switchboarding."[495] CISA connected the CIS with the EIP because the EIP was working on the same mission,[496] and it wanted to make sure they were all connected. Therefore, CISA originated and set up collaborations between local government officials and CIS and between the EIP and CIS.

(8) CIS worked closely with CISA in reporting misinformation to social-media platforms. CIS would receive the reports directly from election officials and would forward this information to CISA. CISA would then forward the information to the applicable social-media platforms. CIS later began to report the misinformation directly to social-media platforms.[497]

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[493] [Id. at 53-54]

[494] [Id. at 59-61]

[495] [Id. at 61-62]

[496] [Id. at 62-63]

[497] [Id. at 63-64]

The EIP also reported misinformation to social-media platforms. CISA served as a mediating role between CIS and EIP to coordinate their efforts in reporting misinformation to the platforms. There were also direct email communications between the EIP and CISA about reporting misinformation.[498] When CISA reported misinformation to social-media platforms, CISA would generally copy the CIS, who, as stated above, was coordinating with the EIP.[499]

(9) Stamos and DiResta of the Stanford Internet Observatory briefed Scully about the EIP report, "The Long Fuse,"[500] in late Spring or early Summer of 2021. Scully also reviewed copies of that report. Stamos and DiResta also have roles in CISA: DiResta serves as "Subject Matter Expert" for CISA's Cybersecurity Advisory Committee, MDM Subcommittee, and Stamos serves on the CISA Cybersecurity Advisory Committee, as does Kate Starbird ("Starbird") of the University of Washington.[501] Stamos identified the EIP's "partners in government" as CISA, DHS, and state and local officials.[502] Also, according to Stamos, the EIP targeted "large following political partisans who were spreading misinformation intentionally."[503]

(10) CISA's Masterson was also involved in communicating with the EIP.[504] Masterson and Scully

[498] [Id. at 63-66]

[499] [Id. at 67-68]]

[500] [Doc. 209-2]

[501] [Doc. No. 209-1, at 72, 361; Doc. No. 212-36 at 4 (Jones Deposition-SEALED DOCUMENT)]

[502] [Doc. No. 209-4 at 4]

[503] [Scully depo. Exh. at l7]

[504] [Doc. No. 209-1 at 76]

questioned EIP about their statements on election-related information. Sanderson left CISA in January 2021, was a fellow at the Stanford Internet Observatory, and began working for Microsoft in early 2022.[505]

(11) CISA received misinformation principally from two sources: the CIS directly from state and local election officials; and information sent directly to a CISA employee.[506] CISA shared information with the EIP and the CIS.[507]

(12) CISA did not do an analysis to determine what percentage of misinformation was "foreign derived." Therefore, CISA forwards reports of information to social-media platforms without determining whether they originated from foreign or domestic sources.[508]

(13) The Virality Project was created by the Stanford Internet Observatory to mimic the EIP for COVID.[509] As previously stated, Stamos and DiResta of the Stanford Internet Observatory were involved in the Virality Project. Stamos gave Scully an overview of what they planned to do with the Virality Project, similar to what they did with the EIP.[510] Scully also had conversations with DiResta about the Virality Pro

ject.[511] DiResta noted the Virality Project was established on the heels of the EIP, following its success in

[505] [Id. at 88-89]

[506] [Id. at 119-20]

[507] [Id. at 120-21]

[508] [Id. at 122-23]

[509] [Id. at 134]

[510] [Id. at 134-36]

[511] [Id. at 139]

order to support government health officials' efforts to combat misinformation targeting COVID-19 vaccines.[512]

(14) According to DiResta, the EIP was designed to "get around unclear legal authorities, including very real First Amendment questions" that would arise if CISA or other government agencies were to monitor and flag information for censorship on social media.[513]

(15) The CIS coordinated with the EIP regarding online misinformation and reported it to CISA. The EIP was using a "ticketing system" to track misinformation.[514] Scully asked the social-media platforms to report back on how they were handling reports of misinformation and disinformation received from CISA.[515] CISA maintained a "tracking spreadsheet" of its misinformation reports to social-media platforms during the 2020 election cycle.[516]

(16) At least six members of the MDM team, including Scully, "took shifts" in the "switchboarding" operation reporting disinformation to social-media platforms; the others were Chad Josiah ("Josiah"), Rob Schaul ("Schaul"), Alex Zaheer ("Zaheer"), John Stafford ("Stafford"), and Pierce Lowary ("Lowary"). Lowary and Zaheer were simultaneously serving as interns for CISA

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[512] [Doc. No. 209-5 at 7]

[513] [Id. at 4]

[514] [Doc. No. 209-1 at 159]

[515] [Doc. No. 209-6 at 11]]

[516] [Doc. No. 209-1 at 165-66]

and working for the Stanford Internet Observatory, which was the operating the EIP.[517] Therefore, Zaheer and Lowary were simultaneously engaged in reporting

misinformation to social-media platforms on behalf of both CISA and the EIP.[518] Zaheer and Lowary were also two of the four Stanford interns who came up with the idea for the EIP.[519]

(17) The CISA switchboarding operation ramped up as the election drew near. Those working on the switchboarding operation worked tirelessly on election night.[520] They would also "monitor their phones" for disinformation reports even during off hours so that they could forward disinformation to the social-media platforms.[521]

(18) As an example, Zaheer, when switchboarding for CISA, forwarded supposed misinformation to CISA's reporting system because the user had claimed "mail-in voting is insecure" and that "conspiracy theories about election fraud are hard to discount."[522]

CISA's tracking spreadsheet contains at least eleven entries of switchboarding reports of misinformation that CISA received "directly from EIP" and forwarded to social-media platforms to review under their policies.[523] One of these reports was reported to Twitter for

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[517] [Id. at 166-68, 183]

[518] [Id.]

[519] [Id. at 171, 184–85]

[520] [Id. at 174-75]

[521] [Id. at 75]

[522] [Doc. No. 209-6 at 61-62]

[523] [Doc. No. 214-35 at 5-6, Column C]

censorship because EIP "saw an article on the Gateway Pundit" run by Plaintiff Jim Hoft.[524]

(19) Scully admitted that CISA engaged in "informal fact checking" to determine whether a claim was true or not.[525] CISA would do its own research and relay statements from public officials to help debunk postings for social-media platforms. In debunking information, CISA apparently always assumed the government official was a reliable source; CISA would not do further research to determine whether the private citizen posting the information was correct or not.[526]

(20) CISA's switchboarding activities reported private and public postings.[527] Social-media platforms responded swiftly to CISA's reports of misinformation.[528]

(21) CISA, in its interrogatory responses, disclosed five sets of recurring meetings with social-media platforms that involved discussions of misinformation, disinformation, and/or censorship of speech on social media.[529] CISA also had bilateral meetings between CISA and the social-media companies.[530]

(22) Scully does not recall whether "hack and leak" or "hack and dump" operations were raised at the Industry meetings, but does not deny it either.[531] However, several emails confirm that "hack and leak"

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[524] [Id. at 4-5, Column F, Line 94]

[525] CISA also became the "ministry of truth."

[526] [Doc. No. 209-1 at 220-22]

[527] [Doc. No. 209-7 at 45-46]

[528] [Doc. No. 209-1 at 291-94; 209-49]

[529] [Doc. No. 209-9 at 38-40]

[530] [Doc. No. 209-1 at 241]

[531] [Id. at 236-37]

operations were on the agenda for the Industry meeting on September 15, 2020,[532] and July 15, 2020.[533]

(23) In the spring and summer of 2022, CISA's Protentis requested that social-media platforms prepare a "one-page" document that sets forth their content-moderation rules[534] that could then be shared with election officials—and which also included "steps for flagging or escalating MDM content" and how to report misinformation.[535] Protentis referred to the working group (which included Facebook and CISA's Hale) as "Team CISA."[536]

(24) The Center for Internet Security continued to report misinformation to social-media platforms during the 2022 election cycle.[537]

(25) CISA has teamed up directly with the State Department's Global Engagement Center ("GEC") to seek review of social-media content.[538] CISA also flagged for review parody and joke accounts.[539] Social-media platforms report to CISA when they update their content-moderation policies to make them more restrictive.[540] CISA publicly stated that it is expanding its efforts to

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[532] [Doc. No. 209-13 at 1]

[533] [Doc. No. 209-14 at 16]

[534] [Doc. No. 209-14]

[535] [Doc. No. 209-15 at 44, 44-45]

[536] [Doc. No. 209-15 at 39]

[537] Doc. No. 209-1 at 266

[538] [Doc. No. 209-15 at 1-2]

[539] [Id. at 11-12]

[540] [Id. at 9]

fight disinformation-hacking in the 2024 election cycle.[541]

(26) A draft copy of the DHS's "Quadrennial Homeland Security Review," which outlines the department's strategy and priorities in upcoming years, states that the department plans to target "inaccurate information" on a wide range of topics, including the origins of the COVID-19 pandemic, the efficacy of COVID-19 vaccines, racial justice, the United States' withdrawal from Afghanistan, and the nature of the United States' support of Ukraine.[542]

(27) Scully also testified that CISA engages with the CDC and DHS to help them in their efforts to stop the spread of disinformation. The examples given were about the origins of the COVID-19 pandemic and Russia's invasion of Ukraine.[543]

(28) On November 21, 2021, CISA Director Easterly reported that CISA is "beefing up its misinformation and disinformation team in wake of a diverse presidential election a proliferation of misleading information online."[544] Easterly stated she was going to "grow and strengthen" CISA's misinformation and disinformation team. She further stated, "We live in a world where people talk about alternative facts, post-truth, which I think is really, really dangerous if people get to pick their own facts."[545]

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[541] [Doc. No. 209-20 at 1-2]

[542] [Doc. No. 209-23 at 1-4]

[543] [Doc. No. 209-1 at 323-25]

[544] [Doc. No. 209-1 at 335-36]

[545] [Doc. No. 209-18 at 1-2]

Easterly also views the word "infrastructure" very expansively, stating, "[W]e're in the business of protecting critical infrastructure, and the most critical is our 'cognitive infrastructure.'"[546] Scully agrees with the assessment that CISA has an expansive mandate to address all kinds of misinformation that may affect control and that could indirectly cause national security concerns.[547]

On June 22, 2022, CISA's cybersecurity Advisory Committee issued a Draft Report to the Director, which broadened "infrastructure" to include "the spread of false and misleading information because it poses a significant risk to critical function, like elections, public health, financial services and emergency responses."[548]

(29) In September 2022, the CIS was working on a "portal" for government officials to report election-related misinformation to social-media platforms.[549] That work continues today.[550]

**F. State Department Defendants**[551]

**1. The GEC**

(1) Daniel Kimmage is the Principal Deputy Coordinator of the State Department's Global Engagement

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[546] [Id.]

[547] [Doc. No. 209-1 at 341]

[548] [Doc. No. 209-25 at 1]

[549] [Doc. No. 210-22]

[550] [Id.]

[551] The State Department Defendants consist of the United States Department of State, Leah Bray ("Bray"), Daniel Kimmage ("Kimmage'), and Alex Frisbie ("Frisbie").

Center ("GEC").[552] The GEC's front office and senior leadership meets with social-media platforms every few months, sometimes quarterly.[553] The meetings focus on the "tools and techniques" of stopping the spread of disinformation on social media, but they rarely discuss specific content that is posted.[554] Additionally, GEC has a "Technology Engagement Team" ("TET") that also meets with social-media companies. The TET meets more frequently than the GEC.[555]

(2) Kimmage recalls two meetings with Twitter. At these meetings, the GEC would bring between five and ten people including Kimmage, one or more deputy coordinators, and team chiefs from the GEC and working-level staff with relevant subject-matter expertise.[556] The GEC staff would meet with Twitter's content-mediation teams, and the GEC would provide an overview of what it was seeing in terms of foreign propaganda and information. Twitter would then discuss similar topics.[557]

(3) The GEC's senior leadership also had similar meetings with Facebook and Google. Similar numbers of people were brought to these meetings by GEC, and similar topics were discussed. Facebook and Google also brought their content-moderator teams.[558]

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[552] Kimmage's deposition was taken and filed as [Doc. No. 208-1].

[553] [Doc. No. 208-1 at 29, 32]

[554] [Id. at 30]

[555] [Id. at 37]

[556] [Id. at 130-31]

[557] [Id. at 133-36]

[558] [Id. at 141-43]

(4) Samaruddin Stewart ("Stewart") was the GEC's Senior Advisor who was a permanent liaison in Silicon Valley for the purpose of meeting with social-media platforms about disinformation. Stewart set up a series of meetings with LinkedIn to discuss "countering disinformation" and to explore shared interests and alignment of mutual goals regarding the challenge.[559]

(5) The GEC also coordinated with CISA and the EIP. Kimmage testified that the GEC had a "general engagement" with the EIP.[560]

(6) On October 17, 2022, at an event at Stanford University, Secretary of State Anthony Blinken mentioned the GEC and stated that the State Department was "engaging in collaboration and building partnerships" with institutions like Stanford to combat the spread of propaganda.[561] Specifically, he stated, "We have something called the Global Engagement Center that's working on this every single day."[562]

(7) Like CISA, the GEC works through the CISA-funded EI-ISAC and works closely with the Stanford Internet Observatory and the Virality Project.

**2. The EIP**

(8) The EIP is partially-funded by the United States National Science Foundation through grants.[563] Like

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[559] [Id. at 159-60]

[560] [Id. at 214-215]. The details surrounding the EIP are described in II 6(5)(6)(7)(8)(9)(10)(15) and (16). Scully Ex. 1 details EIPS work carried out during the 2020 election.

[561] [Doc. No. 208-17 at 5]

[562] [Id.]

[563] [Id. at 17]

its work with CISA, the EIP, according to DiResta, was designed to "get around unclear legal authorities, including very real First Amendment questions" that would arise if CISA or other government agencies were to monitor and flag information for censorship on social media.[564]

The EIP's focus was on understanding misinformation and disinformation in the social-media landscape, and it successfully pushed social-media platforms to adopt more restrictive policies about election-related speech in 2020.[565]

The government agencies that work with and submit alleged disinformation to the EIP are CISA, the State Department Global Engagement Center, and the Elections Infrastructure Information Sharing and Analysis Center.[566]

(9) The EIP report further states that the EIP used a tiered model based on "tickets" collected internally and from stakeholders. The tickets also related to domestic speech by American citizens,[567] including accounts belonging to media outlets, social-media influencers, and political figures.[568] The EIP further emphasized that it wanted greater access to social-media platform's internal data and recommended that the platforms increase their enforcement of censorship policies.[569]

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[564] [Doc. No. 209-5 at 4]

[565] [Doc. No. 209-5, Exh. 1; Ex. 4 at 7, Audio Tr. 4]

[566] [Doc. No. 209-2 at 30]

[567] [Id. at 11]

[568] [Id. at 12]

[569] [Id. at 14]

The EIP was formed on July 26, 2020, 100 days before the November 2020 election.[570] On July 9, 2020, the Stanford Internet Observatory presented the EIP concept to CISA. The EIP team was led by Research Manager DiResta, Director Stamos and the University of Washington's Starbird.[571]

(10) EIP's managers both report misinformation to platforms and communicate with government partners about their misinformation reports.[572] EIP team members were divided into tiers of on-call shifts. Each shift was four hours long and led by one on-call manager. The shifts ranged from five to twenty people. Normal scheduled shifts ran from 8:00 a.m. to 8:00 p.m., ramping up to sixteen to twenty hours a day during the week of the election.[573]

(11) Social-media platforms that participated in the EIP were Facebook, Instagram, Google/YouTube, Twitter, TikTok, Reddit, Nextdoor, Discord, and Pinterest.[574]

(12) In the 2020 election cycle, the EIP processed 639 "tickets," 72% of which were related to delegitimizing the election results.[575] Overall, social-media platforms took action on 35% of the URLs reported to them.[576] One "ticket" could include an entire idea or

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570 [Id. at 20]

571 [Id.]

572 [Id. at 27-28]

573 [Id. at 28]

574 [Id. at 35]

575 [Id. at 45]

576 [Id. at 58]

narrative and was not always just one post.[577] Less than 1% of the tickets related to "foreign interference."[578]

(13) The EIP found that the Gateway Pundit was one of the top misinformation websites, allegedly involving the "exaggeration" of the input of an issue in the election process. The EIP did not say that the information was false.[579] The EIP Report cites The Gateway Pundit forty-seven times.[580]

(14) The GEC was engaging with the EIP and submitted "tickets."[581]

(15) The tickets and URLs encompassed millions of social-media posts, with almost twenty-two million posts on Twitter alone.[582] The EIP sometimes treats as "misinformation" truthful reports that the EIP believes "lack broader context."[583]

(16) The EIP stated "influential accounts on the political right . . . were responsible for the most widely spread of false or misleading information in our data set."[584] Further, the EIP stated the twenty-one most prominent report spreaders on Twitter include political figures and organizations, partisan media outlets, and social-media stars. Specifically, the EIP stated, "All 21 of the repeat spreaders were associated with conservative

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[577] [Id. at 27]

[578] [Id. at 53]

[579] [Id. at 51]

[580] [Id. at 51, 74, 76, 101, 103, 110, 112, 145, 150-51, 153, 155-56, 172, 175, 183, 194-95, 206-09, 211-12, 214-16, and 226]

[581] [Id. at 60]

[582] [Id. at 201]

[583] [Id. at 202]

[584] [Id. at 204-05]

or right-wing political views and support of President Trump."[585] The Gateway Pundit was listed as the second-ranked "Repeat Spreader of Election Misinformation" on Twitter. During the 2020 election cycle, the EIP flagged The Gateway Pundit in twenty-five incidents with over 200,000 retweets.[586] The Gateway Pundit ranked above Donald Trump, Eric Trump, Breitbart News, and Sean Hannity.[587]

The Gateway Pundit's website was listed as the domain cited in the most "incidents"; its website content was tweeted by others in 29,209 original tweets and 840,740 retweets.[588] The Gateway Pundit ranked above Fox News, the New York Post, the New York Times, and the Washington Post.[589] The EIP report also notes that Twitter suspended The Gateway Pundit's account on February 6, 2021, and it was later de-platformed entirely.[590]

(17) The EIP notes that "during the 2020 election, all of the major platforms made significant changes to election integrity policies—policies that attempted to slow the spread of specific narratives and tactics that could 'potentially mislead or deceive the public.'"[591] The EIP was not targeting foreign disinformation, but

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585 [Id. at 204-05]

586 [Id.]

587 [Id. at 246]

588 [Id. at 207]

589 [Id.]

590 [Id. at 224]

591 [Id. at 229]

rather "domestic speakers."[592] The EIP also indicated it would continue its work in future elections.[593]

(18) The EIP also called for expansive censorship of social-media speech into other areas such as "public health."[594]

(19) The EIP stated that it "united government, academic, civil society, and industry, analyzing across platforms to address misinformation in real time."[595]

(20) When asked whether the targeted information was domestic, Stamos answered, "It is all domestic, and the second point on the domestic, a huge part of the problem is well-known influences . . . you . . . have a relatively small number of people with very large followings who have the ability to go and find a narrative somewhere, pick it out of obscurity and . . . harden it into these narratives."[596]

Stamos further stated:

> We have set up this thing called the Election Integrity Partnership, so we went and hired a bunch of students. We're working with the University of Washington, Graphika, and DFR Lab and the vast, vast majority we see we believe is domestic. And so, I think a much bigger issue for the platforms is elite disinformation. The staff that is being driven by people who are verified

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[592] [Id. at 243-44]

[593] [Id. at 243-44]

[594] [Id. at 251]

[595] [Id. at 259]]

[596] [Doc. No. 276-1 at 12]

> that are Americans who are using their real identities.[597]

(21) Starbird of the University of Washington, who is on a CISA subcommittee and an EIP participant, also verified the EIP was targeting domestic speakers, stating:

> Now fast forward to 2020, we saw a very different story around disinformation in the U.S. election. It was largely domestic coming from inside the United States . . . Most of the accounts perpetrating this. . . . they're authentic accounts. They were often blue check and verified accounts. They were pundits on cable television shows that were who they said they were . . . a lot of major spreaders were blue check accounts, and it wasn't entirely coordinated, but instead, it was largely sort of cultivated and even organic in places with everyday people creating and spreading disinformation about the election.[598]

**3. The Virality Project**

(22) The Virality Project targeted domestic speakers' alleged disinformation relating to the COVID-19 vaccines.[599] The Virality Project's final report, dated April 26, 2022, lists DiResta as principal Executive Director and lists Starbird and Masterson as contributors.[600]

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[597] [Id.]

[598] [Doc. No. 276-1 at 42]

[599] [Doc. No. 209-3]; Memes, Magnets, Microchips, Narrative Dynamics Around COVID-19 Vaccines.

[600] [Doc. No. 209-3 at 4]

According to the Virality Project, "vaccine mis-and disinformation was largely driven by a cast of recuring [sic] actors including long-standing anti-vaccine influencers and activists, wellness and lifestyle influence, pseudo medical influencers, conspiracy theory influencers, right-leaning political influencers, and medical freedom influencers."[601]

The Virality Project admits the speech it targets is primarily domestic, stating "Foreign . . . actor's reach appeared to be far less than that of domestic actors."[602] The Virality Project also calls for more aggressive censorship of COVID-19 misinformation, calls for more federal agencies to be involved through "cross-agency collaboration,"[603] and calls for a "whole-of-society response."[604] Just like the EIP, the Virality Project states that it is "multistakeholder collaboration" that includes "government entities" among its key stakeholders.[605] The Virality Project targets tactics that are not necessarily false, including hard-to-verify content, alleged authorization sources, organized outrage, and sensationalized/misleading headlines.[606]

(23) Plaintiff Hines of the Health Freedom Louisiana was flagged by the Virality Project to be a "medical freedom influencer" who engages in the "tactic" of "organized outrage" because she created events or in-

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601 [Id. at 9]

602 [Id.]

603 [Id. at 12]

604 [Id.]

605 [Id. at 17]

606 [Id. at 19]

person gatherings to oppose mask and vaccine mandates in Louisiana.[607]

(24) The Virality Project also acknowledges that government "stakeholders," such as "federal health agencies" and "state and local public health officials," were among those that "provided tips" and "requests to access specific incidents and narratives."[608]

(25) The Virality Project also targeted the alleged COVID-19 misinformation for censorship before it could go viral. "Tickets also enabled analysts to qualify tag platform or health sector partners to ensure their situational awareness of high-engagement material that appeared to be going viral, so that those partners could determine whether something might merit a rapid public or on-platform response."[609]

(26) The Virality Project flagged the following persons and/or organizations as spreaders of misinformation:

i. Jill Hines and Health Freedom of Louisiana;[610]
ii. One America News;[611]
iii. Breitbart News;[612]
iv. Alex Berenson;[613]
v. Tucker Carlson;[614]
vi. Fox News;[615]

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[607] [Id. at 9, 19]

[608] [Id. at 24]

[609] [Id. at 37]

[610] [Id. at 59]

[611] [Id. at 60]

[612] [Id.]

[613] [Id. at 54, 57, 49, 50]

[614] [Id. at 57]

[615] [Id. at 91]

vii. Candace Owens;[616]
viii. The Daily Wire;[617]
ix. Robert F. Kennedy, Jr.;[618]
x. Dr. Simone Gold and America's Frontline Doctors; and[619]
xi. Dr. Joyce Mercula.[620]

(27) The Virality Project recommends that the federal government implement a Misinformation and Disinformation Center of Excellence, housed within the federal government, which would centralize expertise on mis/disinformation within the federal government at CISA.[621]

## III. LAW AND ANALYSIS

### A. Preliminary Injunction Standard

An injunction is an extraordinary remedy never awarded of right. *Benisek v. Lamone*, 138 U.S. 1942, 1943 (2018). In each case, the courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U. S. 7, 24, 129 S. Ct. 365 (2008).

The standard for an injunction requires a movant to show: (1) the substantial likelihood of success on the merits; (2) that he is likely to suffer irreparable harm in the absence of an injunction; (3) that the balance of

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616 [Id. at 86, 92]
617 [Id.]
618 [Id.]
619 [Id. at 87-88]
620 [Id. at 87]
621 [Id. at 150]

equities tips in his favor; and (4) that an injunction is in the public interest. *Benisek*, 138 U.S. at 1944. The party seeking relief must satisfy a cumulative burden of proving each of the four elements enumerated before an injunction can be granted. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). None of the four prerequisites has a quantitative value. *State of Tex. v. Seatrain Int'l, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975).

**B. Analysis**

As noted above, Plaintiffs move for a preliminary injunction against Defendants' alleged violations of the Free Speech Clause of the First Amendment. Plaintiffs assert that they are likely to succeed on the merits of their First Amendment claims because Defendants have significantly encouraged and/or coerced social-media companies into removing protected speech from social-media platforms. Plaintiffs also argue that failure to grant a preliminary injunction will result in irreparable harm because the alleged First Amendment violations are continuing and/or there is a substantial risk that future harm is likely to occur. Further, Plaintiffs maintain that the equitable factors and public interest weigh in favor of protecting their First Amendment rights to freedom of speech. Finally, Plaintiffs move for class certification under Federal Rule of Civil Procedure 23.

In response, Defendants maintain that Plaintiffs are unlikely to succeed on the merits for a myriad of reasons. Defendants also maintain that Plaintiffs lack Article III standing to bring the claims levied herein, that Plaintiffs have failed to show irreparable harm because the risk of future injury is low, and that the equitable factors and public interests weigh in favor of allowing

Defendants to continue enjoying permissible government speech.

Each argument will be addressed in turn below.

**1. Plaintiffs' Likelihood of Success on the Merits**

For the reasons explained herein, the Plaintiffs are likely to succeed on the merits of their First Amendment claim against the White House Defendants, Surgeon General Defendants, CDC Defendants, FBI Defendants, NIAID Defendants, CISA Defendants, and State Department Defendants. In ruling on a motion for Preliminary Injunction, it is not necessary that the applicant demonstrate an absolute right to relief. It need only establish a probable right. *West Virginia Highlands Conservancy v. Island Creek Coal Co.*, 441 F.2d 232 (4th Cir. 1971). The Court finds that Plaintiffs here have done so.

**a. Plaintiffs' First Amendment Claims**

The Free Speech Clause prohibits only governmental abridgment of speech. It does not prohibit private abridgment of speech. *Manhattan Community Access Corporation v. Halleck*, 139 S. Ct. 1921, 1928 (2019). The First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals. *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994). At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. *Id.* Government action, aimed at the suppression of particular views on a subject that discriminates on the basis of viewpoint, is presumptively unconstitutional. The

First Amendment guards against government action "targeted at specific subject matter," a form of speech suppression known as "content-based discrimination." *National Rifle Association of America v. Cuomo*, 350 F. Supp. 3d 94, 112 (N.D. N.Y. 2018). The private party, social-media platforms are not defendants in the instant suit, so the issue here is not whether the social-media platforms are government actors,[622] but whether the government can be held responsible for the private platforms' decisions.

Viewpoint discrimination is an especially egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the perspective of the speaker is the rationale for the restriction. *Rosenberger v. Rectors and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995). Strict scrutiny is applied to viewpoint discrimination. *Simon & Schuster, Inc. v. Members of the New York State Crime Victim's Board*, 505 U.S. 105 (1991). The government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. *Police Department of Chicago v. Moseley*, 408 U.S. 92, 96 (1972).

If there is a bedrock principal underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377 (1996). The benefit of any doubt

[622] This is a standard that requires the private action to be "fairly attributable to the state." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982).

must go to protecting rather than stifling speech. *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 891 (2010).

**i. Significant Encouragement and Coercion**

To determine whether Plaintiffs are substantially likely to succeed on the merits of their First Amendment free speech claim, Plaintiffs must prove that the Federal Defendants either exercised coercive power or exercised such significant encouragement that the private parties' choice must be deemed to be that of the government. Additionally, Plaintiffs must prove the speech suppressed was "protected speech." The Court, after examining the facts, has determined that some of the Defendants either exercised coercive power or provided significant encouragement, which resulted in the possible suppression of Plaintiffs' speech.

The State (i.e., the Government) can be held responsible for a private decision only when it has exercised coercive power or has provided such "significant encouragement," either overt or covert, that the choice must be deemed to be that of the State. Mere approval or acquiescence in the actions of a private party is not sufficient to hold the state responsible for those actions. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *Rendell-Baker v. Kohn*, 457 U.S. 830, 1004-05 (1982); *National Broadcasting Co. Inc v. Communications Workers of America, Afl-Cio*, 860 F.2d 1022 (11th Cir. 1988); *Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1213 (11th Cir. 2003); *Brown v. Millard County*, 47 Fed. Appx. 882 (10th Cir. 2002).

In evaluating "significant encouragement," a state may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to

accomplish. *Norwood v. Harrison*, 413 U.S. at 465. Additionally, when the government has so involved itself in the private party's conduct, it cannot claim the conduct occurred as a result of private choice, even if the private party would have acted independently. *Peterson v. City of Greenville*, 373 U.S. at 247-48. Further, oral, or written statements made by public officials could give rise to a valid First Amendment claim where the comments of a governmental official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request. *National Rifle Association of America*, 350 F. Supp. 3d at 114. Additionally, a public official's threat to stifle protected speech is actionable under the First Amendment and can be enjoined, even if the threat turns out to be empty. *Backpage.com, LLC v. Dart*, 807 F. 3d at 230-31.

The Defendants argue that the "significant encouragement" test for government action has been interpreted to require a higher standard since the Supreme Court's ruling in *Blum v. Yaretsky*, 457 U.S. 991 (1982). Defendants also argue that Plaintiffs are unable to meet the test to show Defendants "significantly encouraged" social-media platforms to suppress free speech. Defendants further maintain Plaintiffs have failed to show "coercion" by Defendants to force social-media companies suppress protected free speech. Defendants also argue they made no threats but rather sought to "persuade" the social-media companies. Finally, Defendants maintain the private social-media companies made independent decisions to suppress certain postings.

In *Blum*, the Supreme Court held the Government "can be held responsible for a private decision only when it has exercised coercive power or has provided

such significant encouragement, either overt or covert, that the choice in law must be deemed to be that of the state." *Blum*, 457 U.S. at 1004. Defendants argue that the bar for "significant encouragement" to convert private conduct into state action is high. Defendants maintain that *Blum's* language does not mean that the Government is responsible for private conduct whenever the Government does more than adopt a passive position toward it. *Skinner v. Ry. Labor Execs. Ass'n.*, 489 U.S. 602, 615 (1989).

Defendants point out this is a question of degree: whether a private party should be deemed an agent or instrument of the Government necessarily turns on the "degree" of the Government's participation in the private party's activities. 489 U.S. at 614. The dispositive question is "whether the State has exercised coercive power or has provided such significant encouragement that the choice must in law be deemed to be that of the State." *VDARE Fund v. City of Colo. Springs*, 11 F.4th 1151, 1161 (10th Cir. 2021).

The Supreme Court found there was not enough "significant encouragement" by the Government in *American Manufacturers Mutual Ins. Co. v. Sullivan*, 526 U.S. 40 (1999). This case involved the constitutionality of a Pennsylvania worker's compensation statute that authorized, but did not require, insurers to withhold payments for the treatment of work-related injuries pending a "utilization" review of whether the treatment was reasonable and necessary. The plaintiffs' argument was that by amending the statute to grant the utilization review (an option they previously did not have), the State purposely encouraged insurers to withhold payments for disputed medical treatment. The

Supreme Court found this type of encouragement was not enough for state action.

The United States Court of Appeal for the Fifth Circuit has also addressed the issue of government coercion or encouragement. For example, in *La. Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317 (5th Cir. 2020), the Sons of Confederate Veterans applied to march in a city parade that was coordinated by a private business association. The Mayor sent a letter asking the private business to prohibit the display of the Confederate battle flag. After the plaintiff's request to march in the parade was denied, the plaintiff filed suit and argued the Mayor's letter was "significant encouragement" to warrant state action. The Fifth Circuit found the letter was not "significant encouragement."

In determining whether the Government's words or actions could reasonably be interpreted as an implied threat, courts examine a number of factors, including: (1) the Defendant's regulatory or other decision-making authority over the targeted entities; (2) whether the government actors actually exercised regulatory authority over the targeted entities; (3) whether the language of the alleged threatening statements could reasonably be perceived as a threat; and (4) whether any of the targeted entities reacted in a manner evincing the perception of implicit threat. *Id.* at 114. As noted above, a public official's threat to stifle protected speech is actionable under the First Amendment and can be enjoined, even if the threat turns out to be empty. *Backpage.com, LLC v. Dart*, 807 F.3d 229, 230-31 (7th Cir. 2015); *Okwedy v. Molinari*, 333 F.3d 339, 340-41 (2d. Cir. 2003).

The closest factual case to the present situation is *O'Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023). In *O'Handley*, the plaintiff maintained that a California agency was responsible for the moderation of his posted content. The plaintiff pointed to the agency's mission to prioritize working closely with social-media companies to be "proactive" about misinformation and the flagging of one of his Twitter posts as "disinformation." The Ninth Circuit rejected the argument that the agency had provided "significant encouragement" to Twitter to suppress speech. In rejecting this argument, the Ninth Circuit stated the "critical question" in evaluating the "significant encouragement" theory is "whether the government's encouragement is so significant that we should attribute the private party's choice to the State . . . " *Id.* at 1158.

Defendants cited many cases in support of their argument that Plaintiffs have not shown significant coercion or encouragement. *See VDARE Found v. City of Colo. Springs*, 11 F.4th 1151 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 1208 (2022) (city's decision not to provide "support or resources" to plaintiff's event was not "such significant encouragement" to transform a private venue's decision to cancel the event into state action); *S.H.A.R.K. v. Metro Park Serving Summit Cnty.*, 499 F.3d 553 (6th Cir. 2007) (government officials' requests were "not the type of significant encouragement" that would render agreeing to those requests to be state action); *Campbell v. PMI Food Equip, Grp., Inc.*, 509 F.3d 776 (6th Cir. 2007) (no state action where government entities did nothing more than authorize and approve a contract that provided tax benefits or incentives conditioned on the company opening a local plant); *Gallagher v. Neil Young Freedom Concert*, 49

F.3d 1442 (10th Cir. 1995) (payments under government contracts and the receipt of government grants and tax benefits are insufficient to establish a symbiotic relationship between the government and a private entity). Ultimately, Defendants contend that Plaintiffs have not shown that the choice to suppress free speech must in law be deemed to be that of the Government. This Court disagrees.

The Plaintiffs are likely to succeed on the merits on their claim that the United States Government, through the White House and numerous federal agencies, pressured and encouraged social-media companies to suppress free speech. Defendants used meetings and communications with social-media companies to pressure those companies to take down, reduce, and suppress the free speech of American citizens. They flagged posts and provided information on the type of posts they wanted suppressed. They also followed up with directives to the social-media companies to provide them with information as to action the company had taken with regard to the flagged post. This seemingly unrelenting pressure by Defendants had the intended result of suppressing millions of protected free speech postings by American citizens. In response to Defendants' arguments, the Court points out that this case has much more government involvement than any of the cases cited by Defendants, as clearly indicated by the extensive facts detailed above. If there were ever a case where the "significant encouragement" theory should apply, this is it.

What is really telling is that virtually all of the free speech suppressed was "conservative" free speech. Using the 2016 election and the COVID-19 pandemic, the Government apparently engaged in a massive effort to

suppress disfavored conservative speech. The targeting of conservative speech indicates that Defendants may have engaged in "viewpoint discrimination," to which strict scrutiny applies. *See Simon & Schuster, Inc.*, 505 U.S. 105 (1991).

In addition to the "significant encouragement" theory, the Government may also be held responsible for private conduct if the Government exercises coercive power over the private party in question. *Blum*, 457 U.S. at 1004. Here, Defendants argue that not only must there be coercion, but the coercion must be targeted at specific actions that harmed Plaintiffs. *Bantam Books v. Sullivan*, 372 U.S. 58 (1963) (where a state agency threatened prosecution if a distributor did not remove certain designated books or magazines it distributed that the state agency had declared objectionable); *see also Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015) (where a sheriff's letter demanded that two credit card issuers prohibit the use of their credit cards to purchase any ads on a particular website containing advertisements for adult services); *Okwedy v. Molinari*, 333 F.3d 339 (2d Cir. 2003) (per curium) (where a municipal official allegedly pressured a billboard company to take down a particular series of signs he found offensive).

The Defendants further argue they only made requests to the social-media companies, and that the decision to modify or suppress content was each social-media company's independent decision. However, when a state has so involved itself in the private party's conduct, it cannot claim the conduct occurred as a result of private choice, even if the private party would have acted independently. *Peterson v. City of Greenville*, 373 U.S. 244, 247-248 (1963).

Therefore, the question is not what decision the social-media company would have made, but whether the Government "so involved itself in the private party's conduct" that the decision is essentially that of the Government. As exhaustedly listed above, Defendants "significantly encouraged" the social-media companies to such extent that the decision should be deemed to be the decisions of the Government. The White House Defendants and the Surgeon General Defendants additionally engaged in coercion of social-media companies to such extent that the decisions of the social-media companies should be deemed that of the Government. It simply makes no difference what decision the social-media companies would have made independently of government involvement, where the evidence demonstrates the wide-scale involvement seen here.

**(1) White House Defendants**

The Plaintiffs allege that by use of emails, public and private messages, public and private meetings, and other means, White House Defendants have "significantly encouraged" and "coerced" social-media platforms to suppress protected free speech on their platforms.

The White House Defendants acknowledged at oral arguments that they did not dispute the authenticity or the content of the emails Plaintiffs submitted in support of their claims.[623] However, they allege that the emails do not show that the White House Defendants either coerced or significantly encouraged social-media platforms to suppress content of social-media postings. White House Defendants argue instead that they were

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[623] [Doc. No. 288 at 164-65]

speaking with social-media companies about promoting more accurate COVID-19 information and to better understand what action the companies were taking to curb the spread of COVID-19 misinformation.

White House Defendants further argue they never demanded the social-media companies to suppress postings or to change policies, and the changes were due to the social-media companies' own independent decisions. They assert that they did not make specific demands via the White House's public statements and four "asks"[624] of social-media companies.[625] Defendants contend the four "asks" were "recommendations," not demands. Additionally, Defendants argue President Biden's July 16, 2021 "they're killing people" comment was clarified on July 19, 2021, to reflect that President Biden was talking about the "Disinformation Dozen," not the social-media companies.

Although admitting White House employee Flaherty expressed frustration at times with social-media companies, White House Defendants contend Flaherty sought to better understand the companies' policies with respect to addressing the spread of misinformation and hoped to find out what the Government could do to help. Defendants contend Flaherty felt such frustration because some of the things the social-media-companies told him were inconsistent with what others told him,

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[624] The White House four "asks" are: (1) measure and publicly share the impact of misinformation on their platform; (2) create a robust enforcement strategy; (3) take faster action against harmful posts; and (4) promote quality information sources in their feed algorithm.

[625] [Doc. No. 10-1 at 377-78]

compounded with the urgency of the COVID-19 pandemic.

Explicit threats are an obvious form of coercion, but not all coercion need be explicit. The following illustrative specific actions by Defendants are examples of coercion exercised by the White House Defendants:

(a) "Cannot stress the degree to which this needs to be resolved immediately. Please remove this account immediately."[626]

(b) Accused Facebook of causing "political violence" by failing to censor false COVID-19 claims.[627]

(c) "You are hiding the ball."[628]

(d) "Internally we have been considering our options on what to do about it."[629]

(e) "I care mostly about what actions and changes you are making to ensure you're not making our country's vaccine hesitancy problem worse."[630]

(f) "This is exactly why I want to know what "Reduction" actually looks like — if "reduction" means pumping our most vaccine hesitance audience with Tucker Carlson saying it does not work . . . then . . . I'm not sure it's reduction."[631]

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[626] [II. A.]

[627] [Id. A. (5)]

[628] [Id. A. (10)]

[629] [Id.]

[630] [Id. A. (11)]

[631] [Id. A. (12)]

(g) Questioning how the Tucker Carlson video had been "demoted" since there were 40,000 shares.[632]

(h) Wanting to know why Alex Berenson had not been kicked off Twitter because Berenson was the epicenter of disinformation that radiated outward to the persuadable public.[633] "We want to make sure YouTube has a handle on vaccine hesitancy and is working toward making the problem better. Noted that vaccine hesitancy was a concern. That is shared by the highest ('and I mean the highest') levels of the White House.'"[634]

(i) After sending to Facebook a document entitled "Facebook COVID-19 Vaccine Misinformation Brief, which recommends much more aggressive censorship by Facebook. Flaherty told Facebook sending the Brief was not a White House endorsement of it, but "this is circulating around the building and informing thinking."[635]

(j) Flaherty stated: "Not to sound like a broken record, but how much content is being demoted, and how effective are you at mitigating reach and how quickly?"[636]

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[632] [Id. A. (15)]

[633] [Id. A. (16)]

[634] [Id. A. (17)]

[635] [Id.]

[636] [Id at A. (19)]

(k) Flaherty told Facebook: "Are you guys fucking serious" I want an answer on what happened here and I want it today."[637]

(l) Surgeon General Murthy stated: "We expect more from our technology companies. We're asking them to operate with greater transparency and accountability. We're asking them to monitor information more closely. We're asking them to consistently take action against misinformation super-spreaders on their platforms."[638]

(m) White House Press Secretary Psaki stated: "we are in regular touch with these social-media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team. We're flagging problematic posts for Facebook that spread disinformation. Psaki also stated one of the White House's "asks" of social-media companies was to "create a robust enforcement strategy."[639]

(n) When asked about what his message was to social-media platforms when it came to COVID-19, President Biden stated: "they're killing people. Look, the only pandemic we have is among the unvaccinated and that — they're killing people."[640]

(o) Psaki stated at the February 1, 2022, White House Press Conference that the White House

[637] [Id.]

[638] [Id.]

[639] [Id.]

[640] [Id.]

wanted every social-media platform to do more to call out misinformation and disinformation and to uplift accurate information.[641]

(p) "Hey folks, wanted to flag the below tweet and am wondering if we can get moving on the process of having it removed. ASAP"[642]

(q) "How many times can someone show false COVID-19 claims before being removed?"

(r) "I've been asking you guys pretty directly over a series of conversations if the biggest issues you are seeing on your platform when it comes to vaccine hesitancy and the degree to which borderline content- as you define it, is playing a role."[643]

(s) "I am not trying to play 'gotcha' with you. We are gravely concerned that your service is one of the top drivers of vaccine hesitancy-period."[644]

(t) "You only did this, however after an election that you helped increase skepticism in and an insurrection which was plotted, in large part, on your platform."[645]

(u) "Seems like your 'dedicated vaccine hesitancy' policy isn't stopping the disinfo dozen."[646]

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[641] [Id. at A. (24)]

[642] [Doc. No. 174-1 at 1]

[643] [Id. at 11]

[644] [Id.]

[645] [Doc. No. 174-1 at 17-20]

[646] [Id. at 41]

(v) White House Communications Director, Kate Bedingfield's announcement that "the White House is assessing whether social-media platforms are legally liable for misinformation spread on their platforms, and examining how misinformation fits into the liability protection process by Section 230 of The Communication Decency Act."[647]

These actions are just a few examples of the unrelenting pressure the Defendants exerted against social-media companies. This Court finds the above examples demonstrate that Plaintiffs can likely prove that White House Defendants engaged in coercion to induce social-media companies to suppress free speech.

With respect to 47 U.S.C. § 230, Defendants argue that there can be no coercion for threatening to revoke and/or amend Section 230 because the call to amend it has been bipartisan. However, Defendants combined their threats to amend Section 230 with the power to do so by holding a majority in both the House of Representatives and the Senate, and in holding the Presidency. They also combined their threats to amend Section 230 with emails, meetings, press conferences, and intense pressure by the White House, as well as the Surgeon General Defendants. Regardless, the fact that the threats to amend Section 230 were bipartisan makes it even more likely that Defendants had the power to amend Section 230. All that is required is that the government's words or actions "could reasonably be interpreted as an implied threat." *Cuomo*, 350 F. Supp. 3d at 114. With the Supreme Court recently making clear

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[647] [Doc. No. 10-1 at 477-78]

that Section 230 shields social-media platforms from legal responsibility for what their users post, *Gonzalez v. Google*, 143 S. Ct. 1191 (2023), Section 230 is even more valuable to these social-media platforms. These actions could reasonably be interpreted as an implied threat by the Defendants, amounting to coercion.

Specifically, the White House Defendants also allegedly exercised significant encouragement such that the actions of the social-media companies should be deemed to be that of the government. The White House Defendants used emails, private portals, meetings, and other means to involve itself as "partners" with social-media platforms. Many emails between the White House and social-media companies referred to themselves as "partners." Twitter even sent the White House a "Partner Support Portal" for expedited review of the White House's requests. Both the White House and the social-media companies referred to themselves as "partners" and "on the same team" in their efforts to censor disinformation, such as their efforts to censor "vaccine hesitancy" spread. The White House and the social-media companies also demonstrated that they were "partners" by suppressing information that did not even violate the social-media companies' own policies.

Further, White House Defendants constantly "flagged" for Facebook and other social-media platforms posts the White House Defendants considered misinformation. The White House demanded updates and reports of the results of their efforts to suppress alleged disinformation, and the social-media companies complied with these demands. The White House scheduled numerous Zoom and in-person meetings with social-media officials to keep each other informed about the companies' efforts to suppress disinformation.

The White House Defendants made it very clear to social-media companies what they wanted suppressed and what they wanted amplified. Faced with unrelenting pressure from the most powerful office in the world, the social-media companies apparently complied. The Court finds that this amounts to coercion or encouragement sufficient to attribute the White House's actions to the social-media companies, such that Plaintiffs are likely to succeed on the merits against the White House Defendants.

**(2) Surgeon General Defendants**

Plaintiffs allege that Surgeon General Murthy and his office engaged in a pressure campaign parallel to, and often overlapping with, the White House Defendants' campaign directed at social-media platforms. Plaintiffs further allege the Surgeon General Defendants engaged in numerous meetings and communications with social-media companies to have those companies suppress alleged disinformation and misinformation posted on their platforms.

The Surgeon General Defendants argue that the Surgeon General's role is primarily to draw attention to public health matters affecting the nation. The SG took two official actions in 2021 and in 2022. In July 2021, the Surgeon General issued a "Surgeon General's Advisory." In March 2022, the Surgeon General issued a Request For Information ("RFI"). Surgeon General Defendants argue that the Surgeon General's Advisory did not require social-media companies to censor information or make changes in their policies. Surgeon General Defendants further assert that the RFI was

voluntary and did not require the social-media companies to answer.

Additionally, the Surgeon General Defendants contend they only held courtesy meetings with social-media companies, did not flag posts for censorship, and never worked with social-media companies to moderate their policies. Surgeon General Defendants also deny that they were involved with the Virality Project.

As with the White House Defendants, this Court finds that Plaintiffs are likely to succeed on the merits of their First Amendment free speech claim against the Surgeon General Defendants. Through public statements, internal emails, and meetings, the Surgeon General Defendants exercised coercion and significant encouragement such that the decisions of the social-media platforms and their actions suppressing health disinformation should be deemed to be the decisions of the government. Importantly, the suppression of this information was also likely prohibited content and/or viewpoint discrimination, entitling Plaintiffs to strict scrutiny.

The Surgeon General Defendants did pre-rollout calls with numerous social-media companies prior to publication of the Health Advisory on Misinformation. The Advisory publicly called on social-media companies "to do more" against COVID misinformation Superspreaders. Numerous calls and meetings took place between Surgeon General Defendants and private social-media companies. The "misinformation" to be suppressed was whatever the government deemed misinformation.

The problem with labeling certain discussions about COVID-19 treatment as "health misinformation" was

that the Surgeon General Defendants suppressed alternative views to those promoted by the government. One of the purposes of free speech is to allow discussion about various topics so the public may make informed decisions. Health information was suppressed, and the government's view of the proper treatment for COVID-19 became labeled as "the truth." Differing views about whether COVID-19 vaccines worked, whether taking the COVID-19 vaccine was safe, whether mask mandates were necessary, whether schools and businesses should have been closed, whether vaccine mandates were necessary, and a host of other topics were suppressed. Without a free debate about these issues, each person is unable to decide for himself or herself the proper decision regarding their health. Each United States citizen has the right to decide for himself or herself what is true and what is false. The Government and/or the OSG does not have the right to determine the truth.

The Surgeon General Defendants also engaged in a pressure campaign with the White House Defendants to pressure social-media companies to suppress health information contrary to the Surgeon General Defendants' views. After the Surgeon General's press conference on July 15, 2021, the Surgeon General Defendants kept the pressure on social-media platforms via emails, private meetings, and by requiring social-media platforms to report on actions taken against health disinformation.

The RFI by the Surgeon General Defendants also put additional pressure on social-media companies to comply with the requests to suppress free speech. The RFI sought information from private social-media companies to provide information about the spread of misinformation. The RFI stated that the office of the

Surgeon General was expanding attempts to control the spread of misinformation on social-media platforms. The RFI also sought information about social-media censorship policies, how they were enforced, and information about disfavored speakers.

Taking all of this evidence together, this Court finds the Surgeon General Defendants likely engaged in both coercion and significant encouragement to such an extent that the decisions of private social-media companies should be deemed that of the Surgeon General Defendants. The Surgeon General Defendants did much more than engage in Government speech: they kept pressure on social-media companies with pre-rollout meetings, follow-up meetings, and RFI. Thus, Plaintiffs are likely to succeed on the merits of their First Amendment claim against these Defendants.

**(3) CDC Defendants**

Plaintiffs allege that the CDC Defendants have engaged in a censorship campaign, together with the White House and other federal agencies, to have free speech suppressed on social-media platforms. Plaintiffs allege that working closely with the Census Bureau, the CDC flagged supposed "misinformation" for censorship on the platforms. Plaintiffs further allege that by using the acronym "BOLO," the CDC Defendants told social-media platforms what health claims should be censored as misinformation.

In opposition, Defendants assert that the CDC's mission is to protect the public's health. Although the CDC Defendants admit to meeting with and sending emails to social-media companies, the CDC Defendants argue they were responding to requests by the companies for science-based public health information, proactively alerting

the social-media companies about disinformation, or advising the companies where to find accurate information. The Census Bureau argues the Interagency Agreement, entered into with the CDC in regard to COVID-19 misinformation, has expired, and that it is no longer participating with the CDC on COVID-19 misinformation issues. The CDC Defendants further deny that they directed any social-media companies to remove posts or to change their policies.

Like the White House Defendants and Surgeon General Defendants, the Plaintiffs are likely to succeed on the merits of Plaintiffs' First Amendment free speech claim against the CDC Defendants. The CDC Defendants through emails, meetings, and other communications, seemingly exercised pressure and gave significant encouragement such that the decisions of the social-media platforms to suppress information should be deemed to be the decisions of the Government. The CDC Defendants coordinated meetings with social-media companies, provided examples of alleged disinformation to be suppressed, questioned the social-media companies about how it was censoring misinformation, required reports from social-media companies about disinformation, told the social-media companies whether content was true or false, provided BOLO information, and used a Partner Support Portal to report disinformation. Much like the other Defendants, described above, the CDC Defendants became "partners" with social-media platforms, flagging and reporting statements on social media Defendants deemed false. Although the CDC Defendants did not exercise coercion to the same extent as the White House and Surgeon General Defendants, their actions still likely resulted in "significant encouragement" by the government to

suppress free speech about COVID-19 vaccines and other related issues.

Various social-media platforms changed their content-moderation policies to require suppression of content that was deemed false by CDC and led to vaccine hesitancy. The CDC became the "determiner of truth" for social-media platforms, deciding whether COVID-19 statements made on social media were true or false. And the CDC was aware it had become the "determiner of truth" for social-media platforms. If the CDC said a statement on social media was false, it was suppressed, in spite of alternative views. By telling social-media companies that posted content was false, the CDC Defendants knew the social-media company was going to suppress the posted content. The CDC Defendants thus likely "significantly encouraged" social-media companies to suppress free speech.

Based on the foregoing examples of significant encouragement and coercion by the CDC Defendants, the Court finds that Plaintiffs are likely to succeed on the merits of their First Amendment claim against the CDC Defendants.

**(4) NIAID Defendants**

Plaintiffs allege that NIAID Defendants engaged in a series of campaigns to discredit and procure the censorship of disfavored viewpoints on social media. Plaintiffs allege that Dr. Fauci engaged in a series of campaigns to suppress speech regarding the Lab-Leak theory of COVID-19's origin, treatment using hydroxychloroquine, the GBD, the treatment of COVID-19 with Ivermectin, the effectiveness of mask mandates, and the speech of Alex Berenson.

In opposition, Defendants assert that the NIAID Defendants simply supports research to better understand, treat, and prevent infectious, immunologic, and allergic diseases and is responsible for responding to emergency public health threats. The NIAID Defendants argue that they had limited involvement with social-media platforms and did not meet with or contact the platforms to change their content or policies. The NIAID Defendants further argue that the videos, press conferences, and public statements by Dr. Fauci and other employees of NIAID was government speech.

This Court agrees that much of what the NIAID Defendants did was government speech. However, various emails show Plaintiffs are likely to succeed on the merits through evidence that the motivation of the NIAID Defendants was a "take down" of protected free speech. Dr. Francis Collins, in an email to Dr. Fauci[648] told Fauci there needed to be a "quick and devastating take down" of the GBD—the result was exactly that. Other email discussions show the motivations of the NIAID were to have social-media companies suppress these alternative medical theories. Taken together, the evidence shows that Plaintiffs are likely to succeed on the merits against the NIAID Defendants as well.

**(5) FBI Defendants**

Plaintiffs allege that the FBI Defendants also suppressed free speech on social-media platforms, with the FBI and FBI's FITF playing a key role in these censorship efforts.

In opposition, Defendants assert that the FBI Defendants' specific job duties relate to foreign influence

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[648] [Doc. No. 207-6]

operations, including attempts by foreign governments to influence U.S. elections. Based on the alleged foreign interference in the 2016 U.S. Presidential election, the FBI Defendants argue that, through their meetings and emails with social-media companies, they were attempting to prevent foreign influence in the 2020 Presidential election. The FBI Defendants deny any attempt to suppress and/or change the social-media companies' policies with regard to domestic speech. They further deny that they mentioned Hunter Biden or a "hack and leak" foreign operation involving Hunter Biden.

According to the Plaintiffs' allegations detailed above, the FBI had a 50% success rate regarding social media's suppression of alleged misinformation, and it did no investigation to determine whether the alleged disinformation was foreign or by U.S. citizens. The FBI's failure to alert social-media companies that the Hunter Biden laptop story was real, and not mere Russian disinformation, is particularly troubling. The FBI had the laptop in their possession since December 2019 and had warned social-media companies to look out for a "hack and dump" operation by the Russians prior to the 2020 election. Even after Facebook specifically asked whether the Hunter Biden laptop story was Russian disinformation, Dehmlow of the FBI refused to comment, resulting in the social-media companies' suppression of the story. As a result, millions of U.S. citizens did not hear the story prior to the November 3, 2020 election. Additionally, the FBI was included in Industry meetings and bilateral meetings, received and forwarded alleged misinformation to social-media companies, and actually mislead social-media companies in regard to the Hunter Biden laptop story. The Court

finds this evidence demonstrative of significant encouragement by the FBI Defendants.

Defendants also argue that Plaintiffs are attempting to create a "deception" theory of government involvement with regards to the FBI Defendants. Plaintiffs allege the FBI told the social-media companies to watch out for Russian disinformation prior to the 2020 Presidential election and then failed to tell the companies that the Hunter Biden laptop was not Russian disinformation. The Plaintiffs further allege Dr. Fauci colluded with others to cover up the Government's involvement in "gain of function" research at the Wuhan lab in China, which may have resulted in the creation of the COVID-19 pandemic.

Although this Court agrees there is no specified "deception" test for government action, a state may not induce private persons to accomplish what it is constitutionally forbidden to accomplish. *Norwood*, 413 U.S. at 455. It follows, then, that the government may not deceive a private party either—it is just another form of coercion. The Court has evaluated Defendants' conduct under the "coercion" and/or "significant encouragement" theories of government action, and finds that the FBI Defendants likely exercised "significant encouragement" over social-media companies.

Through meetings, emails, and in-person contacts, the FBI intrinsically involved itself in requesting social-media companies to take action regarding content the FBI considered to be misinformation. The FBI additionally likely misled social-media companies into believing the Hunter Biden laptop story was Russian disinformation, which resulted in suppression of the story a few weeks prior to the 2020 Presidential election.

Thus, Plaintiffs are likely to succeed in their claims that the FBI exercised "significant encouragement" over social-media platforms such that the choices of the companies must be deemed to be that of the Government.

**(5) CISA Defendants**

Plaintiffs allege the CISA Defendants served as a "nerve center" for federal censorship efforts by meeting routinely with social-media platforms to increase censorship of speech disfavored by federal officials, and by acting as a "switchboard" to route disinformation concerns to social-media platforms.

In response, the CISA Defendants maintain that CISA has a mandate to coordinate with federal and non-federal entities to carry out cybersecurity and critical infrastructure activities. CISA previously designated election infrastructure as a critical infrastructure subsector. CISA also collaborates with state and local election officials; as part of its duties, CISA coordinates with the EIS-GCC, which is comprised of state, local, and federal governmental departments and agencies. The EI-SSC is comprised of owners or operators with significant business or operations in U.S. election infrastructure systems or services. After the 2020 election, the EI-SCC and EIS-GCC launched a Joint Managing Mis/Disinformation Group to coordinate election infrastructure security efforts. The CISA Defendants argue CISA supports the Joint Managing Mis-Disinformation Group but does not coordinate with the EIP or the CIS. Despite DHS providing financial assistance to the CIS through a series of cooperative agreement awards managed by CISA, the CISA Defendants assert that the work scope funded by DHS has not involved the CIS performing disinformation-related tasks.

Although the CISA Defendants admit to being involved in "switchboarding" work during the 2020 election cycle, CISA maintains it simply referred the alleged disinformation to the social-media companies, who made their own decisions to suppress content. CISA maintains it included a notice with each referral to the companies, which stated that CISA was not demanding censorship. CISA further maintains it discontinued its switchboarding work after the 2020 election cycle and has no intention to engage in switchboarding for the next election.[649] CISA further argues that even though it was involved with USG-Industry meetings with other federal agencies and social-media companies, they did not attempt to "push" social-media companies to suppress content or to change policies.

The Court finds that Plaintiffs are likely to succeed on the merits of their First Amendment claim against the CISA Defendants. The CISA Defendants have likely exercised "significant encouragement" with social-media platforms such that the choices of the social-media companies must be deemed to be that of the government. Like many of the other Defendants, the evidence shows that the CISA Defendants met with social-media companies to both inform and pressure them to censor content protected by the First Amendment. They also apparently encouraged and pressured social-media companies to change their content-moderation policies and flag disfavored content.

But the CISA Defendants went even further. CISA expanded the word "infrastructure" in its terminology

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[649] However, at oral argument, CISA attorneys were unable to verify whether or not CISA would be involved in switchboarding during the 2024 election. [Doc. No. 288 at 122]

to include "cognitive" infrastructure, so as to create authority to monitor and suppress protected free speech posted on social media. The word "cognitive" is an adjective that means "relating to cognition." "Cognition" means the mental action or process of acquiring knowledge and understanding through thought, experiences, and the senses.[650] The Plaintiffs are likely to succeed on the merits on its claim that the CISA Defendants believe they had a mandate to control the process of acquiring knowledge. The CISA Defendants engaged with Stanford University and the University of Washington to form the EIP, whose purpose was to allow state and local officials to report alleged election misinformation so it could be forwarded to the social-media platforms to review. CISA used a CISA-funded non-profit organization, the CIS, to perform the same actions. CISA used interns who worked for the Stanford Internal Observatory, which is part of the EIP, to address alleged election disinformation. All of these worked together to forward alleged election misinformation to social-media companies to view for censorship. They also worked together to ensure the social-media platforms reported back to them on what actions the platforms had taken. And in this process, no investigation was made to determine whether the censored information was foreign or produced by U.S. citizens.

According to DiResta, head of EIP, the EIP was designed "to get around unclear legal authorities, including very real First Amendment questions that would arise if CISA or the other government agencies were to monitor and flag information for censorship on social

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[650] Google English Dictionary

media." [651] Therefore, the CISA Defendants aligned themselves with and partnered with an organization that was designed to avoid Government involvement with free speech in monitoring and flagging content for censorship on social-media platforms.

At oral arguments on May 26, 2023, Defendants argued that the EIP operated independently of any government agency. The evidence shows otherwise: the EIP was started when CISA interns came up with the idea; CISA connected the EIP with the CIS, which is a CISA-funded non-profit that channeled reports of misinformation from state and local government officials to social-media companies; CISA had meetings with Stanford Internet Observatory officials (a part of the EIP), and both agreed to "work together"; the EIP gave briefings to CISA; and the CIS (which CISA funds) oversaw the Multi-State Information Sharing and Analysis Center ("MS-ISAC") and the Election Infrastructure Information Sharing and Analysis Center ("EI-ISAC"), both of which are organizations of state and local governments that report alleged election misinformation.

CISA directs state and local officials to CIS and connected the CIS with the EIP because they were working on the same mission and wanted to be sure they were all connected. CISA served as a mediating role between CIS and EIP to coordinate their efforts in reporting misinformation to social-media platforms, and there were direct email communications about reporting misinformation between EIP and CISA. Stamos and DiResta of the EIP also have roles in CISA on CISA advisory committees. EIP identifies CISA as a "partner

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[651] [Doc. No. 209-5 at 4]

in government." The CIS coordinated with EIP regarding online misinformation. The EIP publication, "The Long Fuse,"[652] states the EIP has a focus on election misinformation originating from "domestic" sources across the United States.[653] EIP further stated that the primary repeat spreaders of false and misleading narratives were "verified blue-checked accounts belonging to partisan media outlets, social-media influencers, and political figures, including President Trump and his family."[654] The EIP further disclosed it held its first meeting with CISA to present the EIP concept on July 9, 2020, and EIP was officially formed on July 26, 2020, "in consultation with CISA."[655] The Government was listed as one of EIP's Four Major Stakeholder Groups, which included CISA, the GEC, and ISAC.[656]

As explained, the CISA Defendants set up a "switchboarding" operation, primarily consisting of college students, to allow immediate reporting to social-media platforms of alleged election disinformation. The "partners" were so successful with suppressing election disinformation, they later formed the Virality Project, to do the same thing with COVID-19 misinformation that the EIP was doing for election disinformation. CISA and the EIP were completely intertwined. Several emails from the switchboarding operation sent by intern Pierce Lowary shows Lowary directly flagging posted content and sending it to social-media

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[652] [Doc. No. 209-2]

[653] [Id. at 9]

[654] [Id. at 12]

[655] [Id. at 20-21]

[656] [Id. at 30]

companies. Lowary identified himself as "working for CISA" on the emails.[657]

On November 21, 2021, CISA Director Easterly stated: "We live in a world where people talk about alternative facts, post-truth, which I think is really, really dangerous if people get to pick their own facts." The Free Speech Clause was enacted to prohibit just what Director Easterly is wanting to do: allow the government to pick what is true and what is false. The Plaintiffs are likely to succeed on the merits of their First Amendment claim against the CISA Defendants for "significantly encouraging" social-media companies to suppress protected free speech.

**(5) State Department Defendants**

Plaintiffs allege the State Department Defendants, through the State Department's GEC, were also involved in suppressing protected speech on social-media platforms.

In response, the State Department Defendants argue that they, along with the GEC, play a critical role in coordinating the U.S. government efforts to respond to foreign influence. The State Department Defendants argue that they did not flag specific content for social-media companies and did not give the company any directives. The State Department Defendants also argue that they do not coordinate with or work with the EIP or the CIS.

The Court finds that Plaintiffs are also likely to succeed on the merits regarding their First Amendment Free Speech Clause against the State Department

[657] [Doc. No. 227-2 at 15, 23, 42, 65 & 78]

Defendants. For many of the same reasons the Court reached its conclusion as to the CISA Defendants, the State Department Defendants have exercised "significant encouragement" with social-media platforms, such that the choices of the social-media companies should be deemed to be that of the government. As discussed previously, both CISA and the GEC were intertwined with the VP, EIP, and Stanford Internet Observatory.

The VP, EIP, and Stanford Internet Observatory are not defendants in this proceeding. However, their actions are relevant because government agencies have chosen to associate, collaborate, and partner with these organizations, whose goals are to suppress protected free speech of American citizens. The State Department Defendants and CISA Defendants both partnered with organizations whose goals were to "get around" First Amendment issues.[658] In partnership with these non-governmental organizations, the State Department Defendants flagged and reported postings of protected free speech to the social-media companies for suppression. The flagged content was almost entirely from political figures, political organizations, alleged partisan media outlets, and social-media all-stars associated with right-wing or conservative political views, demonstrating likely "viewpoint discrimination." Since only conservative viewpoints were allegedly suppressed, this leads naturally to the conclusion that Defendants intended to suppress only political views they did not believe in. Based on this evidentiary showing, Plaintiffs are likely to succeed on the merits of their First Amendment claims against the State Department Defendants.

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[658] [Doc. No. 209-5 at 4]

**(6) Other Defendants**

Other Defendants in this proceeding are the U.S. Food and Drug Administration, U. S. Department of Treasury, U.S. Election Assistance Commission, U. S. Department of Commerce, and employees Erica Jefferson, Michael Murray, Wally Adeyemo, Steven Frid, Brad Kimberly, and Kristen Muthig. Plaintiffs confirmed at oral argument that they are not seeking a preliminary injunction against these Defendants. Additionally, Plaintiffs assert claims against the Disinformation Governance Board ("DGB") and its Director Nina Jankowicz. Defendants have provided evidence that the DGB has been disbanded, so any claims against these Defendants are moot. Thus, this Court will not address the issuance of an injunction against any of these Defendants.

**ii. Joint Participation**

The Plaintiffs contend that the Defendants are not only accountable for private conduct that they coerced or significantly encouraged, but also for private conduct in which they actively participated as "joint participants." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 725 (1961). Although most often "joint participation" occurs through a conspiracy or collusive behavior, *Hobbs v. Hawkins*, 968 F.2d 471, 480 (5th Cir. 1992), even without a conspiracy, when a plaintiff establishes the government is responsible for private action arising out of "pervasive entwinement of public institutions and public officials in the private entity's composition and workings." *Brentwood Academy. v. Tennessee Secondary Sch. Athletic Ass'n.*, 531 U. S. 288, 298 (2001).

Under the "joint action" test, the Government must have played an indispensable role in the mechanism

leading to the disputed action. *Frazier v. Bd. Of Trs. Of N.W. Miss. Reg.'l Med. Ctr.*, 765 F.2d 1278, 1287-88 (5th Cir.), amended, 777 F.2d 329 (5th Cir. 1985). When a plaintiff establishes "the existence of a conspiracy involving state action," the government becomes responsible for all constitutional violations committed in furtherance of the conspiracy by a party to the conspiracy. *Armstrong v. Ashley*, 60 F.4th 262, (5th Cir. 2023). Conspiracy can be charged as the legal mechanism through which to impose liability on each and all of the defendants without regard to the person doing the particular act that deprives the plaintiff of federal rights. *Pfannstiel v. City of Marion*, 918 F.2d 1178, 1187 (5th Cir. 1990).

Much like conspiracy and collusion, joint activity occurs whenever the government has "so far insinuated itself" into private affairs as to blur the line between public and private action. *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357 (1974). To become "pervasively entwined" in a private entity's workings, the government need only "significantly involve itself in the private entity's actions and decision-making"; it is not necessary to establish that "state actors . . . literally 'overrode' the private entity's independent judgment." *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 751, 753 (9th Cir. 2020). "Pervasive intertwinement" exists even if the private party is exercising independent judgment. *West v. Atkins*, 487 U.S. 42, 52, n.10 (1988); *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1454 (10th Cir. 1995) (holding that a "substantial degree of cooperative action" can constitute joint action).

For the same reasons as this Court has found Plaintiffs met their burden to show "significant encouragement" by the White House Defendants, the Surgeon

General Defendants, the CDC Defendants, the FBI Defendants, the NIAID Defendants, the CISA Defendants, and the State Department Defendants, this Court finds the Plaintiffs are likely to succeed on the merits that these Defendants "jointly participated" in the actions of the private social-media companies as well, by insinuating themselves into the social-media companies' private affairs and blurring the line between public and private action.[659]

However, this Court finds Plaintiffs are not likely to succeed on the merits that the "joint participation" occurred as a result of a conspiracy with the social-media companies. The evidence thus far shows that the social-media companies cooperated due to coercion, not because of a conspiracy.

This Court finds the White House Defendants, the Surgeon General Defendants, the CDC Defendants, the NIAID Defendants, the FBI Defendants, the CISA Defendants, and the State Department Defendants likely "jointly participated" with the social-media companies to such an extent that said Defendants have become "pervasively entwined" in the private companies' workings to such an extent as to blur the line between public and private action. Therefore, Plaintiffs are likely to succeed on the merits that the government Defendants are responsible for the private social-media companies' decisions to censor protected content on social-media platforms.

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[659] It is not necessary to repeat the details discussed in the "significant encouragement" analysis in order to find Plaintiffs have met their initial burden.

**iii. Other Arguments**

While not admitting any fault in the suppression of free speech, Defendants blame the Russians, COVID-19, and capitalism for any suppression of free speech by social-media companies. Defendants argue the Russian social-media postings prior to the 2016 Presidential election caused social-media companies to change their rules with regard to alleged misinformation. The Defendants argue the Federal Government promoted necessary and responsible actions to protect public health, safety, and security when confronted by a deadly pandemic and hostile foreign assaults on critical election infrastructure. They further contend that the COVID-19 pandemic resulted in social-media companies changing their rules in order to fight related disinformation. Finally, Defendants argue the social-media companies' desire to make money from advertisers resulted in change to their efforts to combat disinformation. In other words, Defendants maintain they had nothing to do with Plaintiffs' censored speech and blamed any suppression of free speech on the Russians, COVID-19, and the companies' desire to make money. The social-media platforms and the Russians are of course not defendants in this proceeding, and neither are they bound by the First Amendment. The only focus here is on the actions of the Defendants themselves.

Although the COVID-19 pandemic was a terrible tragedy, Plaintiffs assert that it is still not a reason to lessen civil liberties guaranteed by our Constitution. "If human nature and history teaches anything, it is that civil liberties face grave risks when governments proclaim indefinite states of emergency." *Does 1-3 v. Mills*, 142 S. Ct. 17, 20–21 (2021) (Gorsuch, J., dissenting).

The "grave risk" here is arguably the most massive attack against free speech in United States history.

Another argument of Defendants is that the previous Administration took the same actions as Defendants. Although the "switchboarding" by CISA started in 2018, there is no indication or evidence yet produced in this litigation that the Trump Administration had anything to do with it. Additionally, whether the previous Administration suppressed free speech on social media is not an issue before this Court and would not be a defense to Defendants even if it were true.

Defendants also argue that a preliminary injunction would restrict the Defendants' right to government speech and would transform government speech into government action whenever the Government comments on public policy matters. The Court finds, however, that a preliminary injunction here would not prohibit government speech. The traditional test used to differentiate government speech from private speech discusses three relevant factors: (1) whether the medium at issue has historically been used to communicate messages from the government; (2) whether the public reasonably interprets the government to be the speaker; and (3) whether the government maintains editorial control over the speech. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 465-80 (2009). A government entity has the right to speak for itself and is entitled to say what it wishes and express the views it wishes to express. The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech. *Pleasant Grove City, Utah*, 555 U.S. at 468.

The Defendants argue that by making public statements, this is nothing but government speech. However, it was not the public statements that were the problem. It was the alleged use of government agencies and employees to coerce and/or significantly encourage social-media platforms to suppress free speech on those platforms. Plaintiffs point specifically to the various meetings, emails, follow-up contacts, and the threat of amending Section 230 of the Communication Decency Act. Plaintiffs have produced evidence that Defendants did not just use public statements to coerce and/or encourage social-media platforms to suppress free speech, but rather used meetings, emails, phone calls, follow-up meetings, and the power of the government to pressure social-media platforms to change their policies and to suppress free speech. Content was seemingly suppressed even if it did not violate social-media policies. It is the alleged coercion and/or significant encouragement that likely violates the Free Speech Clause, not government speech, and thus, the Court is not persuaded by Defendants' arguments here.

**b. Standing**

The United States Constitution, via Article III, limits federal courts' jurisdiction to "cases" and "controversies." *Sample v. Morrison*, 406 F.3d 310, 312 (5th Cir. 2005) (*citing* U.S. Const. art. III, § 2). The "law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 435 (2017) (citation omitted). Thus, "the standing question is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant [its] invocation of federal-court jurisdiction

and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (citation and internal quotation marks omitted). The Article III standing requirements apply to claims for injunctive and declaratory relief. *See Seals v. McBee*, 898 F.3d 587, 591 (5th Cir. 2018), as revised (Aug. 9, 2018); *Lawson v. Callahan*, 111 F.3d 403, 405 (5th Cir. 1997).

Article III standing is comprised of three essential elements. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016) (citation omitted). "The plaintiff must have (1) suffered an injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.* (internal citations omitted). Furthermore, "[a] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Town of Chester, N.Y.*, 581 U.S. at 439 (citations omitted). However, the presence of one party with standing "is sufficient to satisfy Article III's case-or-
controversy requirement." *Texas*, 809 F.3d 134 (*citing Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006)).

In the context of a preliminary injunction, it has been established that "the 'merits' required for the plaintiff to demonstrate a likelihood of success include not only substantive theories but also the establishment of jurisdiction." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). In order to establish standing, the plaintiff must demonstrate that they have encountered or suffered an injury attributable to the defendant's

challenged conduct and that such injury is likely to be resolved through a favorable decision. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560-61 (1992). Further, during the preliminary injunction stage, the movant is only required to demonstrate a likelihood of proving standing. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). Defendants raise challenges to each essential element of standing for both the Private Plaintiffs and the States. Each argument will be addressed in turn below. For the reasons stated herein, the Court finds that the Plaintiffs have demonstrated a likelihood of satisfying Article III's standing requirements.

**i. Injury-in-fact**

Plaintiffs seeking to establish injury-in-fact must show that they suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S. at 339 (citations and internal quotation marks omitted). For an injury to be "particularized," it must "affect the plaintiff in a personal and individual way." *Id.* (citations and internal quotation marks omitted).

Plaintiffs argue that that they have asserted violations of their First Amendment right to speak and listen freely without government interference.[660] In response, Defendants contend that Plaintiffs' allegations rest on dated declarations that focus on long-past conduct, making Plaintiffs' fears of imminent injury entirely speculative.[661] The Court will first address whether the Plaintiff States are likely to prove an injury-in-fact. Then

[660] *See* [Doc. No. 214, at 66]

[661] *See* [Doc. No. 266, at 151]

the court will examine whether the Individual Plaintiffs are likely to prove an injury-in-fact. For the reasons explained below, both the Plaintiff States and Individual Plaintiffs are likely to prove an injury-in-fact.

**(1) Plaintiff States**

In denying Defendants' Motion to Dismiss,[662] this Court previously found that the Plaintiff States had sufficiently alleged injury-in-fact to satisfy Article III standing under either a direct injury or *parens patriae* theory of standing and that the States were entitled to special solicitude in the standing analysis.[663] At the preliminary injunction stage, the issue becomes whether the Plaintiffs are likely to prove standing. *See Speech First, Inc.*, 979 F.3d, at 330. The evidence produced thus far through discovery shows that the Plaintiff States are likely to establish an injury-in-fact through either a *parens patriae* or direct injury theory of standing.

*Parens patriae*, which translates to "parent of the country," traditionally refers to the state's role as a sovereign and guardian for individuals with legal disabilities. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 600 n.8 (1982) (*quoting* Black's Law Dictionary 1003 (5th ed. 1979)). The term "*parens patriae* lawsuit" has two meanings: it can denote a lawsuit brought by the state on behalf of individuals unable to represent themselves, or a lawsuit initiated by the state to protect its "quasi-sovereign" interests. *Id.* at 600; *see also Kentucky v. Biden*, 23 F.4th 585, 596-98 (6th Cir. 2022); *Chapman v. Tristar Prod., Inc.*, 940 F.3d 299, 305 (6th Cir. 2019). A lawsuit based on the former meaning

[662] [Doc. No. 128]

[663] [Doc. No. 224, at 20-33]

is known as a "third-party" parens patriae lawsuit, and it is clearly established law that states cannot bring such lawsuits against the federal government. *Kentucky*, 23 F.4th at 596. Thus, to have *parens patriae* standing, the Plaintiff States must show a likelihood of establishing an injury to one or more of their quasi-sovereign interests.

In *Snapp*, the United States Supreme Court determined that Puerto Rico had *parens patriae* standing to sue the federal government to safeguard its quasi-sovereign interests. *Snapp*, 458 U.S. at 608. The Court identified two types of injuries to a state's quasi-sovereign interests: one is an injury to a significant portion of the state's population, and the other is the exclusion of the state and its residents from benefiting from participation in the federal system. *Id.* at 607-608. The Court did not establish definitive limits on the proportion of the population that must be affected but suggested that an indication could be whether the injury is something the state would address through its sovereign lawmaking powers. *Id.* at 607. Based on the injuries alleged by Puerto Rico, the Court found that the state had sufficiently demonstrated harm to its quasi-sovereign interests and had parens patriae standing to sue the federal government. *Id.* at 609-10.

*In Massachusetts v. E.P.A.*, 549 U.S. 497 (2007), the United States Supreme Court further clarified the distinction between third-party and quasi-sovereign *parens patriae* lawsuits. There, the Court concluded that Massachusetts had standing to sue the EPA to protect its quasi-sovereign interests. The Court emphasized the distinction between allowing a state to protect its citizens from federal statutes (which is prohibited) and permitting a state to assert its rights under federal

law (which it has standing to do). *Massachusetts*, 549 U.S. at 520 n.17. Because Massachusetts sought to assert its rights under a federal statute rather than challenge its application to its citizens, the Court determined that the state had *parens patriae* standing to sue the EPA.

Here, the Plaintiff States alleged and have provided ample evidence to support injury to two quasi-sovereign interests: the interest in safeguarding the free-speech rights of a significant portion of their respective populations and the interest in ensuring that they receive the benefits from participating in the federal system. Defendants argue that this theory of injury is too attenuated and that Plaintiffs are unlikely to prove any direct harm to the States' sovereign or quasi-sovereign interests, but the Court does not find this argument persuasive.

Plaintiffs have put forth ample evidence regarding extensive federal censorship that restricts the free flow of information on social-media platforms used by millions of Missourians and Louisianians, and very substantial segments of the populations of Missouri, Louisiana, and every other State.[664] The Complaint provides

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[664] *See supra*, pp. 8-94 (detailing the extent and magnitude of Defendants' pressure and coercion tactics with social-media companies); *See also* [Doc. No. 214-1, at ¶¶ 1348 (noting that Berenson had nationwide audiences and over 200,000 followers when he was de-platformed on Twitter), 1387 (noting that the Gateway Pundit had more than 1.3 million followers across its social-media accounts before it was suspended), 1397-1409 (noting that Hines has approximately 13,000 followers each on her Health Freedom Louisiana and Reopen Louisiana Facebook pages, approximately 2,000 followers on two other Health Freedom Group Louisiana pages, and that the former

detailed accounts of how this alleged censorship harms "enormous segments of [the States'] populations." Additionally, the fact that such extensive examples of suppression have been uncovered through limited discovery suggests that the censorship explained above could merely be a representative sample of more extensive suppressions inflicted by Defendants on countless similarly situated speakers and audiences, including audiences in Missouri and Louisiana. The examples of censorship produced thus far cut against Defendants' characterization of Plaintiffs' fear of imminent future harm as "entirely speculative" and their description of the Plaintiff States' injuries as "overly broad and generalized grievance[s]."[665] The Plaintiffs have outlined a federal regime of mass censorship, presented specific examples of how such censorship has harmed the States' quasi-sovereign interests in protecting their residents' freedom of expression, and demonstrated numerous injuries to significant segments of the Plaintiff States' populations.

Moreover, the materials produced thus far suggest that the Plaintiff States, along with a substantial segment of their populations, are likely to show that they are being excluded from the benefits intended to arise from participation in the federal system. The U.S. Constitution, like the Missouri and Louisiana Constitutions, guarantees the right of freedom of expression, encompassing both the right to speak and the right to listen. U.S. Const. amend. I; *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S.

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Facebook pages have faced increasing censorship penalties and that the latter pages were de-platformed completely), etc.]

[665] [Doc. No. 266, at 151]

748, 756–57 (1976). The United States Supreme Court has acknowledged the freedom of expression as one of the most significant benefits conferred by the federal Constitution. W. *Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."). Plaintiffs have demonstrated that they are likely to prove that federal agencies, actors, and officials in their official capacity are excluding the Plaintiff States and their residents from this crucial benefit that is meant to flow from participation in the federal system. *See Snapp*, 458 U.S. at 608.

Accordingly, the Court finds that the States have alleged injuries under a *parens patriae* theory of standing because they are likely to prove injuries to the States' quasi-sovereign interests in protecting the constitutionally bestowed rights of their citizens.

Further, Plaintiffs have demonstrated direct censorship injuries that satisfy the requirements of Article III as injuries in fact.[666] Specifically, the Plaintiffs contend that Louisiana's Department of Justice, which encompasses the office of its Attorney General, faced direct censorship on YouTube for sharing video footage wherein Louisianans criticized mask mandates and COVID-19 lockdown measures on August 18, 2021, immediately following the federal Defendants' strong advocacy for COVID-related "misinformation" censorship.[667] Moreover, a Louisiana state legislator experienced censorship

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[666] [Doc. No. 214-1, at ¶¶1428-1430]]

[667] [Id. at ¶1428]

on Facebook when he posted content addressing the vaccination of children against COVID-19.[668] Similarly, during public meetings concerning proposed county-wide mask mandates held by St. Louis County, a political subdivision of Missouri, certain citizens openly expressed their opposition to mask mandates. However, YouTube censored the entire videos of four public meetings, removing the content because some citizens expressed the view that masks are ineffective.[669] Therefore, this Court finds that the Plaintiff States have also demonstrated a likelihood of establishing an injury-in-fact under a theory of direct injury sufficient to satisfy Article III.

Accordingly, for the reasons stated above and explained in this Court's ruling on the Motion to Dismiss,[670] the Plaintiff States are likely to succeed on establishing an injury-in-fact under Article III.

**(2) Individual Plaintiffs**

In *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("*SBA List*"), the Supreme Court held that an allegation of future injury may satisfy the Article III injury-in-fact requirement if there is a "substantial risk" of harm occurring. (*quoting Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). In SBA List, the petitioner challenged a statute that prohibited making false statements during political campaigns. *Id.* at 151-52. The Court considered the justiciability of the pre-enforcement challenge and whether it alleged a sufficiently imminent injury under Article III. It noted that pre-

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[668] [Id. at ¶1429]

[669] [Id. at ¶ 1430]

[670] [Doc. No. 214, at 20–33]

enforcement review is warranted when the threatened enforcement is "sufficiently imminent." *Id.* at 159. The Court further emphasized that past enforcement is indicative that the threat of enforcement is not "chimerical." *Id.* at 164 (*quoting Steffel v. Thompson*, 415 U.S. 452, 459 (1974)).

Likewise, in *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979), the Supreme Court found that the plaintiffs satisfied Article III's injury-in-fact requirement because the fear of future injury was not "imaginary or wholly speculative." There, the Court considered a pre-enforcement challenge to a statute that deemed it an unfair labor practice to encourage consumer boycotts through deceptive publicity. *Id.* at 301. Because the plaintiffs had engaged in past consumer publicity campaigns and intended to continue those campaigns in the future, the Court found their challenge to the consumer publicity provision satisfied Article III. *Id.* at 302. Similar pre-enforcement review was recognized in *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 386 (1988), where the Supreme Court held that booksellers could seek review of a law criminalizing the knowing display of "harmful to juveniles" material for commercial purposes, as defined by the statute. *Virginia*, 484 U.S. at 386 (certified question answered sub nom. *Commonwealth v. Am. Booksellers Ass'n, Inc.*, 236 Va. 168 (1988)).

Here, each of the Individual Plaintiffs are likely to demonstrate an injury-in-fact through a combination of past and ongoing censorship. Bhattacharya, for instance, is the apparent victim of an ongoing "campaign" of social-media censorship, which indicates that he is likely

to experience future acts of censorship.[671] Similarly, Kulldorff attests to a coordinated federal censorship campaign against the Great Barrington Declaration, which implies future censorship.[672] Kulldorff's ongoing censorship experiences on his personal social-media accounts provide evidence of ongoing harm and support the expectation of imminent future harm.[673] Kheriaty also affirms ongoing and anticipated future injuries, noting that the issue of "shadow banning" his social-media posts has intensified since 2022.[674]

Hoft and Hines present similar accounts of past, ongoing, and anticipated future censorship injuries. Defendants even appear to be currently involved in an ongoing project that encourages and engages in censorship activities specifically targeting Hoft's website.[675] Hines, too, recounts past and ongoing censorship

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[671] *See* [Doc. No. 214-1, ¶787 (an email from Dr. Francis Collins to Dr. Fauci and Cliff Lane which read: "Hi [Dr. Fauci] and Cliff, See https://gbdeclaration.org. This proposal from the three fringe epidemiologists who met with the Secretary seems to be getting a lot of attention — and even a co-signature from Nobel Prize winner Mike Leavitt at Stanford. There needs to be a quick and devastating published take down of its premises. I don't see anything like that online yet — is it underway?"), ¶¶1368-1372 (describing the covert and ongoing censorship campaign against him)]

[672] *See* [Id. at ¶¶1373–1380 (where Kulldorff explains an ongoing campaign of censorship against his personal social-media accounts, including censored tweets, censored posts criticizing mask mandates, removal of LinkedIn posts, and the ongoing permanent suspension of his LinkedIn account)]

[673] [Id.]

[674] [Id. at ¶¶1383-1386]

[675] *See* [Id. at ¶¶1387-1396 (describing the past and ongoing campaign against his website, the Gateway Pundit, which resulted in censorship on Facebook, Twitter, Instagram, and YouTube)]

injuries, stating that her personal Facebook page, as well as the pages of Health Freedom Louisiana and Reopen Louisiana, are constantly at risk of being completely de-platformed.[676] At the time of her declaration, Hines' personal Facebook account was under an ongoing ninety-day restriction. She further asserts, and the evidence supplied in support of the preliminary injunction strongly implies, that these restrictions can be directly traced back to federal officials.

Each of the Private Plaintiffs alleges a combination of past, ongoing, and anticipated future censorship injuries. Their allegations go beyond mere complaints about past grievances. Moreover, they easily satisfy the substantial risk standard. The threat of future censorship is significant, and the history of past censorship provides strong evidence that the threat of further censorship is not illusory or speculative. Plaintiffs' request for an injunction is not solely aimed at addressing the initial imposition of the censorship penalties but rather at preventing any continued maintenance and enforcement of such penalties. Therefore, the Court concludes that the Private Plaintiffs have fulfilled the injury-in-fact requirement of Article III.

Based on the reasons outlined above, the Court determines that both the States and Private Plaintiffs have satisfied the injury-in-fact requirement of Article III.

**ii. Traceabilty**

To establish traceability, or "causation" in this context, a plaintiff must demonstrate a "direct relation between the injury asserted and the injurious conduct

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[676] *See* [Id. at ¶¶1397-1411]

alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). Therefore, courts examining this element of standing must assess the remoteness, if any, between the plaintiff's injury and the defendant's actions. As explained in *Ass'n of Am. Physicians & Surgeons v. Schiff*, the plaintiff must establish that it is "'substantially probable that the challenged acts of the defendant, not of some absent third party' caused or will cause the injury alleged." 518 F. Supp. 3d 505, 513 (D.D.C. 2021), *aff'd sub nom. Ass'n of Am. Physicians & Surgeons, Inc. v. Schiff*, 23 F.4th 1028 (D.C. Cir. 2022) ("AAPS II") (*quoting Fla. Audubon Soc. v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996)).

Plaintiffs argue that they are likely to prove that their injuries are fairly traceable to Defendants' actions of inducing and jointly participating in the social-media companies' viewpoint-based censorship under a theory of "but-for" causation, conspiracy, or aiding and abetting.[677] In support, they cite the above-mentioned examples of switchboarding and other pressure tactics employed by Defendants.[678] In response, Defendants

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[677] [Doc. No. 204, at 67-68]

[678] [Id. at 69-71 (*citing* Doc. No. 214-1, ¶¶57, 64 "(promising the White House that Facebook would censor "often-true" but "sensationalized" content)"; ¶ 73 "(imposing forward limits on non-violative speech on WhatsApp)"; ¶¶ 89-92 "(assuring the White House that Facebook will use a "spectrum of levers" to censor content that "do[es] not violate our Misinformation and Harm policy, including "true but shocking claims or personal anecdotes, or discussing the choice to vaccinate in terms of personal and civil liberties")"; ¶¶ 93-100 "(agreeing to censor Tucker Carlson's content at the White House's behest, even though it did not violate platform policies)", ¶¶ 103-104 "(Twitter deplatforming Alex Berenson at White House pressure)"; ¶ 171 "(Facebook deplatformed the Disinformation Dozen immediately after these comments). Facebook officials

assert that there is no basis upon which this Court can conclude that the social-media platforms made the disputed content-moderation decisions because of government pressure.[679] For the reasons explained below, the Court finds that Plaintiffs are likely to prove that their injuries are fairly traceable to the conduct of the Defendants.

In *Duke Power Co. v. Carolina Envt. Study Grp.*, the United States Supreme Court found that a plaintiff's injury was fairly traceable to a statute under a theory of "but-for" causation. 438 U.S. 59 (1978). The plaintiffs, who were comprised in part of individuals living near the proposed sites for nuclear plants, challenged a statute that limited the aggregate liability for a single nuclear accident under the theory that, but for the passing of the statute, the nuclear plants would not have been constructed. *Id.* at 64–65. The Supreme Court agreed with the district court's finding that there was a "substantial likelihood" that the nuclear plants would have been neither completed nor operated absent the passage of the nuclear-friendly statute. *Id.* at 75.

In *Duke Power Co.*, the defendants essentially argued that the statute was not the "but-for" cause of the injuries claimed by the plaintiffs because if Congress had not passed the statute, the Government would have developed nuclear power independently, and the plaintiffs would have likely suffered the same injuries from government-operated plants as they would have from privately operated

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scrambled to get back into the White House's good graces. Id. ¶¶ 172, 224 (pleading for "de-escalation" and "working together").")]

[679] [Doc. No. 266, at 131-136]

ones. *Id.* In rejecting that argument, the Supreme Court stated:

> Whatever the ultimate accuracy of this speculation, it is not responsive to the simple proposition that private power companies now do in fact operate the nuclear-powered generating plants injuring [the plaintiffs], and that their participation would not have occurred but for the enactment and implementation of the Price-Anderson Act. Nothing in our prior cases requires a party seeking to invoke federal jurisdiction to negate the kind of speculative and hypothetical possibilities suggested in order to demonstrate the likely effectiveness of judicial relief.

*Id.* at 77-78. The Supreme Court's reluctancy to follow the defendants down a rabbit-hole of speculation and "what-ifs" is highly instructive.

Here, Defendants heavily rely upon the premise that social-media companies would have censored Plaintiffs and/or modified their content moderation policies even without any alleged encouragement and coercion from Defendants or other Government officials. This argument is wholly unpersuasive. Unlike previous cases that left ample room to question whether public officials' calls for censorship were fairly traceable to the Government; the instant case paints a full picture.[680] A drastic increase in censorship, deboosting, shadow-banning, and account suspensions directly coincided with Defendants' public calls for censorship and private

[680] *See* [Doc. No. 204, at 41-44 (where this Court distinguished this case from cases that "left gaps" in the pleadings)]

demands for censorship.[681] Specific instances of censorship substantially likely to be the direct result of Government involvement are too numerous to fully detail, but a birds-eye view shows a clear connection between Defendants' actions and Plaintiffs injuries.

The Plaintiffs' theory of but-for causation is easy to follow and demonstrates a high likelihood of success as to establishing Article III traceability. Government officials began publicly threatening social-media companies with adverse legislation as early as 2018.[682] In the wake of COVID-19 and the 2020 election, the threats intensified and became more direct.[683] Around this same time, Defendants began having extensive contact with social-media companies via emails, phone calls, and in-person meetings.[684] This contact, paired with the public threats and tense relations between the Biden administration and social-media companies, seemingly resulted in an efficient report-and-censor relationship

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[681] *See, e.g.*, [Doc. No. 241-1, ¶¶1, 7, 17, 164 (examples of Government officials threatening adverse legislation against social-media companies if they do not increase censorship efforts); ¶¶ 51, 119, 133, 366, 424, 519 (examples of social-media companies, typically following up after an in-person meeting or phone call, ensuring Defendants that they would increase censorship efforts)]

[682] [Doc. No. 214-1, ¶1]

[683] *See, e.g.*, [Id. at ¶ 156 (Psaki reinforcing President Biden's "They're killing people" comment); ¶166 (media outlets reporting tense relations between the Biden administration and social-media companies)]

[684] *See, e.g.*, [Doc. No. 174-1, at 3 (Twitter employees setting up a more streamlined process for censorship requests because the company had been "recently bombarded" with censorship requests from the White House)]

between Defendants and social-media companies.[685] Against this backdrop, it is insincere to describe the likelihood of proving a causal connection between Defendants' actions and Plaintiffs' injuries as too attenuated or purely hypothetical.

The evidence presented thus goes far beyond mere generalizations or conjecture: Plaintiffs have demonstrated that they are likely to prevail and establish a causal and temporal link between Defendants' actions and the social-media companies' censorship decisions. Accordingly, this Court finds that there is a substantial likelihood that Plaintiffs would not have been the victims of viewpoint discrimination but for the coercion and significant encouragement of Defendants towards social-media companies to increase their online censorship efforts.[686]

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[685] *See, e.g.*, [Doc. Nos. 174-1, at 3 (Twitter employees setting up a more streamlined process for censorship requests because the company had been "recently bombarded" with censorship requests from the White House); at 4 (Twitter suspending a Jill Biden parody account within 45 minutes of a White House official requesting twitter to "remove this account immediately"); 214-1, at ¶799 (Drs. Bhattacharya and Kuldorff began experienced extensive censorship on social media shortly after Dr. Collins emailed Dr. Fauci seeking a "quick and devastating take down" of the GBD.); ¶1081 (Twitter removing tweets within two minutes of Scully reporting them for censorship.); ¶¶1266-1365 (Explaining how the Virality Project targeted Hines and health-freedom groups.); 214-9, at 2-3 (Twitter ensuring the White House that it would increase censorship of "misleading information" following a meeting between White House officials and Twitter employees.); etc.]

[686] Because this Court finds that Plaintiffs have successfully shown a likelihood of success under a "but for" theory of causation, it will not address Plaintiffs arguments as to other theories of causation. However, the Court does note that caselaw from outside of the Fifth

For the reasons stated above, as well as those set forth in this Court's previous ruling on the Motion to Dismiss,[687] the Court finds that Plaintiffs are likely to succeed in establishing the traceability element of Article III standing.

**iii. Redressability**

The redressability element of the standing analysis requires that the alleged injury is "likely to be redressed by a favorable decision." *Lujan*, 504 U.S. at 560-61. "To determine whether an injury is redressable, a court will consider the relationship between 'the judicial relief requested' and the 'injury' suffered." *California v. Texas*, 141 S. Ct. 2104, 2115, 210 L. Ed. 2d 230 (2021) (*quoting Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984), *abrogated by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014)). Additionally, courts typically find that where an injury is traceable to a defendant's conduct, it is usually redressable as well. *See, e.g., Scenic Am., Inc. v. United States Dep't of Transportation*, 836 F.3d 42, 54 (D.C. Cir. 2016) ("[C]ausation and redressability are closely related, and can be viewed as two facets of a single requirement."); *Toll Bros. v. Twp. of Readington*, 555 F.3d 131, 142 (3d Cir. 2009) ("Redressability . . . is closely related to traceability, and the two prongs often overlap."); *El Paso Cnty. v. Trump*, 408 F. Supp. 3d 840, 852 (W.D. Tex. 2019).

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Circuit supports a more lenient theory of causation for purposes of establishing traceability. *See, e.g., Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65, 71 (2d Cir. 2019); *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 714 (6th Cir. 2015).

[687] [Doc. No. 204, at 67-71]

Plaintiffs argue that they are likely to prove that a favorable decision would redress their injuries because they have provided ample evidence that their injuries are imminent and ongoing.[688] In response, Defendants contend that any threat of future injury is merely speculative because Plaintiffs rely on dated declarations and focus on long-past conduct of Defendants and social-media companies.[689] For the reasons explained below, the Court finds that Plaintiffs are likely to prove that their injuries would be redressed by a favorable decision.

As this Court previously noted,[690] a plaintiff's standing is evaluated at the time of filing of the initial complaint in which they joined. *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004); *Davis v. F.E.C.*, 554 F.3d 724, 734 (2008); *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1153 (10th Cir. 2013). The State Plaintiffs filed suit on May 5, 2022,[691] and the individual Plaintiffs joined on August 2, 2022.[692] Both groups are likely to prove that threat of future injury is more than merely speculative.

Plaintiff States have produced sufficient evidence to demonstrate a likelihood of proving ongoing injuries as of the time the Complaint was filed. For instance, on June 13, 2023, Flaherty still wanted to "get a sense of what [Facebook was] planning" and denied the company's request for permission to stop submitting its biweekly "Covid Insights Report" to the White House.[693] Specifically,

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[688] [Doc. No. 214, at 71-74]

[689] [Doc. No. 266, at 152-157]

[690] [Doc. No. 204, at 62-65]

[691] [Doc. No. 1]

[692] [Doc. No. 45]

[693] [Doc. No. 214-1, at ¶425]

Flaherty wanted to monitor Facebook's suppression of COVID-19 misinformation "as we start to ramp up [vaccines for children under the age of five]."[694] The CDC also remained in collaboration with Facebook in June of 2022 and even delayed implementing policy changes "until [it got] the final word from [the CDC]."[695] After coordinating with the CDC and White House, Facebook informed the White House of its new and government-approved policy, stating: "As of today, [June 22, 2022], all COVID-19 vaccine related misinformation and harm policies on Facebook and Instagram apply to people 6 months or older."[696]

Likewise, the individual Plaintiffs are likely to demonstrate that their injuries were imminent and ongoing as of August 2, 2022. Evidence obtained thus far indicates that Defendants have plans to continue the alleged censorship activities. For example, preliminary discovery revealed CISA's expanding efforts in combating misinformation, with a focus on the 2022 elections.[697] As of August 12, 2022, Easterly was directing the "mission of Rumor Control" for the 2022 midterm elections,[698] and CISA candidly reported to be "bee[fing] up [its] efforts to fight falsehoods[]" in preparation for the 2024 election cycle.[699] Chan of the FBI also testified at his deposition that online disinformation continues to be

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[694] [Id.]

[695] [Doc. Nos. 71-7, at 6; 214-1, ¶424]

[696] [Doc. Nos. 71-7, at 6; 71-3, at 5; 214-1, ¶¶424-425]

[697] [Doc. No. 71-8, at 2; Doc. 86-7, at 14]

[698] [Doc. No. 86-7, at 14]

[699] [Doc. No. 214-1, at ¶1106 (*see also* [Doc. No. 71-8, at 2 (CISA "wants to ensure that it is set up to extract lessons learned from 2022 and apply them to the agency's work in 2024."]

discussed between the federal agencies and social-media companies at the USG Industry meetings, and Chan assumes that this will continue through the 2024 election cycle.[700] All of this suggests that Plaintiffs are likely to prove that risk of future censorship injuries is more than merely speculative. Additionally, past decisions to suppress speech result in ongoing injury as long as the speech remains suppressed, and the past censorship experienced by individual Plaintiffs continues to inhibit their speech in the present. These injuries are also affecting the rights of the Plaintiffs' audience members, including those in Plaintiff States, who have the First Amendment right to receive information free from Government interference.

Accordingly, and for the reasons stated above, the Court finds that Plaintiffs are likely to prove that a favorable decision would redress their injuries because those injuries are ongoing and substantially likely to reoccur.

**iv. Recent United States Supreme Court cases of *Texas* and *Haaland***

Defendants cite to two recent cases from the Supreme Court of the United States which they claim undermine this Court's previous ruling about the Plaintiff States' likelihood of proving Article III standing.

First, Defendants argue that United *States v. Texas*, No. 22-58, 2023 WL 4139000 (U.S. June 23, 2023), undermines the States' Article III standing. In *Texas*, Texas and Louisiana sued the Department of Homeland Security (the "Department"), as well as other federal agencies, claiming that the recently promulgated "Guidelines for the Enforcement of Civil Immigration

[700] [Id. at ¶ 866]

Law" contravened two federal statutes. *Id.* at *2. The Supreme Court held that the states lacked Article III standing because "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution." The Court further noted that the case was "categorically different" from other standing decisions "because it implicates only one discrete aspect of the executive power—namely, the Executive Branch's traditional discretion over whether to take enforcement actions against violators of federal law." *Id.* at *2, *8 (citations omitted).

Here, the Plaintiff States are not asserting a theory that the Defendants failed to act in conformity with the Constitution. To the contrary, the Plaintiff States assert that Defendants have affirmatively violated their First Amendment right to free speech. The Plaintiff States allege and (as extensively detailed above) are likely to prove that the Defendants caused direct injury to the Plaintiff States by significantly encouraging and/or coercing social-media companies to censor posts made on social-media. Further, as noted in this Court's previous ruling, the Plaintiff States are likely to have Article III standing because a significant portion of the Plaintiff States' population has been prevented from engaging with the posts censored by the Defendants. The Supreme Court noted that "when the Executive Branch elects not to arrest or prosecute, it does not exercise coercive power over an individual's liberty or property, and thus does not infringe upon interests that courts are often called upon to protect." *Id.* at *5. Here, federal officials allegedly did exercise coercive power, and the Plaintiffs are likely to prevail on their claim that the Defendants violated the First Amendment rights of the

Plaintiff States, their citizens, and the Individual Plaintiffs.

Defendants contend that the Supreme Court in Texas narrowed the application of special solicitude afforded to states because the Supreme Court noted that the standing analysis in *Massachusetts* "d[id] not control" because "[t]he issue there involved a challenge to the denial of a statutorily authorized petition for rulemaking," rather than the exercise of enforcement discretion. *Id.* at *8 n.6. This Court disagrees with Defendants on that point. As noted by Plaintiffs, the majority opinion in Texas does not mention special solicitude. Further, this Court noted in its previous analysis of standing that the Plaintiff States could satisfy Article III's standing requirements without special solicitude. Therefore, even to the extent this Court " leaves that idea on the shelf," as suggested in Justice Gorsuch's concurrence, the Court nonetheless finds that the Plaintiff States are likely to prove Article III standing.

Defendants also argue that the Supreme Court's recent ruling in *Haaland v. Brackeen*, No. 21-376, 2023 WL 4002951 (U.S. June 15, 2023), undermines the Plaintiff States' Article III standing. In *Haaland*, the Supreme Court ruled that Texas did not possess standing to challenge the placement provisions of the Indian Child Welfare Act, which prioritizes Indian families in custody disputes involving Indian children. *Id.* at *19. The Supreme Court reasoned that the states in Texas could not "assert equal protection claims on behalf of its citizens because '[a] State does not have standing as *parens patriae* to bring an action against the Federal Government.'" *Id.* (*quoting Snapp*, 458 U.S. at 610 n.16)). The Defendants argue that this statement precludes

*parens patriae* standing in the present case.[701] However, in its brief discussion regarding *parens patriae* standing, the *Haaland* Court quoted footnote 16 from *Snapp*, which, in turn, reiterated the "Mellon bar." *Haaland*, 2023 WL 4002951, at *19; *Snapp*, 458 U.S. at 610 n.16 (*quoting Massachusetts v*. 262 U.S. at 485-86.

Plaintiffs correctly note that, although both cases employ broad language, neither *Haaland* nor *Snapp* elaborate on the extent of the "Mellon bar." Moreover, the Supreme Court has clarified in other instances *that parens patriae* suits are permitted against the federal government outside the scope of the Mellon bar. *See Massachusetts v. EPA*, 549 U.S. at 520 n.17, (explaining the "critical difference" between barred *parens patriae* suits by Mellon and allowed *parens patriae* suits against the federal government).

Consistent with *Massachusetts v. EPA*, this Court has previously determined that the Mellon bar applies to "third-party *parens patriae* suits," but not to "quasi-sovereign-interest suits."[702] In *Haaland*, Texas presented a "third-party *parens patriae* suit," as opposed to a "quasi-sovereign-interest suit," as it asserted the equal protection rights of only a small minority of its population (*i.e.*, non-Indian foster or adoptive parents seeking to foster or adopt Indian children against the objections of relevant Indian tribes), which clearly did not qualify as a quasi-sovereign interest. *See Haaland*, 2023 WL 4002951, at *19 & n.11). Here, however, Louisiana and Missouri advocate for the rights of a significant portion of their populations, specifically the hundreds of thousands

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[701] [Doc. 289, at 2].

[702] [Doc. 224, at 215–26], *quoting Kentucky v. Biden*, 23 F.4th 585, 598 (6th Cir. 2022).

or millions of citizens who are potential audience members affected by federal social-media speech suppression.

Furthermore, when the *Haaland* Court determined that Texas lacked third-party standing, it stressed that Texas did not have either a "'concrete injury' to the State" or any hindrance to the third party's ability to protect its own interests. *Id.* at *19 n.11 (quoting *Georgia v. McCollum*, 505 U.S. 42, 55-56 (1992)). Here, by contrast, the Plaintiff States have demonstrated a likelihood of succeeding on their claims that they have suffered, and likely will continue to suffer, numerous concrete injuries resulting from federal social-media censorship.[703] Additionally, the ability of the third parties in this case to protect their own interests is hindered because the diffuse First Amendment injury experienced by each individual audience member in Louisiana and Missouri lacks sufficient economic impact to encourage litigation through numerous individual lawsuits. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963).

Defendants further contend that Haaland rejected Texas's argument regarding the ICWA's placement provisions requiring Texas to compromise its commitment to being impartial in child-custody proceedings.[704] However, the Supreme Court rejected this argument for a specific reason: "Were it otherwise, a State would always have standing to bring constitutional challenges when it is complicit in enforcing federal law." *Haaland*, 2023 WL 4002951, at *19. By contrast, Missouri and Louisiana do not assert that the federal government

[703] *See, e.g.*, [Doc. 214-1, ¶¶ 1427-1442]

[704] [Doc. 289, at 3] *quoting Haaland*, 2023 WL 4002951, at *19.

mandates their complicity in enforcing federal social-media-censorship regimes. The Plaintiff States instead assert that they, along with a substantial portion of their populations, have been injured by Defendants' actions.

Neither *Texas* nor *Haaland* undermine this Court's previous ruling that the Plaintiff States have Article III standing to sue Defendants in the instant case. Further, the evidence produced thus far through limited discovery demonstrates that Plaintiffs are likely to succeed on their First Amendment claims. Accordingly, the Court finds that Plaintiffs are likely to prove all elements of Article III standing, and therefore, are likely to establish that this Court has jurisdiction.

**2. Irreparable Harm**

The second requirement for a Preliminary Injunction is a showing of irreparable injury: plaintiffs must demonstrate "a substantial threat of irreparable injury" if the injunction is not issued. *Texas*, 809 F.3d at 150. For injury to be "irreparable," plaintiffs need only show it cannot be undone through monetary remedies. *Burgess v. Fed. Deposit Inc., Corp.*, 871 F.3d 297, 304 (5th Cir. 2017). Deprivation of a procedural right to protect a party's concrete interests is irreparable injury. *Texas*, 933 F.3d at 447. Additionally, violation of a First Amendment constitutional right, even for a short period of time, is always irreparable injury. *Elrod*, 427 U.S. at 373.

Plaintiffs argue in their memorandum that the First Amendment violations are continuing and/or that there is a substantial risk that future harm is likely to occur. In contrast, Defendants argue that Plaintiffs are unable to show imminent irreparable harm because the alleged

conduct occurred in the past, is not presently occurring, and is unlikely to occur in the future. Defendants argue Plaintiffs rely upon actions that occurred approximately one year ago and that it cannot be remedied by any prospective injunctive relief. Further, Defendants argue that there is no "imminent harm" because the COVID-19 pandemic is over and because the elections where the alleged conduct occurred are also over.

The Court finds that Plaintiffs have demonstrated a "significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm." *Humana, Inc., v. Jackson*, 804 F.2d 1390, 1394 (5th Cir. 1986). To demonstrate irreparable harm at the preliminary injunction stage, Plaintiffs must adduce evidence showing that the irreparable injury is likely to occur during the pendency of the litigation. *Justin Indus. Inc., v. Choctaw Secs., L.P.*, 920 F.2d 262, 268 n. 7 (5th Cir. 1990). This Plaintiffs have done.

Defendants argue that the alleged suppression of social-media content occurred in response to the COVID-19 pandemic and attacks on election infrastructure, and therefore, the alleged conduct is no longer occurring. Defendants point out that the alleged conduct occurred between one to three years ago. However, the information submitted by Plaintiffs was at least partially based on preliminary injunction-related discovery [705] and third-party subpoena requests that were submitted to five social-media platforms on or about July 19,

[705] [Doc. No. 34]

2022.[706] The original Complaint[707] was filed on May 5, 2022, and most of the responses to preliminary injunction-related discovery provided answers to discovery requests that occurred before the Complaint was filed. Since completion of preliminary-injunction related discovery took over six months, most, if not all, of the information obtained would be at least one year old.

Further, the Defendants' decision to stop some of the alleged conduct does not make it any less relevant. A defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the alleged wrongful behavior could not reasonably be expected to recur. *Already, LLC v. Nike*, 568 U.S. 85, 91 (2013). Defendants have not yet met this burden here.

Defendants also argue that, due to the delay in the Plaintiffs seeking relief,[708] the Plaintiffs have not shown "due diligence" in seeking relief. However, this Court finds that Plaintiffs have exercised due diligence. This is a complicated case that required a great deal of discovery in order to obtain the necessary evidence to pursue this case. Although it has taken several months to obtain this evidence, it certainly was not the fault of the Plaintiffs. Most of the information Plaintiffs needed was unobtainable except through discovery.

Defendants further argue the risk that Plaintiffs will sustain injuries in the future is speculative and depends upon the action of the social-media platforms. Defendants

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[706] [Doc. No. 37]

[707] [Doc. No. 1]

[708] Plaintiffs allege actions occurring as far back as 2020.

allege the Plaintiffs have therefore not shown imminent harm by any of the Defendants.

In *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("*SBA List*"), the Supreme Court held that, for purposes of an Article III injury-in-fact, an allegation of future injury may suffice if there is "a 'substantial risk' that the harm will occur." (*quoting Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408, (2013)). In SBA List, a petitioner challenged a statute that prohibited making certain false statements during the course of a political campaign. *Id.* at 151-52. In deciding whether the pre-enforcement challenge was justiciable—and in particular, whether it alleged a sufficiently imminent injury for purposes of Article III—the Court noted that pre-enforcement review is warranted under circumstances that render the threatened enforcement "sufficiently imminent." *Id.* at 159. Specifically, the Court noted that past enforcement is "good evidence that the threat of enforcement is not 'chimerical.'" *Id.* at 164 (*quoting Steffel v. Thompson*, 415 U.S. 452, 459 (1974)).

Similarly, in *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979), the Supreme Court held that a complaint alleges an Article III injury-in-fact where fear of future injury is not "imaginary or wholly speculative." In *Babbitt*, the Supreme Court considered a pre-enforcement challenge to a statute that made it an unfair labor practice to encourage consumers to boycott using "dishonest, untruthful, and deceptive publicity." *Id.* at 301. Because the plaintiffs had engaged in consumer publicity campaigns in the past and alleged an intention to continue those campaigns in the future, the Court held that their challenge to the consumer publicity provision presented an Article III case or controversy. *Id.* at 302; *see also Virginia v. Am. Booksellers*

*Ass'n, Inc.*, 484 U.S. 383, 386 (1988) (where the Supreme Court held that booksellers could seek pre-enforcement review of a law making it a crime to "knowingly display for commercial purpose" material that is "harmful to juveniles," as defined by the statute).

Therefore, the question is whether Plaintiffs have alleged a "substantial risk" that harm may occur, which is not "imaginary or wholly speculative." This Court finds that the alleged past actions of Defendants show a substantial risk of harm that is not imaginary or speculative. *SBA List*, 573 U. S. at 164. Defendants apparently continue to have meetings with social-media companies and other contacts.[709]

Although the COVID-19 pandemic is no longer an emergency, it is not imaginary or speculative to believe that in the event of any other real or perceived emergency event, the Defendants would once again use their power over social-media companies to suppress alternative views. And it is certainly not imaginary or speculative to predict that Defendants could use their power over millions of people to suppress alternative views or moderate content they do not agree with in the upcoming 2024 national election. At oral arguments Defendants were not able to state that the "switchboarding" and other election activities of the CISA Defendants and the State Department Defendants would not resume prior to the upcoming 2024 election;[710] in fact, Chan testified post 2020, "we've never stopped."[711] Notably, a draft copy of the DHS's "Quadrennial Homeland

[709] [Doc. No. 204-1 at 40]

[710] [Doc. No. 208 at 122]

[711] [Chan depo. at 8-9]

Security Review," which outlines the department's strategy and priorities in upcoming years, states that the department plans to target "inaccurate information" on a wide range of topics, including the origins of the COVID-19 pandemic, the efficacy of COVID-19 vaccines, racial justice, the U.S. withdrawal from Afghanistan, and the return of U.S. Support of Ukraine.[712]

The Plaintiffs are likely to succeed on the merits in their claims that there is a substantial risk that harm will occur, that is not imaginary or speculative. Plaintiffs have shown that not only have the Defendants shown willingness to coerce and/or to give significant encouragement to social-media platforms to suppress free speech with regard to the COVID-19 pandemic and national elections, they have also shown a willingness to do it with regard to other issues, such as gas prices,[713] parody speech,[714] calling the President a liar,[715] climate change,[716] gender,[717] and abortion.[718] On June 14, 2022, White House National Climate Advisor Gina McCarthy, at an Axios event entitled, "A Conversation on Battling Disinformation," was quoted as saying, "We have to get together; we have to get better at communicating, and frankly, the tech companies have to stop allowing

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[712] [Doc. No. 209-23 at 4]

[713] [Doc. No. 212-3 at 65-66, ¶ 211]

[714] [Id. at 58-60, ¶¶ 180-188]

[715] [Id. at 61, ¶ 190]

[716] [Id. at 63-64, ¶¶ 200-203]

[717] [Id. at 64-64, ¶¶ 204-208]

[718] [Id. at 65, ¶¶ 209-210]

specific individuals over and over to spread disinformation."[719]

The Complaint (and its amendments) shows numerous allegations of apparent future harm. Plaintiff Bhattacharya alleges ongoing social-media censorship.[720] Plaintiff Kulldorff alleges an ongoing campaign of censorship against the GBD and his personal social-media accounts.[721] Plaintiff Kheriaty also alleges ongoing and expected future censorship,[722] noting "shadow-banning" his social-media account is increasing and has intensified since 2022.[723] Plaintiffs Hoft and Hines also allege ongoing and expected future censorship injuries.[724] It is not imaginary or speculative that the Defendants will continue to use this power. It is likely.

The Court finds that Plaintiffs are likely to succeed on their claim that they have shown irreparable injury sufficient to satisfy the standard for the issuance of a preliminary injunction.

**3. Equitable Factors and Public Interest**

Thus far, Plaintiffs have satisfied the first two elements to obtain a preliminary injunction. The final two elements they must satisfy are that the threatened harm outweighs any harm that may result to the Federal Defendants and that the injunction will not undermine the public interest. *Valley v. Rapides Par. Sch.*

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[719] [Doc. No. 214-15]

[720] [Doc. No. 45-3, ¶¶ 15-33]

[721] [Doc. No. 45-4, ¶¶ 14-16]

[722] [Doc. No. 45-7, ¶¶ 12-18]

[723] [Id. at ¶¶ 15]

[724] [Doc. No. 45-7 at ¶¶ 12-18]; [Doc. No. 84 at ¶¶ 401-420]; [Doc. No. 45-12 at ¶ 4, 12]

*Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997). These two factors overlap considerably. *Texas*, 809 F.3d at 187. In weighing equities, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The public interest factor requires the court to consider what public interests may be served by granting or denying a preliminary injunction. S*ierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 997-98 (8th Cir. 2011).

Defendants maintain their interest in being able to report misinformation and warn social-media companies of foreign actors' misinformation campaigns outweighs the Plaintiffs' interest in the right of free speech. This Court disagrees and finds the balance of equities and the public interest strongly favors the issuance of a preliminary injunction. The public interest is served by maintaining the constitutional structure and the First Amendment free speech rights of the Plaintiffs. The right of free speech is a fundamental constitutional right that is vital to the freedom of our nation, and Plaintiffs have produced evidence of a massive effort by Defendants, from the White House to federal agencies, to suppress speech based on its content. Defendants' alleged suppression has potentially resulted in millions of free speech violations. Plaintiffs' free speech rights thus far outweighs the rights of Defendants, and thus, Plaintiffs satisfy the final elements needed to show entitlement to a preliminary injunction.

**4. Injunction Specificity**

Lastly, Defendants argue that Plaintiff's proposed preliminary injunction lacks the specificity required by

Federal Rule of Civil Procedure 65 and is impermissibly overbroad. Rule 65(d)(1) requires an injunction to "state its terms specifically" and to "describe in reasonable detail the acts or acts restrained or required." The specificity provisions of Rule 65(d) are designed to prevent uncertainty and confusion on the part of those faced with injunction orders and to avoid possible contempt based upon a decree too vague to be understood. *Atiyeh v. Capps*, 449 U.S. 1312, 1316–17 (1981). An injunction must be narrowly tailored to remedy the specific action that gives rise to the injunction. *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016).

This Court believes that an injunction can be narrowly tailored to only affect prohibited activities, while not prohibiting government speech or agency functions. Just because the injunction may be difficult to tailor is not an excuse to allow potential First Amendment violations to continue. Thus, the Court is not persuaded by Defendants arguments here.

Because Plaintiffs have met all the elements necessary to show entitlement to a preliminary injunction, this Court shall issue such injunction against the Defendants described above.

**IV. CLASS CERTIFICATION**

In their Third Amended Complaint, the Individual Plaintiffs purport to bring a class action "on behalf of themselves and two classes of other persons similarly situated to them."[725] Plaintiffs go on to describe the two proposed classes, as well as state generally that each requirement for class certification is met.[726] Defendants

[725] [Doc. No. 268 at ¶489].

[726] [Id. at ¶¶490–501].

opposed Plaintiffs' request for class certification in their Response to Plaintiffs' Motion for Class Certification and for Leave to File Third Amended Complaint.[727]

The Court is obligated to analyze whether this litigation should proceed as a class action. *See Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996) ("A district court must conduct a rigorous analysis of the rule 23 prerequisites before certifying a class."). Pursuant to this obligation, the Court questioned counsel at the hearing on the preliminary injunction as to the basis for class certification. As explained in further detail below, the Court finds that Plaintiffs failed to meet their burden of proof, and class certification is improper here.

**A. Class Certification Standard under FRCP 23**

"The decision to certify is within the broad discretion of the court, but that discretion must be exercised within the framework of rule 23." *Id.* at 740. "The party seeking certification bears the burden of proof." *Id.*

Federal Rule of Civil Procedure 23(a) lays out the four key prerequisites for a class action. It states:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
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> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;

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[727] [Doc. No. 244].

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

In addition to the enumerated requirements above, Plaintiffs must propose a class that has an objective and precise definition. "The existence of an ascertainable class of persons to be represented by the proposed class representative is an implied prerequisite of Federal Rule of Civil Procedure 23." *John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007).

"In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Here, Plaintiffs specifically bring this class action under Rule 23(b)(2), which allows for maintenance of a class action where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b0) (2). "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of Rule 23(b)(2) class actions. *Amchem Prod., Inc.*, 521 U.S. at 614.

Notably, the Fifth Circuit recently held that a standing analysis is necessary before engaging in the class certification analysis. *Angell v. GEICO Advantage Ins. Co.*, 67 F.4th 727, 733 (5th Cir. 2023). However, because

this Court has already completed multiple standing analyses in this matter, and because the Court ultimately finds that the class should not be certified, the Court will not address which standing test should be applied to this specific issue.

**B. Analysis**

In order to certify this matter as a class action, the Court must find that Plaintiffs have established each element of Rule 23(a). *See In re Monumental Life Ins. Co.*, 365 F.3d 408, 414-15 (5th Cir. 2004) ("All classes must satisfy the four baseline requirements of rule 23(a): numerosity, commonality, typicality, and adequacy of representation."). The Court finds that Plaintiffs failed to meet their burden, and therefore, the Court will not certify the class action.

**1. Class Definition**

Plaintiffs propose two classes to proceed with their litigation as a class action. First, Plaintiffs define Class 1 as follows:

> The class of social-media users who have engaged or will engage in, or who follow, subscribe to, are friends with, or are otherwise connected to the accounts of users who have engaged or will engage in, speech on any social-media company's platform(s) that has been or will be removed; labelled; used as a basis for suspending, deplatforming, issuing strike(s) against, demonetizing, or taking other adverse action against the speaker; downranked; deboosted; concealed; or otherwise suppressed by the platform after Defendants and/or those acting in

> concert with them flag or flagged the speech to the platform(s) for suppression.[728]

Next, Plaintiffs define Class 2 as follows:

> The class of social-media users who have engaged in or will engage in, or who follow, subscribe to, are friends with, or are otherwise connected to the accounts of users who have engaged in or will engage in, speech on any social-media company's platform(s) that has been or will be removed; labelled; used as a basis for suspending, deplatforming, issuing strike(s) against, demonetizing, or taking other adverse action against the speaker; downranked; deboosted; concealed; or otherwise suppressed by the company pursuant to any change to the company's policies or enforcement practices that Defendants and/or those acting in concert with them have induced or will induce the company to make.[729]

"It is elementary that in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable." *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970). The Court finds that the class definitions provided by Plaintiffs are neither "adequately defined" nor "clearly ascertainable." Simply put, there is no way to tell just how many people or what type of person would fit into these proposed classes. The proposed class definitions are so broad that almost every person in America, and perhaps in many other countries as well, could fit into the classes. The Court agrees with Defendants that the language used is simply too vague to maintain a class

[728] [Doc. No. 268 at ¶490]

[729] [Id. at ¶491]

action using these definitions.[730] Where a class definition is, as here, "too broad and ill-defined" to be practicable, the class should not be certified. *See Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, No. 22-10145, 2023 WL 4073826, at *14 (5th Cir. June 20, 2023).

Further, no evidence was produced at the hearing on the motion for preliminary injunction that "would have assisted the district court in more accurately delineating membership in a workable class." *DeBremaecker*, 433 F.2d at 734. The Court questioned Plaintiffs' counsel about the issues with the proposed class definitions, but counsel was unable to provide a solution that would make class certification feasible here. Counsel for Plaintiffs stated that "the class definition is sufficiently precise," but the Court fails to see how that is so, and counsel did not explain any further.[731] Counsel for Plaintiffs focused on the fact that the proposed class action falls under Rule 23(b)(2), providing for broad injunctive relief, and therefore, counsel argued that the Court would not need to "figure out every human being in the United States of American [sic] who was actually adversely affected."[732] Even if the Court does not need to identify every potential class member individually, the Court still needs to be able to state the practical bounds of the class definition—something it cannot do with the loose wording given by Plaintiffs.

Without a feasible class definition, the Court cannot certify Plaintiffs' proposed class action. Out of an

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[730] [Doc. No. 244 at 7]

[731] Hearing Transcript at 181, line 15.

[732] [Id. at lines 16-18]

abundance of caution, however, the Court will address the other enumerated prerequisites of Rule 23(a) below.

**2. Numerosity**

The numerosity requirement mandates that a class be "so large that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Although the number of members in a proposed class is not determinative of whether joinder is impracticable," classes with a significantly high number of potential members easily satisfy this requirement. *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (finding class of 100 to 150 members satisfied the numerosity requirement). Other factors, such as "the geographical dispersion of the class" and "the nature of the action," may also support a finding that the numerosity element has been met. *Id.* at 624-25.

Here, Plaintiffs state that both Class 1 and Class 2 are "sufficiently numerous that joinder of all members is impracticable."[733] Plaintiffs reference the "content of hundreds of users with, collectively, hundreds of thousands or millions of followers" who were affected by Defendants' alleged censorship.[734] Thus, based on a surface-level look at potential class members, it appears that the numerosity requirement would be satisfied because the class members' numbers reach at least into the thousands, if not the millions.

However, the numerosity requirement merely serves to highlight the same issue described above: the potential class is simply too broad to even begin to fathom who would fit into the class. Joinder of all the

[733] [Doc. No. 268 at ¶¶492-93]

[734] [Id. at ¶¶492]

potential class members is more than impractical—it is impossible. Thus, while the sheer number of potential class members may tend towards class certification, the Court is only further convinced by Plaintiffs' inability to estimate the vast number of class members that certification is improper here.

**3. Commonality**

The commonality requirement ensures that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The test for commonality is not demanding and is met 'where there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.'" *Mullen*, 186 F.3d at 625 (*quoting Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997)).

Here, Plaintiffs state that both classes share common questions of law or fact, including "the question whether the government is responsible for a social-media company's suppression of content that the government flags to the company for suppression" for Class 1 and "the question whether the government is responsible for a social-media company's suppression of content pursuant to a policy or enforcement practice that the government induced the company to adopt or enforce" for Class 2.[735] These questions of law are broadly worded and may not properly characterize the specific issues being argued in this case.

At the hearing for the preliminary injunction, Plaintiffs' counsel clarified that the alleged campaign of censorship "involve[es] a whole host of common questions

[735] [Id. at ¶¶494-95]

whose resolution are going to determine whether or not there's a First Amendment violation."[736] The Court agrees that there is certainly a common question of First Amendment law that impacts each member of the proposed classes, but notes Defendants' well-reasoned argument that Plaintiffs may be attempting to aggregate too many questions into one class action.[737] The difficulty of providing "a single, class-wide answer," as highlighted by Defendants, further proves to this Court that class certification is likely not the best way to proceed with this litigation.[738] Although commonality is a fairly low bar, the Court is not convinced Plaintiffs have met their burden on this element of Rule 23(a).

**4. Typicality**

The typicality requirement mandates that named parties' claims or defenses "are typical . . . of the class." Fed. R. Civ. P. 23(a)(3). "Like commonality, the test for typicality is not demanding." *Mullen*, 186 F.3d at 625. It "focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent." *Lightbourn*, 118 F.3d at 426.

Here, Plaintiffs assert that the Individual Plaintiffs' claims are typical of both Class 1 and Class 2 members' claims because they "all arise from the same course of conduct by Defendants…namely, the theory that such conduct violates the First Amendment."[739] Further, Plaintiffs state that the Individual Plaintiffs "are not

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[736] Hearing Transcript, at 183, lines 19-21.

[737] [Doc. No. 244 at 10]

[738] [Id. at 13]

[739] [Doc. No. 268 at ¶496-97]

subject to any affirmative defenses that are inapplicable to the rest of the class and likely to become a major focus of the case."[740]

While the general claims of each potential class member would arise from the Defendants' alleged First Amendment violations, the Individual Plaintiffs have not explained how their claims are typical of each proposed class specifically. For example, Class 2 includes those social-media users who "follow, subscribe to, are friends with, or are otherwise connected to the accounts of users" subject to censorship.[741] While the Individual Plaintiffs detail at length their own censorship, they do not clarify how they have been harmed by the censorship of other users. Again, this confusion highlights the myriad issues with this proposed class action as a result of the ill-defined and over-broad class definitions. The Court cannot make a finding that the Individual Plaintiffs' claims are typical of all class members' claims, simply because the Court cannot identify who would fit in the proposed class. Merely stating that the Rule 23(a) requirements have been met is not enough to persuade this Court that the class should be certified as stated.

**5. Adequate Representation**

The final element of a class certification analysis requires that the class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Differences between named plaintiffs and class members render the named plaintiffs' inadequate representatives only if those differences create conflicts

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[740] [Id.]

[741] [Id. at ¶491]

between the named plaintiffs' interests and the class members' interests." *Mullen*, 186 F.3d at 626.

On this element, Plaintiffs state that they "are willing and able to take an active role in the case, control the course of litigation, and protect the interest of absentees in both classes."[742] Plaintiff also state that "[n]o conflicts of interest currently exist or are likely to develop" between themselves and the absentees.[743] This element is likely met, without evidence to the contrary.

However, without a working class definition, and with the issues concerning the other Rule 23(a) elements discussed above, the Court finds class certification inappropriate here, regardless of the adequacy of the Individual Plaintiffs' representation. Thus, for the foregoing reasons, the Court declines to certify this matter as a class action.

**V. CONCLUSION**

> Once a government is committed to the principle of silencing the voice of opposition, it has only one place to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.
>
> Harry S. Truman

The Plaintiffs are likely to succeed on the merits in establishing that the Government has used its power to silence the opposition. Opposition to COVID-19 vaccines; opposition to COVID-19 masking and lockdowns; opposition to the lab-leak theory of COVID-19;

[742] [Id. at ¶498]

[743] [Id.]

opposition to the validity of the 2020 election; opposition to President Biden's policies; statements that the Hunter Biden laptop story was true; and opposition to policies of the government officials in power. All were suppressed. It is quite telling that each example or category of suppressed speech was conservative in nature. This targeted suppression of conservative ideas is a perfect example of viewpoint discrimination of political speech. American citizens have the right to engage in free debate about the significant issues affecting the country.

Although this case is still relatively young, and at this stage the Court is only examining it in terms of Plaintiffs' likelihood of success on the merits, the evidence produced thus far depicts an almost dystopian scenario. During the COVID-19 pandemic, a period perhaps best characterized by widespread doubt and uncertainty, the United States Government seems to have assumed a role similar to an Orwellian "Ministry of Truth."[744]

The Plaintiffs have presented substantial evidence in support of their claims that they were the victims of a far-reaching and widespread censorship campaign. This court finds that they are likely to succeed on the merits of their First Amendment free speech claim against the Defendants. Therefore, a preliminary injunction should issue immediately against the Defendants as set out herein. The Plaintiffs Motion for

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[744] An "Orwellian 'Ministry of Truth'" refers to the concept presented in George Orwell's dystopian novel, '1984.' In the novel, the Ministry of Truth is a governmental institution responsible for altering historical records and disseminating propaganda to manipulate and control public perception.

Preliminary Injunction [Doc. No. 10] is **GRANTED IN PART and DENIED IN PART.**

The Plaintiffs' request to certify this matter as a class action pursuant to Fed. R. Civ. P. Article 23(b)(2) is
**DENIED.**

MONROE, LOUISIANA this 4th day of July 2023.

/s/ TERRY A. DOUGHTY
TERRY A. DOUGHTY,
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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Case No. 3:22-CV-01213

STATE OF MISSOURI, ET AL.
JUDGE TERRY A. DOUGHTY

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*v.*

JOSEPH R BIDEN JR., ET AL.
MAG. JUDGE KAYLA D. MCCLUSKY

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Filed: July 4, 2023

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**JUDGMENT**

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For the reasons set forth in the Memorandum Ruling on the Request for Preliminary Injunction,

**IT IS ORDERED, ADJUDGED, AND DECREED** that Plaintiffs' Motion for Preliminary Injunction [Doc. No. 10] is **GRANTED** in part and **DENIED** in part.

**IT IS FURTHER ORDERED** that: the **DEPARTMENT OF HEALTH AND HUMAN SERVICES** ("HHS") and **THE NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES** ("NIAID"), and specifically the following employees of the HHS and NIAID:

**XAVIER BECERRA**,[1] Secretary of HHS; **DR. HUGH AUCHINCLOSS**, Director of NIAID; **YOLANDA BYRD**, HHS Digital Engagement Team; **CHRISTY CHOI**, HHS Office of Communications; **ASHLEY MORSE**, HHS Director of Digital Engagement; **JOSHUA PECK**, HHS Deputy Assistant Secretary, Deputy Digital Director of HHS successor (formerly **JANELL MUHAMMED**); along with their secretaries, directors, administrators and employees; **SURGEON GENERAL VIVEK H. MURTHY, KATHARINE DEALY**, Chief Engagement Officer for the Surgeon General, along with her secretaries, directors, administrators, and employees; the **CENTERS FOR DISEASE CONTROL AND PREVENTION** ("CDC"), and specifically the following employees: **CAROL Y. CRAWFORD**, Chief of the Digital Media Branch of the CDC Division of Public Affairs; **JAY DEMPSEY**, Social-media Team Leader, Digital Media Branch, CDC Division of Public Affairs; **KATE GALATAS**, CDC Deputy Communications Director; **UNITED STATES CENSUS BUREAU** ("Census Bureau"), and specifically the following employees: **JENNIFER SHOPKORN**, Census Bureau Senior Advisor for Communications, Division Chief for the Communications Directorate, and Deputy Director of the Census Bureau Office of Faith Based and Neighborhood Partnerships, along with their secretaries, directors, administrators and employees; the **FEDERAL BUREAU OF INVESTIGATION** ("FBI"), and specifically the following employees: **LAURA DEHMLOW**, Section Chief, FBI Foreign Influence Task Force; **ELVIS M. CHAN**, Supervisory Special Agent of Squad CY-1 in the FBI San

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[1] All individuals named in this Judgment are being sued in their official capacities.

Francisco Division; **THE UNITED STATES DEPARTMENT OF JUSTICE**, along with their secretary, director, administrators, and employees; the following members of the Executive Office of the President of the United States: White House Press Secretary **KARINE JEAN-PIERRE**, Counsel to the President; **STUART F. DELERY**, White House Partnerships Manager; **AISHA SHAH**, Special Assistant to the President; **SARAH BERAN, MINA HSIANG**, Administrator of the United States Digital Service within the Office of Management and Budget; **ALI ZAIDI**, White House National Climate Advisor; White House Senior COVID-19 Advisor successor (formerly **ANDREW SLAVITT**); Deputy Assistant to the President and Director of Digital Strategy successor (formerly **ROB FLAHERTY**); **DORI SALCIDO**, White House COVID-19 Director of Strategic Communications and Engagement; White House Digital Director for the COVID-19 Response Team successor (formerly **CLARKE HUMPHREY**); Deputy Director of Strategic Communications and Engagement of the White House COVID-19 Response Team successor (formerly **BENJAMIN WAKANA**); Deputy Director for Strategic Communications and External Engagement for the White House COVID-19 Response Team successor (formerly **SUBHAN CHEEMA**); White House COVID-19 Supply Coordinator successor (formerly **TIMOTHY W. MANNING**); Chief Medical Advisor to the President, **DR. HUGH AUCHINCLOSS**, along with their directors, administrators and employees; the **CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY** ("**CISA**"), and specifically the following employees: **JEN EASTERLY**, Director of CISA; **KIM WYMAN**, Senior Cybersecurity Advisor and Senior Election Security Leader; **LAUREN PROTENTIS; GEOFFREY**

**HALE**; **ALLISON SNELL**; **BRIAN SCULLY**, Officials of CISA; the **UNITED STATES DEPARTMENT OF HOMELAND SECURITY** ("DHS"), and specifically the following employees: **ALEJANDRO MAYORKAS**, Secretary of DHS; **ROBERT SILVERS**, Under-Secretary of the Office of Strategy, Policy and Plans; **SAMANTHA VINOGRAD**, Senior Counselor for National Security in the Official of the Secretary for DHS, along with their secretary, directors, administrators, and employees; the **UNITED STATES DEPARTMENT OF STATE** ("State Department"), and specifically the following employees: **LEAH BRAY**, Acting Coordinator of the State Department's Global Engagement Center ("GEC"); **ALEX FRISBIE**, State Department Senior Technical Advisor and member of the Technology Engagement Team at the GEC; **DANIEL KIMMAGE**, Acting Coordinator of the GEC, along with their secretary, directors, administrators, and employees **ARE HEREBY ENJOINED AND RESTRAINED** from taking the following actions as to social-media companies:[2]

(1) meeting with social-media companies for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms;[3]

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[2] "Social-media companies" include Facebook/Meta, Twitter, You Tube/Google, WhatsApp, Instagram, WeChat, TikTok, Sina Weibo, QQ, Telegram, Snapchat, Kuaishou, Qzone, Pinterest, Reddit, LinkedIn, Quora, Discord, Twitch, Tumblr, Mastodon, and like companies.

[3] "Protected free speech" means speech that is protected by the Free Speech Clause of the First Amendment to the United States Constitution in accordance with jurisprudence of the United States Supreme Court, Courts of Appeal and District Courts.

(2) specifically flagging content or posts on social-media platforms and/or forwarding such to social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech;

(3) urging, encouraging, pressuring, or inducing in any manner social-media companies to change their guidelines for removing, deleting, suppressing, or reducing content containing protected free speech;

(4) emailing, calling, sending letters, texting, or engaging in any communication of any kind with social-media companies urging, encouraging, pressuring, or inducing in any manner for removal, deletion, suppression, or reduction of content containing protected free speech;

(5) collaborating, coordinating, partnering, switchboarding, and/or jointly working with the Election Integrity Partnership, the Virality Project, the Stanford Internet Observatory, or any like project or group for the purpose of urging, encouraging, pressuring, or inducing in any manner removal, deletion, suppression, or reduction of content posted with social-media companies containing protected free speech;

(6) threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech;

(7) taking any action such as urging, encouraging, pressuring, or inducing in any manner social-media companies to remove, delete, suppress, or reduce posted content protected by the Free Speech Clause of the First Amendment to the United States Constitution;

(8) following up with social-media companies to determine whether the social-media companies removed, deleted, suppressed, or reduced previous social-media postings containing protected free speech;

(9) requesting content reports from social-media companies detailing actions taken to remove, delete, suppress, or reduce content containing protected free speech; and

(10) notifying social-media companies to Be on The Lookout ("BOLO") for postings containing protected free speech.

This Preliminary Injunction precludes said named Defendants, their agents, officers, employees, contractors, and all acting in concert with them from the aforementioned conduct. This Preliminary Injunction also precludes said named Defendants, their agents, officers, employees, and contractors from acting in concert with others who are engaged in said conduct.

**IT IS FURTHER ORDERED** that the following actions are **NOT** prohibited by this Preliminary Injunction:

(1) informing social-media companies of postings involving criminal activity or criminal conspiracies;

(2) contacting and/or notifying social-media companies of national security threats, extortion, or other threats posted on its platform;

(3) contacting and/or notifying social-media companies about criminal efforts to suppress voting, to provide illegal campaign contributions, of cyber-attacks against election infrastructure, or foreign attempts to influence elections;

(4) informing social-media companies of threats that threaten the public safety or security of the United States;

(5) exercising permissible public government speech promoting government policies or views on matters of public concern;

(6) informing social-media companies of postings intending to mislead voters about voting requirements and procedures;

(7) informing or communicating with social-media companies in an effort to detect, prevent, or mitigate malicious cyber activity;

(8) communicating with social-media companies about deleting, removing, suppressing, or reducing posts on social-media platforms that are not protected free speech by the Free Speech Clause in the First Amendment to the United States Constitution.

**IT IS FURTHER ORDERED** that no security is required to be posted by Plaintiffs under Federal Rule of Civil Procedure 65.

**IT IS FURTHER ORDERED** that this Preliminary Injunction Order shall remain in effect pending the final resolution of this case or until further orders issue from this Court, the United States Court of Appeals for the Fifth Circuit, or the Supreme Court of the United States.

**IT IS FURTHER ORDERD** that the Motion for Preliminary Injunction [Doc. No. 10] is **DENIED** as to the following Defendants: U.S. Food and Drug Administration; U. S. Department of Treasury; U.S. Election Assistance Commission; U. S. Department of Commerce

and employees Erica Jefferson, Michael Murray, Wally Adeyemo, Steven Frid, Brad Kimberly, and Kristen Muthig; and Disinformation Governance Board ("DGB") and its Director Nina Jankowicz.

**IT IS FURTHER ORDERED** that no evidentiary hearing is required at this time.

**IT IS FURTHER ORDERED** that Plaintiffs' request for certification of this proceeding as a class action pursuant to Fed. R. Civ. P. Article 23 (b)(2) is **DENIED**.

**THUS, DONE AND SIGNED IN MONROE, LOUISIANA**, this 4th day of July 2023.

/s/ TERRY A. DOUGHTY
TERRY A. DOUGHTY,
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONDROE DIVISION

Civil Action No. 3:22-cv-1213

STATE OF MISSOURI, ET AL. JUDGE TERRY A. DOUGHTY

*v.*

JOSEPH R. BIDEN JR. ET AL.
MAG. JUDGE KAYLA D. MCCLUSKY

Filed: July 10, 2023

**MEMORANDUM RULING ON MOTION TO STAY**

Before the Court is a Motion to Stay Preliminary Injunction Pending Appeal and Alternatively, for Administrate Stay [Doc. No. 297] ("Motion to Stay") filed by Defendants.[1]

[1] Defendants consist of President Joseph R Biden ("President Biden"), Jr, Karine Jean-Pierre ("Jean-Pierre"), Vivek H Murthy ("Murthy"), Xavier Becerra ("Becerra"), Dept of Health & Human Services ("HHS"), Dr. Hugh Auchincloss ("Auchincloss"), National Institute of Allergy & Infectious Diseases ("NIAID"), Centers for Disease Control & Prevention ("CDC"), Alejandro Mayorkas ("Mayorkas"), Dept of Homeland Security ("DHS"), Jen Easterly ("Easterly"), Cybersecurity & Infrastructure Security Agency ("CISA"), Carol Crawford ("Crawford"), United States Census Bureau ("Census Bureau"), U. S. Dept of Commerce ("Commerce"), Robert Silvers ("Silvers"), Samantha Vinograd ("Vinograd"), Ali Zaidi ("Zaidi"), Rob Flaherty ("Flaherty"), Dori Salcido ("Salcido"), Stuart F. Delery ("Delery"), Aisha Shah ("Shah"), Sarah Beran ("Beran"), Mina Hsiang ("Hsiang"), U. S. Dept of Justice ("DOJ"), Federal Bureau of Investigation ("FBI"), Laura Dehmlow ("Dehmlow"), Elvis M.

An Opposition [Doc. No. 299] was filed by Plaintiffs.[2]

For the reasons set forth herein, Defendants' Motion to Stay is **DENIED**.

**I. BACKGROUND**

On July 4, 2023, this Court issued a Preliminary Injunction against the Defendants,[3] which prohibited the Defendants from contacting social-media companies and taking specific actions for the purpose of urging, encouraging, pressuring, or inducing in any manner, the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms.[4] The Judgment defined "protected free speech" as "speech that is protected by the Free Speech Clause of the First Amendment to the United States Constitution in accordance with the jurisprudence of the United

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Chan ("Chan"), Jay Dempsey ("Dempsey"), Kate Galatas ("Galatas"), Katharine Dealy ("Dealy"), Yolanda Byrd ("Byrd"), Christy Choi ("Choi"), Ashley Morse ("Morse"), Joshua Peck ("Peck"), Kym Wyman ("Wyman"), Lauren Protentis ("Protentis"), Geoffrey Hale ("Hale"), Allison Snell ("Snell"), Brian Scully ("Scully"), Jennifer Shopkorn ("Shopkorn"), U. S. Food & Drug Administration ("FDA"), Erica Jefferson ("Jefferson"), Michael Murray ("Murray"), Brad Kimberly ("Kimberly"), U. S. Dept of State ("State"), Leah Bray ("Bray"), Alexis Frisbie ("Frisbie"), Daniel Kimmage ("Kimmage"), U.S. Dept of Treasury ("Treasury"), Wally Adeyemo ("Adeyemo"), U.S. Election Assistance Commission ("EAC"), Steven Frid ("Frid"), and Kristen Muthig ("Muthig").

[2] Plaintiffs consist of the State of Missouri, the State of Louisiana, Dr. Aaron Kheriaty ("Kheriaty"), Dr. Martin Kulldorff ("Kulldorff"), Jim Hoft ("Hoft"), Dr. Jayanta Bhattacharya ("Bhattacharya"), and Jill Hines ("Hines").

[3] [Doc. No. 294]

[4] [*Id.*]

States Supreme Court, Courts of Appeal and District Courts."[5]

Defendants filed a Notice of Appeal[6] on July 5, 2023. On July 6, 2023, Defendants filed the instant Motion to Stay.[7] In the Motion to Stay, Defendants seek to have the Court Stay the Preliminary Injunction pending appeal, or alternatively to administratively stay the preliminary injunction for seven days.

The Defendants allege that they face irreparable harm with each day the injunction remains in effect, because the injunction's broad scope and ambiguous terms may be read to prevent the Defendants from engaging in a vast range of lawful and responsible conduct, including speaking on matters of public concern, and working with social-media companies on initiatives to prevent grave harm to the American people and the Country's various democratic processes.

**II. LAW AND ANALYSIS**

In determining whether to grant a stay pending appeal, a court is to consider: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 426 (2009). In evaluating these factors, courts have refused to apply

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[5] [*Id.* at 4, n. 3]

[6] [Doc. No. 296]

[7] [Doc. No. 297]

them in a rigid or mechanical fashion. *United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983).

**A. Success on the Merits**

For all the reasons set forth in the Memorandum Ruling,[8] this Court finds the Plaintiffs have shown a likelihood of success on the merits and, therefore, that Defendants have failed to show a likelihood of success on the merits. As discussed in detail in the Memorandum Ruling, all of the Defendants likely "significantly encouraged" and/or "jointly participated" with the social-media companies to engage in viewpoint-based suppression of protected free speech. Additionally, the White House Defendants[9] and the Surgeon General Defendants[10] were found to have likely engaged in coercion of social-media companies.

The following are a few examples of actions taken by Defendants that demonstrate they are unlikely to succeed on the merits.

**1. White House Defendants**

(a) On January 23, 2021, White House Digital Director for COVID-19 Response Team Clarke Humphrey

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[8] [Doc. No. 294]

[9] White House Defendants consist of President Joseph R. Biden ("President Biden"), White House Press Secretary Karine Jean-Pierre ("Jean-Pierre"), Ashley Morse ("Morse"), Deputy Assistant to the President and Director of Digital Strategy Rob Flaherty ("Flaherty"), Dori Salcido ("Salcido"), Aisha Shah ("Shah"), Sarah Beran ("Beran"), Stuart F. Delery ("Delery"), Mina Hsiang ("Hsiang"), and Dr. Hugh Auchincloss (Dr. Auchincloss")

[10] Surgeon General Defendants consists of Dr. Vivek H. Murthy ("Murthy") and Katharine Dealy ("Dealy").

emailed Twitter and requested the removal of an anti-COVID-19 vaccine tweet by Robert F. Kennedy, Jr.[11]

(b) On April 14, 2021, White House Deputy Assistant to the President and Director of Digital Strategy Rob Flaherty ("Flaherty") demanded censorship by Facebook of a video of Fox News hosts Tucker Carlson and Tomi Lahren where Tucker Carlson was saying COVID-19 vaccines don't work and Tomi Lahren was saying she won't take a COVID-19 vaccine.[12] Flaherty demanded immediate answers from Facebook on April 16, 2021, in relation to the video, and on April 21, 2021, despite not violating Facebook's policies, Facebook gave the video a 50% reduction for seven days and stated it would continue to demote the video.[13]

**2. Surgeon General Defendants**

(a) Senior Advisor to the Surgeon General Eric Waldo ("Waldo") testified that Surgeon General Dr. Vivek H. Murthy ("Murthy") used his office to advocate for social-media platforms to take stronger actions against "health misinformation," which involved putting pressure on social-media platforms to reduce the dissemination of health misinformation. That message was given to social-media platforms both publicly and privately.[14]

(b) In addition to public statements, Murthy had meetings with social-media companies, called health misinformation "poison," and called for social-media companies to do more to control the reach of health

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[11] [Doc. No. 293 at 9]

[12] [Doc. No. 293 at 16]

[13] [Doc. No. 297 at 17-18]

[14] [Doc. No. 293 at 28]

disinformation. When Murthy was calling posts "health disinformation," he was referring to anti-vaccine posts.[15]

**3. CDC Defendants**[16]

(a) The CDC Defendants consistently had regular contact with social-media platforms via email, phone, and in-person meetings. The CDC Defendants received CrowdTangle reports from Facebook as to the "top engaged COVID and vaccine related content.[17]

(b) The CDC Defendants provided PowerPoint slide decks to Facebook, which provided examples of misinformation topics and made recommendations to Facebook as to whether claims were true or false. Some of the items designated as false by the CDC Defendants included medically debatable topics such as whether COVID-19 had a 99.96% survival rate, whether COVID-19 vaccines weaken the immune system, and the safety of COVID-19 vaccines.[18]

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[15] [Doc. No. 293 at 31-33]

[16] The CDC Defendants consist of the Centers for Disease Control & Prevention, Carol Crawford ("Crawford"), Jay Dempsey ("Dempsey"), Kate Galatas ("Galatas"), United States Census Bureau ("Census Bureau"), Jennifer Shopkorn ("Shopkorn"), the Department of Health and Human Services ("HHS"), Xavier Becerra ("Becerra"), Yolanda Byrd ("Byrd"), Christy Choi ("Choi"), Ashley Morse ("Morse"), and Joshua Peck ("Peck").

[17] [Doc. No. 293 at 39]

[18] [Doc. No. 293 at 41-44]

**4. NIAID Defendants**[19]

(a) Dr. Francis Collins sent an email to Dr. Anthony Fauci on October 8, 2020, which stated that the Great Barrington Declaration[20] needed to have a "quick and devastating take-down."[21]

(b) Dr. Fauci sent back information to "debunk" The Great Barrington Declaration and both Dr. Collins and Dr. Fauci followed up with a series of public media statements attacking the Great Barrington Declaration. Thereafter the Great Barrington Declaration was censored by social-media platforms.[22]

**5. FBI Defendants**[23]

(a) The FBI Defendants, along with numerous social-media platforms, CISA, and the Department of Homeland Security, met consistently at Industry Meetings. The Industry Meetings were used by the FBI Defendants and others to discuss election disinformation.[24]

(b) Prior to the 2020 Presidential election, the FBI repeatedly warned social-media companies to be alert

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[19] The NIAD Defendants consist of the National Institute of Allergy and Infectious Disease and Dr. Hugh Auchincloss ("Dr. Auchincloss").

[20] [Doc. No. 293 at 55]

[21] The Great Barrington Declaration is a one-page treatise opposing the reliance of lockdowns, criticized social distancing, and expressed concerns about physical and mental health impacts of lockdowns.

[22] [Doc. No. 293 at 54]

[23] FBI Defendants include Elvis Chan ("Chan"), the Federal Bureau of Investigation ("FBI"), Lauren Dehmlow ("Dehmlow"), and the U.S. Department of Justice ("DOJ").

[24] [Doc. No. 293 at 54]

for "hack and dump" or "hack and leak" operations. The Hunter Biden laptop story was published by the Washington Post on October 14, 2020. After being asked by Facebook whether the Hunter Biden laptop story was Russian disinformation, the FBI's Laura Dehmlow refused to comment, leading Facebook to suppress the story. The FBI had had the laptop since December of 2019, and knew that the story was not Russian disinformation.[25]

**6. CISA Defendants[26]**

(a) The CISA Defendants regularly met with social-media platforms at several types of meetings. At those meetings, disinformation was discussed as well as reports about social-media companies' changes to censorship policies.[27] CISA had five sets of recurring meetings with social-media platforms that involved discussions of misinformation, disinformation, and/or censorship of protected free speech on social media.[28]

(b) The CISA Defendants collaborated with the Election Integrity Partnership, working with them in a "switchboarding" operation which reported alleged election misinformation to social-media companies. The alleged election misinformation included claims that

[25] [Doc. No. 293 at 61-63]

[26] CISA Defendants consist of the Cybersecurity and Infrastructure Security Agency ("CISA"), Jen Easterly ("Easterly"), Kim Wyman ("Wyman"), Lauren Protentis ("Protentis"), Geoffrey Hale ("Hale"), Allison Snell ("Snell"), Brian Scully ("Scully"), the Department of Homeland Security ("DHS"), Alejandro Mayorkas ("Mayorkas"), Robert Silvers ("Silvers"), and Samantha Vinograd ("Vinograd").

[27] [Doc. No. 293 at 68-69]

[28] [Doc. No. 293 at 75]

"mail-in voting is insecure" and "theories about election fraud are hard to discount."[29]

(c) CISA Director Jen Easterly views the word "infrastructure" expressively to include our "cognitive infrastructure," which deals with the way people acquire knowledge and understanding.[30]

**7. State Department Defendants**[31]

(a) The State Department Defendants worked closely and collaborated with the Election Integrity Partnership and the Virality Project, who forwarded alleged election misinformation and COVID-19 misinformation to social-media companies.[32] The alleged misinformation related to content by American citizens. The alleged disinformation primarily involved social media posts which delegitimized election results,[33] and posts which involved anti-vaccine content by such personalities as Alex Berenson, Candace Owens, Tucker Carlson, and John F. Kennedy, Jr.[34]

(b) The Election Integrity Partnership was designed "to get around unclear legal authorities, including very real First Amendment questions" that would arise if

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[29] [Doc. No. 293 at 70-74]

[30] [Doc. No. 293 at 77]

[31] The State Department Defendants consist of the United States Department of State, Leah Bray ("Bray"), Daniel Kimmage ("Kimmage'), and Alex Frisbie ("Frisbie").

[32] Doc. No. 293 at 79-81]

[33] [Doc. No. 293 at 81]

[34] [Doc. No. 293 at 86]

government agencies were to monitor and flag information for censorship on social media.[35]

**B. Standing**

Defendants further argue that they will prevail as to establishing that Plaintiffs lack Article III standing. For the reasons set forth previously in the Memorandum Ruling[36] this Court found all of the Plaintiffs are likely to establish all elements of Article III standing. Defendants argue the States of Missouri and Louisiana do not have *parens patriae* standing to bring a claim against the Federal Government. This Court disagrees. In *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007), the United States Supreme Court concluded that *Massachusetts* had standing to sue the E.P.A. to protect its *quasi-sovereign interests*. The court clarified that because *Massachusetts* sought to assert its rights under federal law, rather than challenge the federal law's application for its citizens, the *State of Massachusetts* had standing. Like *Massachusetts*, the States of Missouri and Louisiana are asserting their rights under the First Amendment to the United States Constitution, and also asserting rights under each Plaintiff States' own constitution. The Plaintiff States are likely to prevail on their standing argument because they have adequately alleged (and provided evidence supporting) injuries to their *quasi-sovereign* interest as well as direct censorship injuries on social-media.

There are also individual Plaintiffs in this case. Only one Plaintiff with standing is required to be able to

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[35] [Doc. No. 293 at 73]

[36] [Doc. No. 293 at 119-139] (see also [Doc. No. 214] (Memorandum Ruling Denying Defendants' Motion to Dismiss))

maintain this suit. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). Defendants argue that the individual Plaintiffs' standing have not shown "irreparable harm." The individual Plaintiffs' standing analysis is set forth in the Memorandum Ruling.[37] The "irreparable harm" element was also specifically discussed in the Memorandum Ruling.[38] Violation of a First Amendment Constitutional right, even for a short period of time, is always irreparable injury. *Elrod v. Burns.*, 427 U.S. 347 (1976). Accordingly, for the reasons set forth previously, the Plaintiffs have shown there is a substantial risk that future harm is likely to occur and that they are likely to satisfy the requirements of Article III standing.

**C. Public Interest and Harm**

Defendants further maintain they will be irreparably injured absent a stay, and that the balance of the equities weighs heavily in the Defendants' favor of granting a stay. Again, this Court disagrees. As discussed in the Memorandum Ruling,[39] the First Amendment free speech rights of Plaintiffs by far outweighs the Defendants' interests.

Defendants argue that the injunction may be read to prevent the Defendants from engaging in a vast range of lawful conduct—including speaking on matters of public concern and working with social-media companies on initiatives to prevent grave harm to the American people and our democratic processes. However, the Preliminary Injunction only prohibits what the

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[37] [*Id.* at 126-135]

[38] [*Id.* at 139-140]

[39] [*Id.* at 144-45]

Defendants have no right to do—urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech on social-media platforms. The Defendants provide no argument that they are legally allowed to take such action. The Defendants are asking the Court to grant them relief to a Preliminary Injunction that only bars illegal conduct. In other words, the only effect of staying the Preliminary Injunction would be to free Defendants to urge, encourage, pressure, or induce the removal, deletion, suppression, or reduction of content containing protected free speech on social-media platforms.

The Preliminary Injunction also has several exceptions which list things that are **NOT** prohibited. The Preliminary Injunction allows Defendants to exercise permissible public government speech promoting government policies or views on matters of public concern, to inform social-media companies of postings involving criminal activity, criminal conspiracies, national security threats, extortion, other threats, criminal efforts to suppress voting, providing illegal campaign contributions, cyber-attacks against election infrastructure, foreign attempts to influence elections, threats against the public safety or security of the United States, postings intending to mislead voters about voting requirements, procedures, preventing or mitigating malicious cyber activity, and to inform social-media companies about speech not protected by the First Amendment.

Defendants cite no specific action that would be prohibited by this Preliminary Injunction that would provide grave harm to the American people or over democratic processes. In fact, in opposition to the Motion for Preliminary Injunction, Defendants submitted five

Declarations[40] that addressed Defendants' concerns. Every one of these concerns was addressed in the Preliminary Injunction exceptions. An enjoined party must identify a specific concern that the injunction will prohibit. *Regal Knitwear Co. v. N.L.R.B.*, 65 S. Ct. 478, 482 (1945). Defendants have failed to do so. Therefore, the Defendants would not be irreparably harmed, and the balance of equities and harm weighs in favor of Plaintiffs, not Defendants.

**D. Specificity of Preliminary Injunction**

Additionally, Defendants argue that the Preliminary Injunction is sweeping in scope and vague in its terms.[41] A Preliminary Injunction must describe in reasonable detail the act or acts restrained or required. FED. R. CIV. P. 65. An ordinary person reading the Court's order must be able to ascertain from the document itself exactly what conduct is proscribed or prohibited. *Louisiana v. Biden*, 45 F.4th 841, 846 (5th Cir. 2022). Defendants argue that both the prohibited conduct and the conduct that is not prohibited is vague.

Defendants first argue the definition of "protected free speech" is vague because it refers to jurisprudence of the United States Supreme Court, The United States Courts of Appeal, and United States District Courts. Defendants question whether an agency official would

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[40] Leah Bray [Doc. No. 226-6 at 198-296] (foreign propaganda); Larissa Knapp [Doc. No. 266-6 at 448-47] (crimes, threats, national security threats); Brandon Wales [Doc. No. 266-6 at 553-572] (malicious cyber activity); Max Lesko [Doc. No. 266-4 at 130-178] (commission of public health issues); and Carol Crawford [Doc. No. 266-5 at 67-77] (public health information)

[41] Doc. No. 297-1 at 3]

be required to research the laws of every federal court to determine what is "protected free speech."

In order to clarify the definition of "protected free speech" in the Preliminary Injunction, this Court will modify the definition of "protected free speech" in n. 3 to read as follows:

> "Protected free speech" means speech which is protected by the Free Speech Clause of the First Amendment to the United States Constitution in accordance with the jurisprudence of the United States Supreme Court.

Although general "obey the law" injunctions are normally too vague to form the basis of an injunction, language in an injunction to prohibit future violations of a statute will be upheld when it relates to the type of acts the Defendants are alleged to have committed. *NLRB. V. Express Pub. Co.*, 61 S. Ct. 693, 699 (1941); *Interstate Commerce Commission v. Keeshin Motor Exp. Co.*, 134 F.2d 228, 231, (7th Cir. 1943) cert. den. 64 S. Ct. 38 (1943).

The Preliminary Injunction at issue prohibits the Defendants from taking the described actions with social-media companies as to "protected free speech," which is defined by jurisprudence of the United States Supreme Court. The actions prohibited are the type of actions the Defendants are alleged to have committed. Therefore, the reference to United States Supreme Court jurisprudence is not vague. Defendant officials can be and should be trained to recognize what speech is protected and what speech is not prior to working with social-media companies to suppress or delete postings. Additionally, the exceptions to the Free Speech Clause of the First Amendment are "well-defined and

narrowly limited classes of speech." *United States v. Stevens*, 559 U.S. 460, 468-69 (2010).

Defendants further argue that the exemption in the Preliminary Injunction, which allows the Government to exercise permissible government speech promoting government policies or views on matters of public concern, is vague in light of references in the Memorandum Ruling to government speech by the White House Defendants and the Surgeon General Defendants.[42] It is clear that the Preliminary Injunction does not prohibit government speech. The portion of the Memorandum Ruling addressing Defendants' government speech argument[43] clearly notes that the government speech was not a First Amendment violation. Rather, it was the use of government agencies and employees to coerce and/or significantly encourage social-media platforms to suppress free speech on their platforms. Therefore, the government speech exception in the Preliminary Injunction is not ambiguous or vague.

Defendants further allege that the injunction is not clear what entities or individuals are covered because the Preliminary Injunction names entire agencies which are composed of many sub-components. Defendants noted that the Preliminary Injunction did not enjoin the Food and Drug Administration ("FDA") but enjoined the Department of Health and Human Services, of whom the FDA is a part.

The Motion for Preliminary Injunction is clearly denied as to the FDA, along with the other entities specifically noted. FED. R. CIV. P. Rule 65 not only prohibits

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[42] [Doc. No. 294 at 6]

[43] [Doc. No. 293 at 118-119].

the party Defendants, but also those identified with them in interest, in priority with them, represented by them, or subject to their control. *Regal Knitwear Co. v. N.L.R.B.*, 65 S. Ct. 478, 481 (1945). An injunctive order also binds the party's officers, agents, servants, employees, attorneys, and those persons in active concert with them who receive actual notice of the order. *U.S. v. Hall*, 472 F.2d 261, 267, (5th Cir. 1972). FED. R. CIV. P. Rule 65(d) specifically allows an agency's officers, agents, servants, employees, and attorneys to be bound. Therefore, the Preliminary Injunction is not vague or ambiguous as to the entities or individuals who are covered. If Defendants' interpretation was accepted, an agency could simply instruct a sub-agency to perform the prohibited acts and avoid the consequences of an injunction.

**III. CONCLUSION**

Plaintiffs are likely to prove that all of the enjoined Defendants coerced, significantly encouraged, and/or jointly participated social-media companies to suppress social-media posts by American citizens that expressed opinions that were anti-COVID-19 vaccines, anti-COVID-19 lockdowns, posts that delegitimized or questioned the results of the 2020 election, and other content not subject to any exception to the First Amendment. These items are protected free speech and were seemingly censored because of the viewpoints they expressed. Viewpoint discrimination is subject to strict scrutiny.

Although this Preliminary Injunction involves numerous agencies, it is not as broad as it appears. It only prohibits something the Defendants have no legal right to do—contacting social-media companies for the purpose of urging, encouraging, pressuring, or inducing in

any manner, the removal, deletion, suppression, or reduction of content containing protected free speech posted on social-media platforms. It also contains numerous exceptions.

Therefore, for the reasons set forth herein,

The Defendants' Motion to Stay [Doc. No. 297] is **DENIED**.

**MONROE, LOUISIANA**, this 10th day of July 2023.

/s/ TERRY A. DOUGHTY
TERRY A. DOUGHTY,
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONDROE DIVISION

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Civil Action No. 3:22-cv-1213

STATE OF MISSOURI, ET AL.
JUDGE TERRY A. DOUGHTY

*v.*

JOSEPH R. BIDEN JR. ET AL.
MAG. JUDGE KAYLA D. MCCLUSKY

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Filed: July 10, 2023

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**JUDGMENT ON MOTION TO STAY**

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For the reasons set forth in the Memorandum Ruling on Motion to Stay,

**IT IS ORDERED, ADJUDGED, AND DECREED** that the definition of "protected free speech" in the Memorandum Ruling [Doc. No. 294, at p.4, n.3] shall be amended to read as follows:

> "Protected free speech" means speech which is protected by the Free Speech Clause of the First Amendment of the United States Constitution in accordance with the jurisprudence of the United States Supreme Court.

**IT IS FURTHER ORDERED** that the Defendants' Motion to Stay Preliminary Injunction Pending Appeal,

and Alternatively, for Administrative Stay [Doc. No. 297] is **DENIED**.

**MONROE, LOUISIANA**, this 10th day of July 2023.

/s/ TERRY A. DOUGHTY
TERRY A. DOUGHTY,
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30445

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

*v.*

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
Filed: Sept. 8, 2023

**OPINION**

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.

**I.**

For the last few years—at least since the 2020 presidential transition—a group of federal officials has been in regular contact with nearly every major American social-media 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.

Enter this lawsuit. The Plaintiffs—three doctors, a news website, a healthcare activist, and two states[1]—

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[1] Specifically, the Plaintiffs are (1) Jayanta Bhattacharya and Martin Kulldorff, two epidemiologists who co-wrote the Great Barrington Declaration, an article criticizing COVID-19 lockdowns; (2) Jill Hines, an activist who spearheaded "Reopen Louisiana"; (3) Aaron Kheriaty, a psychiatrist who opposed lockdowns and vaccine mandates; (4) Jim Hoft, the owner of the Gateway Pundit, a once-deplatformed news site; and (5) Missouri and Louisiana, who assert their sovereign and quasi-sovereign interests in protecting their citizens and the free flow of information. Bhattacharya, Kulldorff, Hines, Kheriaty, and Hoft, collectively, are referred to herein as the "Individual Plaintiffs." Missouri and Louisiana, together, are referred to as the "State Plaintiffs."

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. So, they sued the officials[2] for First Amendment violations and asked the district court to enjoin the officials' conduct. In response, the officials argued that they only "sought to mitigate the hazards of online misinformation" by "calling attention

[2] The defendant-officials include (1) the President; (2) his Press Secretary; (3) the Surgeon General; (4) the Department of Health and Human Services; (5) the HHS's Director; (6) Anthony Fauci in his capacity as the Director of the National Institute of Allergy and Infectious Diseases; (7) the NIAID; (8) the Centers for Disease Control; (9) the CDC's Digital Media Chief; (10) the Census Bureau; (11) the Senior Advisor for Communications at the Census Bureau; (12) the Department of Commerce; (13) the Secretary of the Department of Homeland Security; (14) the Senior Counselor to the Secretary of the DHS; (15) the DHS; (16) the Cybersecurity and Infrastructure Security Agency; (17) the Director of CISA; (18) the Department of Justice; (19) the Federal Bureau of Investigation; (20) a special agent of the FBI; (21) a section chief of the FBI; (22) the Food and Drug Administration; (23) the Director of Social Media at the FDA; (24) the Department of State; (25) the Department of Treasury; (26) the Department of Commerce; and (27) the Election Assistance Commission. The Plaintiffs also sued a host of various advisors, officials, and deputies in the White House, the FDA, the CDC, the Census Bureau, the HHS, and CISA. Note that some of these officials were not enjoined and, therefore, are not mentioned again in this opinion.

to content" that violated the "platforms' policies," a form of permissible government speech.

The district court agreed with the Plaintiffs and granted preliminary injunctive relief. In reaching that decision, it reviewed the conduct of several federal offices, but only enjoined the White House, the Surgeon General, the CDC, the FBI, the National Institute of Allergy and Infectious Diseases (NIAID), the Cybersecurity and Infrastructure Security Agency (CISA), and the Department of State. We briefly review—per the district court's order and the record—those officials' conduct.

**A.**

Considering their close cooperation and the ministerial ecosystem, we take the White House and the Surgeon General's office together. Officials from both offices began communicating with social media companies—including Facebook, Twitter (now known as "X"), YouTube, and Google—in early 2021. From the outset, that came with requests to take down flagged content. In one email, a White House official told a platform to take a post down "ASAP," and instructed it to "keep an eye out for tweets that fall in this same [] genre" so that they could be removed, too. In another, an official told a platform to "remove [an] account immediately"—he could not "stress the degree to which this needs to be resolved immediately." Often, those requests for removal were met.

But, the White House officials did not only flag content. Later that year, they started monitoring the platforms' moderation activities, too. In that vein, the officials asked for—and received—frequent updates from the platforms. Those updates revealed, however, that

the platforms' policies were not clear-cut and did not always lead to content being demoted. So, the White House pressed the platforms. For example, one White House official demanded more details and data on Facebook's internal policies at least twelve times, including to ask what was being done to curtail "dubious" or "sensational" content, what "interventions" were being taken, what "measurable impact" the platforms' moderation policies had, "how much content [was] being demoted," and what "misinformation" was not being downgraded. In one instance, that official lamented that flagging did not "historically mean[] that [a post] was removed." In another, the same official told a platform that they had "been asking [] pretty directly, over a series of conversations" for "what actions [the platform has] been taking to mitigate" vaccine hesitancy, to end the platform's "shell game," and that they were "gravely concerned" the platform was "one of the top drivers of vaccine hesitancy." Another time, an official asked why a flagged post was "still up" as it had "gotten pretty far." The official queried "how does something like that happen," and maintained that "I don't think our position is that you should remove vaccine hesitant stuff," but "slowing it down seems reasonable." Always, the officials asked for more data and stronger "intervention[s]."

From the beginning, the platforms cooperated with the White House. One company made an employee "available on a regular basis," and another gave the officials access to special tools like a "Partner Support Portal" which "ensure[d]" that their requests were "prioritized automatically." They all attended regular meetings. But, once White House officials began to demand more from the platforms, they seemingly stepped-up their

efforts to appease the officials. When there was confusion, the platforms would call to "clear up" any "misunderstanding[s]" and provide data detailing their moderation activities. When there was doubt, they met with the officials, tried to "partner" with them, and assured them that they were actively trying to "remove the most harmful COVID-19 misleading information." At times, their responses bordered on capitulation. One platform employee, when pressed about not "level[ing]" with the White House, told an official that he would "continue to do it to the best of [his] ability, and [he will] expect [the official] to hold [him] accountable." Similarly, that platform told the Surgeon General that "[w]e're [] committed to addressing the [] misinformation that you've called on us to address." The platforms were apparently eager to stay in the officials' good graces. For example, in an effort to get ahead of a negative news story, Facebook preemptively reached out to the White House officials to tell them that the story "doesn't accurately represent the problem or the solutions we have put in place."

The officials were often unsatisfied. They continued to press the platforms on the topic of misinformation throughout 2021, especially when they seemingly veered from the officials' preferred course. When Facebook did not take a prominent pundit's "popular post[]" down, a White House official asked "what good is" the reporting system, and signed off with "last time we did this dance, it ended in an insurrection." In another message, an official sent Facebook a Washington Post article detailing the platform's alleged failures to limit misinformation with the statement "[y]ou are hiding the ball." A day later, a second official replied that they felt Facebook was not "trying to solve the problem" and the

White House was "[i]nternally . . . considering our options on what to do about it." In another instance, an official—demanding "assurances" that a platform was taking action—likened the platform's alleged inaction to the 2020 election, which it "helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform."

To ensure that problematic content was being taken down, the officials—via meetings and emails—pressed the platforms to change their moderation policies. For example, one official emailed Facebook a document recommending changes to the platform's internal policies, including to its deplatforming and downgrading systems, with the note that "this is circulating around the building and informing thinking." In another instance, the Surgeon General asked the platforms to take part in an "all-of-society" approach to COVID by implementing stronger misinformation "monitoring" programs, redesigning their algorithms to "avoid amplifying misinformation," targeting "repeat offenders," "[a]mplify[ing] communica-tions from trusted . . . experts," and "[e]valuat[ing] the effectiveness of internal policies."

The platforms apparently yielded. They not only continued to take down content the officials flagged, and provided requested data to the White House, but they also changed their moderation policies expressly in accordance with the officials' wishes. For example, one platform said it knew its "position on [misinformation] continues to be a particular concern" for the White House, and said it was "making a number of changes" to capture and downgrade a "broader set" of flagged content. The platform noted that, in line with the officials' requests, it would "make sure that these additional [changes] show results—the stronger demotions

in particular should deliver real impact." Another time, a platform represented that it was going to change its moderation policies and activities to fit with express guidance from the CDC and other federal officials. Similarly, one platform noted that it was taking down flagged content which seemingly was not barred under previous iterations of its moderation policy.

Relatedly, the platforms enacted several changes that coincided with the officials' aims shortly after meeting with them. For example, one platform sent out a post-meeting list of "commitments" including a policy "change[]" "focused on reducing the virality" of anti-vaccine content even when it "does not contain actionable misinformation." On another occasion, one platform listed "policy updates . . . regarding repeat misinformation" after meeting with the Surgeon General's office and signed off that "[w]e think there's considerably more we can do in partnership with you and your teams to drive behavior."

Even when the platforms did not expressly adopt changes, though, they removed flagged content that did not run afoul of their policies. For example, one email from Facebook stated that although a group of posts did not "violate our community standards," it "should have demoted them before they went viral." In another instance, Facebook recognized that a popular video did not qualify for removal under its policies but promised that it was being "labeled" and "demoted" anyway after the officials flagged it.

At the same time, the platforms often boosted the officials' activities at their request. For example, for a vaccine "roll out," the officials shared "what [t]he admin's plans are" and "what we're seeing as the biggest

headwinds" that the platforms could help with. The platforms "welcome[d] the opportunity" to lend a hand. Similarly, when a COVID vaccine was halted, the White House asked a platform to—through "hard . . . intervention[s]" and "algorithmic amplification"—"make sure that a favorable review reaches as many people" as possible to stem the spread of alleged misinformation. The officials also asked for labeling of posts and a 24-hour "report-back" period to monitor the public's response. Again, the platforms obliged—they were "keen to amplify any messaging you want us to project," i.e., "the right messages." Another time, a platform told the White House it was "eager" to help with vaccine efforts, including by "amplify[ing]" content. Similarly, a few months later, after the White House shared some of the "administration's plans" for vaccines in an industry meeting, Facebook reiterated that it was "committed to the effort of amplifying the rollout of [those] vaccines."

Still, White House officials felt the platforms were not doing enough. One told a platform that it "remain[ed] concerned" that the platform was encouraging vaccine hesitancy, which was a "concern that is shared at the highest (and I mean highest) levels of the [White House]." So, the official asked for the platform's "road map to improvement" and said it would be "good to have from you all . . . a deeper dive on [misinformation] reduction." Another time, the official responded to a moderation report by flagging a user's account and saying it is "[h]ard to take any of this seriously when you're actively promoting anti-vaccine pages." The platform subsequently "removed" the account "entirely" from its site, detailed new changes to the company's moderation policies, and told the official that "[w]e clearly still have work to do." The official responded that "removing bad

information" is "one of the easy, low-bar things you guys [can] do to make people like me think you're taking action." The official emphasized that other platforms had "done pretty well" at demoting non-sanctioned information, and said "I don't know why you guys can't figure this out."

The officials' frustrations reached a boiling point in July of 2021. That month, in a joint press conference with the Surgeon General's office, the White House Press Secretary said that the White House "expect[s] more" from the platforms, including that they "consistently take action against misinformation" and "operate with greater transparency and accountability." Specifically, the White House called on platforms to adopt "proposed changes," including limiting the reach of "misinformation," creating a "robust enforcement strategy," taking "faster action" because they were taking "too long," and amplifying "quality information." The Press Secretary said that the White House "engag[es] with [the platforms] regularly and they certainly understand what our asks are." She also expressly noted that several accounts, despite being flagged by the White House, "remain active" on a few platforms.

The Surgeon General also spoke at the press conference. He said the platforms were "one of the biggest obstacles" to controlling the COVID pandemic because they had "enabled misinformation to poison" public discourse and "have extraordinary reach." He labeled social-media-based misinformation an "urgent public health threat[]" that was "literally costing . . . lives." He asked social-media companies to "operate with greater transparency and accountability," "monitor misinformation more closely," and "consistently take action against misinformation super-spreaders on their platforms."

The Surgeon General contemporaneously issued a public advisory "calling out social media platforms" and saying they "have a role to play to improve [] health outcomes." The next day, President Biden said that the platforms were "killing people" by not acting on misinformation. Then, a few days later, a White House official said they were "reviewing" the legal liability of platforms—noting "the president speak[s] very aggressively about" that—because "they should be held accountable."

The platforms responded with total compliance. Their answer was four-fold. First, they capitulated to the officials' allegations. The day after the President spoke, Facebook asked what it could do to "get back to a good place" with the White House. It sought to "better understand . . . what the White House expects from us on misinformation going forward." Second, the platforms changed their internal policies. Facebook reached out to see "how we can be more transparent," comply with the officials' requests, and "deescalate" any tension. Others fell in line, too—YouTube and Google told an official that they were "working on [it]" and relayed the "steps they are currently taking" to do better. A few days later, Facebook told the Surgeon General that "[w]e hear your call for us to do more," and wanted to "make sure [he] saw the steps [it took]" to "adjust policies on what we are removing with respect to misinformation," including "expand[ing] the group of false claims" that it removes. That included the officials' "specific recommendations for improvement," and the platform "want[ed] to make sure to keep [the Surgeon General] informed of [its] work on each."

Third, the platforms began taking down content and deplatforming users they had not previously targeted. For example, Facebook started removing information

posted by the "disinfo dozen"—a group of influencers identified as problematic by the White House—despite earlier representations that those users were not in violation of their policies. In general, the platforms had pushed back against deplatforming users in the past, but that changed. Facebook also made other pages that "had not yet met their removal thresholds[] more difficult to find on our platform," and promised to send updates and take more action. A month later, members of the disinfo dozen were deplatformed across several sites. Fourth, the platforms continued to amplify or assist the officials' activities, such as a vaccine "booster" campaign.

Still, the White House kept the pressure up. Officials continuously expressed that they would keep pushing the platforms to act. And, in the following year, the White House Press Secretary stressed that, in regard to problematic users on the platforms, the "President has long been concerned about the power of large" social media companies and that they "must be held accountable for the harms they cause." She continued that the President "has been a strong supporter of fundamental reforms to achieve that goal, including reforms to [S]ection 230, enacting antitrust reforms, requiring more transparency, and more." Per the officials, their back-and-forth with the platforms continues to this day.

**B.**

Next, we turn to the CDC. Much like the White House officials, the CDC tried to "engage on a [] regular basis" with the platforms. They also received reports on the platforms' moderation activities and policy updates. And, like the other officials, the CDC also flagged

content for removal that was subsequently taken down. In one email, an official mentioned sixteen posts and stated, "[W]e are seeing a great deal of misinfo [] that we wanted to flag for you all." In another email, CDC officials noted that flagged content had been removed. And, the CDC actively sought to promote its officials' views over others. For example, they asked "what [was] being done on the amplification-side" of things.

Unlike the other officials, though, the CDC officials also provided direct guidance to the platforms on the application of the platforms' internal policies and moderation activities. They did so in three ways. First, CDC officials authoritatively told the platforms what was (and was not) misinformation. For example, in meetings—styled as "Be On the Lookout" alerts—officials educated the platforms on "misinformation[] hot topics." Second, CDC officials asked for, or at least encouraged, harmonious changes to the platforms' moderation policies. One platform noted that "[a]s soon as the CDC updates [us]," it would change information on its website to comply with the officials' views. In that same email, the platform said it was expanding its "misinfo policies" and it was "able to make this change based on the conversation we had last week with the CDC." In another email, a platform noted "several updates to our COVID-19 Misinformation and Harm policy based on your inputs." Third, through its guidance, the CDC outright directed the platforms to take certain actions. In one post-meeting email, an official said that "as mentioned on the call, any contextual information that can be added to posts" on some alleged "disinformation" "could be very effective."

Ultimately, the CDC's guidance informed, if not directly affected, the platforms' moderation decisions.

The platforms sought answers from the officials as to whether certain controversial claims were "true or false" and whether related posts should be taken down as misleading. The CDC officials obliged, directing the platforms as to what was or was not misinformation. Such designations directly controlled the platforms' decision-making process for the removal of content. One platform noted that "[t]here are several claims that we will be able to remove as soon as the CDC debunks them; until then, we are unable to remove them."

**C.**

Next, we consider the conduct of the FBI officials. The agency's officials regularly met with the platforms at least since the 2020 election. In these meetings, the FBI shared "strategic information with [] social-media companies" to alert them to misinformation trends in the lead-up to federal elections. For example, right before the 2022 congressional election, the FBI tipped the platforms off to "hack and dump" operations from "state-sponsored actors" that would spread misinformation through their sites. In another instance, they alerted the platforms to the activities and locations of "Russian troll farms." The FBI apparently acquired this information from ongoing investigations.

Per their operations, the FBI monitored the platforms' moderation policies, and asked for detailed assessments during their regular meetings. The platforms apparently changed their moderation policies in response to the FBI's debriefs. For example, some platforms changed their "terms of service" to be able to tackle content that was tied to hacking operations.

But, the FBI's activities were not limited to purely foreign threats. In the build up to federal elections, the

FBI set up "command" posts that would flag concerning content and relay developments to the platforms. In those operations, the officials also targeted domestically sourced "disinformation" like posts that stated incorrect poll hours or mail-in voting procedures. Apparently, the FBI's flagging operations across-the-board led to posts being taken down 50% of the time.

**D.**

Finally, we briefly discuss the remaining offices, namely the NIAID, CISA, and the State Department. Generally speaking, the NIAID did not have regular contact with the platforms or flag content. Instead, NIAID officials were—as evidenced by internal emails—concerned with "tak[ing] down" (*i.e.*, discrediting) opposing scientific or policy views. On that front, Director Anthony Fauci publicly spoke in favor of certain ideas (*e.g.*, COVID lockdowns) and against others (*e.g.*, the lab-leak theory). In doing so, NIAID officials appeared on podcasts and livestreams on some of the platforms. Apparently, the platforms subsequently demoted posts that echoed or supported the discredited views.

CISA and the State Department, on the other hand, both communicated directly with the platforms. The State Department hosted meetings that were meant to "facilitate [] communication" with the platforms. In those meetings, they educated the platforms on the "tools and techniques" that "malign" or "foreign propaganda actors" (*e.g.*, terrorist groups, China) were using to spread misinformation. Generally, the State Department officials did not flag content, suggest policy changes, or reciprocally receive data during those meetings.

CISA, however, did flag content. Beyond holding regular industry meetings with the platforms, CISA

officials engaged in "switchboarding" operations, meaning they acted as an intermediary for a third-party group by forwarding flagged content from them to the platforms. For example, during a federal election, CISA officials would receive "something on social media that [local election officials] deemed to be disinformation aimed at their jurisdiction" and, in turn, CISA would "share [that] with the appropriate social media compan[y]." In switchboarding, CISA officials worked alongside the Center for Internet Security and the Election Integrity Project, two private organizations. The officials' actions apparently led to content being removed or demoted by the recipient platforms.

* * *

Relying on the above record, the district court concluded that the officials, via both private and public channels, asked the platforms to remove content, pressed them to change their moderation policies, and threatened them—directly and indirectly—with legal consequences if they did not comply. And, it worked—that "unrelenting pressure" forced the platforms to act and take down users' content. Notably, though, those actions were not limited to private actors. Accounts run by state officials were often subject to censorship, too. For example, one platform removed a post by the Louisiana Department of Justice—which depicted citizens testifying against public policies regarding COVID—for violating its "medical misinformation policy" by "spread[ing] medical misinformation." In another instance, a platform took down a Louisiana state legislator's post discussing COVID vaccines. Similarly, one platform removed several videos, namely testimonials regarding COVID, posted by St. Louis County. So, the district court reasoned, the Plaintiffs were "likely to

succeed" on their claim because when the platforms moderated content, they were acting under the coercion (or significant encouragement) of government officials, in violation of the First Amendment, at the expense of both private and governmental actors.

In addition, the court found that considerations of equity weighed in favor of an injunction because of the clear need to safeguard the Plaintiffs' First Amendment rights. Finally, the court ruled that the Plaintiffs had standing to bring suit under several different theories, including direct First Amendment censorship and, for the State Plaintiffs, quasi-sovereign interests as well. Consequently, the district court entered an injunction against the officials barring them from an assortment of activities, including "meeting with," "communicat[ing]" with, or "flagging content" for social-media companies "for the purpose of urging, encouraging, pressuring, or inducing in any manner the removal, deletion, suppression, or reduction of content containing protected free speech." The officials appeal.

**II.**

We review the district court's standing determination de novo. *Freedom Path, Inc. v. Internal Revenue Serv.*, 913 F.3d 503, 507 (5th Cir. 2019). "We review a preliminary injunction for abuse of discretion, reviewing findings of fact for clear error and conclusions of law *de novo*. Whether an injunction fulfills the mandates of Fed. R. Civ. P. 65(d) is a question of law we review *de novo*." *Louisiana v. Biden*, 45 F.4th 841, 845 (5th Cir. 2022) (internal quotation marks and citation omitted).

## III.

We begin with standing. To establish Article III standing, the Plaintiffs bear the burden to show "[1] an injury in fact [2] that is fairly traceable to the challenged action of the defendant and [3] likely to be redressed by [their] requested relief." *Stringer v. Whitley*, 942 F.3d 715, 720 (5th Cir. 2019) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Because the Plaintiffs seek injunctive relief, the injury-in-fact and redressability requirements "intersect[]" and therefore the Plaintiffs must "demonstrat[e] a continuing injury or threatened future injury," not a past one. *Id.* "At the preliminary injunction stage, the movant must clearly show only that each element of standing is likely to obtain in the case at hand." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (citations omitted). The presence of any one plaintiff with standing to pursue injunctive relief as to the Plaintiffs' First-Amendment claim satisfies Article III's case-or-controversy requirement. *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006).

### A.

An injury-in-fact is "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560). "For a threatened future injury to satisfy the imminence requirement, there must be at least a 'substantial risk' that the injury will occur." *Crawford v. Hinds Cnty. Bd. of Supervisors*, 1 F.4th 371, 375 (5th Cir. 2021) (quoting *Stringer*, 942 F.3d at 721). Past harm can constitute an injury-in-fact for purposes of pursuing injunctive relief if it causes

"continuing, present adverse effects." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)). Otherwise, "'[p]ast wrongs are evidence' of the likelihood of a future injury but 'do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy.'" *Crawford*, 1 F.4th at 375 (quoting *Lyons*, 461 U.S. at 102–03) (alteration adopted).

Each of the Individual Plaintiffs has shown *past* injury-in-fact. Bhattacharya's and Kulldorff's sworn declarations allege that their article, the Great Barrington Declaration, which was critical of the government's COVID-related policies such as lockdowns, was "deboosted" in Google search results and removed from Facebook and Reddit, and that their roundtable discussion with Florida Governor Ron DeSantis concerning mask requirements in schools was removed from YouTube. Kulldorff also claimed censorship of his personal Twitter and LinkedIn accounts due to his opinions concerning vaccine and mask mandates; both accounts were suspended (although ultimately restored). Kheriaty, in his sworn declaration, attested to the fact that his Twitter following was "artificially suppressed" and his posts "shadow bann[ed]" so that they did not appear in his followers' feeds due to his views on vaccine mandates and lockdowns, and that a video of one of his interviews concerning vaccine mandates was removed from YouTube (but ultimately re-posted). Hoft—founder, owner, and operator of news website The Gateway Pundit—submitted a sworn declaration averring that The Gateway Pundit's Twitter account was suspended and then banned for its tweets about vaccine mandates and election fraud, its Facebook posts concerning COVID-19 and election security were either banned or flagged as false or

misinformation, and a YouTube video concerning voter fraud was removed. Hoft's declaration included photographic proof of the Twitter and Facebook censorship he had suffered. And Hines's declaration swears that her personal Facebook account was suspended and the Facebook posts of her organization, Health Freedom Louisiana, were censored and removed for their views on vaccine and mask mandates.

The officials do not contest that these past injuries occurred. Instead, they argue that the Individual Plaintiffs have failed to demonstrate that the harm from these past injuries is ongoing or that similar injury is likely to reoccur in the future, as required for standing to pursue injunctive relief. We disagree with both assertions.

All five Individual Plaintiffs have stated in sworn declarations that their prior censorship has caused them to self-censor and carefully word social-media posts moving forward in hopes of avoiding suspensions, bans, and censorship in the future. Kulldorff, for example, explained that he now "restrict[s] what [he] say[s] on social-media platforms to avoid suspension and other penalties." Kheriaty described how he now must be "extremely careful when posting any information on Twitter related to the vaccines, to avoid getting banned" and that he intentionally "limit[s] what [he] say[s] publicly," even "on topics where [he] ha[s] specific scientific and ethical expertise and professional experience." And Hoft notes that, "[t]o avoid suspension and other forms of censorship, [his website] frequently avoid[s] posting content that [it] would otherwise post on social-media platforms, and [] frequently alter[s] content to make it less likely to trigger censorship policies." These

lingering effects of past censorship must be factored into the standing calculus. *See Lyons*, 461 U.S. at 102.

As the Supreme Court has recognized, this chilling of the Individual Plaintiffs' exercise of their First Amendment rights is, itself, a constitutionally sufficient injury. *See Laird v. Tatum*, 408 U.S. 1, 11 (1972). True, "to confer standing, allegations of chilled speech or self-censorship must arise from a fear of [future harm] that is not imaginary or wholly speculative." *Zimmerman v. City of Austin, Tex.*, 881 F.3d 378, 390 (5th Cir. 2018) (internal quotation marks and citation omitted); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) (Plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm"). But the fears motivating the Individual Plaintiffs' self-censorship, here, are far from hypothetical. Rather, they are grounded in the very real censorship injuries they have previously suffered to their speech on social media, which are "evidence of the likelihood of a future injury." *Crawford*, 1 F.4th at 375 (internal quotation marks and citation omitted). Supported by this evidence, the Individual Plaintiffs' self-censorship is a cognizable, ongoing harm resulting from their past censorship injuries, and therefore constitutes injury-in-fact upon which those Plaintiffs may pursue injunctive relief. *Lyons*, 461 U.S. at 102.

Separate from their ongoing harms, the Individual Plaintiffs have shown a substantial risk that the injuries they suffered in the past will reoccur. The officials suggest that there is no threat of future injury because "Twitter has stopped enforcing its COVID-related misinformation policy." But this does nothing to mitigate the risk of future harm to the Individual Plaintiffs. Twitter continues to enforce a robust general

misinformation policy, and the Individual Plaintiffs seek to express views—and have been censored for their views—on topics well beyond COVID-19, including allegations of election fraud and the Hunter Biden laptop story.[3] Plaintiffs use social-media platforms other than Twitter—such as Facebook and YouTube—which still enforce COVID- or health-specific misinformation policies.[4] And most fundamentally, the Individual Plaintiffs are not seeking to enjoin Twitter's content moderation policies (or those of any other social-media platform, for that matter). Rather, as Plaintiffs' counsel made clear at oral argument, what the Individual Plaintiffs are challenging is the government's *interference with* those social-media companies' independent application of their policies. And there is no evidence to suggest that the government's meddling has ceased. To the contrary, the officials' attorney conceded at oral argument that they continue to be in regular contact with social-media platforms concerning content-moderation issues today.

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[3] Notably, Twitter maintains a separate "crisis misinformation policy" which applies to "public health emergencies." *Crisis misinformation policy*, TWITTER (August 2022), https://help.twitter.com/en/rules-and-policies/crisis-misinformation. This policy would presumably apply to COVID-related misinformation if COVID-19 were again classified as a Public Health Emergency, as it was until May 11, 2023. *See End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 5, 2023), https://www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html.

[4] *Facebook Community Standards: Misinformation*, META, https://transparency.fb.com/policies/community-standards/misinformation/ (last visited August 11, 2023); Misinformation policies, YOUTUBE, https://support.google.com/youtube/topic/10833358 (last visited August 11, 2023).

The officials also contend that future harm is unlikely because "all three plaintiffs who suggested that their social-media accounts had been permanently suspended in the past now appear to have active accounts." But as the Ninth Circuit recently recognized, this fact weighs in *Plaintiffs'* favor. In *O'Handley v. Weber*, considering this issue in the context of redressability,[5] the Ninth Circuit explained:

> Until recently, it was doubtful whether [injunctive] relief would remedy [the plaintiff]'s alleged injuries because Twitter had permanently suspended his account, and the requested injunction [against government-imposed social-media censorship] would not change that fact. Those doubts disappeared in December 2022 when Twitter restored his account.

62 F.4th 1145, 1162 (9th Cir. 2023). The same logic applies here. If the Individual Plaintiffs did not currently have active social-media accounts, then there would be no risk of future government-coerced censorship of their speech on those accounts. But since the Individual Plaintiffs continue to be active speakers on social media, they continue to face the very real and imminent threat of government-coerced social-media censorship.

Because the Individual Plaintiffs have demonstrated ongoing harm from their past censorship as well as a substantial risk of future harm, they have established

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[5] When plaintiffs seek injunctive relief, the injury-in-fact and redressability requirements intersect. *Stringer*, 942 F.3d at 720. So, it makes no difference that the Ninth Circuit addressed the issue of reinstated social-media accounts in its redressability analysis while we address it as part of injury-in-fact. The ultimate question is whether there was a sufficient threat of future injury to warrant injunctive relief.

an injury-in-fact sufficient to support their request for injunctive relief.

**B.**

Turning to the second element of Article III standing, the Individual Plaintiffs were also required to show that their injuries were "fairly traceable" to the challenged conduct of the officials. *Stringer*, 942 F.3d at 720. When, as is alleged here, the "causal relation between [the claimed] injury and [the] challenged action depends upon the decision of an independent third party . . . standing is not precluded, but it is ordinarily substantially more difficult to establish." *California v. Texas*, 141 S. Ct. 2104, 2117 (2021) (internal quotation marks and citation omitted). "To satisfy that burden, the plaintiff[s] must show at the least 'that third parties will likely react in predictable ways.'" *Id.* (quoting *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019)).

The officials contend that traceability is lacking because the Individual Plaintiffs' censorship was a result of "independent decisions of social-media companies." This conclusion, they say, is a matter of timing: social-media platforms implemented content-moderation policies in early 2020 and therefore the Biden Administration—which took office in January 2021— "could not be responsible for [any resulting] content moderation." But as we just explained, the Individual Plaintiffs do not challenge the social-media platforms' content-moderation policies. So, the fact that the Individual Plaintiffs' censorship can be traced back, at least in part, to third-party policies that pre-date the current presidential administration is irrelevant. The dispositive question is whether the Individual Plaintiffs' censorship can also be

traced to government-coerced *enforcement* of those policies. We agree with the district court that it can be.

On this issue, *Department of Commerce* is instructive. There, a group of plaintiffs brought a constitutional challenge against the federal government's decision to reinstate a citizenship question on the 2020 census. 139 S. Ct. at 2561. Their theory of harm was that, as a result of this added question, noncitizen households would respond to the census at lower rates than citizen households due to fear of immigration-related consequences, which would, in turn, lead to undercounting of population in certain states and a concomitant diminishment in political representation and loss of federal funds. *Id.* at 2565-66. In response, the government presented many of the same causation arguments raised here, contending that any harm to the plaintiffs was "not fairly traceable to the [government]'s decision" but rather "depend[ed] on the independent action of third parties" (*there*, noncitizens refusing to respond to the census; *here*, social-media companies censoring posts) which "would be motivated by unfounded fears that the Federal Government will itself break the law" (*there*, "using noncitizens' answers against them for law enforcement purposes"; *here*, retaliatory enforcement actions or regulatory reform). *Id.* But a unanimous Supreme Court disagreed. As the Court explained, the plaintiffs had "met their burden of showing that third parties will likely react in predictable ways to the citizenship question" because evidence "established that noncitizen households have historically responded to the census at lower rates than other groups" and the district court had "not clearly err[ed] in crediting the . . . theory that the discrepancy [was] likely

attributable at least in part to noncitizens' reluctance to answer a citizenship question." *Id.* at 2566.

That logic is directly applicable here. The Individual Plaintiffs adduced extensive evidence that social-media platforms have engaged in censorship of certain viewpoints on key issues and that the government has engaged in a years-long pressure campaign designed to ensure that the censorship aligned with the government's preferred viewpoints. The district court did not clearly err in crediting the Individual Plaintiffs' theory that the social-media platforms' censorship decisions were likely attributable at least in part to the platforms' reluctance to risk the adverse legal or regulatory consequences that could result from a refusal to adhere to the government's directives. The Individual Plaintiffs therefore met their burden of showing that the social-media platforms will likely react in a predictable way—*i.e.*, censoring speech—in response to the government's actions.

To be sure, there were instances where the social-media platforms *declined* to remove content that the officials had identified for censorship. But predictability does not require certainty, only likelihood. *See Dep't of Com.*, 139 S. Ct. at 2566 (requiring that third parties "will *likely* react in predictable ways"). Here, the Individual Plaintiffs presented extensive evidence of escalating threats—both public and private—by government officials aimed at social-media companies concerning their content-moderation decisions. The district court thus had a sound basis upon which to find a *likelihood* that, faced with unrelenting pressure from the most powerful office in the world, social-media platforms did, and would continue to, bend to the government's will. This determination was not, as the officials

contend, based on "unadorned speculation." Rather, it was a logical conclusion based directly on the evidence adduced during preliminary discovery.

C.

The final element of Article III standing—redressability—required the Individual Plaintiffs to demonstrate that it was "likely, as opposed to merely speculative, that the [alleged] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks and citation omitted). The redressability analysis focuses on "the relationship between the judicial relief requested and the injury" alleged. *California*, 141 S. Ct. at 2115 (internal quotation marks and citation omitted).

Beginning first with the injury alleged, we have noted multiple times now an important distinction between censorship as a result of social-media platforms' *independent* application of their content-moderation policies, on the one hand, and censorship as a result of social-media platforms' *government-coerced* application of those policies, on the other. As Plaintiffs' counsel made clear at oral argument, the Individual Plaintiffs seek to redress the latter injury, not the former.

The Individual Plaintiffs have not sought to invalidate social-media companies' censorship policies. Rather, they asked the district court to restrain the officials from unlawfully interfering with the social-media companies' independent application of their content-moderation policies. As the Ninth Circuit has also recognized, there is a direct relationship between this requested relief and the injury alleged such that redressability is satisfied. *See O'Handley*, 62 F.4th at 1162.

**D.**

We also conclude that the State Plaintiffs are likely to establish direct standing.[6] First, state officials have suffered, and will likely continue to suffer, direct censorship on social media. For example, the Louisiana Department of Justice posted a video showing Louisiana citizens testifying at the State Capitol and questioning the efficacy of COVID-19 vaccines and mask mandates. But one platform removed the video for spreading alleged "medical misinformation" and warned that any subsequent violations would result in suspension of the state's account. The state thereafter modified its practices for posting on social media for fear of future censorship injury.

Similarly, another platform took down a Louisiana state legislator's post discussing COVID vaccines. And several videos posted by St. Louis County showing residents discussing COVID policies were removed, too. Acts of this nature continue to this day. In fact, at oral argument, counsel for the State of Louisiana explained that YouTube recently removed a video of counsel, speaking in his official capacity, criticizing the federal government's alleged unconstitutional censorship in this case.[7]

These acts of censorship confer standing for substantially the same reasons as those discussed for the Individual Plaintiffs. That is, they constitute an

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[6] The State Plaintiffs also contend that they have *parens patriae* standing. We do not consider this alternative argument.

[7] These actions are not limited to the State Plaintiffs. On the contrary, other states' officials have offered evidence of numerous other instances where their posts were removed, restricted, or otherwise censored.

ongoing injury, and demonstrate a likelihood of future injury, traceable to the conduct of the federal officials and redressable by an injunction against them.

The federal officials admit that these instances of censorship occurred but deny that the State Plaintiffs have standing based on the assertion that "the First Amendment does not confer rights on States." But the Supreme Court has made clear that the government (state and otherwise) has a "right" to speak on its own behalf. *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000); *see also Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207-08 (2015). Perhaps that right derives from a state's sovereign nature, rather than from the First Amendment itself. But regardless of the source of the right, the State Plaintiffs sustain a direct injury when the social-media accounts of state officials are censored due to federal coercion.

Federally coerced censorship harms the State Plaintiffs' ability to listen to their citizens as well. This right to listen is "reciprocal" to the State Plaintiffs' right to speak and constitutes an independent basis for the State Plaintiffs' standing here. *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 757 (1976).

Officials from the States of Missouri and Louisiana testified that they regularly use social media to monitor their citizens' concerns. As explained by one Louisiana official:

> [M]ask and vaccine mandates for students have been a very important source of concern and public discussion by Louisiana citizens over the last year. It is very important for me to have access to free public

> discourse on social media on these issues so I can understand what our constituents are actually thinking, feeling, and expressing about such issues, and so I can communicate properly with them.

And a Missouri official testified to several examples of critical speech on an important topic that he was not able to review because it was censored:

> [O]ne parent who posted on nextdoor.com (a neighborhood networking site operated by Facebook) an online petition to encourage his school to remain mask-optional found that his posts were quietly removed without notifying him, and his online friends never saw them. Another parent in the same school district who objected to mask mandates for schoolchildren responded to Dr. Fauci on Twitter, and promptly received a warning from Twitter that his account would be banned if he did not delete the tweets criticizing Dr. Fauci's approach to mask mandates. These examples are just the sort of online speech by Missourians that it is important for me and the Missouri Attorney General's Office to be aware of.

The Government does not dispute that the State Plaintiffs have a crucial interest in listening to their citizens. Indeed, the CDC's own witness explained that if content were censored and removed from social-media platforms, government communicators would not "have the full picture" of what their citizens' true concerns are. So, when the federal government coerces or substantially encourages third parties to censor certain viewpoints, it hampers the states' right to hear their constituents and, in turn, reduces their ability to respond to the concerns of their constituents. This injury,

too, means the states likely have standing. *See Va. State Bd. of Pharm.*, 425 U.S. at 757.

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The Plaintiffs have standing because they have demonstrated ongoing harm from past social-media censorship and a likelihood of future censorship, both of which are injuries traceable to government-coerced enforcement of social-media platforms' content-moderation policies and redressable by an injunction against the government officials. We therefore proceed to the merits of Plaintiffs' claim for injunctive relief.[8]

**IV.**

A party seeking a preliminary injunction must establish that (1) they are likely to succeed on the merits, (2) there is a "substantial threat" they will suffer an "irreparable injury" otherwise, (3) the potential injury "outweighs any harm that will result" to the other side, and (4) an injunction will not "disserve the public interest." *Atchafalaya Basinkeeper* v. *U.S. Army Corps of Eng'rs*, 894 F.3d 692, 696 (5th Cir. 2018) (citing *La Union Del Pueblo Entero v. FEMA*, 608 F.3d 217, 219 (5th Cir. 2010)). Of course, a "preliminary injunction is an extraordinary remedy," meaning it should not be entered lightly. *Id.*

We start with likelihood of success. The Plaintiffs allege that federal officials ran afoul of the First Amendment by coercing and significantly encouraging "social-

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[8] The Individual Plaintiffs' standing and the State Plaintiffs' standing provide independent bases upon which the Plaintiffs' injunctive-relief claim may proceed since there need be only one plaintiff with standing to satisfy the requirements of Article III. *Rumsfeld*, 547 U.S. at 52 n.2.

media platforms to censor disfavored [speech]," including by "threats of adverse government action" like antitrust enforcement and legal reforms. We agree.

**A.**

The government cannot abridge free speech. U.S. CONST. amend. I. A private party, on the other hand, bears no such burden—it is "not ordinarily constrained by the First Amendment." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019). That changes, though, when a private party is coerced or significantly encouraged by the government to such a degree that its "choice"—which if made by the government would be unconstitutional, *Norwood v. Harrison*, 413 U.S. 455, 465 (1973)—"must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *Barnes v. Lehman*, 861 F.2d 1383, 1385-36 (5th Cir. 1988).[9] This is known as the close nexus test.[10]

Under that test, we "begin[] by identifying 'the specific conduct of which the plaintiff complains.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (quoting *Blum*, 457 U.S. at 1004 ("Faithful adherence to

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[9] That makes sense: First Amendment rights "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960).

[10] Note that, at times, we have called this test by a few other names. *See, e.g.*, *Frazier v. Bd. of Trustees of Nw. Miss. Reg'l Med. Ctr.*, 765 F.2d 1278, 1284 (5th Cir. 1985) ("the fair attribution test"); *Bass v. Parkwood Hosp.*, 180 F.3d 234, 242 (5th Cir. 1999) ("The state compulsion (or coercion) test"). We settle that dispute now—it is the close nexus test. *Am. Mfrs.*, 526 U.S. at 52 (a "close nexus" is required). In addition, some of our past decisions have confused this test with the joint action test, *see Bass*, 180 F.3d at 242, but the two are separate tests with separate considerations.

the 'state action' requirement . . . requires careful attention to the gravamen of the plaintiff's complaint.")). Then, we ask whether the government sufficiently induced that act. Not just any coaxing will do, though. After all, "the government can speak for itself," which includes the right to "advocate and defend its own policies." *Southworth*, 529 U.S. at 229; *see also Walker*, 576 U.S. at 207. But, on one hand there is persuasion, and on the other there is coercion and significant encouragement—two distinct means of satisfying the close nexus test. *See Louisiana Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317, 320 (5th Cir. 2020) (per curiam) ("Responding agreeably to a request and being all but forced by the coercive power of a governmental official are different categories of responses . . . "). Where we draw that line, though, is the question before us today.

**1.**

We start with encouragement. To constitute "significant encouragement," there must be such a "close nexus" between the parties that the government is practically "*responsible*" for the challenged decision. *Blum*, 457 U.S. at 1004 (emphasis in original). What, then, is a close nexus? We know that "the mere fact that a business is subject to state regulation" is not sufficient. *Id.* (alteration adopted) (citation omitted); *Halleck*, 139 S. Ct. at 1932 ("Put simply, being regulated by the State does not make one a state actor."). And, it is well established that the government's "[m]ere approval of or acquiescence in" a private party's actions is not enough either. *Blum*, 457 U.S. at 1004-05. Instead, for encouragement, we find that the government must exercise some active, meaningful control over the private party's decision.

Take *Blum v. Yaretsky*. There, the Supreme Court found there was no state action because a decision to discharge a patient—even if it followed from the "requir[ed] completion of a form" under New York law—was made by private physicians, not the government. *Id.* at 1006-08. The plaintiff argued that, by regulating and overseeing the facility, the government had "affirmatively command[ed]" the decision. *Id.* at 1005. The Court was not convinced—it emphasized that "physicians, [] not the forms, make the decision" and they do so under "professional standards that are not established by the State." *Id.* Similarly, in *Rendell-Baker v. Kohn* the Court found that a private school—which the government funded and placed students at—was not engaged in state action because the conduct at issue, namely the decision to fire someone, "[was] not . . . influenced by any state regulation." 457 U.S. 830, 841 (1982).

Compare that, though, to *Roberts v. Louisiana Downs, Inc.*, 742 F.2d 221 (5th Cir. 1984). There, we held that a horseracing club's action was attributable to the state because the Louisiana government—through legal and informal supervision—was overly involved in the decision to deny a racer a stall. *Id.* at 224. "Something more [was] present [] than simply extensive regulation of an industry, or passive approval by a state regulatory entity of a decision by a regulated business." *Id.* at 228. Instead, the stalling decision was made partly by the "racing secretary," a legislatively created position accompanied by expansive supervision from on-site state officials who had the "power to override decisions" made by the club's management. *Id.* So, even though the secretary was plainly a "private employee" paid by the club, the state's extensive oversight—coupled with

*some* level of authority on the part of the state—meant that the club's choice was not fully independent or made wholly subject to its own policies. *Id.* at 227-28. So, this case is on the opposite end of the state-involvement spectrum to *Blum*.

Per *Blum* and *Roberts*, then, significant encouragement requires "[s]omething more" than uninvolved oversight from the government. *Id.* at 228. After all, there must be a "close nexus" that renders the government practically "responsible" for the decision. *Blum*, 457 U.S. at 1004. Taking that in context, we find that the clear throughline for encouragement in our caselaw is that there must be *some* exercise of *active* (not passive), *meaningful* (impactful enough to render them responsible) *control* on the part of the government over the private party's challenged decision. Whether that is (1) entanglement in a party's independent decision-making or (2) direct involvement in carrying out the decision itself, the government must encourage the decision to such a degree that we can fairly say it was the state's choice, not the private actor's. *See id.*; *Roberts*, 742 F.2d at 224; *Rendell-Baker*, 457 U.S. at 841 (close nexus test is met if action is "compelled or [] *influenced*" by the state (emphasis added)); *Frazier*, 765 F.2d at 1286 (significant encouragement is met when "the state has had some affirmative role, albeit one of encouragement short of compulsion," in the decision).[11]

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[11] This differs from the "joint action" test that we have considered in other cases. Under that doctrine, a private party may be considered a state actor when it "operates as a 'willful participant in joint activity with the State or its agents.'" *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 296 (2001) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 941 (1982)). The difference

between the two lies primarily in the degree of the state's involvement.

Under the joint action test, the level of integration is *very high*—there must be "pervasive entwinement" between the parties. *Id.* at 298. That is integration to such a degree that "will support a conclusion that an ostensibly private organization ought to be charged with a *public character*." *Id.* at 302 (emphasis added) (finding state action by athletic association when public officials served on the association's board, public institutions provided most of the association's funding, and the association's employees received public benefits); *see also Rendell-Baker*, 457 U.S. at 842 (requiring a "symbiotic relationship"); Frazier, 765 F.2d at 1288 & n.22 (explaining that although the joint action test involves the government playing a "meaningful role" in the private actor's decision, that role must be part of a "functionally symbiotic" relationship that is so extensive that "*any act* of the private entity will be fairly attributable to the state even if it cannot be shown that the government played a direct role in the *particular* action challenged." (emphases added)).

Under the close nexus test, however, the government is not deeply intertwined with the private actor as a whole. Instead, the state is involved in only one facet of the private actor's operations—its decision-making process regarding the *challenged* conduct. *Roberts*, 742 F.2d at 224; *Howard Gault*, 848 F.2d at 555. That is a much narrower level of integration. *See Roberts*, 742 F.2d at 228 ("We do not today hold that the state and Louisiana Downs are in such a relationship that all acts of the track constitute state action, nor that all acts of the racing secretary constitute state action," but instead that "[i]n the area of stalling, . . . state regulation and involvement is so specific and so pervasive that [such] decisions may be considered to bear the imprimatur of the state."). Consequently, the showings required by a plaintiff differ. Under the joint action test, the plaintiff must prove substantial integration between the two entities *in toto*. For the close nexus test, the plaintiff instead must only show significant involvement from the state in the *particular* challenged action.

Still, there is admittedly *some* overlap between the tests. *See Brentwood*, 531 U.S. at 303 ("'Coercion' and 'encouragement' are like 'entwinement' in referring to kinds of facts that can justify characterizing an ostensibly private action as public instead. Facts that

Take *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, 848 F.2d 544 (5th Cir. 1988). There, a group of onion growers—by way of state picketing laws and local officials—shut down a workers' strike. *Id.* at 548-49. We concluded that the growers' "activity"—axing the strike—"while not compelled by the state, was so *significantly encouraged*, both overtly and covertly, that the choice must in law be deemed to be that of the state." *Id.* at 555 (alterations adopted) (citation and quotation marks omitted) (emphasis added).[12] Specifically, "[i]t was the heavy participation of state and state officials," including local prosecutors and police officers, "that [brought] [the conduct] under color of state law." *Id.* In other words, the officials were directly involved in carrying out the challenged decision. That satisfied the requirement that, to encourage a decision,

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address any of these criteria are significant, but no one criterion must necessarily be applied. When, therefore, the relevant facts show pervasive entwinement to the point of largely overlapping identity, the implication of state action is not affected by pointing out that the facts might not loom large under a different test."). But, that is to be expected—these tests are not "mechanical[ly]" applied. *Roberts*, 742 F.2d at 224.

[12] We note that although state-action caselaw seems to deal most often with § 1983 (*i.e.*, the under-color-of-law prong) and the Fourteenth Amendment, there is no clear directive from the Supreme Court that any variation in the law or government at issue changes the state-action analysis. *See Blum*, 457 U.S. at 1004. In fact, we have expressly rejected such ideas. *See Miller v. Hartwood Apartments, Ltd.*, 689 F.2d 1239, 1243 (5th Cir. 1982) ("Although the *Blum* decision turned on § 1983, we find the determination of federal action to rest on the same general principles as determinations of state action."); *Barnes*, 861 F.2d at 1385 ("The analysis of state action under the Fourteenth Amendment and the analysis of action under color of state law may coincide for purposes of § 1983.").

the government must exert some meaningful, active control over the private party's decision.

Our reading of what encouragement means under the close nexus test tracks with other federal courts, too. For example, the Ninth Circuit reads the close nexus test to be satisfied when, through encouragement, the government "overwhelm[s] the private party['s]" choice in the matter, forcing it to "act in a certain way." *O'Handley*, 62 F.4th at 1158; *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 751 (9th Cir. 2020) ("A finding that individual state actors or other state requirements literally 'overrode' a nominally private defendant's independent judgment might very well provide relevant information."). That analysis, much like meaningful control, asks whether a decision "was the result of [a party's] own independent judgment." *O'Handley*, 62 F.4th at 1159.

**2.**

Next, we take coercion—a separate and distinct means of satisfying the close nexus test. Generally speaking, if the government compels the private party's decision, the result will be considered a state action. *Blum*, 457 U.S. at 1004. So, what is coercion? We know that simply "being regulated by the State does not make one a state actor." *Halleck*, 139 S. Ct. at 1932. Coercion, too, must be something more. But, distinguishing coercion from persuasion is a more nuanced task than doing the same for encouragement. Encouragement is evidenced by an exercise of active, meaningful control, whether by entanglement in the party's decision-making process or direct involvement in carrying out the decision itself. Therefore, it may be more noticeable and, consequently, more distinguishable from persuasion. Coercion, on the

other hand, may be more subtle. After all, the state may advocate—even forcefully—on behalf of its positions. *Southworth*, 529 U.S. at 229.

Consider a Second Circuit case, *National Rifle Ass'n v. Vullo*, 49 F.4th 700 (2d Cir. 2022). There, a New York state official "urged" insurers and banks via strongly worded letters to drop the NRA as a client. *Id.* at 706. In those letters, the official alluded to reputational harms that the companies would suffer if they continued to support a group that has allegedly caused or encouraged "devastation" and "tragedies" across the country. *Id.* at 709. Also, the official personally told a few of the companies in a closed-door meeting that she "was less interested in pursuing the [insurers' regulatory] infractions . . . so long as [they] ceased" working with the NRA. *Id.* at 718. Ultimately, the Second Circuit found that both the letters and the statement did not amount to coercion, but instead "permissible government speech." *Id.* at 717, 719. In reaching that decision, the court emphasized that "[a]lthough she did have regulatory authority over the target audience," the official's letters were written in a "nonthreatening tone" and used persuasive, non-intimidating language. *Id.* at 717. Relatedly, while she referenced "adverse consequences" if the companies did not comply, they were only "reputational risks"—there was no intimation that "punishment or adverse regulatory action would follow the failure to accede to the request." *Id.* (alterations adopted). As for the "so long as" statement, the Second Circuit found that—when viewed in "context"—the official was merely "negotiating[] and resolving [legal] violations,"

a legitimate power of her office.[13] *Id.* at 718-19. Because she was only "carrying out her regulatory responsibilities" and "engaging in legitimate enforcement action," the official's references to infractions were not coercive. *Id.* Thus, the Second Circuit found that *seemingly* threatening language was actually permissible government advocacy.

That is not to say that coercion is *always* difficult to identify. Sometimes, coercion is obvious. Take *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). There, the Rhode Island Commission to Encourage Morality—a state-created entity—sought to stop the distribution of obscene books to kids. *Id.* at 59. So, it sent a letter to a book distributor with a list of verboten books and requested that they be taken off the shelves. *Id.* at 61-64. That request conveniently noted that compliance would "eliminate the necessity of our recommending prosecution to the Attorney General's department." *Id.* at 62 n.5. Per the Commission's request, police officers followed up to make sure the books were removed. *Id.* at 68. The Court concluded that this "system of informal censorship," which was "clearly [meant] to intimidate" the recipients through "threat of [] legal sanctions and other means of coercion" rendered the distributors' decision to remove the books a state action. *Id.* at 64, 67, 71-72. Given *Bantam Books*, not-so subtle asks

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[13] Apparently, the companies had previously issued "illegal insurance policies—programs created and endorsed by the NRA"—that covered litigation defense costs resulting from any firearm-related injury or death, in violation of New York law. *Vullo*, 49 F.4th at 718. The court reasoned that the official had the power to bring those issues to a close.

accompanied by a "system" of pressure (*e.g.*, threats and
follow-ups) are clearly coercive.

Still, it is rare that coercion is so black and white. More often, the facts are complex and sprawling as was the case in *Vullo*. That means it can be quite difficult to parse out coercion from persuasion. We, of course, are not the first to recognize this. In that vein, the Second Circuit has crafted a four-factor test that distills the considerations of *Bantam Books* into a workable standard. We, lacking such a device, adopt the Second Circuit's approach as a helpful, non-exclusive tool for completing the task before us, namely identifying when the state's messages cross into impermissible coercion.

The Second Circuit starts with the premise that a government message is coercive—as opposed to persuasive—if it "can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request." *Vullo*, 49 F.4th at 715 (quotation marks and citation omitted). To distinguish such "attempts to coerce" from "attempts to convince," courts look to four factors, namely (1) the speaker's "word choice and tone"; (2) "whether the speech was perceived as a threat"; (3) "the existence of regulatory authority"; and, "perhaps most importantly, (4) whether the speech refers to adverse consequences." *Id.* (citations omitted). Still, "[n]o one factor is dispositive." *Id.* (citing *Bantam Books*, 372 U.S. at 67). For example, the Second Circuit found in *Vullo* that the state officials' communications were not coercive because, in part, they were not phrased in an intimidating manner and only referenced reputational harms—an otherwise acceptable consequence for a governmental actor to threaten. *Id.* at 717, 719.

The Ninth Circuit has also adopted the four-factor approach and, in doing so, has cogently spelled out the nuances of each factor. Consider *Kennedy v. Warren*, 66 F.4th 1199 (9th Cir. 2023). There, Senator Elizabeth Warren penned a letter to Amazon asking it to stop selling a "false or misleading" book on COVID. *Id.* at 1204. The senator stressed that, by selling the book, Amazon was "providing consumers with false and misleading information" and, in doing so, was pursuing what she described as "an unethical, unacceptable, and potentially unlawful course of action." *Id.* So, she asked it to do better, including by providing a "public report" on the effects of its related sales algorithms and a "plan to modify these algorithms so that they no longer" push products peddling "COVID-19 misinformation." *Id.* at 1205. The authors sued, but the Ninth Circuit found no state action.

The court, lamenting that it can "be difficult to distinguish" between persuasion and coercion, turned to the Second Circuit's "useful non-exclusive" four-factor test. *Id.* at 1207. First, the court reasoned that the senator's letter, although made up of "strong rhetoric," was framed merely as a "request rather than a command." *Id.* at 1208. Considering both the text and the "tenor" of the parties' relationship, the court concluded that the letter was not unrelenting, nor did it "suggest[] that compliance was the only realistic option." *Id.* at 1208-09.

Second, and relatedly, even if she had said as much, the senator lacked regulatory authority—she "ha[d] no unilateral power to penalize Amazon." *Id.* at 1210. Still, the sum of the second prong is more than just power. Given that the overarching purpose of the four-factor test is to ask if the speaker's message can "reasonably

be construed" as a "threat of adverse consequences," the lack of power is "certainly relevant." *Id.* at 1209-10. After all, the "absence of authority influences how a reasonable person would read" an official's message. *Id.* at 1210; *see also Hammerhead Enters., Inc. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983) (finding no government coercion where city official lacked "the power to impose sanctions on merchants who did not respond to [his] requests") (citing *Bantam Books*, 372 U.S. at 71). For example, in *Warren*, it would have been "unreasonable" to believe, given Senator Warren's position "as a single Senator" who was "removed from the relevant levers of power," that she could exercise any authority over Amazon. 66 F.4th at 1210.

Still, the "lack of direct authority" is not entirely dispositive. *Id.* Because—per the Second and Ninth Circuits—the key question is whether a message can "reasonably be construed as coercive," *id.* at 1209,[14] a speaker's power over the recipient need not be clearly defined or readily apparent, so long as it can be reasonably said that there is *some* tangible power lurking in

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[14] According to the Ninth Circuit, that tracks with its precedent. "[I]n *Carlin Communications, Inc. v. Mountain States Telephone & Telegraph Co.*, 827 F.2d 1291 (9th Cir. 1987), [they] held that a deputy county attorney violated the First Amendment by threatening to prosecute a telephone company if it continued to carry a salacious dial-a-message service." *Warren*, 66 F.4th at 1207. But, "in *American Family Association, Inc. v. City & County of San Francisco*, 277 F.3d 1114 (9th Cir. 2002), [they] held that San Francisco officials did not violate the First Amendment when they criticized religious groups' anti-gay advertisements and urged television stations not to broadcast the ads." *Id.* The rub, per the court, was that "public officials may criticize practices that they would have no constitutional ability to regulate, so long as there is no actual or threatened imposition of government power or sanction." *Id.*

the background. *See Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003) (finding a private party "could reasonably have believed" it would face retaliation if it ignored a borough president's request because "[e]ven though [he] lacked direct regulatory control," there was an "implicit threat" that he would "use whatever authority he does have . . . to interfere" with the party's cashflow). That, of course, was not present in *Warren*. So, the second prong was easily resolved against state action.

Third, the senator's letter "contain[ed] no explicit reference" to "adverse consequences."[15] 66 F.4th at 1211. And, beyond that, no "threat [was] clear from the context." *Id.* To be sure, an "official does not need to say 'or else,'" but there must be some message—even if "unspoken"—that can be reasonably construed as intimating a threat. *Id.* at 1211-12. There, when read "holistically," the senator only implied that Amazon was "morally complicit" in bad behavior, nothing more. *Id.* at 1212.

Fourth, there was no indication that Amazon perceived the message as a threat. There was "no evidence" it "changed its algorithms"—"let alone that it felt compelled to do so"—as a result of the senator's urgings. *Id.* at 1211. Admittedly, it is not required that the recipient "bow[] to government pressure," but courts are more likely to find coercion if there is "some indication" that the message was "understood" as a threat, such as evidence of actual change. *Id.* at 1210-11. In Warren, it was apparent (and there was no sense to the contrary)

[15] The Ninth Circuit emphasized that officials may advocate for positions, including by "[g]enerating public pressure to motivate others to change their behavior."

that the minor policy change the company did make stemmed from reputational concerns, not "fears of liability in a court of law." *Id.* at 1211. Considering the above, the court found that the senator's message amounted to an attempt at persuasion, not coercion.

**3.**

To sum up, under the close nexus test, a private party's conduct may be state action if the government coerced *or* significantly encouraged it. *Blum*, 457 U.S. at 1004. Although this test is not mechanical, *see Roberts*, 742 F.2d at 224 (noting that state action is "essentially [a] factual determination" made by "sifting facts and weighing circumstances case by case to determine if there is a sufficient nexus between the state and the particular aspect of the private individual's conduct which is complained of" (citation and quotation marks omitted)), there are clear, although not exclusive, ways to satisfy either prong.

For encouragement, we read the law to require that a governmental actor exercise active, meaningful control over the private party's decision in order to constitute a state action. That reveals itself in (1) entanglement in a party's independent decision-making or (2) direct involvement in carrying out the decision itself. *Compare Roberts*, 742 F.2d at 224 (state had such "continuous and intimate involvement" and supervision over horseracing decision that, when coupled with its authority over the actor, it was considered a state action) *and Howard Gault*, 848 F.2d at 555 (state eagerly, and effectively, assisted a private party in shutting down a protest), *with Blum*, 457 U.S. at 1008 (state did not sufficiently influence the decision as it was made subject to independent standards). In any of those scenarios, the

state has such a "close nexus" with the private party that the government actor is practically *"responsible"* for the decision, *Blum*, 457 U.S. at 1004, because it has necessarily encouraged the private party to act and, in turn, commandeered its independent judgment, *O'Handley*, 62 F.4th at 1158-59.

For coercion, we ask if the government compelled the decision by, through threats or otherwise, intimating that some form of punishment will follow a failure to comply. *Vullo*, 49 F.4th at 715. Sometimes, that is obvious from the facts. *See, e.g., Bantam Books*, 372 U.S. at 62-63 (a mafiosi-style threat of referral to the Attorney General accompanied with persistent pressure and follow-ups). But, more often, it is not. So, to help distinguish permissible persuasion from impermissible coercion, we turn to the Second (and Ninth) Circuit's four-factor test. Again, honing in on whether the government "intimat[ed] that some form of punishment" will follow a "failure to accede," we parse the speaker's messages to assess the (1) word choice and tone, including the overall "tenor" of the parties' relationship; (2) the recipient's perception; (3) the presence of authority, which includes whether it is reasonable to fear retaliation; and (4) whether the speaker refers to adverse consequences. *Vullo*, 49 F.4th at 715; *see also Warren*, 66 F.4th at 1207.

Each factor, though, has important considerations to keep in mind. For word choice and tone, "[a]n interaction will tend to be more threatening if the official refuses to take 'no' for an answer and pesters the recipient until it succumbs." *Warren*, 66 F.4th at 1209 (citing *Bantam Books*, 372 U.S. at 62-63). That is so because we consider the overall "tenor" of the parties' relationship. *Id.* For authority, there is coercion even if the

speaker lacks present ability to act so long as it can "reasonably be construed" as a threat worth heeding. *Compare id.* at 1210 (single senator had no worthwhile power over recipient, practical or otherwise), *with Okwedy*, 333 F.3d at 344 (although local official lacked direct power over the recipient, company "could reasonably have believed" from the letter that there was "an implicit threat" and that he "would use whatever authority he does have" against it).

As for perception, it is not necessary that the recipient "admit that it bowed to government pressure," nor is it even "necessary for the recipient to have complied with the official's request"—"a credible threat may violate the First Amendment even if 'the victim ignores it, and the threatener folds his tent.'" *Warren*, 66 F.4th at 1210 (quoting *Backpage.com, LLC v. Dart*, 807 F.3d 229, 231 (7th Cir. 2015)). Still, a message is more likely to be coercive if there is *some* indication that the party's decision resulted from the threat. *Id.* at 1210-11. Finally, as for adverse consequences, the government need not speak its threat aloud if, given the circumstances, it is fair to say that the message intimates *some* form of punishment. *Id.* at 1209. If these factors weigh in favor of finding the government's message coercive, the coercion test is met, and the private party's resulting decision is a state action.

**B.**

With that in mind, we turn to the case at hand. We start with "the specific conduct of which the plaintiff complains." *Am. Mfrs.*, 526 U.S. at 51. Here, that is "censor[ing] disfavored speakers and viewpoints" on social media. The Plaintiffs allege that the "Defendants [] coerced, threatened, and pressured social-media platforms"—

via "threats of adverse government action" like increased regulation, antitrust enforcement, and changes to Section 230—to make those censorship decisions. That campaign, per the Plaintiffs, was multi-faceted—the officials "publicly threaten[ed] [the] companies" while they privately piled on "unrelenting pressure" via "demands for greater censorship." And they succeeded—the platforms censored disfavored content.

The officials do not deny that they worked alongside the platforms. Instead, they argue that their conduct—asking or trying to persuade the platforms to act—was permissible government speech. So, we are left with the task of sifting out any coercion and significant encouragement from their attempts at persuasion. Here, there were multiple speakers and messages. Taking that in context, we apply the law to one set of officials at a time, starting with the White House and Office of the Surgeon General.

**1.**

We find that the White House, acting in concert with the Surgeon General's office, likely (1) coerced the platforms to make their moderation decisions by way of intimidating messages and threats of adverse consequences, and (2) significantly encouraged the platforms' decisions by commandeering their decision-making processes, both in violation of the First Amendment.

Generally speaking, officials from the White House and the Surgeon General's office had extensive, organized communications with platforms. They met regularly, traded information and reports, and worked together on a wide range of efforts. That working relationship was, at times, sweeping. Still, those facts alone likely are not problematic from a First-Amendment

perspective. But, the relationship between the officials and the platforms went beyond that. In their communications with the platforms, the officials went beyond advocating for policies, *Southworth*, 529 U.S. at 229, or making no-strings-attached requests to moderate content, *Warren*, 66 F.4th at 1209. Their interaction was "something more." *Roberts*, 742 F.2d at 228.

We start with coercion. On multiple occasions, the officials coerced the platforms into direct action via urgent, uncompromising demands to moderate content. Privately, the officials were not shy in their requests—they asked the platforms to remove posts "ASAP" and accounts "immediately," and to "slow[] down" or "demote[]" content. In doing so, the officials were persistent and angry. *Cf. Bantam Books*, 372 U.S. at 62-63. When the platforms did not comply, officials followed up by asking why posts were "still up," stating (1) "how does something like [this] happen," (2) "what good is" flagging if it did not result in content moderation, (3) "I don't know why you guys can't figure this out," and (4) "you are hiding the ball," while demanding "assurances" that posts were being taken down. And, more importantly, the officials threatened—both expressly and implicitly—to retaliate against inaction. Officials threw out the prospect of legal reforms and enforcement actions while subtly insinuating it would be in the platforms' best interests to comply. As one official put it, "removing bad information" is "one of the easy, low-bar things you guys [can] do to make people like me"—that is, White House officials—"think you're taking action."

That alone may be enough for us to find coercion. Like in *Bantam Books*, the officials here set about to force the platforms to remove metaphorical books from

their shelves. It is uncontested that, between the White House and the Surgeon General's office, government officials asked the platforms to remove undesirable posts and users from their platforms, sent follow-up messages of condemnation when they did not, and publicly called on the platforms to act. When the officials' demands were not met, the platforms received promises of legal regime changes, enforcement actions, and other unspoken threats. That was likely coercive. *See Warren*, 66 F.4th at 1211-12.

That being said, even though coercion may have been readily apparent here, we find it fitting to consult the Second Circuit's four-factor test for distinguishing coercion from persuasion. In asking whether the officials' messages can "reasonably be construed" as threats of adverse consequences, we look to (1) the officials' word choice and tone; (2) the recipient's perception; (3) the presence of authority; and (4) whether the speaker refers to adverse consequences. M *Vullo*, 49 F.4th at 715; *see also Warren*, 66 F.4th at 1207.

First, the officials' demeanor. We find, like the district court, that the officials' communications—reading them in "context, not in isolation"—were on-the-whole intimidating. *Warren*, 66 F.4th at 1208. In private messages, the officials demanded "assurances" from the platforms that they were moderating content in compliance with the officials' requests, and used foreboding, inflammatory, and hyper-critical phraseology when they seemingly did not, like "you are hiding the ball," you are not "trying to solve the problem," and we are "gravely concerned" that you are "one of the top drivers of vaccine hesitancy." In public, they said that the platforms were irresponsible, let "misinformation [] poison" America, were "literally costing . . . lives," and were "killing

people." While officials are entitled to "express their views and rally support for their positions," the "word choice and tone" applied here reveals something more than mere requests. *Id.* at 1207-08.

Like *Bantam Books*—and unlike the requests in *Warren*—many of the officials' asks were "phrased virtually as orders," 372 U.S. at 68, like requests to remove content "ASAP" or "immediately." The threatening "tone" of the officials' commands, as well as of their "overall interaction" with the platforms, is made all the more evident when we consider the persistent nature of their messages. Generally speaking, "[a]n interaction will tend to be more threatening if the official refuses to take 'no' for an answer and pesters the recipient until it succumbs." *Warren*, 66 F.4th at 1209 (citing *Bantam Books*, 372 U.S. at 62-63). Urgency can have the same effect. *See Backpage.com*, 807 F.3d at 237 (finding the "urgency" of a sheriff's letter, including a follow-up, "imposed another layer of coercion due to its strong suggestion that the companies could not simply ignore" the sheriff), *cert. denied*, 137 S. Ct. 46 (2016). Here, the officials' correspondences were both persistent and urgent. They sent repeated follow-up emails, whether to ask why a post or account was "still up" despite being flagged or to probe deeper into the platforms' internal policies. On the latter point, for example, one official asked at least *twelve* times for detailed information on Facebook's moderation practices and activities. Admittedly, many of the officials' communications are not by themselves coercive. But, we do not take a speaker's communications "in isolation." *Warren*, 66 F.4th at 1208. Instead, we look to the "tenor" of the parties' relationship and the conduct of the government in context. *Id.* at 1209. Given their treatment of the platforms as a

whole, we find the officials' tone and demeanor was coercive, not merely persuasive.

Second, we ask how the platforms perceived the communications. Notably, "a credible threat may violate the First Amendment even if 'the victim ignores it, and the threatener folds his tent.'" *Id.* at 1210 (quoting *Backpage.com*, 807 F.3d at 231). Still, it is more likely to be coercive if there is some evidence that the recipient's subsequent conduct is *linked* to the official's message. For example, in Warren, the Ninth Circuit court concluded that Amazon's decision to stop advertising a specific book was "more likely . . . a response to widespread concerns about the spread of COVID-19," as there was "no evidence that the company changed [course] in response to Senator Warren's letter." *Id.* at 1211. Here, there is plenty of evidence—both direct and circumstantial, considering the platforms' contemporaneous actions—that the platforms were influenced by the officials' demands. When officials asked for content to be removed, the platforms took it down. And, when they asked for the platforms to be more aggressive, "interven[e]" more often, take quicker actions, and modify their "internal policies," the platforms did—and they sent emails and assurances confirming as much. For example, as was common after public critiques, one platform assured the officials they were "committed to addressing the [] misinformation that you've called on us to address" after the White House issued a public statement. Another time, one company promised to make an employee "available on a regular basis" so that the platform could "automatically prioritize" the officials' requests after criticism of the platform's response time. Yet another time, a platform said it was going to "adjust [its] policies" to include "specific recommendations

for improvement" from the officials, and emailed as much because they "want[ed] to make sure to keep you informed of our work on each" change. Those are just a few of many examples of the platforms changing—and acknowledging as much—their course as a direct result of the officials' messages.

Third, we turn to whether the speaker has "authority over the recipient." 66 F.4th at 1210. Here, that is clearly the case. As an initial matter, the White House wields significant power in this Nation's constitutional landscape. It enforces the laws of our country, U.S. CONST. art. II, and—as the head of the executive branch—directs an army of federal agencies that create, modify, and enforce federal regulations. We can hardly say that, like the senator in *Warren*, the White House is "removed from the relevant levers of power." 66 F.4th at 1210. At the very least, as agents of the executive branch, the officials' powers track somewhere closer to those of the commission in *Bantam Books*—they were legislatively given the power to "investigate violations[] and recommend prosecutions." *Id.* (citing *Bantam Books*, 372 U.S. at 66).

But, authority over the recipient does not have to be a clearly-defined ability to act under the close nexus test. Instead, a generalized, non-descript means to punish the recipient may suffice depending on the circumstances. As the Ninth Circuit explained in *Warren*, a message may be "*inherently coercive*" if, for example, it was conveyed by a "law enforcement officer" or "penned by an executive official with unilateral power." *Id.* (emphasis added). In other words, a speaker's power may stem from an inherent authority over the recipient. *See, e.g.*, *Backpage.com*, 807 F.3d 229. That reasoning is likely applicable here, too, given the officials' executive status.

It is not even necessary that an official have direct power over the recipient. Even if the officials "lack[ed] direct authority" over the platforms, the cloak of authority may still satisfy the authority prong. *See Warren*, 66 F.4th at 1210. After all, we ask whether a "reasonable person" would be threatened by an official's statements. *Id.* Take, for example, *Okwedy*. There, a borough president penned a letter to a company—which, per the official, owned a "number of billboards on Staten Island and derive[d] substantial economic benefits from them"—and "call[ed] on [them] as a responsible member of the business community to please contact" his "legal counsel." 333 F.3d at 342. The Second Circuit found that, even though the official "lacked direct regulatory authority" or control over the company, an "implicit threat" flowed from his letter because he had *some* innate authority to affect the company. *Id.* at 344. The Second Circuit noted that "[a]lthough the existence of regulatory or other direct decisionmaking authority is certainly relevant to the question of whether a government official's comments were unconstitutionally threatening or coercive, a defendant without such direct regulatory or decisionmaking authority can also exert an impermissible type or degree of pressure." *Id.* at 343.

Consider another example, *Backpage.com*. There, a sheriff sent a cease-and-desist letter to credit card companies—which he admittedly "had no authority to take any official action" against—to stop doing business with a website. 807 F.3d at 230, 236. "[E]ven if the companies understood the jurisdictional constraints on [the sheriff]'s ability to proceed against them directly," the sheriff's letter was still coercive because, among other reasons, it "invok[ed] the legal obligations of [the recipients]

to cooperate with law enforcement," and the sheriff could easily "refer the credit card companies to the appropriate authority to investigate" their dealings,[16] much like a White House official could contact the Department of Justice. *Id.* at 236-37.

True, the government can "appeal[]" to a private party's "interest in avoiding liability" so long as that reference is not meant to intimidate or compel. *Id.* at 237; *see also Vullo*, 49 F.4th at 717-19 (statements were non-coercive because they referenced legitimate use of powers in a nonthreatening manner). But here, the officials' demands that the platforms remove content and change their practices were backed by the officials' unilateral power to act or, at the very least, their ability to inflict "*some form of punishment*" against the platforms.[17] *Okwedy*, 333 F.3d at 342 (citation omitted)

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[16] This was true even though the financial institutions were large, sophisticated, and presumably understood the federal authorities were unlikely to prosecute the companies. *Backpage.com*, 807 F.3d at 234. As the Seventh Circuit explained, it was still in the credit card companies' financial interests to comply. Backpage's measly $135 million in annual revenue was a drop in the bucket of the financial service companies' combined net revenue of $22 billion. *Id.* at 236. Unlike credit card processors that at least made money servicing Backpage, social-media platforms typically depend on advertisers, not their users, for revenue. *Cf. Wash. Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019) (holding campaign finance regulations on online ads unconstitutional where they "ma[de] it financially irrational, generally speaking, for platforms to carry political speech when other, more profitable options are available").

[17] Or, as the Ninth Circuit put it, "public officials may criticize practices that they would have no constitutional ability to regulate, so long as there is no actual or *threatened* imposition of *government power or sanction*." *Warren*, 66 F.4th at 1207 (citation omitted) (emphasis added).

(emphasis added). Therefore, the authority factor weighs in favor of finding the officials' messages coercive.

Finally, and "perhaps most important[ly]," we ask whether the speaker "refers to adverse consequences that will follow if the recipient does not accede to the request." *Warren*, 66 F.4th at 1211 (citing *Vullo*, 49 F.4th at 715). Explicit and subtle threats both work—"an official does not need to say 'or else' if a threat is clear from the context." *Id.* (citing *Backpage.com*, 807 F.3d at 234). Again, this factor is met.

Here, the officials made express threats and, at the very least, leaned into the inherent authority of the President's office. The officials made inflammatory accusations, such as saying that the platforms were "poison[ing]" the public, and "killing people." The platforms were told they needed to take greater responsibility and action. Then, they followed their statements with threats of "fundamental reforms" like regulatory changes and increased enforcement actions that would ensure the platforms were "held accountable." But, beyond express threats, there was *always* an "unspoken 'or else.'" *Warren*, 66 F.4th at 1212. After all, as the executive of the Nation, the President wields awesome power. The officials were not shy to allude to that understanding native to every American—when the platforms faltered, the officials warned them that they were "[i]nternally . . . considering our options on what to do," their "concern[s] [were] shared at the highest (and I mean highest) levels of the [White House]," and the "President has long been concerned about the power of large social media platforms." Unlike the letter in Warren, the language deployed in the officials' campaign reveals clear "plan[s] to punish" the platforms if they did

not surrender. *Warren*, 66 F.4th at 1209. *Compare id.*, *with Backpage.com*, 807 F.3d at 237. Consequently, the four-factor test weighs heavily in favor of finding the officials' messages were coercive, not persuasive.

Notably, the Ninth Circuit recently reviewed a case that is strikingly similar to ours. In *O'Handley*, officials from the California Secretary of State's office allegedly "act[ed] in concert" with Twitter to censor speech on the platform. 62 F.4th at 1153. Specifically, the parties had a "collaborative relationship" where officials flagged tweets and Twitter "almost invariably" took them down. *Id.* Therefore, the plaintiff contended, when his election-fraud-based post was removed, California "abridged his freedom of speech" because it had "pressured Twitter to remove disfavored content." *Id.* at 1163. But, the Ninth Circuit disagreed, finding the close nexus test was not satisfied. The court reasoned that there was no clear indication that Twitter "would suffer adverse consequences if it refused" to comply with California's request. *Id.* at 1158. Instead, it was a "purely optional," "no strings attached" request. *Id.* Consequently, "Twitter complied with the request under the terms of its own content-moderation policy and using its own independent judgment." *Id.*[18] To the

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[18] The Ninth Circuit insightfully noted the difficult task of applying the coercion test in the First Amendment context:

> [W]e have drawn a sharp distinction between attempts to convince and attempts to coerce. Particularly relevant here, we have held that government officials do not violate the First Amendment when they request that a private intermediary not carry a third party's speech so long as the officials do not threaten adverse consequences if the intermediary refuses to comply. This distinction tracks core First Amendment principles. A private party can find the government's stated reasons for making a request persuasive,

Ninth Circuit, there was no indication—whether via tone, content, or otherwise—that the state would retaliate against inaction given the insubstantial relationship. Ultimately, the officials conduct was "far from the type of coercion" seen in cases like *Bantam Books*. *Id.* In contrast, here, the officials made clear that the platforms would suffer adverse consequences if they failed to comply, through express or implied threats, and thus the requests were not optional.

Given all of the above, we are left only with the conclusion that the officials' statements were coercive. That conclusion tracks with the decisions of other courts. After reviewing the four-factor test, it is apparent that the officials' messages could "reasonably be construed" as threats. *Warren*, 66 F.4th at 1208; *Vullo*, 49 F.4th at 716. Here, unlike in *Warren*, the officials' "call[s] to action"—given the context and officials' tone, the presence of *some* authority, the platforms' yielding responses, and the officials' express and implied references to adverse consequences—"directly suggest[ed] that compliance was the only realistic option to avoid government sanction." 66 F.4th at 1208. And, unlike *O'Handley*, the officials were not simply flagging posts with "no strings attached," 62 F.4th at 1158—they did much, much more.

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> just as it can be moved by any other speaker's message. The First Amendment does not interfere with this communication so long as the intermediary is free to disagree with the government and to make its own independent judgment about whether to comply with the government's request.

*O'Handley*, 62 F.4th at 1158. After all, consistent with their constitutional and statutory authority, state "[a]gencies are permitted to communicate in a non-threatening manner with the entities they oversee without creating a constitutional violation." *Id.* at 1163 (citing *Vullo*, 49 F.4th at 714-19).

Now, we turn to encouragement. We find that the officials also significantly encouraged the platforms to moderate content by exercising active, meaningful control over those decisions. Specifically, the officials entangled themselves in the platforms' decision-making processes, namely their moderation policies. *See Blum*, 457 U.S. at 1008. That active, meaningful control is evidenced plainly by a view of the record. The officials had consistent and consequential interaction with the platforms and constantly monitored their moderation activities. In doing so, they repeatedly communicated their concerns, thoughts, and desires to the platforms. The platforms responded with cooperation—they invited the officials to meetings, roundups, and policy discussions. And, more importantly, they complied with the officials' requests, including making changes to their policies.

The officials began with simple enough asks of the platforms—"can you share more about your framework here" or "do you have data on the actual number" of removed posts? But, the tenor later changed. When the platforms' policies were not performing to the officials' liking, they pressed for more, persistently asking what "interventions" were being taken, "how much content [was] being demoted," and why certain posts were not being removed. Eventually, the officials pressed for outright change to the platforms' moderation policies. They did so privately and publicly. One official emailed a list of proposed changes and said, "this is circulating around the building and informing thinking." The White House Press Secretary called on the platforms to adopt "proposed changes" that would create a more "robust enforcement strategy." And the Surgeon General published an advisory calling on the platforms to "[e]valuate

the effectiveness of [their] internal policies" and implement changes. Beyond that, they relentlessly asked the platforms to remove content, even giving reasons as to why such content should be taken down. They also followed up to ensure compliance and, when met with a response, asked how the internal decision was made.

And, the officials' campaign succeeded. The platforms, in capitulation to state-sponsored pressure, changed their moderation policies. The platforms explicitly recognized that. For example, one platform told the White House it was "making a number of changes"—which aligned with the officials' demands—as it knew its "position on [misinformation] continues to be a particular concern" for the White House. The platform noted that, in line with the officials' requests, it would "make sure that these additional [changes] show results—the stronger demotions in particular should deliver real impact." Similarly, one platform emailed a list of "commitments" after a meeting with the White House which included policy "changes" "focused on reducing the virality" of anti-vaccine content even when it "does not contain actionable misinformation." Relatedly, one platform told the Surgeon General that it was "committed to addressing the [] misinformation that you've called on us to address," including by implementing a set of jointly proposed policy changes from the White House and the Surgeon General.

Consequently, it is apparent that the officials exercised meaningful control—via changes to the platforms' independent processes—over the platforms' moderation decisions. By pushing changes to the platforms' policies through their expansive relationship with and informal oversight over the platforms, the officials imparted a lasting influence on the platforms' moderation

decisions without the need for any further input. In doing so, the officials ensured that any moderation decisions were not made in accordance with independent judgments guided by independent standards. *See id.; see also Am. Mfrs.*, 526 U.S. at 52 ("The decision to withhold payment, like the decision to transfer Medicaid patients to a lower level of care in *Blum*, is made by concededly private parties, and 'turns on . . . judgments made by private parties' without 'standards . . . established by the State.'"). Instead, they were encouraged by the officials' imposed standards.

In sum, we find that the White House officials, in conjunction with the Surgeon General's office, coerced and significantly encouraged the platforms to moderate content. As a result, the platforms' actions "must in law be deemed to be that of the State." *Blum*, 457 U.S. at 1004.

**2.**

Next, we consider the FBI. We find that the FBI, too, likely (1) coerced the platforms into moderating content, and (2) encouraged them to do so by effecting changes to their moderation policies, both in violation of the First Amendment.

We start with coercion. Similar to the White House, Surgeon General, and CDC officials, the FBI regularly met with the platforms, shared "strategic information," frequently alerted the social media companies to misinformation spreading on their platforms, and monitored their content moderation policies. But, the FBI went beyond that—they urged the platforms to take down content. Turning to the Second Circuit's four-factor test, we find that those requests were coercive. *Vullo*, 49 F.4th at 715.

First, given the record before us, we cannot say that the FBI's messages were plainly threatening in tone or manner. *Id.* But, second, we do find the FBI's requests came with the backing of clear authority over the platforms. After all, content moderation requests "might be inherently coercive if sent by . . . [a] law enforcement officer." *Warren*, 66 F.4th at 1210 (citations omitted); *see also Zieper v. Metzinger*, 392 F. Supp. 2d 516, 531 (S.D.N.Y. 2005) (holding that a reasonable jury could find an FBI agent's request coercive when he asked an internet service provider to take down a controversial video that could be "inciting a riot" because he was "an FBI agent charged with investigating the video"); *Backpage*, 807 F.3d at 234 ("[C]redit card companies don't like being threatened by a law-enforcement official that he will sic the feds on them, even if the threat may be empty."). This is especially true of the lead law enforcement, investigatory, and domestic security agency for the executive branch. Consequently, because the FBI wielded *some* authority over the platforms, *see Okwedy*, 333 F.3d at 344, the FBI's takedown requests can "reasonably be construed" as coercive in nature, *Warren*, 66 F.4th at 1210.

Third, although the FBI's communications did not plainly reference adverse consequences, an actor need not express a threat aloud so long as, given the circumstances, the message *intimates* that some form of punishment will follow noncompliance. *Id.* at 1209. Here, beyond its inherent authority, the FBI—unlike most federal actors—also has tools at its disposal to force a platform to take down content. For instance, in *Zieper*, an FBI agent asked a web-hosting platform to take down a video portraying an imaginary documentary showing preparations for a military takeover of Times

Square on the eve of the new millennium. 392 F. Supp. 2d at 520-21. In appealing to the platform, the FBI agent said that he was concerned that the video could be "inciting a riot" and testified that he was trying to appeal to the platform's "'good citizenship' by pointing out a public safety concern." *Id.* at 531. And these appeals to the platform's "good citizenship" worked—the platform took down the video. *Id.* at 519. The Southern District of New York concluded that a reasonable jury could find that statement coercive, "particularly when said by an FBI agent charged with investigating the video." *Id.* at 531. Indeed, the question is whether a message intimates that *some* form of punishment that may be used against the recipient, an analysis that includes means of retaliation that are not readily apparent. *See Warren*, 66 F.4th at 1210.

Fourth, the platforms clearly perceived the FBI's messages as threats. For example, right before the 2022 congressional election, the FBI warned the platforms of "hack and dump" operations from "state-sponsored actors" that would spread misinformation through their sites. In doing so, the FBI officials leaned into their inherent authority. So, the platforms reacted as expected—by taking down content, including posts and accounts that originated from the United States, in direct compliance with the request. Considering the above, we conclude that the FBI coerced the platforms into moderating content. But, the FBI's endeavors did not stop there.

We also find that the FBI likely significantly encouraged the platforms to moderate content by entangling themselves in the platforms' decision-making processes. *Blum*, 457 U.S. at 1008. Beyond taking down posts, the platforms also changed their terms of service in concert

with recommendations from the FBI. For example, several platforms "adjusted" their moderation policies to capture "hack-and-leak" content after the FBI asked them to do so (and followed up on that request). Consequently, when the platforms subsequently moderated content that violated their newly modified terms of service (*e.g.*, the results of hack-and-leaks), they did not do so via independent standards. *See Blum*, 457 U.S. at 1008. Instead, those decisions were made subject to commandeered moderation policies.

In short, when the platforms acted, they did so in response to the FBI's inherent authority *and* based on internal policies influenced by FBI officials. Taking those facts together, we find the platforms' decisions were significantly encouraged and coerced by the FBI.[19]

**3.**

Next, we turn to the CDC. We find that, although not plainly coercive, the CDC officials likely significantly encouraged the platforms' moderation decisions, meaning they violated the First Amendment.

We start with coercion. Here, like the other officials, the CDC regularly met with the platforms and frequently flagged content for removal. But, unlike the others, the CDC's requests for removal were not coercive—they did not ask the platforms in an intimidating or threatening manner, do not possess any clear authority

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[19] Plaintiffs and several *amici* assert that the FBI and other federal actors coerced or significantly encouraged the social-media companies into disseminating information that was favorable to the administration—information the federal officials knew was false or misleading. We express no opinion on those assertions because they are not necessary to our holding here.

over the platforms, and did not allude to any adverse consequences. Consequently, we cannot say the platforms' moderation decisions were coerced by CDC officials.

The same, however, cannot be said for significant encouragement. Ultimately, the CDC was entangled in the platforms' decision-making processes, *Blum*, 457 U.S. at 1008.

The CDC's relationship with the platforms began by defining—in "Be On the Lookout" meetings—what was (and was not) "misinformation" for the platforms. Specifically, CDC officials issued "advisories" to the platforms warning them about misinformation "hot topics" to be wary of. From there, CDC officials instructed the platforms to label disfavored posts with "contextual information," and asked for "amplification" of approved content. That led to CDC officials becoming intimately involved in the various platforms' day-to-day moderation decisions. For example, they communicated about how a platform's "moderation team" reached a certain decision, how it was "approach[ing] adding labels" to particular content, and how it was deploying manpower. Consequently, the CDC garnered an extensive relationship with the platforms.

From that relationship, the CDC, through authoritative guidance, directed changes to the platforms' moderation policies. At first, the platforms asked CDC officials to decide whether certain claims were misinformation. In response, CDC officials told the platforms whether such claims were true or false, and whether information was "misleading" or needed to be addressed via CDC-backed labels. That back-and-forth then led to "[s]omething more." *Roberts*, 742 F.2d at 228.

Specifically, CDC officials directly impacted the platforms' moderation policies. For example, in meetings with the CDC, the platforms actively sought to "get into [] policy stuff" and run their moderation policies by the CDC to determine whether the platforms' standards were "in the right place." Ultimately, the platforms came to *heavily rely* on the CDC. They adopted rule changes meant to implement the CDC's guidance. As one platform said, they "were able to make [changes to the 'misinfo policies'] based on the conversation [they] had last week with the CDC," and they "immediately updated [their] policies globally" following another meeting. And, those adoptions led the platforms to make moderation decisions based entirely on the CDC's say-so—"[t]here are several claims that we will be able to remove as soon as the CDC debunks them; until then, we are unable to remove them." That dependence, at times, was total. For example, one platform asked the CDC how it should approach certain content and even asked the CDC to double check and proofread its proposed labels.

Viewing these facts, we are left with no choice but to conclude that the CDC significantly encouraged the platforms' moderation decisions. Unlike in *Blum*, the platforms' decisions were not made by independent standards, 457 U.S. at 1008, but instead were marred by modification from CDC officials. Thus, the resulting content moderation, "while not compelled by the state, was so significantly encouraged, both overtly and covertly" by CDC officials that those decisions "must in law be deemed to be that of the state." *Howard Gault*, 848 F.2d at 555 (alterations adopted) (internal quotation marks and citation omitted).

**4.**

Finally, we address the remaining officials—the NIAID, the State Department, and CISA. Having reviewed the record, we find the district court erred in enjoining these other officials. Put simply, there was not, at this stage, sufficient evidence to find that it was likely these groups coerced or significantly encouragement the platforms.

For the NIAID officials, it is not apparent that they ever communicated with the social-media platforms. Instead, the record shows, at most, that public statements by Director Anthony Fauci and other NIAID officials promoted the government's scientific and policy views and attempted to discredit opposing ones—quintessential examples of government speech that do not run afoul of the First Amendment. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467-68 (2009) ("[The government] is entitled to say what it wishes, and to select the views that it wants to express." (quotation marks and citations omitted)); *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring) ("It is the very business of government to favor and disfavor points of view. . . . "). Consequently, with only insignificant (if any) communication (direct or indirect) with the platforms, we cannot say that the NIAID officials likely coerced or encouraged the platforms to act.

As for the State Department, while it did communicate directly with the platforms, so far there is no evidence these communications went beyond educating the platforms on "tools and techniques" used by foreign actors. There is no indication that State Department officials flagged specific content for censorship, suggested

policy changes to the platforms, or engaged in any similar actions that would reasonably bring their conduct within the scope of the First Amendment's prohibitions. After all, their messages do not appear coercive in tone, did not refer to adverse consequences, and were not backed by any apparent authority. And, per this record, those officials were not involved to any meaningful extent with the platforms' moderation decisions or standards.

Finally, although CISA flagged content for social-media platforms as part of its switchboarding operations, based on this record, its conduct falls on the "attempts to convince," not "attempts to coerce," side of the line. *See Okwedy*, 333 F.3d at 344; *O'Handley*, 62 F.4th at 1158. There is not sufficient evidence that CISA made threats of adverse consequences—explicit or implicit—to the platforms for refusing to act on the content it flagged. *See Warren*, 66 F.4th at 1208-11 (finding that senator's communication was a "request rather than a command" where it did not "suggest[] that compliance was the only realistic option" or reference potential "adverse consequences"). Nor is there any indication CISA had power over the platforms in any capacity, or that their requests were threatening in tone or manner. Similarly, on this record, their requests—although certainly amounting to a non-trivial level of involvement—do not equate to meaningful control. There is no plain evidence that content was actually moderated per CISA's requests or that any such moderation was done subject to non-independent standards.

* * *

Ultimately, we find the district court did not err in determining that several officials—namely the White

House, the Surgeon General, the CDC, and the FBI—likely coerced or significantly encouraged social-media platforms to moderate content, rendering those decisions state actions.[20] In doing so, the officials likely violated the First Amendment.[21]

But, we emphasize the limited reach of our decision today. We do not uphold the injunction against all the officials named in the complaint. Indeed, many of those officials were permissibly exercising government speech, "carrying out [their] responsibilities," or merely "engaging in [a] legitimate [] action." *Vullo*, 49 F.4th at 718-19. That distinction is important because the state-action doctrine is vitally important to our Nation's operation—by distinguishing between the state and the People, it promotes "a robust sphere of individual liberty." *Halleck*, 139 S. Ct. at 1928. That is why the Supreme Court has been reluctant to expand the scope of the doctrine. *See Matal v. Tan*, 582 U.S. 218, 235 (2017) ("[W]e must exercise great caution before extending our government-speech precedents."). If just any relationship with the government "sufficed to transform a private entity into a state actor, a large swath of private entities in America would suddenly be turned into state

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[20] Here, in holding that some of the officials likely coerced or sufficiently encouraged the platforms to censor content, we pass no judgment on any joint actor or conspiracy-based state action theory.

[21] "With very limited exceptions, none applicable to this case, censorship—'an effort by administrative methods to prevent the dissemination of ideas or opinions thought dangerous or offensive,' as distinct from punishing such dissemination (if it falls into one of the categories of punishable speech, such as defamation or threats) after it has occurred—is prohibited by the First Amendment as it has been understood by the courts." *Backpage.com*, 807 F.3d at 235 (citation omitted).

actors and be subject to a variety of constitutional constraints on their activities." *Halleck*, 139 S. Ct. at 1932. So, we do not take our decision today lightly. But, 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. Therefore, the district court was correct in its assessment—"unrelenting pressure" from certain government officials likely "had the intended result of suppressing millions of protected free speech postings by American citizens." We see no error or abuse of discretion in that finding.[22]

**V.**

Next, we address the equities. Plaintiffs seeking a preliminary injunction must show that irreparable injury is "likely" absent an injunction, the balance of the equities weighs in their favor, and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (collecting cases).

While "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)), "invocation of the First Amendment

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[22] Our holding today, as is appropriate under the state-action doctrine, is limited. Like in *Roberts*, we narrowly construe today's finding of state action to apply only to the challenged decisions. *See* 742 F.2d at 228 ("We do not doubt that many of the actions of the racetrack and its employees are no more than private business decisions," but "[i]n the area of stalling, [] state regulation and involvement is so specific and so pervasive that [such] decisions may be considered to bear the imprimatur of the state.").

cannot substitute for the presence of an imminent, non-speculative irreparable injury," *Google, Inc. v. Hood*, 822 F.3d 212, 228 (5th Cir. 2016).

Here, the district court found that the Plaintiffs submitted enough evidence to show that irreparable injury is likely to occur during the pendency of the litigation. In so doing, the district court rejected the officials' arguments that the challenged conduct had ceased and that future harm was speculative, drawing on mootness and standing doctrines. Applying the standard for mootness, the district court concluded that a defendant must show that "it is absolutely clear the alleged wrongful behavior could not reasonably be expected to recur" and that the officials had failed to make such showing here. In assessing whether Plaintiffs' claims of future harm were speculative and dependent on the actions of social-media companies, the district court applied a quasi-standing analysis and found that the Plaintiffs had alleged a "substantial risk" of future harm that is not "imaginary or wholly speculative," pointing to the officials' ongoing coordination with social-media companies and willingness to suppress free speech on a myriad of hot-button issues.

We agree that the Plaintiffs have shown that they are likely to suffer an irreparable injury. Deprivation of First Amendment rights, even for a short period, is sufficient to establish irreparable injury. *Elrod*, 427 U.S. at 373; *Cuomo*, 141 S. Ct. at 67; *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012).

The district court was right to be skeptical of the officials' claims that they had stopped all challenged conduct. *Cf. Speech First, Inc. v. Fenves*, 979 F.3d 319, 328

(5th Cir. 2020) ("[A] defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice, even in cases in which injunctive relief is sought."). But, the district court's use of a "not imaginary or speculative" standard in the irreparable harm context is inconsistent with binding case law. *See Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on *a possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." (citation omitted)(emphasis added)). The correct standard is whether a future injury is "likely." *Id.* But, because the Plaintiffs sufficiently demonstrated that their First Amendment interests are either threatened or impaired, they have met this standard. *See Opulent Life Church*, 697 F.3d at 295 (citing 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")). Indeed, the record shows, and counsel confirmed at oral argument, that the officials' challenged conduct has not stopped.

Next, we turn to whether the balance of the equities warrants an injunction and whether such relief is in the public interest. Where the government is the opposing party, harm to the opposing party and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The district court concluded that the equities weighed in favor of granting the injunction because the injunction maintains the "constitutional structure" and Plaintiffs' free speech rights. The officials argue that the district court gave short shrift to their assertions

that the injunction could limit the Executive Branch's ability to "persuade" the American public, which raises separation-of-powers issues.

Although both Plaintiffs and the officials assert that their ability to speak is affected by the injunction, the government is not permitted to use the government-speech doctrine to "silence or muffle the expression of disfavored viewpoints." *Matal*, 582 U.S. at 235.

It is true that the officials have an interest in engaging with social-media companies, including on issues such as misinformation and election interference. But the government is not permitted to advance these interests to the extent that it engages in viewpoint suppression. Because "[i]njunctions protecting First Amendment freedoms are always in the public interest," the equities weigh in Plaintiffs' favor. *Opulent Life Church*, 697 F.3d at 298 (quotation marks and citations omitted).

While the officials raise legitimate concerns that the injunction could sweep in lawful speech, we have addressed those concerns by modifying the scope of the injunction.

**VI.**

Finally, we turn to the language of the injunction itself. An injunction "is overbroad if it is not 'narrowly tailored to remedy the specific action which gives rise to the order' as determined by the substantive law at issue." *Scott v. Schedler*, 826 F.3d 207, 211 (5th Cir. 2016) (alterations adopted) (quoting *John Doe #1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004)). This requirement that a "plaintiff's remedy must be tailored to redress the plaintiff's particular injury" is in recognition of a federal court's "constitutionally prescribed role

. . . to vindicate the individual rights of the people appearing before it," not "generalized partisan preferences." *Gill v. Whitford*, 138 S. Ct. 1916, 1933-34 (2018).

In addition, injunctions cannot be vague. "Every order granting an injunction . . . must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." FED. R. CIV. P. 65(d)(1). The Supreme Court has explained:

> [T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood. Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.

*Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (citations omitted).

To be sure, "[t]he specificity requirement is not unwieldy," *Meyer v. Brown & Root Construction Co.*, 661 F.2d 369, 373 (5th Cir. 1981), and "elaborate detail is unnecessary," *Islander E. Rental Program v. Barfield*, No. 96-41275, 1998 WL 307564, at *4 (5th Cir. Mar. 24, 1998). But still, "an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." *Louisiana v. Biden*, 45 F.4th at 846 (citation omitted).

The preliminary injunction here is both vague and broader than necessary to remedy the Plaintiffs' injuries, as shown at this preliminary juncture. As an initial matter, it is axiomatic that an injunction is overbroad if it enjoins a defendant from engaging in legal conduct. Nine of the preliminary injunction's ten prohibitions risk doing just that. Moreover, many of the provisions are duplicative of each other and thus unnecessary.

Prohibitions one, two, three, four, five, and seven prohibit the officials from engaging in, essentially, any action "for the purpose of urging, encouraging, pressuring, or inducing" content moderation. But "urging, encouraging, pressuring" or even "inducing" action does not violate the Constitution unless and until such conduct crosses the line into coercion or *significant* encouragement. *Compare Walker*, 576 U.S. at 208 ("[A]s a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position."), *Finley*, 524 U.S. at 598 (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view. . . . "), *and Vullo*, 49 F.4th at 717 (holding statements "encouraging" companies to evaluate risk of doing business with the plaintiff did not violate the Constitution where the statements did not "intimate that some form of punishment or adverse regulatory action would follow the failure to accede to the request"), *with Blum*, 457 U.S. at 1004, *and O'Handley*, 62 F.4th at 1158 ("In deciding whether the government may urge a private party to remove (or refrain from engaging in) protected speech, we have drawn a sharp distinction between attempts to convince and attempts to coerce."). These provisions also tend to overlap with each other, barring various actions that may cross the line into coercion. There is no

need to try to spell out every activity that the government could possibly engage in that may run afoul of the Plaintiffs' First Amendment rights as long the unlawful conduct is prohibited.

The eighth, ninth, and tenth provisions likewise may be unnecessary to ensure Plaintiffs' relief. A government actor generally does not violate the First Amendment by simply "following up with social-media companies" about content-moderation, "requesting content reports from social-media companies" concerning their content-moderation, or asking social media companies to "Be on The Lookout" for certain posts.[23] Plaintiffs have not carried their burden to show that these activities must be enjoined to afford Plaintiffs full relief.

These provisions are vague as well. There would be no way for a federal official to know exactly when his or her actions cross the line from permissibly communicating with a social-media company to impermissibly "urging, encouraging, pressuring, or inducing" them "*in any way*." *See Scott*, 826 F.3d at 209, 213 ("[a]n injunction should not contain broad generalities"); *Islander East*, 1998 WL 307564, at *4 (finding injunction against "interfering in any way" too vague). Nor does the injunction define "Be on The Lookout" or "BOLO." That, too, renders it vague. *See Louisiana v. Biden*, 45 F.4th at 846 (holding injunction prohibiting the federal government from "implementing the Pause of new oil

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[23] While these activities, standing alone, are not violative of the First Amendment and therefore must be removed from the preliminary injunction, we note that these activities *may* violate the First Amendment when they are part of a larger scheme of government coercion or significant encouragement, and neither our opinion nor the modified injunction should be read to hold otherwise.

and natural gas leases on public lands or in offshore waters as set forth in [the challenged Executive Order]" was vague because the injunction did not define the term "Pause" and the parties had each proffered different yet reasonable interpretations of the Pause's breadth).

While helpful to some extent, the injunction's carveouts do not solve its clarity and scope problems. Although they seem to greenlight legal speech, the carveouts, too, include vague terms and appear to authorize activities that the injunction otherwise prohibits on its face. For instance, it is not clear whether the Surgeon General could publicly urge social media companies to ensure that cigarette ads do not target children. While such a statement could meet the injunction's exception for "exercising permissible public government speech promoting government policy or views on matters of public concern," it also "urg[es] . . . in any manner[] social-media companies to change their guidelines for removing, deleting, suppressing, or reducing content containing protected speech." This example illustrates both the injunction's overbreadth, as such public statements constitute lawful speech, *see Walker*, 576 U.S. at 208, and vagueness, because the government-speech exception is ill-defined, *see Scott*, 826 F.3d at 209, 213 (vacating injunction requiring the Louisiana Secretary of State to maintain in force his "policies, procedures, and directives" related to the enforcement of the National Voter Registration Act, where "policies, procedures, and directives" were not defined). At the same time, given the legal framework at play, these carveouts are likely duplicative and, as a result, unnecessary.

Finally, the fifth prohibition—which bars the officials from "collaborating, coordinating, partnering, switchboarding, and/or jointly working with the Election Integrity Partnership, the Virality Project, the Stanford Internet Observatory, or any like project or group" to engage in the same activities the officials are proscribed from doing on their own—may implicate private, third-party actors that are not parties in this case and that may be entitled to their own First Amendment protections. Because the provision fails to identify the specific parties that are subject to the prohibitions, *see Scott*, 826 F.3d at 209, 213, and "exceeds the scope of the parties' presentation," *OCA-Greater Houston v. Texas*, 867 F.3d 604, 616 (5th Cir. 2017), Plaintiffs have not shown that the inclusion of these third parties is necessary to remedy their injury. So, this provision cannot stand at this juncture. *See also Alexander v. United States*, 509 U.S. 544, 550 (1993) ("[C]ourt orders that actually [] forbid speech activities are classic examples of prior restraints."). For the same reasons, the injunction's application to "all acting in concert with [the officials]" is overbroad.

We therefore VACATE prohibitions one, two, three, four, five, seven, eight, nine, and ten of the injunction.

That leaves provision six, which bars the officials from "threatening, pressuring, or coercing social-media companies in any manner to remove, delete, suppress, or reduce posted content of postings containing protected free speech." But, those terms could also capture otherwise legal speech. So, the injunction's language must be further tailored to exclusively target illegal conduct and provide the officials with additional guidance or instruction on what behavior is prohibited. To be sure, our standard practice is to remand to the

district court to tailor such a provision in the first instance. *See Scott*, 826 F.3d at 214. But this is far from a standard case. In light of the expedited nature of this appeal, we modify the injunction's remaining provision ourselves.

In doing so, we look to the Seventh Circuit's approach in *Backpage.com*, 807 F.3d at 239. There, the Seventh Circuit held that a county sheriff violated Backpage's First Amendment rights by demanding that financial service companies cut ties with Backpage in an effort to "crush" the platform (an online forum for "adult" classified ads). *Id.* at 230. To remedy the constitutional violation, the court issued the following injunction:

> Sheriff Dart, his office, and all employees, agents, or others who are acting or have acted for or on behalf of him, shall take no actions, formal or informal, to coerce or threaten credit card companies, processors, financial institutions, or other third parties with sanctions intended to ban credit card or other financial services from being provided to Backpage.com.

*Id.* at 239.

Like the Seventh Circuit's preliminary injunction in *Backpage.com*, we endeavor to modify the preliminary injunction here to target the coercive government behavior with sufficient clarity to provide the officials notice of what activities are proscribed. Specifically, prohibition six of the injunction is MODIFIED to state:

> Defendants, and their employees and agents, shall take no actions, formal or informal, directly or indirectly, 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. That includes, but is not limited to, compelling the platforms to act, such as by intimating that some form of punishment will follow a failure to comply with any request, or supervising, directing, or otherwise meaningfully controlling the social-media companies' decision-making processes.

Under the modified injunction, the enjoined Defendants cannot coerce or significantly encourage a platform's content-moderation decisions. Such conduct includes threats of adverse consequences—even if those threats are not verbalized and never materialize—so long as a reasonable person would construe a government's message as alluding to some form of punishment. That, of course, is informed by context (*e.g.*, persistent pressure, perceived or actual ability to make good on a threat). The government cannot subject the platforms to legal, regulatory, or economic consequences (beyond reputational harms) if they do not comply with a given request. *See Bantam Books*, 372 U.S. at 68; *Okwedy*, 333 F.3d at 344. The enjoined Defendants also cannot supervise a platform's content moderation decisions or directly involve themselves in the decision itself. Social-media platforms' content-moderation decisions must be theirs and theirs alone. *See Blum*, 457 U.S. at 1008. This approach captures illicit conduct, regardless of its form.

Because the modified injunction does not proscribe Defendants from activities that could include legal conduct, no carveouts are needed. There are two guiding inquiries for Defendants. First, is whether their action could be reasonably interpreted as a threat to take, or cause to be taken, an official action against the social-media companies if the companies decline Defendants'

request to remove, delete, suppress, or reduce protected free speech on their platforms. Second, is whether Defendants have exercised active, meaningful control over the platforms' content-moderation decisions to such a degree that it inhibits the platforms' independent decision-making.

To be sure, this modified injunction still "restricts government communications not specifically targeted to particular content *posted by plaintiffs themselves*," as the officials protest. But that does not mean it is still overbroad. To the contrary, an injunction "is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled." *Pro. Ass'n of Coll. Educators, TSTA/NEA v. El Paso Cnty. Cmty. Coll. Dist.*, 730 F.2d 258, 274 (5th Cir. 1984) (citations omitted); *see also Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987). Such breadth is plainly necessary, if not inevitable, here. 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. The harms that radiate from such conduct extend far beyond just the Plaintiffs; it impacts every social-media user. Naturally, then, an injunction against such conduct will afford protections that extend beyond just Plaintiffs, too. *Cf. Feds for Med. Freedom v. Biden*, 63 F.4th 366, 387 (5th Cir. 2023) ("[A]n injunction [can] benefit non-parties as long as that benefit [is] merely incidental." (internal quotation marks and citation omitted)).

As explained in Part IV above, the district court erred in finding that the NIAID Officials, CISA

Officials, and State Department Officials likely violated Plaintiffs' First Amendment rights. So, we exclude those parties from the injunction. Accordingly, the term "Defendants" as used in this modified provision is defined to mean only the following entities and officials included in the original injunction:

> The following members of the Executive Office of the President of the United States: White House Press Secretary, Karine Jean-Pierre; Counsel to the President, Stuart F. Delery; White House Partnerships Manager, Aisha Shah; Special Assistant to the President, Sarah Beran; Administrator of the United States Digital Service within the Office of Management and Budget, Mina Hsiang; White House National Climate Advisor, Ali Zaidi; White House Senior COVID-19 Advisor, formerly Andrew Slavitt; Deputy Assistant to the President and Director of Digital Strategy, formerly Rob Flaherty; White House COVID-19 Director of Strategic Communications and Engagement, Dori Salcido; White House Digital Director for the COVID-19 Response Team, formerly Clarke Humphrey; Deputy Director of Strategic Communications and Engagement of the White House COVID-19 Response Team, formerly Benjamin Wakana; Deputy Director for Strategic Communications and External Engagement for the White House COVID-19 Response Team, formerly Subhan Cheema; White House COVID-19 Supply Coordinator, formerly Timothy W. Manning; and Chief Medical Advisor to the President, Dr. Hugh Auchincloss, along with their directors, administrators and employees. Surgeon General Vivek H. Murthy; and Chief Engagement Officer for the Surgeon General, Katharine Dealy, along with their directors, administrators and employees.

The Centers for Disease Control and Prevention ("CDC"), and specifically the following employees: Carol Y. Crawford, Chief of the Digital Media Branch of the CDC Division of Public Affairs; Jay Dempsey, Social-media Team Leader, Digital Media Branch, CDC Division of Public Affairs; and Kate Galatas, CDC Deputy Communications Director. And the Federal Bureau of Investigation ("FBI"), and specifically the following employees: Laura Dehmlow, Section Chief, FBI Foreign Influence Task Force; and Elvis M. Chan, Supervisory Special Agent of Squad CY-1 in the FBI San Francisco Division.

**VII.**

The district court's judgment is AFFIRMED with respect to the White House, the Surgeon General, the CDC, and the FBI, and REVERSED as to all other officials. The preliminary injunction is VACATED except for prohibition number six, which is MODIFIED as set forth herein. The Appellants' motion for a stay pending appeal is DENIED as moot. The Appellants' request to extend the administrative stay for ten days following the date hereof pending an application to the Supreme Court of the United States is GRANTED, and the matter is STAYED.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-cv-01213-TAD-KDM

STATE OF MISSOURI EX REL.
ANDREW BAILEY, ATTORNEY GENERAL,
STATE OF LOUISIANA EX REL.
JEFFREY M. LANDRY, ATTORNEY GENERAL,
DR. JAYANTA BHATTACHARYA, JILL HINES,
JIM HOFT, DR. AARON KHERIATY,
AND DR. MARTIN KULLDORFF,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR. IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES;
KARINE JEAN-PIERRE, IN HER OFFICIAL CAPACITY AS WHITE HOUSE PRESS SECRETARY;
VIVEK H. MURTHY, IN HIS OFFICIAL CAPACITY OF SURGEON GENERAL OF THE UNITED STATES;
XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES;
DEPARTMENT OF HEALTH & HUMAN SERVICES;
DR. ANTHONY FAUCI, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES AND AS CHIEF MEDICAL ADVISOR TO THE PRESIDENT; NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES; DR. HUGH AUCHINCLOSS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF THE NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES; CENTERS FOR DISEASE CONTROL AND PREVENTION; CAROL Y. CRAWFORD, IN HER OFFICIAL CAPACITY AS CHIEF OF THE DIGITAL MEDIA BRANCH OF THE DIVISION OF PUBLIC AFFAIRS WITHIN THE CENTERS FOR DISEASE CONTROL AND PREVENTION; UNITED STATES CENSUS BUREAU,

A.K.A. BUREAU OF THE CENSUS; JENNIFER SHOPKORN, IN HER OFFICIAL CAPACITY AS SENIOR ADVISOR FOR COMMUNICATIONS WITH THE U.S. CENSUS BUREAU; DEPARTMENT OF COMMERCE; ALEJANDRO MAYORKAS, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; ROBERT SILVERS, IN HIS OFFICIAL CAPACITY AS UNDER SECRETARY OF THE OFFICE OF STRATEGY, POLICY, AND PLANS, WITHIN DHS; SAMANTHA VINOGRAD, IN HER OFFICIAL CAPACITY AS SENIOR COUNSELOR FOR NATIONAL SECURITY IN THE OFFICE OF THE SECRETARY FOR DHS; DEPARTMENT OF HOMELAND SECURITY; JEN EASTERLY, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY; CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY; GINA MCCARTHY, IN HER OFFICIAL CAPACITY AS WHITE HOUSE NATIONAL CLIMATE ADVISOR, NINA JANKOWICZ, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE SO-CALLED "DISINFORMATION GOVERNANCE BOARD" WITHIN THE DEPARTMENT OF HOMELAND SECURITY, ANDREW SLAVITT, IN HIS OFFICIAL CAPACITY AS WHITE HOUSE SENIOR COVID-10 ADVISOR, ROB FLAHERTY, IN HIS OFFICIAL CAPACITY AS DEPUTY ASSISTANT TO THE PRESIDENT AND DIRECTOR OF DIGITAL STRATEGY AT THE WHITE HOUSE, COURTNEY ROWE, IN HER OFFICIAL CAPACITY AS WHITE HOUSE COVID-19 DIRECTOR OF STRATEGIC COMMUNICATIONS AND ENGAGEMENT, CLARKE HUMPHREY, IN HER OFFICIAL CAPACITY AS WHITE HOUSE DIGITAL DIRECTOR FOR THE COVID-19 RESPONSE TEAM, BENJAMIN WAKANA, IN HIS OFFICIAL CAPACITY AS THE DEPUTY DIRECTOR OF STRATEGIC COMMUNICATIONS AND ENGAGEMENT AT THE WHITE HOUSE COVID-19 RESPONSE TEAM, SUBHAN CHEEMA, IN HIS OFFICIAL CAPACITY AS DEPUTY DIRECTOR FOR STRATEGIC COMMUNICATIONS AND EXTERNAL ENGAGEMENT FOR THE WHITE HOUSE COVID-19 RESPONSE TEAM, DORI SALCIDO, IN HER OFFICIAL CAPACITY AS WHITE HOUSE COVID-19

DIRECTOR OF STRATEGIC COMMUNICATIONS AND
ENGAGEMENT, TIMOTHY W. MANNING, IN HIS OFFICIAL
CAPACITY AS WHITE HOUSE COVID-19 SUPPLY
COORDINATOR, DANA REMUS, IN HER OFFICIAL
CAPACITY AS COUNSEL TO THE PRESIDENT,
AISHA SHAH, IN HER OFFICIAL CAPACITY AS WHITE
HOUSE PARTNERSHIPS MANAGER,
LAURA ROSENBERGER, IN HER OFFICIAL CAPACITY
AS SPECIAL ASSISTANT TO THE PRESIDENT,
MINA HSIANG, IN HER OFFICIAL CAPACITY AS
ADMINISTRATOR OF THE U.S. DIGITAL SERVICE
WITHIN THE OFFICE OF MANAGEMENT AND BUDGET
IN THE EXECUTIVE OFFICE OF THE PRESIDENT,
U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF
INVESTIGATION, LAURA DEHMLOW, IN HER OFFICIAL
CAPACITY AS SECTION CHIEF FOR THE FBI'S FOREIGN
INFLUENCE TASK FORCE, ELVIS M. CHAN, IN HIS
OFFICIAL CAPACITY AS SUPERVISORY SPECIAL AGENT
OF SQUAD CY-1 IN THE SAN FRANCISCO DIVISION OF
THE FEDERAL BUREAU OF INVESTIGATION,
JAY DEMPSEY, IN HIS OFFICIAL CAPACITY AS SOCIAL
MEDIA TEAM LEAD, DIGITAL MEDIA BRANCH,
DIVISION OF PUBLIC AFFAIRS AT THE CDC,
KATE GALATAS, IN HER OFFICIAL CAPACITY AS DEPUTY
COMMUNICATIONS DIRECTOR AT THE CDC,
ERIC WALDO, IN HIS OFFICIAL CAPACITY AS CHIEF
ENGAGEMENT OFFICER FOR THE SURGEON GENERAL,
YOLANDA BYRD, IN HER OFFICIAL CAPACITY AS A
MEMBER OF THE DIGITAL ENGAGEMENT TEAM AT HHS,
CHRISTY CHOI, IN HER OFFICIAL CAPACITY AS
DEPUTY DIRECTOR, OFFICE OF COMMUNICATIONS,
HRSA WITHIN HHS, TERICKA LAMBERT, IN HER
OFFICIAL CAPACITY AS DIRECTOR OF DIGITAL
ENGAGEMENT AT HHS AND DEPUTY DIRECTOR OF THE
OFFICE OF DIGITAL STRATEGY AT THE WHITE HOUSE,
JOSHUA PECK, IN HIS OFFICIAL CAPACITY AS DEPUTY
ASSISTANT SECRETARY FOR PUBLIC ENGAGEMENT
AT HHS, JANELL MUHAMMED, IN HER OFFICIAL
CAPACITY AS DEPUTY DIGITAL DIRECTOR AT HHS,
MATTHEW MASTERSON, IN HIS OFFICIAL CAPACITY AS

SENIOR CYBERSECURITY ADVISORY WITHIN CISA IN THE DEPARTMENT OF HOMELAND SECURITY, LAUREN PROTENTIS, IN HER OFFICIAL CAPACITY AS AN OFFICIAL OF CISA, GEOFFREY HALE, IN HIS OFFICIAL CAPACITY AS AN OFFICIAL OF CISA, ALLISON SNELL, IN HER OFFICIAL CAPACITY AS AN OFFICIAL OF CISA, KIM WYMAN, IN HER OFFICIAL CAPACITY AS CISA'S SENIOR ELECTION SECURITY LEAD, BRIAN SCULLY, IN HIS OFFICIAL CAPACITY AS AN OFFICIAL OF DHS AND CISA, ZACHARY HENRY SCHWARTZ, IN HIS OFFICIAL CAPACITY AS DIVISION CHIEF FOR THE COMMUNICATIONS DIRECTORATE AT THE U.S. CENSUS BUREAU, LORENA MOLINA-IRIZARRY, IN HER OFFICIAL CAPACITY AS AN OFFICIAL OF THE CENSUS BUREAU, KRISTIN GALEMORE, IN HER OFFICIAL CAPACITY AS DEPUTY DIRECTOR OF THE OFFICE OF FAITH BASED AND NEIGHBORHOOD PARTNERSHIPS AT THE CENSUS BUREAU, U.S. FOOD AND DRUG ADMINISTRATION, ERICA JEFFERSON, IN HER OFFICIAL CAPACITY AS ASSOCIATE COMMISSIONER FOR EXTERNAL AFFAIRS WITHIN THE OFFICE OF THE COMMISSIONER AT THE U.S. FOOD AND DRUG ADMINISTRATION, MICHAEL MURRAY, IN HIS OFFICIAL CAPACITY AS ACQUISITION STRATEGY PROGRAM MANAGER FOR THE OFFICE OF HEALTH COMMUNICATIONS AND EDUCATION AT THE FDA, BRAD KIMBERLY, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF SOCIAL MEDIA AT THE FDA, U.S. DEPARTMENT OF STATE, LEAH BRAY, IN HER OFFICIAL CAPACITY AS ACTING COORDINATOR OF THE STATE DEPARTMENT'S GLOBAL ENGAGEMENT CENTER, SAMARUDDIN K. STEWART, IN HIS OFFICIAL CAPACITY AS SENIOR TECHNICAL ADVISOR AND/OR SENIOR ADVISOR FOR THE GLOBAL ENGAGEMENT CENTER OF THE STATE DEPARTMENT, DANIEL KIMMAGE, IN HIS OFFICIAL CAPACITY AS ACTING COORDINATOR FOR THE GLOBAL ENGAGEMENT CENTER AT THE STATE DEPARTMENT, ALEXIS FRISBIE, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE TECHNOLOGY ENGAGEMENT TEAM AT THE GLOBAL ENGAGEMENT CENTER AT THE

STATE DEPARTMENT, U.S. DEPARTMENT OF TREASURY, WALLY ADEYEMO, IN HIS OFFICIAL CAPACITY AS DEPUTY SECRETARY OF THE TREASURY, U.S. ELECTION ASSISTANCE COMMISSION, MARK A. ROBBINS, IN HIS OFFICIAL CAPACITY AS INTERIM EXECUTIVE DIRECTOR OF THE EAC, AND KRISTEN MUTHIG, IN HER OFFICIAL CAPACITY AS DIRECTOR OF COMMUNICATIONS FOR THE EAC,
DEFENDANTS

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Filed: May 5, 2023

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**THIRD AMENDED COMPLAINT**

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**NATURE OF THE ACTION**

1. In 1783, George Washington warned that if "the Freedom of Speech may be taken away," then "dumb and silent we may be led, like sheep, to the Slaughter." George Washington, *Address to the Officers of the Army* (March 15, 1783). The freedom of speech in the United States now faces one of its greatest assaults by federal government officials in the Nation's history.

2. A private entity violates the First Amendment "if the government coerces or induces it to take action the government itself would not be permitted to do, such as censor expression of a lawful viewpoint." *Biden v. Knight First Amendment Institute at Columbia Univ.*, 141 S. Ct. 1220, 1226 (2021) (Thomas, J., concurring). "The government cannot accomplish through threats of adverse government action what the Constitution prohibits it from doing directly." *Id.*

3. That is exactly what has occurred over the past several years, beginning with express and implied threats from government officials and culminating in the Biden Administration's open and explicit censorship programs. Having threatened and cajoled social-media platforms for years to censor viewpoints and speakers disfavored by the Left, senior government officials in the Executive Branch have moved into a phase of open collusion with social-media companies to suppress disfavored speakers, viewpoints, and content on social-media platforms under the Orwellian guise of halting so-called "disinformation," "misinformation," and "malinformation."

4. The aggressive censorship that Defendants have procured constitutes government action for at least five reasons: (1) absent federal intervention, common-law and statutory doctrines, as well as voluntary conduct and natural free-market forces, would have restrained the emergence of censorship and suppression of speech of disfavored speakers, content, and viewpoint on social media; and yet (2) through Section 230 of the Communications Decency Act (CDA) and other actions, the federal government subsidized, fostered, encouraged, and empowered the creation of a small number of massive social-media companies with disproportionate ability to censor and suppress speech on the basis of speaker, content, and viewpoint; (3) such inducements as Section 230 and other legal benefits (such as the absence of antitrust enforcement) constitute an immensely valuable benefit to social-media platforms and incentive to do the bidding of federal officials; (4) federal officials—including, most notably, certain Defendants herein—have repeatedly and aggressively threatened to remove these legal benefits and impose other

adverse consequences on social-media platforms if they do not aggressively censor and suppress disfavored speakers, content, and viewpoints on their platforms; and (5) Defendants herein, colluding and coordinating with each other, have also directly coordinated and colluded with social-media platforms to identify disfavored speakers, viewpoints, and content and thus have procured the actual censorship and suppression of the freedom of speech. These factors are both individually and collectively sufficient to establish government action in the censorship and suppression of social-media speech, *especially* given the inherent power imbalance: not only do the government actors here have the power to penalize noncompliant companies, but they have threatened to exercise that authority.

5. Defendants' campaign of censorship includes the recent announcement of the creation of a "Disinformation Governance Board" within the Department of Homeland Security. "Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth." *United States v. Alvarez*, 567 U.S. 709, 728 (2012) (plurality op.). Likewise, our constitutional tradition stands against the idea that we need a "Disinformation Governance Board" within our federal domestic-security apparatus.

6. Email correspondence between the CDC, the Census Bureau, and major social-media platforms including Twitter, Facebook, and YouTube was released that reveals yet more evidence that Defendants are directing social media censorship.

7. As a direct result of these actions, there has been an unprecedented rise of censorship and suppression of free speech—including core political speech—on

social-media platforms. Many viewpoints and speakers have been unlawfully and unconstitutionally silenced in the modern public square. These actions gravely threaten the fundamental right of free speech and free discourse for virtually all citizens in Missouri, Louisiana, and America, both on social media and elsewhere. And they have directly impacted individual Plaintiffs in this case, all of whom have been censored and/or shadowbanned as a result of Defendants' actions.

8. Under the First Amendment, the federal Government should play no role in policing private speech or picking winners and losers in the marketplace of ideas. But that is what federal officials are doing, on a massive scale — the full scope and impact of which yet to be determined.

9. Secretary Mayorkas of DHS commented that the federal Government's efforts to police private speech on social media are occurring "across the federal enterprise." It turns out that this statement is quite literally true. This case involves a massive, sprawling federal "Censorship Enterprise," which includes dozens of federal officials across at least eleven federal agencies and components, who communicate with social-media platforms about misinformation, disinformation, and the suppression of private speech on social media—all with the intent and effect of pressuring social-media platforms to censor and suppress private speech that federal officials disfavor.

10. This Censorship Enterprise is extremely broad, including officials in the White House, HHS, DHS, CISA, the CDC, NIAID, and the Office of the Surgeon General; as well as the Census Bureau, the FDA, the FBI, the State Department, the Treasury Department,

and the U.S. Election Assistance Commission, among others. And this effort rises to the highest levels of the U.S. Government, including numerous White House officials overseeing the Censorship Enterprise.

## JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction because the federal claims arise under the Constitution and laws of the United States.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

## PARTIES

### A. Plaintiffs.

13. Plaintiff State of Missouri is a sovereign State of the United States of America. Missouri sues to vindicate its sovereign, quasi-sovereign, and proprietary interests.

14. Andrew Bailey is the Attorney General of Missouri. Under Missouri law, he has authority to bring suit on behalf of the State of Missouri to vindicate the State's sovereign, quasi-sovereign, and proprietary interests, and to protect the constitutional rights of its citizens. *See, e.g.*, Mo. Rev. Stat. § 27.060.

15. Plaintiff State of Louisiana is a sovereign State of the United States of America. Louisiana sues to vindicate its sovereign, quasi-sovereign, and proprietary interests.

16. Jeffrey M. Landry is the duly elected Attorney General of Louisiana. Under Louisiana law, he has authority to bring suit on behalf of the State of Louisiana

to vindicate the State's sovereign, quasi-sovereign, and proprietary interests, and to protect the constitutional rights of its citizens.

17. Missouri and Louisiana, and their agencies and officials, have a sovereign and proprietary interest in receiving free flow of information in public discourse on social-media platforms. This includes an interest in preventing the States, their agencies, and their political subdivisions from suffering direct censorship on social-media platforms when they post their own content. In addition, Missouri and Louisiana, and their agencies and officials, are constantly engaged in the work of formulating, enacting, advancing and enforcing public policies, and formulating messages and communications related to such policies, and they frequently and necessarily rely on the flow of speech and information on social media to inform public-policy decisions. Further, information and ideas shared on social media frequently are repeated in, and impact and influence, public discourse outside of social media, which Missouri and Louisiana, and their agencies and officials, also rely upon.

18. Missouri and Louisiana further have a sovereign interest in ensuring that the fundamental values reflected in their own Constitutions and laws, and the fundamental rights guaranteed to their citizens, are not subverted by the unconstitutional actions of federal officials and those acting in concert with them. Missouri's Constitution provides the highest level of protection for the freedom of speech, protecting it in even more expansive language than that in the First Amendment, and Louisiana's Constitution provides similar protection for free-speech rights. Defendants' unlawful subversion of Missourians' and Louisianans' fundamental rights and liberties under state law violates both the

state and federal Constitutions, and it injures Missouri's and Louisiana's sovereign interests in advancing their own fundamental laws and fundamental policies favoring the freedom of speech.

19. In addition, Missouri and Louisiana have a quasi-sovereign interest in protecting the free-speech rights of the vast majority of their citizens, who constitute "a sufficiently substantial segment of its population." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). This falls within Missouri's and Louisiana's "quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general." *Id.* This injury "suffices to give the State standing to sue as *parens patriae*" because "the injury" to Missourians' and Louisianans' free-speech and free-expression rights "is one that the State . . . would likely attempt to address"—indeed, Missouri and Louisiana have addressed, *see, e.g.*, MO. CONST., art. I, § 8; LA. CONST., art. I, § 7—"through [their] sovereign lawmaking powers." *Alfred L. Snapp*, 458 U.S. at 607.

20. Further, Missouri and Louisiana "ha[ve] an interest in securing observance of the terms under which [they] participate[] in the federal system." *Alfred L. Snapp*, 458 U.S. at 607-08. This means bringing suit to "ensur[e] that the State and its residents are not excluded from the benefits that are to flow from participation in the federal system." *Id.* at 608. The rights secured by the First Amendment, and analogous state constitutional provisions, are foremost among the "benefits that are to flow from participation in the federal system." *Id.* Missouri and Louisiana "have an interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the

federal system are not denied to its general population." *Id.* Missouri and Louisiana sue to vindicate all these interests here.

21. Plaintiff Dr. Jayanta Bhattacharya is a former Professor of Medicine and current Professor of Health Policy at Stanford University School of Medicine and a research associate at the National Bureau of Economic Research. He is also Director of Stanford's Center for Demography and Economics of Health and Aging. He holds an M.D. and Ph.D. from Stanford University. He has published 161 scholarly articles in peer-reviewed journals in the fields of medicine, economics, health policy, epidemiology, statistics, law, and public health, among others. His research has been cited in the peer-reviewed scientific literature more than 13,000 times. He was one of the co-authors of the Great Barrington Declaration, a statement criticizing government-mandated COVID restrictions, which was co-signed by over 930,000 people, including over 62,000 scientists and healthcare professionals. Dr. Bhattacharya and his audiences have experienced significant censorship and suppression of his speech on social-media caused by Defendants, as detailed in his previously filed Declaration, ECF No. 10-3, which is attached as Exhibit C and incorporated by reference herein.

22. Plaintiff Dr. Martin Kulldorff is an epidemiologist, a biostatistician and a former Professor of Medicine at Harvard University and Brigham and Women's Hospital, from 2015 to November 2021. Before that, he was Professor of Population Medicine at Harvard University from 2011 to 2015. He holds a Ph.D. from Cornell University. He has published over 200 scholarly articles in peer-reviewed journals in the fields of public health, epidemiology, biostatistics and medicine, among

others. His research has been cited in the peer-reviewed scientific literature more than 25,000 times. He was one of the co-authors of the Great Barrington Declaration, a statement criticizing government-mandated COVID restrictions, which was co-signed by over 930,000 people, including over 62,000 scientists and healthcare professionals. Dr. Kulldorff and his audiences have experienced significant censorship and suppression of his speech on social-media caused by Defendants, as detailed in his previously filed Declaration, ECF No. 10-4, which is attached as Exhibit D and incorporated by reference herein.

23. Plaintiff Dr. Aaron Kheriaty earned his M.D. from Georgetown University, and completed residency training in psychiatry at the University of California Irvine. For many years, he was a Professor of Psychiatry at UCI School of Medicine and the Director of the Medical Ethics Program at UCI Health, where he chaired the ethics committee. He also chaired the ethics committee at the California Department of State Hospitals for several years. He is now a Fellow at the Ethics & Public Policy Center in Washington, DC, where he directs the program on Bioethics and American Democracy. He has authored numerous books and articles for professional and lay audiences on bioethics, social science, psychiatry, religion, and culture. His work has been published in the Wall Street Journal, the Washington Post, Arc Digital, The New Atlantis, Public Discourse, City Journal, and First Things. He has conducted print, radio, and television interviews on bioethics topics with The New York Times, the Los Angeles Times, CNN, Fox News, and NPR. He maintains social-media accounts, including the Twitter account @akheriaty, which has over 158,000 followers. Dr. Kheriaty

and his audiences have experienced significant censorship and suppression of his speech on social-media caused by Defendants, as detailed in his previously filed Declaration, ECF No. 10-7, which is attached as Exhibit G incorporated by reference herein.

24. Plaintiff Jim Hoft is the founder, owner, and operator of the popular news website The Gateway Pundit. He resides in St. Louis, Missouri. The Gateway Pundit is one of the most popular conservative news sites in the country, with over 2.5 million web searches per day. Mr. Hoft maintains and operates The Gateway Pundit's social-media accounts, including a Facebook account with over 650,000 followers, an Instagram account with over 205,000 followers, and (until its recent permanent suspension) a Twitter account with over 400,000 followers. Mr. Hoft and his audiences have experienced extensive government-induced censorship on social-media platforms, including of his speech on COVID-19 issues and election security issues, as set forth in his Declaration, ECF No. 10-5, which is attached as Exhibit E and incorporated by reference herein.

25. Plaintiff Jill Hines is a resident of Louisiana. She is the Co-Director of Health Freedom Louisiana, a consumer and human rights advocacy organization. She also launched, in 2020, a grassroots effort called Reopen Louisiana. She maintains social-media accounts for both Health Freedom Louisiana and Reopen Louisiana with approximately 13,000 followers. Ms. Hines and her audiences have experienced extensive government-induced censorship of her speech on social media, including her speech related to COVID-19 restrictions, as set forth in her Declaration, ECF No. 10-12, which is attached as Exhibit L and incorporated by reference herein.

**B. Defendants.**

26. Defendant Joseph R. Biden, Jr., is President of the United States. He is sued in his official capacity.

27. Defendant Karine Jean-Pierre is White House Press Secretary. She is sued in her official capacity. She is substituted for her predecessor, former White House Press Secretary Jennifer Rene Psaki.

28. Defendant Vivek H. Murthy is Surgeon General of the United States. He is sued in his official capacity.

29. Defendant Xavier Becerra is Secretary of the Department of Health and Human Services. He is sued in his official capacity.

30. Defendant Department of Health and Human Services (HHS) is a Cabinet-level agency within the Government of the United States.

31. Defendant Anthony Fauci is the former Director of the National Institute of Allergy and Infectious Diseases (NIAID) and Chief Medical Advisor to the President. He is sued in his official capacity.

32. Defendant National Institute of Allergy and Infectious Diseases (NIAID) is a federal agency under the Department of Health and Senior Services.

33. Dr. Hugh Auchincloss is the Acting Director of NIAID, and became Acting Director on or about January 1, 2023. He is sued in his official capacity.

34. Defendant Centers for Disease Control and Prevention (CDC) is a federal agency under the Department of Health and Human Services.

35. Defendant Carol Y. Crawford is Chief of the Digital Media Branch of the Division of Public Affairs

within the Centers for Disease Control and Prevention. She is sued in her official capacity.

36. Defendant United States Census Bureau, a.k.a. Bureau of the Census ("Census Bureau"), is an agency of the federal government within the Department of Commerce.

37. Defendant Jennifer Shopkorn is Senior Advisor for Communications with the U.S. Census Bureau. She is sued in her official capacity.

38. Defendant U.S. Department of Commerce is a Cabinet-level agency within the Government of the United States.

39. Defendant Alejandro Mayorkas is Secretary of the Department of Homeland Security. He is sued in his official capacity.

40. Defendant Robert Silvers is Under Secretary of the Office of Strategy, Policy, and Plans, within the Department of Homeland Security. He is sued in his official capacity.

41. Defendant Samantha Vinograd is the Senior Counselor for National Security within the Office of the Secretary of DHS. She is sued in her official capacity.

42. Defendant Department of Homeland Security (DHS) is a Cabinet-level agency within the Government of the United States.

43. Defendant Jen Easterly is the Director of the Cybersecurity and Infrastructure Security Agency within the Department of Homeland Security. She is sued in her official capacity.

44. Defendant Cybersecurity and Infrastructure Security Agency (CISA) is an agency within the

Department of Homeland Security that is charged with protecting the United States' cybersecurity and physical infrastructure.

45. Defendant Gina McCarthy is the White House National Climate Advisor. She is sued in her official capacity.

46. Defendant Nina Jankowicz is the director of the newly constituted "Disinformation Governance Board" within the Department of Homeland Security. She is sued in her official capacity.

47. At times relevant to this Complaint, Defendant Andrew Slavitt is or was the White House Senior COVID-19 Advisor. He is sued in his official capacity.

48. Defendant Rob Flaherty is Deputy Assistant to the President and Director of Digital Strategy at the White House. He is sued in his official capacity.

49. At times relevant to this Complaint, Defendant Courtney Rowe is or was the White House Covid-19 Director of Strategic Communications and Engagement. She is sued in her official capacity.

50. Defendant Clarke Humphrey is the White House Digital Director for the Covid-19 Response Team. She is sued in her official capacity.

51. At times relevant to this Complaint, Defendant Benjamin Wakana is or was the Deputy Director of Strategic Communications and Engagement at the White House COVID-19 Response Team. He is sued in his official capacity.

52. Defendant Subhan Cheema is Deputy Director for Strategic Communications and External Engagement

for the White House Covid-19 Response Team. He is sued in his official capacity.

53. Defendant Dori Salcido is, on information and belief, the White House Covid-19 Director of Strategic Communications and Engagement. She is sued in her official capacity.

54. At times relevant to this Complaint, Defendant Timothy W. Manning is or was the White House Covid-19 Supply Coordinator. He is sued in his official capacity.

55. Defendant Dana Remus was, at times relevant to this Complaint, Counsel to the President, a.k.a. White House Counsel. She is sued in her official capacity.

56. Defendant Aisha Shah is White House Partnerships Manager. She is sued in her official capacity.

57. Defendant Laura Rosenberger serves as Special Assistant to the President at the White House. She has extensive experience in service at the State Department. She is sued in her official capacity.

58. Defendant Mina Hsiang is Administrator of the U.S. Digital Service within the Office of Management and Budget in the Executive Office of the President. She is sued in her official capacity.

59. Defendant U.S. Department of Justice ("DOJ") is a Cabinet-level agency within the Government of the United States.

60. Defendant Federal Bureau of Investigation ("FBI") is an investigative agency of the federal Government within the U.S. Department of Justice. The Foreign Influence Task Force ("FITF") is a task force within the FBI that purportedly investigates and/or

addresses foreign influences within the United States. The FTIF's website states: "The FBI is the lead federal agency responsible for investigating foreign influence operations. In the fall of 2017, Director Christopher Wray established the Foreign Influence Task Force (FITF) to identify and counteract malign foreign influence operations targeting the United States." https://www.fbi.gov/investigate/counterintelligence/foreign-influence.

61. Defendant Laura Dehmlow is the Section Chief for the FBI's Foreign Influence Task Force. She is sued in her official capacity.

62. Defendant Elvis M. Chan is Supervisory Special Agent of Squad CY-1 in the San Francisco Division of the FBI. On information and belief, he has authority over cybersecurity issues for FBI in that geographical region, which includes the headquarters of major social-media platforms, and he plays a critical role for FBI and FITF in coordinating with social-media platforms relating to censorship and suppression of speech on their platforms.

63. Defendant Jay Dempsey is Social Media Team Lead, Digital Media Branch, Division of Public Affairs at the CDC. He is sued in his official capacity.

64. Defendant Kate Galatas is Deputy Communications Director at the CDC. She is sued in her official capacity.

65. Defendant Eric Waldo is Chief Engagement Officer for the Surgeon General. He is sued in his official capacity.

66. Defendant Yolanda Byrd is a member of the Digital Engagement Team at HHS. She is sued in her official capacity.

67. Defendant Christy Choi is Deputy Director, Office of Communications, HRSA within HHS. She is sued in her official capacity.

68. Defendant Tericka Lambert served Director of Digital Engagement at HHS and now serves as Deputy Director of the Office of Digital Strategy at the White House. She is sued in her official capacity.

69. Defendant Joshua Peck is Deputy Assistant Secretary for Public Engagement at HHS. He is sued in his official capacity.

70. At times relevant to this Complaint, Defendant Janell Muhammad is or was Deputy Digital Director at HHS. She is sued in her official capacity.

71. At times relevant to this Complaint, Defendant Matthew Masterson is or was Senior Cybersecurity Advisory within CISA in the Department of Homeland Security. He is sued in his official capacity.

72. Defendant Lauren Protentis is a member of the "Mis, Dis, and Mal-information (MDM) Team" within CISA at DHS. She is sued in her official capacity.

73. Defendant Geoffery Hale is a member of the Mis, Dis, and Mal-information (MDM) Team within CISA at DHS. He is sued in his official capacity.

74. Defendant Allison Snell is a member of the Mis, Dis, and Mal-information (MDM) Team within CISA at DHS. She is sued in her official capacity.

75. Defendant Kim Wyman is CISA's Senior Election Security Lead. She is sued in her official capacity.

76. Defendant Brian Scully is a member of DHS's Countering Foreign Influence Task Force, National Risk Management Center, and the Chief of the Mis-, Dis-,

Malinformation Team at CISA. He is sued in his official capacity.

77. Defendant Zachary ("Zack") Henry Schwartz is the Division Chief for the Communications Directorate at the U.S. Census Bureau. He is sued in his official capacity.

78. Defendant Lorena Molina-Irizarry served at times relevant to this Complaint as Director of Operations at Census Open Innovation Labs at the Census Bureau and Senior Advisor on the American Rescue Plan Team at the White House. She is sued in her official capacity.

79. Defendant Kristin Galemore is Deputy Director of the Office of Faith Based and Neighborhood Partnerships at the Census Bureau. She is sued in her official capacity.

80. Defendant U.S. Food and Drug Administration ("FDA") is a federal agency within the U.S. Department of Health and Human Services.

81. Defendant Erica Jefferson is the Associate Commissioner for External Affairs within the Office of the Commissioner at the U.S. Food and Drug Administration. She is sued in her official capacity.

82. Defendant Michael Murray is the Acquisition Strategy Program Manager for the Office of Health Communications and Education at the FDA. He is sued in his official capacity.

83. Defendant Brad Kimberly is the Director of Social Media at the FDA. He is sued in his official capacity.

84. Defendant U.S. Department of State ("State Department") is a Cabinet-level agency within the Government of the United States.

85. Defendant Leah Bray is the Acting Coordinator of the State Department's Global Engagement Center. She is sued in her official capacity.

86. Defendant Samaruddin K. Stewart is a Senior Technical Advisor and/or Senior Advisor for the Global Engagement Center of the State Department. He is sued in his official capacity.

87. At times relevant to this Complaint, Defendant Daniel Kimmage is or was the Acting Coordinator for the Global Engagement Center at the State Department. He is sued in his official capacity.

88. Defendant Alexis Frisbie is a member of the Technology Engagement Team at the Global Engagement Center at the State Department. She is sued in her official capacity.

89. The State Department operates a "Global Engagement Center" within the State Department that conducts counter-"disinformation" activities. According to the State Department's website, the Global Engagement Center's mission is "[t]o direct, lead, synchronize, integrate, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining or influencing the policies, security, or stability of the United States, its allies, and partner nations." As alleged further herein, the Global Engagement Center is involved in procuring the censorship of private speech on social media, including of U.S. citizens. The State Department

also maintains an Office of Cyber Coordinator, a.k.a. Office of the Coordinator for Cyber Issues, that has, on information and belief, also been involved in federal social-media censorship activities.

90. Defendant U.S. Department of the Treasury ("Treasury") is a Cabinet-level agency within the Government of the United States.

91. Defendant Wally Adeyemo is the Deputy Secretary of the Treasury. He is sued in his official capacity.

92. Defendant U.S. Election Assistance Commission ("EAC") is an independent agency within the Government of the United States. According to its website, the EAC "was established by the Help America Vote Act of 2002 (HAVA). The EAC is an independent, bipartisan commission charged with developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, and serving as a national clearinghouse of information on election administration."

93. Defendant Mark A. Robbins is the Interim Executive Director of the EAC. He is sued in his official capacity.

94. Defendant Kristen Muthig is the Director of Communications for the EAC. According to the EAC's website, Muthig "manages media relations, communications strategy and supports the commissioners and EAC leadership." She is sued in her official capacity.

## GENERAL ALLEGATIONS

### A. Freedom of Speech Is the Bedrock of American Liberty.

95. The First Amendment of the U.S. Constitution states that "Congress shall make no law . . . abridging

the freedom of speech, or of the press . . . " U.S. CONST. amend. I.

96. Article I, § 8 of the Missouri Constitution provides "[t]hat no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty. . . . " MO. CONST. art. I, § 8. Article I, § 7 of the Louisiana Constitution provides that "[n]o law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom." LA. CONST. art. I, § 7. All other State Constitutions likewise protect the freedom of speech as a fundamental right of the first order.

97. The freedom of speech and expression guaranteed by the First Amendment is one of the greatest bulwarks of liberty. These rights are fundamental and must be protected against government interference.

**1. Government officials lack authority to censor disfavored speakers and viewpoints.**

98. If the President or Congress enacted a law or issued an order requiring the suppression of certain disfavored viewpoints or speakers on social media, or directing social media to demonetize, shadow-ban, or expel certain disfavored speakers, such a law or order would be manifestly unconstitutional under the First Amendment.

99. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism,

religion, or other matters of opinion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

100. "[T]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002) (quotations omitted).

101. "In light of the substantial and expansive threats to free expression posed by content-based restrictions," the Supreme "Court has rejected as 'startling and dangerous' a 'free- floating test for First Amendment coverage . . . [based on] an *ad hoc* balancing of relative social costs and benefits.'" *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (plurality op.) (quoting *United States v. Stevens*, 559 U.S. 460, 470 (2010)).

**2. Merely labeling speech "misinformatation" or disinformation does not strip away First Amendment protections.**

102. Labeling disfavored speech "misinformation" or "disinformation" does not strip it of First Amendment protection. "Absent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements. This comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee." *Id.* at 718.

103. The Supreme Court has thus rejected the argument "that false statements, as a general rule, are beyond constitutional protection." *Id.*

104. "Permitting the government to decree this speech to be a criminal offense, whether shouted from the rooftops or made in a barely audible whisper, would endorse government authority to compile a list of subjects about which false statements are punishable. That governmental power has no clear limiting principle. Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth." *Id.* at 723 (citing G. ORWELL, NINETEEN EIGHTY-FOUR (1949) (Centennial ed. 2003)).

105. "Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech . . . it would give government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom." *Id.* at 723.

**3. Counterspeech, not censorship, is the proper response to supposed "misinformation."**

106. When the Government believes that speech is false and harmful, "counterspeech," not censorship, must "suffice to achieve its interest." *Id.* at 726. The First Amendment presumes that "the dynamics of free speech, of counterspeech, of refutation, can overcome the lie." *Id.*

107. "The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straightout lie, the simple truth." *Id.* at 727.

108. "The theory of our Constitution is 'that the best test of truth is the power of the thought to get itself accepted in the competition of the market.'" *Id.* at 728 (quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)).

109. "The First Amendment itself ensures the right to respond to speech we do not like, and for good reason. Freedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person. And suppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates." *Id.* at 728.

**4. Americans have a First Amendment right to be exposed to a free flow of speech, viewpoints, and content, free from censorship by government officials.**

110. The First Amendment also protects the right to receive others' thoughts, messages, and viewpoints freely, in a free flow of public discourse. "[W]here a speaker exists . . . , the protection afforded is to the communication, to its source and to its recipients both." *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976).

111. The right to receive information is "an inherent corollary of the rights to free speech and press that are explicitly, guaranteed by the Constitution," because "the right to receive ideas follows ineluctably from the sender's First Amendment right to send them." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v.*

*Pico*, 457 U.S. 853, 867 (1982). "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers." *Lamont v. Postmaster Gen.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring).

112. "A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

113. "[A]ssuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment." *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994). Indeed, "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972) (plurality op.) (quotations omitted).

**5. Government officials may not circumvent the First Amendment by inducing, threatening, and/or colluding with private entities to suppress protected speech.**

114. It is "axiomatic" that the government may not "induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish." *Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (quotations omitted).

115. A private entity violates the First Amendment "if the government coerces or induces it to take action

the government itself would not be permitted to do, such as censor expression of a lawful viewpoint." *Knight First Amendment Institute*, 141 S. Ct. at 1226 (Thomas, J., concurring). "The government cannot accomplish through threats of adverse government action what the Constitution prohibits it from doing directly." *Id.*

116. Threats of adverse regulatory or legislative action, to induce private actors to censor third parties' speech, violate the First Amendment. *See Hammerhead Enters. v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983) ("Where comments of a government official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to the official's request, a valid claim can be stated."); *see also Bantam Books v. Sullivan*, 372 U.S. 58, 68 (1963) (holding that a veiled threat of prosecution to pressure a private bookseller to stop selling disfavored books could violate the First Amendment).

117. The unprecedented control over private speech exercised by social-media companies gives government officials an unprecedented opportunity to circumvent the First Amendment and achieve indirect censorship of private speech. "By virtue of its ownership of the essential pathway," a social media platform "can . . . silence the voice of competing speakers with a mere flick of the switch." *Turner*, 512 U.S. at 656; *see also Knight First Amendment Inst.*, 141 S. Ct. at 1224 (Thomas, J., concurring). "The potential for abuse of this private power over a central avenue of communication cannot be overlooked." Turner, 512 U.S. at 656.

**B. The Dominance of Social Media as a Forum for Public Information and Discourse.**

118. Social media has become, in many ways, "the modern public square." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017). Social media platforms provide "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Id.*

119. "Today's digital platforms provide avenues for historically unprecedented amounts of speech, including speech by government actors. Also unprecedented, however, is the concentrated control of so much speech in the hands of a few private parties." *Knight First Amendment Institute*, 141 S. Ct. at 1221.

120. The "concentration" of power in social media companies "gives some digital platforms enormous control over speech." *Id.* at 1224. Defendants have not hesitated to exploit this power.

121. For example, on information and belief, Facebook has close to 3 billion registered users worldwide and over 124 million users in the United States, including millions of Missourians and millions of citizens of other States.

122. On information and belief, Twitter has more than 340 million users worldwide, including approximately 70 million users in the United States. Approximately 500 million tweets are posted on Twitter every day, and they are accessible to non-Twitter users on the internet. Moreover, Twitter users include large numbers of politicians, journalists, public figures, and others with a disproportionately large impact on public

discourse in other forums, so Twitter's impact on public discourse is even larger than its numbers alone reflect.

123. On information and belief, YouTube has more than 4 billion hours of video views every month. Videos on YouTube channels are visible to both YouTube users and to the general public on the internet. An estimated 500 hours of video content are uploaded to YouTube every minute.

124. YouTube is extremely popular among politicians and public figures in reaching their audiences. On information and belief, in 2020, approximately 92 percent of U.S. Senators and 86 percent of U.S. Representatives uploaded content on YouTube.

125. According to a recent Pew Research study, 66 percent of U.S. adults use Facebook, and 31 percent of U.S. adults say they get news regularly on Facebook. Walker et al., *News Consumption Across Social Media in 2021*, PEW RESEARCH CENTER (Sept. 20, 2021), *at* https://www.pewresearch.org/journalism/2021/09/20/news-consumption-across-social-media-in- 2021/.

126. According to the same study, 72 percent of U.S. adults say that they use YouTube, and 22 percent of U.S. adults say that they regularly get news on YouTube. *Id.*

127. According to the same study, 23 percent of U.S. adults say that they use Twitter, and 13 percent of U.S. adults say they regularly get news on Twitter. *Id.* This comprises 55 percent of Twitter users. *Id.*

128. According to the same study, 41 percent of U.S. adults say that they use Instagram, and 11 percent of U.S. adults say they regularly get news on Instagram. *Id.*

129. The free flow of information and expression on social media directly affects non- users of social media as well. Social-media users who are exposed to information, ideas, and expression through social media communicate the same information, ideas, and expression with non-social-media users. News, information, messages, narratives, and storylines that originate on social media are frequently replicated in other forums, such as television, print media, and private discourse. Further, much content posted on social-media is directly available to non-social-media users. For example, posts on Twitter are directly accessible on the internet to non-Twitter-users, and content on YouTube is available to the general public on the internet as well.

130. In the aggregate, these numbers of Americans who (1) use social-media platforms, and (2) regularly use social-media platforms to obtain news and information about matters of public interest, comprise hundreds of millions of Americans, including millions of Missourians and Louisianans, and very substantial segments of the populations of Missouri, Louisiana, and every other State.

131. There are also many ways for social-media companies to censor or suppress speech on social-media platforms. Some of these methods are immediately known to the speaker and/or his or her audience, and some are not visible to them. Censorship, therefore, can occur without the knowledge of the speaker and/or his or her audience. These methods include, but are not limited to, terminating speakers' accounts, suspending accounts, imposing warnings or strikes against accounts to chill future disfavored speech, "shadow banning" speakers, demonetizing content, adjusting algorithms to suppress or de-emphasize speakers or messages,

promoting or demoting content, placing warning labels on content, suppressing content in other users' feeds, promoting negative comments on disfavored content, and requiring additional click-through(s) to access content, among many others. Many methods, moreover, have a chilling effect on social-media speech, as the threat of censorship (such as suspension, demonetization, or banning) drives speakers to self-censor to avoid making statements that might be deemed to violate the social-media companies' vague, ever-changing, often-hidden, and inconsistently enforced standards for censoring and suppressing speech. Collectively herein, all these methods of suppressing and/or censoring speech on social media are called "censorship" and/or "suppression" of social-media speech.

132. The censorship and suppression of free speech on social media functions in most cases as a prior restraint on speech, both through its direct effect and its chilling effects. A prior restraint is the most severe form of restriction on freedom of expression.

**C. Public and Private Attempts to Police "Misinformation" or "Disinformation" on Social Media Have Proven Embarrassingly Inaccurate.**

133. Yesterday's "misinformation" often becomes today's viable theory and tomorrow's established fact. "Even where there is a wide scholarly consensus concerning a particular matter, the truth is served by allowing that consensus to be challenged without fear of reprisal. Today's accepted wisdom sometimes turns out to be mistaken." *Alvarez*, at 752 (Alito, J., dissenting) (emphasis added). This prediction has proven true, again and again, when it comes to suppressing "misinformation" and "disinformation" on social media.

**1. The Hunter Biden laptop story.**

134. Perhaps most notoriously, social-media platforms aggressively censored an October 14, 2020 New York Post exposé about the contents of the laptop of (then-Candidate Biden's son) Hunter Biden, which had been abandoned in a Delaware repair shop and contained compromising photos and email communications about corrupt foreign business deals. As the New York Post reported at the time, "[b]oth Twitter and Facebook took extraordinary censorship measures against The Post on Wednesday over its exposés about Hunter Biden's emails . . . The Post's primary Twitter account was locked as of 2:20 p.m. Wednesday because its articles about the messages obtained from Biden's laptop broke the social network's rules against 'distribution of hacked material,' according to an email The Post received from Twitter," even though there were "zero claims that [Hunter Biden's] computer had been hacked." *Twitter, Facebook censor Post over Hunter Biden exposé*, N.Y. POST (Oct. 14, 2020), *at* https://nypost.com/2020/10/14/facebook-twitter-block-the-post-from-posting/. "Twitter also blocked users from sharing the link to The Post article indicating that Hunter Biden introduced Joe Biden to the Ukrainian businessman, calling the link 'potentially harmful.'" *Id.*

135. As the Wall Street Journal Editorial Board reported, "nearly all of the media at the time ignored the story or 'fact-checked' it as false. This . . . was all the more egregious given other evidence supporting the Post's scoop. Neither Hunter Biden nor the Biden campaign denied that the laptop was Hunter's. And Hunter's former business partner, Tony Bobulinski, went public with documents backing up some of the laptop's contents."

Editorial Board, *Hunter Biden's Laptop Is Finally News Fit to Print*, WALL ST. J. (March 18, 2022).

136. Biden, his allies, and those acting in concert with them falsely attacked the Hunter Biden laptop story as "disinformation." *Id.* Fifty "intelligence officials—headlined by former Obama spooks James Clapper and John Brennan—circulated a statement peddling the Russian 'disinformation' line—even as they admitted they had no evidence. Th[e] result was a blackout of the Hunter news, except in a few places. . . . " *Id.* Parroting the Biden campaign's false line, both social media platforms and major news organizations treated the story as "disinformation" and aggressively censored it.

137. In early 2022—over a year and a half later—major news organizations finally admitted that the Hunter Biden laptop story was truthful and rested on reliable sourcing and information. *Id.* The Washington Post and the New York Times quietly acknowledged the truth and reliability of the story "17 months" later, in mid-March 2022. *Id.*

138. Free-speech advocate Glenn Reynolds aptly described this embarrassing episode as one that permanently damaged the credibility and reputation for fairness of social-media platforms and major media outlets: "Twitter and other tech giants banned The Post's reporting, since admitted to be accurate, on Hunter Biden's laptop and the damaging information it contained. Many social-media giants banned any links to the story, and Twitter even went so far as to stop its users from sharing the story one-on-one through direct messages. (CEO Jack Dorsey later admitted that was a 'total mistake.') Their purpose was to affect the election's

outcome in favor of the Democrats, and they probably did." Glenn H. Reynolds, '*Censorship is free speech' is the establishment's Orwellian line on Elon Musk's Twitter crusade*, N.Y. POST (Apr. 15, 2022), https://nypost.com/2022/04/14/the-establishments-orwellian-line-on-elon-musks-twitter-crusade/.

**2. Speech about the lab-leak theory of COVID-19's origins.**

139. Likewise, beginning in February 2020, social-media platforms censored speech advocating for the lab-leak theory of the origins of SARS-CoV-2, the virus that causes COVID-19. The lab-leak theory postulates that the virus did not originate naturally in bats or other animals, but leaked from a biotech laboratory in Wuhan, China, operated by the Wuhan Institute of Virology.

140. On information and belief, Defendant Dr. Anthony Fauci, a senior federal government official, coordinating with others, orchestrated a campaign to discredit the lab-leak hypothesis in early 2020. As director of NIAID, Dr. Fauci had funded risky "gain-of-function" research at the Wuhan Institute of Virology through intermediaries such as EcoHealth Alliance, headed by Dr. Peter Daszak. Thus, if the lab-leak theory were established, Dr. Fauci and Dr. Daszak could be potentially implicated in funding the research on viruses that caused the COVID-19 pandemic and killed millions of people worldwide.

141. During the same time frame as he was orchestrating a campaign to falsely discredit the lab-leak theory, Dr. Fauci was exchanging emails with Mark Zuckerberg, the CEO of Facebook, regarding public messaging and the dissemination of COVID-19 information

on social-media. On information and belief, Dr. Fauci coordinated directly with Facebook and/or other social-media firms to suppress disfavored speakers and content of speech on social media.

142. Not surprisingly, social-media platforms like Facebook promptly accepted Dr. Fauci's initiative to discredit the lab-leak theory, and they engaged in an aggressive campaign to censor speech advocating for the lab-leak theory on social media on the ground that it was supposedly disinformation. Facebook "expand[ed] its content moderation on Covid-19 to include 'false' and 'debunked' claims such as that 'COVID-19 is man-made or manufactured.'" Editorial Board, *Facebook's Lab-Leak About-Face*, WALL ST. J. (May 27, 2021), https://www.wsj.com/articles/facebooks-lab-leak-about-face-11622154198. This included suppressing speech by highly credentialed and well-respected writers, such as "science journalist Nicholas Wade," *id.*, and scientist Alina Chan. Other social-media platforms likewise censored speech advocating for the lab-leak hypothesis.

143. By 2021, however, "the circumstantial evidence" favoring the lab-leak theory "finally permeated the insular world of progressive public health," *id.*, and Fauci and other Biden Administration officials were forced to admit the theory's inherent plausibility. After a long period of censorship, in May 2021, Facebook and other platforms announced that they would no longer censor social-media speech advocating for the lab-leak theory.

144. The Wall Street Journal noted the close link between government and social-media platforms in censoring this speech: "Facebook acted in lockstep with the government," indicating that "[w]hile a political or scientific

claim is disfavored by government authorities, Facebook will limit its reach. When government reduces its hostility toward an idea, so will Facebook." *Id.* "Free speech protects the right to challenge government. But instead of acting as private actors with their own speech rights, the companies are mandating conformity with existing government views." *Id.*

145. There had long been credible—even compelling—evidence of the plausibility of the lab-leak theory, long before social-media companies stopped censoring it. *See, e.g.*, House Foreign Affairs Committee Minority Staff Report, *The Origins of COVID-19: An Investigation of the Wuhan Institute of Virology* (Aug. 2021), https://gop-foreignaffairs.house.gov/wp-content/uploads/2021/08/ORIGINS-OF-COVID-19-REPORT.pdf (detailing evidence available long before censorship lifted); Nicholas Wade, *The origin of COVID: Did people or nature open Pandora's box at Wuhan?*, BULL ATOMIC SCIENTISTS (May 5, 2021), https://thebulletin.org/2021/05/the-origin-of-covid-did-people-or-nature-open-pandoras-box-at-wuhan/; ALINA CHAN VIRAL: THE SEARCH FOR THE ORIGIN OF COVID-19 (Sept. 3, 2021).

146. Facebook's decision to stop censoring the lab-leak theory did not come until "after almost every major media outlet, and . . . even the British and American security services, finally confirmed that it is a feasible possibility." Freddie Sayers, *How Facebook censored the lab leak theory*, UNHERD (May 31, 2021), https://unherd.com/2021/05/how-facebook-censored-the-lab-leak-theory/. Facebook admitted that its decision to end censorship was made "in consultation with" government officials, *i.e.*, "public health experts." *Id.*

147. The reach of Facebook's censorship alone (to say nothing of other platforms that censored the lab-leak theory) was enormous. Facebook "displayed 'warnings'" on such supposed COVID-19-related misinformation, and claimed that "[w]hen people saw those warning labels, 95% of the time they did not go on to view the original content." *Id.* "Moreover, if an article is rated 'false' by their 'fact checkers', the network will 'reduce its distribution'. This means that, while an author or poster is not aware that censorship is taking place, the network could be hiding their content so it is not widely disseminated." *Id.*

148. Ironically, while admitting that it had erroneously censored speech on the lab-leak theory for over a year, Facebook announced that it was "now extending its policy of 'shadow-banning' accounts that promote misinformation. 'Starting today, we will reduce the distribution of all posts in News Feed from an individual's Facebook account if they repeatedly share content that has been rated by one of our fact-checking partners.' So now, if you share something deemed to contain misinformation multiple times, your account could be silenced; you won't be informed, you won't know to what degree your content will be hidden and you won't know how long it will last—all thanks to group of 'fact-checkers' whose authority cannot be questioned." *Id.* It is astonishing that "this announcement was made on the very same day as Facebook's admission of error" on the lab-leak theory. *Id.*

**3. Speech about the efficacy of mask mandates and COVID-19 lockdowns.**

149. Social-media platforms also aggressively censored speech questioning the efficacy of masks and

lockdowns as COVID-19 mitigation measures. Yet evidence revealed that concerns about the efficacy of these measures were well-founded.

150. For example, on information and belief, Twitter's "COVID-19 misleading information policy," as of December 2021, noted that Twitter will censor (label or remove) speech claiming that "face masks . . . do not work to reduce transmission or to protect against COVID-19," among many other restrictions. *See* Twitter, *Covid-19 misleading information policy*, https://help.twitter.com/en/rules-and-policies/medical-misinformation-policy. On information and belief, both Twitter and other social-media platforms have imposed similar policies, imposing censorship on speech questioning the efficacy of masks and the efficacy of lockdowns as COVID-19 mitigation measures.

151. On April 8, 2021, YouTube "deleted a video in which Florida Gov. Ron DeSantis and a handful of medical experts," including Plaintiffs Bhattacharya and Kulldorff, "questioned the effectiveness of having children wear masks to stop the spread of COVID-19." *YouTube Purges Ron DeSantis Video Over Claims Children Don't Need to Wear Masks*, THE WRAP (Apr. 8, 2021), https://www.thewrap.com/youtube-purges-florida-governor-video-over-claims-children-dont-need-to-wear-masks/.

152. On August 10, 2021, "YouTube barred Sen. Rand Paul (R-Ky.) from uploading new videos to the site for seven days, after the ophthalmologist posted a video last week arguing that most masks 'don't work' against the coronavirus." *Rand Paul Suspended from YouTube Over Covid Claims* , FORBES (Aug. 10, 2021). https://www.forbes.com/sites/joewalsh/2021/08/10/rand-paul-suspended-from-youtube-over-covid-claims/?sh=31f1d4e01971.

153. "When Scott Atlas, a member of the Trump White House's coronavirus task force, questioned the efficacy of masks last year, Twitter removed his tweet. When eminent scientists from Stanford and Harvard recently told Florida Gov. Ron DeSantis that children should not be forced to wear masks, YouTube removed their video discussion from its platform." *How Facebook uses 'fact-checking' to suppress scientific truth*, N.Y. POST (May 18, 2021), https://nypost.com/2021/05/18/how-facebook-uses-fact-checking-to-suppress-scientific-truth/.

154. In the same vein, Facebook suppressed a scientist for citing a peer-reviewed study "by a team of researchers in Germany who established an online registry for thousands of parents to report on the impact of masks on their children. More than half of those who responded said that masks were giving their children headaches and making it difficult for them to concentrate. More than a third cited other problems, including malaise, impaired learning, drowsiness and fatigue." *Id.*

155. On November 21, 2020, "[t]wo leading Oxford University academics . . . accused Facebook of 'censorship' after it claimed an article they wrote on face masks amounted to 'false information'." *Two top Oxford academics accuse Facebook of censorship for branding their article on whether masks work false information'*, DAILY MAIL (Nov. 21, 2020) https://www.dailymail.co.uk/news/article-8973631/Two-Oxford-academics-accuse-Facebook-censorship-article-warning.html.

156. No convincing evidence supported the efficacy of mask mandates, while compelling evidence contradicted it, both before and after their implementation.

Tracking the aggregate case numbers in States with and without mask mandates over the course of the COVID-19 pandemic, in a "natural experiment," demonstrates that mask mandates made "zero difference." John Tierney, *The Failed COVID Policy of Mask Mandates*, CITY J. (April 19, 2022), https://www.city-journal.org/the-failed-covid-policy-of-mask-mandates. Both case rates and mortality rates were "virtually identical." *Id.* Indeed, "mask mandates were implemented without scientific justification," and "they failed around the world." *Id.* "In their pre-Covid planning strategies for a pandemic, neither the Centers for Disease Control nor the World Health Organization had recommended masking the public—for good reason. Randomized clinical trials involving flu viruses had shown, contrary to popular wisdom in Japan and other Asian countries, that there was 'no evidence that face masks are effective in reducing transmission,' as the WHO summarized the scientific literature." *Id.* "Anthony Fauci acknowledged this evidence early in the pandemic, both in his public comments ('There's no reason to be walking around with masks,' he told 60 Minutes) and in his private emails ('I do not recommend you wear a mask,' he told a colleague, explaining that masks were too porous to block the small Covid virus)." *Id.* "Instead of carefully analyzing the effects of masks, the CDC repeatedly tried to justify them by misrepresenting short-term trends and hyping badly flawed research, like studies in Arizona and Kansas purporting to show that infections had been dramatically reduced by the mask mandates imposed in some counties. But in each state, . . . infection rates remained lower in the counties that did not mandate masks." *Id.*; *see also, e.g.,* IAN

Miller, Unmasked: The Global Failure of Covid Mask Mandates (Jan. 20, 2022).

157. Ironically, Plaintiff Kulldorff was suspended on Twitter for several weeks for posting that masks endow vulnerable individuals with a false sense of security, because they actually do not work well to protect against viral infection. This exemplifies the danger of government involvement in social media censorship: preventing a world-renowned epidemiologist from conveying to the public that vulnerable people should not rely on masks for protection could indirectly cause great harm.

158. Likewise, no convincing evidence supported the efficacy of lockdowns. Quite the contrary. In January 2022, a Johns Hopkins meta-analysis reviewed the efficacy of lockdowns as a COVID-19 mitigation measure and found that they had minimal impact, if any, on COVID-19 mortality rates. The study reached "the conclusion that lockdowns have had little to no effect on COVID-19 mortality . . . [L]ockdowns in Europe and the United States only reduced COVID-19 mortality by 0.2% on average. . . . While this meta-analysis concludes that lockdowns have had little to no public health effects, they have imposed enormous economic and social costs where they have been adopted. In consequence, lockdown policies are ill-founded and should be rejected as a pandemic policy instrument." Herby et al., *A Literature Review and Meta-Analysis of the Effects of Lockdowns on COVID-19 Mortality,* Studies in Applied Economics (Jan. 2022), *available at* https://sites.krieger.jhu.edu/iae/files/2022/01/A-Literature-Review-and-Meta-Analysis-of-the-Effects-of-Lockdowns-on-COVID-19-Mortality.pdf.

159. On December 21, 2021, Dr. Leana Wen, a CNN medical commentator and strong advocate for COVID-19 restrictions, tweeted that "cloth masks are little more than facial decorations." *CNN's Leana Wen: 'Cloth Masks Are Little More Than Facial Decorations'*, REASON, *at* https://reason.com/2021/12/21/leana-wen-cloth-mask-facial-decorations-covid-cdc-guidance/. Twitter did not censor this tweet, even though it undermined the efficacy of mask mandates that permitted the use of cloth masks (*i.e.*, virtually all of them)—undoubtedly because it was advocating for *more* aggressive mitigation measures (*i.e.*, higher-quality masks than cloth masks), not less.

160. "On September 26, 2021, CDC Director Walensky cited an Arizona study to claim that schools without mask mandates were 3.5 times more likely to experience COVID-19 outbreaks. However, the study is so flawed that experts have said it 'should not have entered into the public discourse' and that you 'can't learn anything' about mask rules from the study." March 11, 2022 Letter of U.S. Rep. Cathy McMorris Rodgers, et al., to Surgeon General Murthy, *at* https://republicans-energycommerce.house.gov/wp-content/uploads/2022/03/3.11.22-Letter-to-Surgeon-General-Murthy-Final.pdf. Yet Director Walensky's statement circulated widely on social media without being censored.

**4. Speech about election integrity and the security of voting by mail.**

161. In or around 2020, social-media platforms began aggressively censoring speech that raised concerns about the security of voting by mail, a major election-security issue. Notoriously, social-media platforms aggressively censored core political speech by then-

President Trump and the Trump campaign raising concerns about the security of voting by mail in the run-up to the November 2020 presidential election.

162. This censorship is ironic because, for many years before 2020, it was a common left-wing talking point to claim that fraud occurred in voting by mail. In opposing photo-ID requirements for in-person voting, Democrats and their allies frequently claimed that photo IDs for in-person voting were pointless because voting by mail, not in-person voting, presented the real opportunities for fraud.

163. These Democratic claims of fraud in voting by mail were widely parroted in mainstream media for many years. For example, in 2012, the New York Times wrote that "votes cast by mail are less likely to be counted, more likely to be compromised and more likely to be contested than those cast in a voting booth, statistics show," in an article headlined "Error and Fraud at Issue as Absentee Voting Rises." https://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html. In 2012, The Washington Post published an articles stating that "[i]t may still be possible to steal an American election, if you know the right way to go about it," citing a case in which "[c]onspirators allegedly bought off absentee voters" and "faked absentee ballots." https://www.washingtonpost.com/politics/decision2012/selling-votes-is-common-type-of-election-fraud/2012/10/01/f8f5045a-071d-11e2-81ba-ffe35a7b6542_story.html. In 2014, MSNBC claimed: "Indeed, election experts say absentee ballot fraud is the most common form of organized voter fraud, since, because of the secret ballot, there's no way to ensure that an in-person voter is voting for the candidate he promised to." https://www.msnbc.com/msnbc

/greg-abbott-bogus-voter-fraud-crusade-msna291356. In 2016, Slate claimed, in a piece titled, "Voter Fraud Exists. Republican Restrictions Won't Stop It," that "[t]he vast majority of voter fraud prosecutions touted by conservative groups like the Heritage Foundation involve absentee ballots that were illegally cast. And the only voting fraud schemes with the potential to actually swing elections involved mail-in ballots." https://slate.com/news-and-politics/2016/09/voter-fraud-exists-through-absentee-ballots-but-republicans-wont-stop-it.html.

164. Many other authorities confirm the reasonableness of concerns about security of voting by mail. For example, in *Crawford v. Marion County Election Board*, the U.S. Supreme Court held that fraudulent voting "perpetrated using absentee ballots" demonstrates "that not only is the risk of voter fraud real but that it could affect the outcome of a close election." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 195–96 (2008) (opinion of Stevens, J.) (emphasis added).

165. The bipartisan Carter-Baker Commission on Federal Election Reform—co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker—determined that "[a]bsentee ballots remain the largest source of potential voter fraud." BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005), at https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf. According to the Carter-Baker Commission, "[a]bsentee balloting is vulnerable to abuse in several ways." *Id.* "Blank ballots mailed to the wrong address or to large residential buildings might be intercepted." *Id.* "Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure,

overt and subtle, or to intimidation." *Id.* "Vote buying schemes are far more difficult to detect when citizens vote by mail." *Id.* Thus, the Commission noted that "absentee balloting in other states has been a major source of fraud." *Id.* at 35. It emphasized that voting by mail "increases the risk of fraud." *Id.* And the Commission recommended that "States . . . need to do more to prevent . . . absentee ballot fraud." *Id.* at v.

166. The U.S. Department of Justice's 2017 Manual on Federal Prosecution of Election Offenses, published by its Public Integrity Section, states: "Absentee ballots are particularly susceptible to fraudulent abuse because, by definition, they are marked and cast outside the presence of election officials and the structured environment of a polling place." U.S. Dep't of Justice, *Federal Prosecution of Election Offenses* 28 (8th ed. Dec. 2017), at https://www.justice.gov/criminal/file/1029066/download. This Manual reports that "the more common ways" that election-fraud "crimes are committed include . . . [o]btaining and marking absentee ballots without the active input of the voters involved." *Id.* at 28. And the Manual notes that "[a]bsentee ballot frauds" committed both with and without the voter's participation are "common" forms of election fraud. *Id.* at 29.

167. Thus, social-media censorship that has occurred since 2020 to suppress speech raising concerns about the security of voting by mail would, if applied even-handedly, suppress statements about the risks of fraud in mail-in voting by the United States Supreme Court, the Carter-Baker Commission co-chaired by President Jimmy Carter, and the U.S. Department of Justice's prosecution manual for election-integrity crimes. One would not be able to quote Justice Stevens'

opinion for the Supreme Court in *Crawford* on social media if it followed its own rules. Raising concerns about election integrity, and questioning the security of voting by mail, became unspeakable on social media only after it became expedient for the Democratic Party and the political Left to suppress these ideas, viewpoints, and concerns.

168. This censorship of speech, speakers, and viewpoints on such topics and concerns continues to this day, at Defendants' instigation, as alleged further herein.

169. There is a common theme to all these examples of wrong-headed censorship: Each involved censoring truthful or reliable information that contradicted left-wing political narratives. What led to the censorship was not the fact that the speech was supposedly false, but that the message was politically inconvenient for Democratic officials and government-preferred narratives. As a result, the ability of politicians and social-media platforms to reliably identify actual "misinformation" and "disinformation" has been proven false, again and again.

### D. Defendants, Using Their Official Authority, Have Threatened, Cajoled, and Colluded With Social-Media Companies to Silence Disfavored Speakers and Viewpoints.

170. On information and belief, the individual Defendants and those acting in concert with them have conspired and colluded to suppress Americans' First Amendment and analogous state-law rights to freedom of expression on social-media platforms, and to be exposed to free expression on such platforms, and they have taken many overt actions to achieve this goal.

**1. Section 230 of the CDA subsidized, protected, and fostered the creation of speech- censorship policies in a small, concentrated group of social-media firms.**

171. First, the Defendants did not act in a vacuum. For decades, the federal government has artificially encouraged, protected, fostered, and subsidized the aggregation of control over speech, including the specific power of censorship, by a small group of powerful social-media firms.

172. In particular, Section 230 of the Communications Decency Act (CDA) artificially empowered and subsidized the growth of social-media companies and their censorship policies by effectively immunizing much censorship on social media from liability. Section 230's unique liability shield fostered the aggregation of power in the field into a concentrated cluster of powerful social-media firms, and it directly fostered, protected, and encouraged the development of speech-censorship policies. This process was greatly accelerated and enhanced by the social-media platforms' success in convincing courts to adopt ever-broadening interpretations of Section 230 immunity, which stray beyond the statutes' text.

173. "Historically, at least two legal doctrines limited a company's right to exclude." *Knight First Amendment Institute*, 141 S. Ct. at 1222 (Thomas, J., concurring). "First, our legal system and its British predecessor have long subjected certain businesses, known as common carriers, to special regulations, including a general requirement to serve all comers." *Id.* "Second, governments have limited a company's right to exclude when that company is a public accommo-

dation. This concept—related to common-carrier law—applies to companies that hold themselves out to the public but do not 'carry' freight, passengers, or communications." *Id.* Absent the artificial immunity created by the overly expansive interpretations of Section 230 immunity, these legal doctrines, and free-market forces, would impose a powerful check on content- and viewpoint-based censorship by social-media platforms. *See id.*

174. The CDA was enacted in 1996 for the purpose of promoting the growth of internet commerce and protecting against the transmission of obscene materials to children over the internet. It was intended to "offer a forum for a true diversity of political discourse," 47 U.S.C. § 230(a)(3), but in recent years Defendants have exploited it to produce the opposite effect.

175. Section 230 of the CDA, 47 U.S.C. § 230, provides unique liability protections for internet publishers of information, such as social-media companies, which are not available to other publishers, such as those of printed media. Section 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). In other words, social-media firms are generally protected from liability for what their users post.

176. Section 230(c)(2), however, also provides that: "No provider or user of an interactive computer service shall be held liable on account of (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent,

harassing, or *otherwise objectionable, whether or not such material is constitutionally protected*." 47 U.S.C. § 230(c)(2)(A) (emphasis added). Courts have interpreted Section 230 broadly—beyond its plain textual import—to shield social-media platforms from liability for censoring anything they deem "objectionable," even if it is constitutionally protected speech.

177. This reading is unreasonable and exceeds what Congress authorized. Viewpoint and content-based discrimination—now widely practiced by social-media platforms—are the antithesis of "good faith." *Id.* Moreover, Congress intended the "otherwise objectionable" material in § 230(c)(2)(A) to refer only to content similar to "obscene, lewd, lascivious, filthy, excessively violent, [and] harassing" content referred to in the same list. *Id.* But social-media companies have interpreted this liability shield unreasonably broadly, and have convinced courts to adopt overbroad interpretations of Section 230 immunity. *See, e.g., Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15 (2020) (statement of Thomas, J., respecting the denial of certiorari) ("[C]ourts have extended the immunity in § 230 far beyond anything that plausibly could have been intended by Congress."); *id.* at 15-18 (discussing and criticizing the overbroad reading of § 230 liability that has shielded social-media firms).

178. These platforms, therefore, have the best of both worlds: They claim that they are exempt from liability if they leave even atrocious content posted, but they are *also* exempt from liability if they censor anything they deem "objectionable, whether or not such material is constitutionally protected." 47 U.S.C. § 230(c)(2)(A).

179, Further, Section 230 of the CDA purportedly shields such platforms from liability for colluding with other social-media platforms on how to censor speech: "No provider or user of an interactive computer service shall be held liable on account of . . . (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1)." 47 U.S.C. § 230(c)(2)(B). On information and belief, social-media platforms do, in fact, extensively coordinate with one another in censoring social-media speech.

180. Section 230 also purports to preempt any state law to the contrary: "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3).

181. On information and belief, the immunity provided by Section 230 of the CDA directly contributed to the rise of a small number of extremely powerful social-media platforms, who have now turned into a "censorship cartel." The liability shield provided by the federal government artificially subsidized, fostered, and encouraged the viewpoint and content-based censorship policies that those platforms have adopted at Defendants' urging.

182. On information and belief, social-media firms greatly value the immunity provided by § 230 of the CDA, which continues to provide them with artificial liability protections, and credible threats to amend or repeal that immunity are powerful motivators to those platforms. Defendants are aware of this.

183. On information and belief, the largest and most powerful social-media firms are also greatly concerned

about antitrust liability and enforcement, given their dominance in the social-media market(s), and credible threats to impose antitrust liability and/or enforcement are powerful motivators to those platforms as well. Defendants are aware of this too.

**2. The campaign of threats against social-media companies to demand censorship.**

184. Defendant Biden, his political allies, and those acting in concert with him have a long history of threatening to use official government authority to impose adverse legal consequences against social-media companies if such companies do not increase censorship of speakers and messages disfavored by Biden and his political allies. Common threats of adverse legal and/or regulatory consequences include the threat of antitrust enforcement or legislation, and the threat of amending or repealing the liability protections of Section 230 of the Communications Decency Act (CDA), among others, if social-media companies fail to engage in more aggressive censorship of viewpoints, content, and speakers disfavored by Defendants. These threats are effective because they address legal matters of critical concern to dominant social-media firms.

185. Defendants have leveraged these threats to secure such increased censorship of speakers, content, and viewpoints that they disfavor on social-media platforms; and they have now moved into a phase of open collusion with the threatened companies, cooperating with them directly to censor speech, speakers, and viewpoints that Defendants disfavor.

186. Threats from Biden, senior government officials in the Biden administration, and those acting in concert with them come in the context of a history of

such threats from senior federal officials politically allied with them. These threats have routinely linked (1) the prospect of official government action in the form of adverse legislation, regulation, or agency action—especially threats of antitrust legislation and/or enforcement and calls to amend or repeal Section 230 of the CDA, among others—with (2) calls for more aggressive censorship and suppression of speakers, viewpoints, and messages that these officials disfavor. Recent examples include, but are by no means limited to, the following:

- Speaker Nancy Pelosi, April 12, 2019: "I do think that for the privilege of 230, there has to be a bigger sense of responsibility on it. And it is not out of the question that that could be removed." *Nancy Pelosi warns tech companies that Section 230 is 'in jeopardy'*, TECH CRUCH (April 12, 2019), at https://techcrunch.com/2019/04/12/nancy-pelosi-section-230/. ("When asked about Section 230, Pelosi referred to the law as a 'gift' to tech companies that have leaned heavily on the law to grow their business. . . . 'It is a gift to them and I don't think that they are treating it with the respect that they should, and so I think that that could be a question mark and in jeopardy . . . I do think that for the privilege of 230, there has to be a bigger sense of responsibility on it. And it is not out of the question that that could be removed.'").
- Senator Mark Warner, Oct. 28, 2020: "It saddens me that some of my colleagues have joined in the Trump Administration's cynical and concerted effort to bully platforms into allowing dark money groups, right-wing militias and even

the President himself to continue to exploit social media platforms to sow disinformation, engage in targeted harassment, and suppress voter participation. We can and should have a conversation about Section 230—and the ways in which it has enabled platforms to turn a blind eye as their platforms are used to facilitate discrimination and civil rights violations, enable domestic terrorist groups to organize violence in plain sight, assist in stalking and networked harassment campaigns, and enable online frauds targeted at vulnerable users. . . . " Statement of U.S. Sen. Mark R. Warner on Section 230 Hearing (Oct. 28, 2020), *at* https://www.warner.senate.gov/public/index.cfm/2020/10/statement-of-sen-mark-r-warner-on-facebook-s-decision-to-finally-ban-qanon-from-its-platforms.

- Then-Senator Kamala Harris, Sept. 30, 2019: "Look, let's be honest, Donald Trump's Twitter account should be suspended." *Kamala Harris says Trump's Twitter account should be suspended*, CNN.com (Sept. 30, 2019), *at* https://www.cnn.com/2019/09/30/politics/kamala-harris-trump-twitter-cnntv/index.html; *see also* https://twitter.com/kamalaharris/status/1179810620952207362.

- Then-Senator Kamala Harris, Oct. 2, 2019: "Hey @jack [*i.e.*, Twitter CEO Jack Dorsey]. Time to do something about this," providing picture of a tweet from President Trump. https://twitter.com/kamalaharris/status/1179193225325826050.

- Senator Richard Blumenthal, Nov. 17, 2020: "I have urged, in fact, a breakup of tech giants. Because they've misused their bigness and power. . . . And indeed Section 230 reform, meaningful reform, including even possible repeal in large part because their immunity is way too broad and victims of their harms deserve a day in court." *Breaking the News: Censorship, Suppression, and the 2020 Election Before the S. Comm. on Judiciary*, 116th Cong. at 36:10-15 (2020) (statement of Sen. Richard Blumenthal).
- Senator Mazie Hirono, Feb. 5, 2021: "Sec 230 was supposed to incentivize internet platforms to police harmful content by users. Instead, the law acts as a shield allowing them to turn a blind eye. The SAFE TECH ACT brings 230 into the modern age and makes platforms accountable for the harm they cause." https://twitter.com/maziehirono/status/1357790558606024705?lang=bg.
- March 2021 Joint Hearing of the Communications and Technology Subcommittee, Joint Statement of Democratic Committee Chairs: "This hearing will continue the Committee's work of holding online platforms accountable for the growing rise of misinformation and disinformation. . . . For far too long, big tech has failed to acknowledge the role they've played in fomenting and elevating blatantly false information to its online audiences. Industry self-regulation has failed. We must begin the work of changing incentives driving social media companies to allow and even promote misinformation and disinformation." *See* Yaël Eisenstat

& Justin Hendrix, *A Dozen Experts with Questions Congress Should Ask the Tech CEOs—On Disinformation and Extremism*, JUST SECURITY (Mar. 25, 2021), https://www.justsecurity.org/75439/questions-congress-should-ask-the-tech-ceos-on-disinformation-and-extremism/.

- On April 20, 2022, twenty-two Democratic members of Congress sent a letter to Mark Zuckerberg of Facebook (n/k/a "Meta Platforms, Inc."), demanding that Facebook increase censorship of "Spanish-language disinformation across its platforms." The letter claimed that "disinformation" was a threat to democracy, and it made explicit threats of adverse legislative action if Facebook/Meta did not increase censorship: "The spread of these narratives demonstrate that Meta does not see the problem of Spanish-language disinformation in the United States as a critical priority for the health of our democracy. The lack of Meta's action to swiftly address Spanish-language misinformation globally demonstrates the need for Congress to act to ensure Spanish-speaking communities have fair access to trustworthy information." The letter demanded information about Facebook's censorship policies on election-related speech for the upcoming elections: "How is Meta preparing to proactively detect and address foreign disinformation operations targeted at Spanish-speaking communities for future elections within the United States, including the 2022 primaries and general election? . . . [W]hat new steps has Meta taken to ensure the effectiveness of its algorithmic content detection policies to address disinformation and hate-speech across different languages?" April 20, 2022 Letter of Rep. Tony Cardenas, et al., at https://cardenas.house.gov/imo/media/doc/Meta%20RT%20and%20

Spanish%20Language%20Disinformation%20Congressional%20Letter%20Final.pdf.

187. Comments from two House Members summarize this campaign of pressure and threats: "In April 2019, Louisiana Rep. Cedric Richmond warned Facebook and Google that they had 'better' restrict what he and his colleagues saw as harmful content or face regulation: 'We're going to make it swift, we're going to make it strong, and we're going to hold them very accountable.' New York Rep. Jerrold Nadler added: 'Let's see what happens by just pressuring them.'" Vivek Ramaswamy and Jed Rubenfeld, Editorial, *Save the Constitution from Big Tech: Congressional threats and inducements make Twitter and Facebook censorship a free-speech violation*, WALL ST. J. (Jan. 11, 2021), https://www.wsj.com/articles/save-the-constitution-from-big-tech-11610387105.

188. Defendants' political allies have repeatedly used congressional hearings as forums to advance these threats of adverse legislation if social-media platforms do not increase censorship of speakers, speech, content, and viewpoints they disfavor. They have repeatedly used such hearings to berate social-media firm leaders, such as Mark Zuckerberg of Facebook, Jack Dorsey of Twitter, and Sundar Pichai of Google and YouTube, and to make threats of adverse legal consequences if censorship is not increased. Such hearings include, but are not limited to, those cited above, as well as an antitrust hearing before the House Judiciary Committee on July 29, 2020; a Senate Judiciary Committee hearing on November 17, 2020; and a House Energy and Commerce Hearing on March 25, 2021.

189. The flip side of such threats, of course, is the implied "carrot" of retaining Section 230 immunity and avoiding antitrust scrutiny, allowing the major social-media platforms to retain their legally privileged status that is worth billions of dollars of market share.

190. Starting in or around 2020, if not before, social-media firms have responded to these threats by engaging in increasingly more aggressive censorship of speakers, messages, and viewpoints disfavored by Defendants, senior government officials, and the political left. "With all the attention paid to online misinformation, it's easy to forget that the big [social-media] platforms generally refused to remove false content purely because it was false until 2020." Gilead Edelman, *Beware the Never-Ending Disinformation Emergency*, THE WIRED (March 11, 2022), *at* https://www.wired.com/story/youtube-rigged-election-donald-trump-moderation- misinformation/. On information and belief, it was in response to such threats of adverse legal consequences that social-media companies ramped up censorship in 2020, disproportionately targeting speakers and viewpoints on the political right. On information and belief, the examples of censorship of truthful and reliable speech in 2020, cited above, were motivated in whole or in part by such threats.

191. Then-candidate and now-President Biden has led this charge. He has tripled down on these threats of adverse official action from his colleagues and allies in senior federal- government positions. His threats of adverse government action have been among the most vociferous, and among the most clearly linked to calls for more aggressive censorship of disfavored speakers and speech by social-media companies.

192. For example, on January 17, 2020, then-candidate Biden stated, in an interview with the New York Times editorial board, that Section 230 of the CDA should be "revoked" because social-media companies like Facebook did not do enough to censor supposedly false information in the form of political ads criticizing him—*i.e.*, core political speech. He stated: "The idea that it's a tech company is that Section 230 should be revoked, immediately should be revoked, number one. For Zuckerberg and other platforms." He also stated, "It should be revoked because it is not merely an internet company. It is propagating falsehoods they know to be false. . . . There is no editorial impact at all on Facebook. None. None whatsoever. It's irresponsible. It's totally irresponsible." N.Y. Times Editorial Board, *Joe Biden* (Jan. 17, 2020), *at* https://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html. These claims were specifically linked to Facebook's alleged failure to censor *core political speech*—*i.e.*, political ads on Facebook criticizing candidate Biden. *Id.*

193. Candidate Biden also threatened that Facebook CEO Mark Zuckerberg should be subject to civil liability and even *criminal prosecution* for not censoring such core political speech: "He should be submitted to civil liability and his company to civil liability. . . . Whether he engaged in something and amounted to collusion that in fact caused harm that would in fact be equal to a criminal offense, that's a different issue. That's possible. That's possible it could happen." *Id.* In other words, Biden's message—not long before he became President of the United States—was that if Facebook did not censor political ads against him, Zuckerberg should go to prison. These two threats echoed

the same threats made by numerous political allies of the President since 2019, cited above.

194. During the presidential campaign, now-Vice President Harris made similar threats against social-media firms to pressure them to engage in more aggressive censorship of speakers, content, and viewpoints she disfavors. For example, in addition to the statements cited above, she stated in 2019: "We will hold social media platforms responsible for the hate infiltrating their platforms, because they have a responsibility to help fight against this threat to our democracy. And if you profit off of hate—if you act as a megaphone for misinformation or cyberwarfare, if you don't police your platforms—we are going to hold you accountable as a community." *Kamala Harris Wants to Be Your Online Censor-in-Chief*, REASON.COM (May 7, 2019), *at* https://reason.com/2019/05/07/kamala-harris-promises-to-pursue-online-censorship-as-president/.

195. In or around June 2020, the Biden campaign published an open letter and online petition (ironically, on Facebook) calling for Facebook to engage in more aggressive censorship of core political speech and viewpoints that then-Candidate Biden disfavored. The open letter complained that Facebook "continues to allow Donald Trump to say anything — and to pay to ensure that his wild claims reach millions of voters. Super PACs and other dark money groups are following his example. Trump and his allies have used Facebook to spread fear and misleading information about voting. . . . We call for Facebook to proactively stem the tide of false information by no longer amplifying untrustworthy content and promptly fact-checking election-related material that goes viral. We call for Facebook to stop allowing politicians to hide behind paid misin-

formation in the hope that the truth will catch up only after Election Day. There should be a two-week pre-election period during which **all** political advertisements must be fact-checked before they are permitted to run on Facebook. . . . Anything less will render , Facebook a tool of misinformation that corrodes our democracy." Biden-Harris, *Our Open Letter to Facebook* (last visited May 5, 2022), https://joebiden.com/2961-2/.

196. The online petition demanded that Facebook "[p]romote real news, not fake news," "[q]uickly remove viral misinformation," and "[e]nforce voter suppression rules against everyone—even the President [Trump]." The petition complained that Facebook "continues to amplify misinformation and lets candidates pay to target and confuse voters with lies." It demanded that Facebook "promote authoritative and trustworthy sources of election information, rather than rants of bad actors and conspiracy theorists," "promptly remove false, viral information," and "prevent political candidates and PACs from using paid advertising to spread lies and misinformation — especially within two weeks of election day." Biden-Harris, *#Movefastfixit* (last visited May 5, 2022), https://joebiden.com/facebook/.

197. On September 28, 2020, the Biden-Harris campaign sent a letter to Facebook accusing it of propagating a "storm of disinformation" by failing to censor the Trump campaign's political speech, including social-media political ads. Sept. 28, 2020 Biden-Harris Letter, *at* https://www.documentcloud.org/documents/7219497-Facebook-Letter-9-28.html. The letter accused Facebook of allowing "hyper-partisan" and "fantastical" speech to reach millions of people, and it demanded "more aggressive" censorship of Trump. *Id.*

198. A federal lawsuit filed in 2021 alleged that "before and after the November, 2020 election," California government officials "contracted with partisan Biden campaign operatives to police speech online. The secretary of state of California then sent these flagged tweets to Twitter, Instagram, YouTube and other platforms for their removal." *Harmeet Dhillon: Biden White House 'flags' Big Tech — here's why digital policing is so dangerous*, FOX NEWS (July 16, 2021), *at* https://www.foxnews.com/opinion/biden-white-house-flags-big-tech-digital-policing-harmeet-dhillon. Once in power, Biden and those acting in concert with him would continue this same course of conduct of "flagging" content for censorship by private social-media firms, now using the authority of the *federal* government to "flag" specific speech and speakers for censorship and suppression.

199. On December 2, 2020—during the presidential transition—Biden's former chief of staff and top technical advisor, Bruce Reed, publicly stated that "it's long past time to hold the social media companies accountable for what's published on their platforms." *Biden Tech Advisor: Hold Social Media Companies Accountable for What Their Users Post*, CNBC.com (Dec. 2, 2020), *at* https://www.cnbc.com/2020/12/02/biden-advisor-bruce-reed-hints-that-section-230-needs-reform.html. This comment specifically referred to the amendment or repeal of Section 230 of the Communications Decency Act. *See id.* Thus, the threat of adverse legal consequences for social-media companies that did not censor opposing political viewpoints was at the forefront of the incoming Biden Administration's public messaging.

200. Coming into the new Administration, with now-President Biden's political allies in control of both Houses of Congress, social-media companies were on clear notice that the federal government's involvement in social-media censorship was likely to escalate, and their threats of adverse legislation, regulation, and legal action became more ominous. On information and belief, this caused a chilling effect on speech by prompting social-media companies to ramp up their own censorship programs against disfavored speech and speakers, to preempt the risk of adverse action against them by the Government.

201. Once in control of the Executive Branch, Defendants promptly capitalized on these threats by pressuring, cajoling, and openly colluding with social-media companies to actively suppress particular disfavored speakers and viewpoints on social media.

202. Defendants, those acting in concert with them, and those allied with them routinely seek to justify overt censorship of disfavored speakers and viewpoints by wrapping it in the monikers "misinformation," "disinformation," and/or "malinformation." Their standard tactic is to label speech that contradicts their preferred political narratives "misinformation," "disinformation," and "malinformation" to justify suppressing it. Other common buzzwords include calls for a "healthy information ecosystem," "healthy information environment," or "healthy news environment," among others. This is the Orwellian vocabulary of censorship. It is deployed aggressively to undermine fundamental First Amendment rights.

203. As noted above, these labels have proven extremely unreliable. Defendants' and the political Left's

ability to accurately identify "misinformation" and "disinformation" is unreliable because they apply such labels, not based on actual truth or falsity, but based on their current preferred political narrative. This has resulted, again and again, in the suppression of truthful information under the name of "disinformation" and "misinformation."

**3. White House and HHS officials collude with social-media firms to suppress speech.**

204. Before the Biden Administration took office, on information and belief, coordination and collusion between senior HHS officials and social-media companies to censor viewpoints and speakers was already underway. Once in office, senior officials in the Biden Administration—in the White House, in HHS, and elsewhere—capitalized and greatly expanded on these efforts.

205. On information and belief, beginning on or around January or February 2020, if not before, Defendant Dr. Anthony Fauci, a senior federal government official, coordinated with social-media firms to police and suppress speech regarding COVID-19 on social media.

206. Prior to 2020, as head of NIAID, Dr. Fauci had overseen funding of risky gain-of-function research on viruses, including research at the Wuhan Institute of Virology. This included research funded through intermediaries such as Dr. Peter Daszak and the EcoHealth Alliance, among others.

207. In late January and early February 2020, Dr. Fauci received information from colleagues that suggested that the COVID-19 virus may have originated in

a laboratory in Wuhan, China. This revelation threatened to implicate Dr. Fauci in the virus's origins, as he had funded the risky research that, under this theory, led to the virus's origin. Soon thereafter, Dr. Fauci participated in a conference call with scientists and science-funding authorities intended to discredit and suppress this lab-leak theory. After the conference call, influential individuals signed public statements that were placed in science journals in attempt to discredit the lab-leak theory.

208. In the same time frame, Dr. Fauci communicated with Facebook CEO Mark Zuckerberg directly regarding public messaging and the flow of information on social media about the government's COVID-19 response. For example, in a series of emails produced in response to FOIA requests dated from March 15 to 17, 2020, Zuckerberg invited Fauci to make public statements to be posted for viewing by all Facebook users regarding COVID-19, and also made another proposal that is redacted in FOIA-produced versions but was treated as a high priority by Fauci and NIH staff.

209. In an email on March 15, 2020, Zuckerberg proposed coordinating with Fauci on COVID-19 messaging to "make sure people can get authoritative information from reliable sources," and suggested including a video message from Fauci because "people trust and want to hear from experts." Zuckerberg proposed including this content in a "hub" that "we're going to put at the top of Facebook" to reach "200+ million Americans, 2.5 billion people worldwide."

210. In the same email, Zuckerberg made a three-line proposal to Fauci that was redacted by the federal

government before the email was produced in a FOIA request.

211. The next day, NIH's communications director emailed Fauci and strongly recommended that he do the videos for Facebook. Regarding the redacted proposal from Zuckerberg, she stated: "But an even bigger deal is his offer [REDACTED]. The sooner we get that offer up the food-chain the better." She also stated that her staff was "standing by to discuss this with HHS and WH comms," and requested authority to "determine who the best point of contact would be so the Administration can take advantage of this officer, soonest." Fauci responded that "I will write or call Mark and tell him that I am interested in doing this. I will then tell him that you will get for him the name of the USG [on information and belief, shorthand for "U.S. Government"] point of contact."

212. Fauci responded by email to Zuckerberg on March 17, 2020, agreeing to the collaboration that Zuckerberg proposed and describing his redacted proposal as "very exciting."

213. As alleged above, around the same time frame as the Zuckerberg-Fauci emails, Facebook and other social-media companies censored and suppressed speakers and speech advocating for the lab-leak theory of COVID-19's origins, despite the overwhelming circumstantial evidence favoring that theory. This censorship directly implemented the plan, orchestrated by Fauci and others in early 2020, to discredit and suppress the lab-leak theory.

214. In the same timeframe, Facebook and other social-media companies began an ever-increasing campaign of monitoring, censorship, and suppression of speech

and speakers about COVID-19 and issues related to COVID-19. This campaign would dramatically escalate with the advent of the Biden Administration.

215. On information and belief, those firms coordinated directly with Fauci, CDC, and other government officials regarding censorship and suppression of disfavored speech and speakers.

216. For example, Facebook's "COVID and Vaccine Policy" states that Facebook "does not allow false claims about the vaccines or vaccination programs which *public health experts have advised us* could lead to COVID-19 vaccine rejection." Facebook, *COVID-19 and Vaccine Policy Updates &* Protections, https://www.facebook.com/help/230764881494641 (emphasis added). On information and belief, Fauci and CDC officials are included among those "public health experts" who "advise[]" Facebook on what to censor. Facebook also censors COVID-19 information as "false," not based on actual truth or falsity, but based on whether the claim contradicts or challenges the pronouncements of Fauci and the CDC. *Id.* This includes strongly supported claims such as "[c]laims that wearing a face mask properly does not help prevent the spread of COVID-19," along with an elaborate list of additional disfavored content and viewpoints subject to censorship. *Id.*

217. On information and belief, other social-media firms have similar policies and similar practices of coordinating with Fauci and the CDC and with each other, directly or indirectly, on the suppression of disfavored speakers and speech.

218. Such collusion between HHS officials and social-media companies on the censorship of disfavored

speakers and speech accelerated once the Biden Administration took office.

219. On May 5, 2021, Defendant Psaki gave a White House press conference at which she stated that "[t]he President's view is that the major platforms have a responsibility related to the health and safety of all Americans to stop amplifying untrustworthy content, disinformation, and misinformation, especially related to COVID-19, vaccinations, and elections. And we've seen that over the past several months, broadly speaking. . . . we've seen it from a number of sources." White House, *Press Briefing by Press Secretary Jen Psaki and Secretary of Agriculture Tom Vilsack*, *May 5, 2021, at* https://www.whitehouse.gov/briefing-room/press-briefings/2021/05/05/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-agriculture-tom-vilsack-may-5-2021/.

220. Echoing Biden's past threats to social-media firms, Psaki immediately went on to state that President Biden "supports better privacy protections *and a robust anti-trust program*." *Id.* (emphasis added). She linked the threat of anti-trust enforcement to the demand for more aggressive censorship by social-media platforms, stating that the President's "view is that there's more that needs to be done to ensure that this type of misinformation; disinformation; damaging, sometimes life-threatening information is not going out to the American public." *Id.*

221. At a White House press briefing with Psaki on July 15, 2021, Surgeon General Vivek Murthy announced that "health misinformation" constitutes an "urgent public health threat," stating that he had "issued a Surgeon General's Advisory on the dangers of health misinformation. Surgeon General Advisories are reserved for urgent public

health threats. And while those threats have often been related to what we eat, drink, and smoke, today we live in a world where misinformation poses an imminent and insidious threat to our nation's health." The White House, *Press Briefing by Press Secretary Jen Psaki and Surgeon General Dr. Vivek H. Murthy, July 15, 2021*, at https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/.

222. Surgeon General Murthy stated that "[m]odern technology companies have enabled misinformation to poison our information environment with little accountability to their users. They've allowed people who intentionally spread misinformation — what we call 'disinformation' —to have extraordinary reach." *Id.* He accused their algorithms of "pulling us deeper and deeper into a well of misinformation." *Id.*

223. Surgeon General Murthy explicitly called for more aggressive censorship of social-media speech, stating that "we're saying we expect more from our technology companies. . . . . We're asking them to monitor misinformation more closely. We're asking them to consistently take action against misinformation super-spreaders on their platforms." *Id.* "

224. He also stated that "technology companies have a particularly important role" to play in combating "misinformation." He stated: "We know that the dramatic increase in the speed—speed and scale of spreading misinformation has, in part, been enabled by these platforms. So that's why in this advisory today, we are asking them to step up. We know they have taken some steps to address misinformation, but much, much more has to be done. And we can't wait longer for them to

take aggressive action because it's costing people their lives." *Id.*

225. He also stated: "we are asking technology companies to help lift up the voices of credible health authorities. . . . [T]hey have to do more to reduce the misinformation that's out there so that the true voices of experts can shine through." *Id.*

226. At the same press briefing, after the Surgeon General spoke, Defendant Psaki stated: "[W]e are in regular touch with these social media platforms, and those engagements *typically happen through members of our senior staff*, but also members of our COVID-19 team, given, as Dr. Murthy conveyed, this is a big issue of misinformation, specifically on the pandemic." *Id.* (emphasis added). She added, "*We're flagging problematic posts for Facebook that spread disinformation.*" *Id.* (emphasis added). She stated, "we have recommended—proposed that they create a robust enforcement strategy," *i.e.*, a more aggressive censorship program. *Id.*

227. Psaki called on social-media companies to censor particular disfavored speakers, stating: "[T]here's about 12 people who are producing 65 percent of anti-vaccine misinformation on social media platforms. All of them remain active on Facebook, despite some even being banned on other platforms, including Facebook — ones that Facebook owns." *Id.* And she called on Facebook and other social-media companies to censor disfavored content and disfavored viewpoints: "[I]t's important to take faster action against harmful posts. As you all know, information travels quite quickly on social media platforms; sometimes it's not accurate. And Facebook needs to move more quickly to remove

harmful, violative posts — posts that will be within their policies for removal often remain up for days. That's too long. The information spreads too quickly." *Id.*

228. She stated that "[w]e engage with them [*i.e.*, social-media companies] regularly and *they certainly understand what our asks are.*" *Id.* (emphasis added). She stated that, "we've made a calculation to push back on misinformation," and that "we are working to combat misinformation that's traveling online." *Id.*

229. The same day, the Surgeon General released his advisory regarding "health misinformation." It defined "health misinformation" as "information that is false, inaccurate, or misleading according to the best available evidence at the time. Misinformation has caused confusion and led people to decline COVID-19 vaccines, reject public health measures such as masking and physical distancing, and use unproven treatments." *Confronting Health Misinformation: The U.S. Surgeon General's Advisory on Building a Healthy Information Environment,* at 4 (July 15, 2021), *at* https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf.

230. The Surgeon General's advisory called for social-medial companies to "make meaningful long-term investments to address misinformation, including product changes," to "[r]edesign recommendation algorithms to avoid amplifying misinformation," to "build in 'frictions'—such as suggestions and warnings—to reduce the sharing of misinformation," and to "make it easier for users to report misinformation." *Id.* at 12. It called on social-media companies to "[s]trengthen the monitoring of misinformation," and to censor disfavored speakers swiftly and aggressively: "Prioritize

early detection of misinformation 'super-spreaders' and repeat offenders. Impose clear consequences for accounts that repeatedly violate platform policies." *Id.*

231. Facebook responded by stating that it was, in fact, aggressively censoring "health misinformation," and *coordinating with the Government to do so.* "A Facebook spokesperson said the company has *partnered with government experts*, health authorities and researchers to take 'aggressive action against misinformation about COVID-19 and vaccines to protect public health.'" *White House Slams Facebook as Conduit for COVID-19 Misinformation*, REUTERS (July 15, 2021), at https://www.reuters.com/world/us/us-surgeon-general-warns-over-covid-19-misinformation-2021-07-15/ (emphasis added). "'So far we've removed more than 18 million pieces of COVID misinformation, [and] removed accounts that repeatedly break these rules . . . ,' the spokesperson added." *Id.*

232. Facebook stated that it "has introduced rules against making certain false claims about COVID-19 and its vaccines." *Id.*

233. The next day, July 16, 2021, a reporter asked President Biden what he thought of COVID misinformation on social media, and he responded, referring to platforms like Facebook, by stating: "They're killing people." *They're Killing People: Biden Denounces Social Media for Virus Disinformation*, N.Y. TIMES (July 16, 2021), *at* https://www.nytimes.com/2021/07/16/us/politics/biden-facebook-social-media-cov*id.*html. The New York Times reported that "this week, White House officials went further and singled out social media companies for allowing false information to proliferate. That came after weeks of failed attempts to get Facebook to

turn over information detailing what mechanisms were in place to combat misinformation about the vaccine, according to a person familiar with the matter." *Id.*

234. The same day, July 16, 2021, Psaki explicitly called for social-media companies to coordinate with *each other* in censoring disfavored speakers, to ensure that such speakers are completely muzzled. "You shouldn't be banned from one platform and not others . . . for providing misinformation out there." White House, Press Briefing by Press Secretary Jen Psaki, July 16, 2021, *at* https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/16/press-briefing-by-press-secretary-jen-psaki-july-16-2021/. On information and belief, social-media companies have heeded this demand, and they do, in fact, coordinate extensively with each other in censorship of disfavored speakers, speech, and viewpoints on social media.

235. Psaki also demanded that social-media companies "create robust enforcement strategies," "tak[e] faster action against harmful posts," and "promot[e] quality information algorithms"—which is a euphemism for algorithms that suppress disfavored messages. *Id.* When asked whether Facebook's already-aggressive censorship—it claimed to have suppressed 18 million pieces of COVID-19-related "misinformation"—was "sufficient," she responded, "Clearly not, because we're talking about additional steps that should be taken." *Id.*

236. Four days later, July 20, 2021, the White House explicitly threatened to amend or repeal the liability protections of § 230 of the Communications Decency Act if social-media companies did not increase censorship of

disfavored speakers and viewpoints. *'They Should Be Held Accountable': White House Reviews Platforms' Misinformation Liability*, USA TODAY (July 20, 2021), *at* https://www.usatoday.com/story/news/politics/2021/07/20/white-house-reviews-section-230-protections-covid-misinformation/8024210002/. The White House communications director announced that "[t]he White House is assessing whether social media platforms are legally liable for misinformation spread on their platforms." *Id.* "We're reviewing that, and certainly, they should be held accountable," she said. *Id.*

237. She "specified the White House is examining how misinformation fits into the liability protections granted by Section 230 of the Communications Decency Act, which shields online platforms from being responsible for what is posted by third parties on their sites." *Id.* Media reported that, in connection with this threat, "Relations are tense between the Biden administration and social media platforms, specifically Facebook, over the spread of misinformation online." *Id.; see also, e.g., White House says social media networks should be held accountable for spreading misinformation*, CNBC.com (July 20, 2021), *at* https://www.cnbc.com/2021/07/20/white-house-social-networks-should-be-held-accountable-for-spreading-misinfo.html. When asked whether the President is "open to amending 230 when Facebook and Twitter and other social media outlets spread false information that cause Americans harm, shouldn't they be held accountable in a real way?" White House Communications Director Bedingfield responded, "We're reviewing that and certainly they should be held accountable. And I think you heard the president speak very aggressively about this. He understands that this is an important piece of the ecosystem." *Id.*

238. After this series of public statements, responding to "White House pressure," Facebook censored the accounts of the 12 specific disfavored speakers whom Psaki accused of spreading health misinformation. *Facebook takes action against 'disinformation dozen' after White House pressure*, CNN.com (Aug. 18, 2021), *at* https://www.cnn.com/2021/08/18/tech/facebook-disinformation-dozen/index.html. Psaki had "hammered the platform in July for allowing the people identified in the report to remain on its platform." *Id.* After they were singled out for censorship by the White House, Facebook "removed over three dozen Pages, groups and Facebook or Instagram accounts linked to these 12 people, including at least one linked to each of the 12 people, for violating our policies." *Id.*

239. In the same time frame, Twitter permanently suspended the account of prominent lockdown critic Alex Berenson, despite repeated reassurances from high-level Twitter executives that his account was safe, just days after Dr. Fauci singled him out as a danger for suggesting young people might reasonably decline the vaccine.

240. On October 29, 2021, the Surgeon General tweeted from his *official* account (as opposed to his personal account, which remains active), in a thread: "We must demand Facebook and the rest of the social media ecosystem take responsibility for stopping health misinfor-mation on their platforms. The time for excuses and half measures is long past. We need transparency and accountability now. The health of our country is at stake." *See* https://twitter.com/Surgeon_General/status/1454181191494606854.

241. Defendants' response to this censorship was to demand still more censorship by social-media platforms, including but not limited to Facebook. "[A]fter Facebook's action against the 'disinformation dozen,' a White House spokesperson continued to strongly criticize the company." *Id.* "'In the middle of a pandemic, being honest and transparent about the work that needs to be done to protect public health is absolutely vital, but Facebook still refuses to be straightforward about how much misinformation is circulating—and being actively promoted—on their platform,' a White House spokesperson told CNN Business. 'It's on everyone to get this right so we can make sure the American people are getting accurate information to protect the health of themselves and their loved ones — which is why the Administration will continue to push leaders, media outlets, and leading sources of information like Facebook to meet those basic expectations,' the spokesperson added." *Id.*

242. On February 1, 2022, Psaki was asked at a White House press conference whether the Administration was satisfied with Spotify's decision to affix advisory warnings to Joe Rogan's immensely popular podcast, which featured speakers that contradicted the Administration's messaging about COVID-19 and vaccines, or whether the government "think[s] that companies like Spotify should go further than just, you know, putting a label on" disfavored viewpoints and speakers. Psaki responded by demanding that Spotify and other platforms "do[] more" to block disfavored speech: "[O]ur hope is that all major tech platforms . . . be vigilant to ensure the American people have access to accurate information on something as significant as COVID-19. So, this disclaimer — it's a positive step. But we want every platform to continue *doing more* to call out . . . mis- and

disinformation while also uplifting accurate information." She stated that Spotify's advisory warnings are "a good step, it's a positive step, but *there's more that can be done.*" White House, *Press Briefing by Press Secretary Jen Psaki, February 1, 2022* (emphases added), *at* https://www.whitehouse.gov/briefing-room/press-briefings/2022/02/01/press-briefing-by-press-secretary-jen-psaki-february-1-2022/.

243. On March 3, 2022, the Surgeon General issued a formal "Request for Information" on the "Impact of Health Misinformation" on social media. HHS, *Impact of Health Misinformation in the Digital Information Environment in the United States Throughout the COVID-19 Pandemic Request for Information* (RFI), 87 Fed. Reg. 12,712-12,714 (March 2, 2022).

244. In the RFI, "[t]he Office of the Surgeon General requests input from interested parties on the impact and prevalence of health misinformation in the digital information environment during the COVID–19 pandemic." *Id.* at 12,712. The RFI states that "the speed, scale, and sophistication with which misinformation has been spread during the COVID-19 pandemic has been unprecedented," and it implies that social-media companies are to blame, carrying a clear threat of future regulation: "This RFI seeks to understand both the impact of health misinformation during the COVID–19 pandemic and the unique role that technology and social media platforms play in the dissemination of critical health information during a public health emergency." *Id.* at 12,713.

245. The RFI seeks specific information about health "misinformation" on such social- media platforms: "Information about how widespread COVID–19

misinformation is on individual technology platforms including: General search engines, content sharing platforms, social media platforms, e-commerce platforms, crowd sourced platforms, and instant messaging systems." *Id.*

246. The RFI seeks: "Any aggregate data and analysis on how many users were exposed, were potentially exposed, or otherwise engaged with COVID–19 misinformation," where "[e]xposure is defined as seeing content in newsfeeds, in search results, or algorithmically nominated content," and "[p]otential exposure is the exposure users would have had if they could see all the content that is eligible to appear within their newsfeeds." *Id.* at 12,714. It also seeks "[i]nformation about COVID–19 misinformation policies on individual technology platforms," including "[a]ny aggregate data and analysis of technology platform COVID–19 misinformation policies including implementation of those policies and evaluations of their effectiveness." *Id.*

247. Media reports aptly described Murthy as "demand[ing]" information about the major sources of COVID-19 misinformation by May 2, 2022. Brad Dress, *Surgeon General Demands Data on COVID-19 Misinformation from Major Tech Firms*, THE HILL (March 3, 2022), *at* https://thehill.com/policy/healthcare/596709-surgeon-general-demands-data-on-covid-19-misinformation-from-major-tech/. "In a formal notice, Murthy requested major tech platforms submit information about the prevalence and scale of COVID-19 misinformation on their sites, from social networks, search engines, crowdsourced platforms, e-commerce platforms and instant messaging systems." *Id.* "In his notice to major tech platforms, Murthy is requesting specific information on demographics affected by misinformation as well as sour-

ces of misinformation and 'exactly how many users saw or may have been exposed to instances of Covid-19 misinformation.'" *Id.*

248. On or around July 27, 2022, a limited number of emails between CDC officials and representatives of social-media platforms from late 2020 and early months of 2021 became publicly available, over a year after they had been requested under FOIA. These newly revealed emails—which are attached as Exhibit A, and incorporated by reference herein—confirm the allegations of collusion between HHS officials and social-media platforms to censor disfavored speech, speakers, and viewpoints, as alleged herein.

249. These emails indicate that Defendant Carol Y. Crawford of CDC and other CDC officials frequently communicated and coordinated with social-media platforms, including Facebook/Meta, Twitter, Google/YouTube, and Instagram, regarding the censorship of speech on social-media platforms, including flagging specific content for censorship. During 2021, Crawford organized "Be On the Lookout" or "BOLO" meetings on "misinformation" with representatives of social-media platforms—including Twitter, Facebook/Meta, and Google/YouTube—in which she and other federal officials colluded and/or collude with those platforms about speech to target for suppression. These meetings include Crawford and other federal officials flagging specific social-media posts for censorship and providing examples of the types of posts to censor. Crawford emailed "slides" from the "BOLO" meetings to participants afterwards. These slides included repeated examples of specific posts on social-media platforms flagged for censorship. The slides called for "all" social-media platforms to "Be On the Lookout" for such posts. Crawford cautioned the meet-

ing participants, with respect to these slides, "[p]lease do not share outside your trust and safety teams.

250. Officials of the Census Bureau participated and/or participate in these BOLO meetings, including Defendant Jennifer Shopkorn and Christopher Lewitzke, who is a Senior Digital Marketing Associate with Reingold, a communications firm that was, on information and belief, acting on behalf of the Census Bureau. Crawford's emails indicate that the Census Bureau and its officials and agents, such as Lewitzke and Shopkorn, play an important, active, and ongoing role in colluding with social-media platforms to censor disfavored speech. On March 18, 2021, Crawford emailed Twitter officials and stated that "[w]e are working on a project with Census to leverage their infrastructure to identify and monitor social media for vaccine misinformation," and stated that "[w]e would like the opportunity to work with your trust team on a regular basis to discuss what we are seeing." She also noted that "I understand that you did this with Census last year as well." Twitter responded by stating, "With our CEO testifying before Congress this week is tricky," but otherwise agreed to the collusive arrangement. Likewise, in subsequent emails to Twitter (on May 6) and Facebook (on May 10), Crawford noted to the social-media platform officials that "[o]ur census team," *i.e.*, Lewitzke and Shopkorn, who were cc'ed on the emails, "has much more info on it if needed" regarding "some example posts" of "misinfo" that she flagged for censorship.

251. Defendants Crawford and others, including the Census officials and agents Lewitzke and Shopkorn, took other steps to procure the censorship of disfavored speech on social media. For example, on May 10, 2021, Crawford emailed Twitter officials to flag "two

issues that we are seeing a great deal of misinfo about," noting that Lewitzke and Shopkorn "ha[ve] much more info on it if needed." The same email included 13 specific Twitter posts as examples of the sort of posts to be censored. On May 6, 2021, Crawford sent a similar email to Meta/Facebook officials, also copying Lewitzke and Shophorn and stating that they have "much more info" about the issue; this email included 16 specific posts from Facebook and Instagram as examples of posts to be targeted for censorship. On May 12, 2021, Crawford emailed Facebook officials to flag "some new info on myths your misinfo folks might be interested in," with links to specific issues of "misinformation" for Facebook to censor. On April 9, 2021, Crawford agreed with a Twitter official that CDC would provide "examples of problematic content" posted on Twitter, and the Twitter official noted that "all examples of misinformation are helpful." Calendar invites from early 2021 indicate that Crawford, Jay Dempsey, and other CDC officials participated in Facebook's "weekly sync with CDC," with "CDC to invite other agencies as needed."

252. In another exchange of emails, Crawford agreed with Facebook officials that CDC would participate in a COVID-19 "misinfo reporting channel," and arranged for CDC officials to have training on the use of Facebook's "misinfo reporting channel." On information belief, Crawford's "team" at CDC, as well as Shopkorn and Lewitzke from Census, were "onboarded" onto Facebook's "misinfo reporting channel." A calendar invite in May 2021 included Crawford, Lewitzke, Shopkorn, other CDC officials, and other Reingold employees who were, on information and belief, acting on behalf of the Census Bureau, to participate in the "onboarding" onto Facebook's "misinfo reporting channel."

253. Crawford's communications with Facebook indicate that CDC, the Census Bureau, and other government agencies collaborate with Facebook to flag speech regarding both COVID-19 and elections for censorship using "CrowdTangle," which Facebook describes as "a Facebook tool that tracks how content spreads online." An email from a Facebook official to Crawford stated that, using CrowdTangle, "[w]hen health departments flag potential vaccine misinformation on Facebook and Instagram, we review and remove the content if it violates our policies . . . This is similar to how governments and fact-checkers use CrowdTangle ahead of *elections*. . . . " (Emphasis added.)

254. Additional communications between CDC and social-media platforms reflect an ongoing, close, and continuing collaboration, effectively amounting to a joint enterprise, on censorship of COVID-19 "misinformation" and related issues. *See* Ex. A. For example, the communications reflect close coordination on creating and publishing content on behalf of CDC on social-media platforms, and artificially "amplifying" government messaging on social-media to the suppression of private messaging, including a gift of $15 million in Facebook ad credits from Facebook to CDC. They also reflect close coordination on amplifying CDC's content and other related issues.

**4. White House and DHS officials collude with social-media firms to suppress speech.**

255. On information and belief, senior officials in the Biden Administration and the Department of Homeland Security are also colluding with social-media companies to suppress disfavored speakers and viewpoints. These efforts include censorship of disfavored content and view-

points about election integrity and COVID-19, among other topics, under the guise of suppressing "misinformation" and "domestic terrorism." These efforts culminated with the Orwellian announcement of the creation of a "Disinformation Governance Board" within DHS.

256. A direct forum for government officials to call for social-media censorship of election-related "misinformation" was already in place during the general election cycle of 2020.

257. In August 2020, social-media firms "met with federal government officials to discuss how to handle misinformation during this month's political conventions and election results this fall." Ingram et al., *Big Tech met with govt to discuss how to handle election results*, NBC News (Aug. 20, 2022), *at* https://www.nbcnews.com/tech/tech-news/big-tech-met-gov-t-discuss-how-handle-election-results-n1236555.

258. This was one of a "series" of meetings between major social-media companies and government officials about the suppression of election-related "misinformation": "'We held the latest in a series of meetings with government partners today where we each provided updates on what we're seeing on our respective platforms and what we expect to see in the coming months,' companies including Google, Facebook, Twitter and Reddit said in a joint statement after the meeting." *Id.* "The statement also included Microsoft, Verizon Media, Pinterest, LinkedIn and the Wikimedia Foundation, which operates Wikipedia and other sites." *Id.*

259. The discussion was reported as "one in a series of monthly meetings between the government and tech companies" and involved "back-and-forth conversation on a variety of topics." *Id.* Neither the "topics" of the

"conversation" nor the particular participants on behalf of the government were disclosed. *Id.* "According to the industry statement, participants in Wednesday's meeting also included representatives from the FBI's foreign influence task force, the Justice Department's national security division, the Office of the Director of National Intelligence and the Cybersecurity and Infrastructure Security Agency." *Id.* "The companies said they would continue to meet regularly before the November election." *Id.*

260. On September 28, 2020, the Biden-Harris campaign sent a letter to Facebook demanding that Facebook take "more aggressive" action to censor statements by President Trump and the Trump campaign that raised concerns about election security and the security of voting by mail. Sept. 28, 2020 Biden-Harris Letter, https://www.documentcloud.org/documents/7219497-Facebook-Letter-9-28.html. The letter accused Facebook of being a "propagator of disinformation" for refusing to censor the rival campaign's core political speech, thus promoting "distrust in our democracy" and threatening to "undermine democracy." *Id.* The Biden-Harris campaign described the Trump campaign's political speech as "dangerous claptrap" and argued that "[r]emoving this video should have been the easiest of calls." *Id.* The letter demanded that Facebook "remove Mr. Trump's posts, which violate your policies." *Id.* (underline in original).

261. The same letter complained that Facebook's "algorithm" permitted Trump's political speech to reach millions of people. It complained about the successful reach on Facebook of political speech that it opposed, bemoaning the fact that "a hyperpartisan propaganda organ like the *Daily Wire* is Facebook's top web pub-

lisher." *Id.* The Biden-Harris campaign accused Facebook of allowing speech that it favored "to be drowned out by a storm of disinformation." *Id.* And it concluded, "We will be calling out those failures [to censor Trump's political speech] as they occur over the coming 36 days," *i.e.*, until the November 2020 general election. *Id.*

262. On information and belief, responding to prior threats from Defendants and those acting in concert with them, Facebook complied with this demand and did engage in "more aggressive" censorship of the Trump campaign's core political speech from then on, resulting in an aggressive campaign to suppress President Trump and his campaign's political speech, especially on issues related to election security. In the wake of the Biden-Harris letter, Facebook declared that it "won't allow ads with content that seeks to delegitimize the outcome of an election," and it ramped up censorship of Trump's political speech thereafter.

263. As one commentator noted, "It's no surprise that Facebook's policy change happened the same week that the Biden campaign demanded Trump's Facebook posts be censored." Alexander Hall, *Liberal Media Used to Warn Against Mailing Votes; Now Big Tech, Left Are Protecting It* (Oct. 30, 2020), *at* https://www.newsbusters.org/blogs/free-speech/alexander-hall/2020/10/30/liberal-media-used-warn-against-mailing-votes-now-big.

264. At the same time, "Twitter also modified its rules, stating: 'we may label and reduce the visibility of Tweets containing false or misleading information about civic processes in order to provide additional context' in its Civic integrity policy." *Id.*

265. Both platforms ramped up censorship of core political speech of President Trump and his campaign, as well as core political speech by others favoring their messages and campaigns, in the critical final month before the 2020 general election, resulting in egregious acts of censorship. These acts of censorship included suppression of expressions of concern about election security as a result of the massive increase in voting by mail during the 2020 general election.

266. In perhaps the most notorious example, as noted above, Twitter, Facebook, and other social-media companies censored the New York Post's entirely truthful and carefully sourced article about Hunter Biden's laptop on October 14, 2020, as discussed further above. This censorship included locking the New York Post's social-media accounts for weeks until after the election.

267. According to one survey, sixteen percent of Biden voters polled stated that they would have changed their votes if they had known about the Hunter Biden laptop story before the election, which could have changed the outcome of the election.

268. This censorship required deliberate, aggressive action by social-media firms. "Facebook moderators had to manually intervene to suppress a controversial New York Post story about Hunter Biden, according to leaked moderation guidelines seen by the Guardian." *Facebook leak reveals policies on restricting New York Post's Biden story*, THE GUARDIAN (Oct. 30, 2020), *at* https://www.theguardian.com/technology/2020/oct/30/facebook-leak-reveals-policies-restricting-new-york-post-biden-story.

269. At the time, Facebook claimed that the censorship of the Hunter Biden laptop story was "part of our standard process to reduce the spread of misinform-

mation. We temporarily reduce distribution pending factchecker review." *Id.* But this was not true. In fact, Facebook imposed "special treatment" on the New York Post to suppress the story, which included "manually overrid[ing]" Facebook's own guidelines for suppressing so-called "misinformation." *Id.*

270. On December 10, 2020, nine Democratic House Members in the so-called "Congressional Task Force on Digital Citizenship" (a group of exclusively Democratic members of Congress) sent a letter to President-elect Biden, calling for the incoming Administration to create task forces that would increase censorship of "disinformation and misinformation" on social media. Dec. 10, 2020 Letter of Rep. Wexton, et al., *at* https://wexton.house.gov/uploadfiles/12.10.20_house_democrats_disinformation_roadmap_to_president-elect_biden.pdf.

271. The letter decried the rise of "news environments online, which report vastly different information and do not offer the same editorial standards to protect against disinformation and misinformation that traditional news media do." *Id.* It criticized social-media platforms for failing to censor "disinformation" more aggressively: "As social media platforms post record revenues from engagement, they seldom act as responsible information gatekeepers and, in fact, have financial incentives to direct users to posts that are false, misleading, or emotionally manipulative." *Id.*

272. The letter called on President-elect Biden to "[s]upport collaboration between government and civic organizations to combat dangerous propaganda." *Id.* The letter acknowledged that "social media platforms have taken some steps to limit the spread of harmful disinformation and misinformation over the past year,"

but urged that these steps were not nearly enough, arguing that "we can still see how easily this content is posted and amplified by bad actors and unknowing citizens," that "platforms have financial incentives for engaging posts to reach larger audiences, regardless of the content," and that "computer algorithms still make up a majority of content moderation, and platforms have at times refused to take action against accounts and groups promoting violence and hate speech." *Id.*

273. The letter called for President-elect Biden to deploy the U.S. Department of Justice and the Department of Homeland Security to combat "disinformation," and it called for more direct government involvement in policing the content of political speech on social media platforms, in order to "build citizen resilience to disinformation and support a healthy information ecosystem"—which is Newspeak for viewpoint- and content-based censorship.

274. In announcing the letter, its lead signer, Rep. Wexton, openly stated that Americans lack the sophistication to make their own judgments about truth and falsity of online speech, and that government-approved "gatekeepers" of information should be imposed: "In the letter, the Members recognize that, while a growing number of people in the U.S. are getting their news from social media platforms, many Americans are ill-equipped to recognize and sift through false, misleading, or emotionally manipulative posts. Additionally, there exists a lack of effective information gatekeepers to protect against disinformation threats online." *See* Dec. 10, 2020 News Release, https://wexton.house.gov/news/documentsingle.aspx?DocumentID=431.

275. Consistent with this letter, the Biden Administration launched several initiatives designed to inject

the power and authority of federal agencies like DHS into policing "disinformation" and "misinformation" online—which, all too often, means censoring core political speech disfavored by government officials.

276. On information and belief, DHS and its officials are actively engaged in this project of procuring the censorship of disfavored speakers, content, and viewpoints in speech about election integrity.

277. On May 3, 2021, it was reported that DHS intended to "partner with private firms," *i.e.*, social-media companies, to monitor disfavored speech online. *Biden team may partner with private firms to monitor extremist chatter online*, CNN.com (May 3, 2021), *at* https://www.cnn.com/2021/05/03/politics/dhs-partner-private-firms-survieil-suspected-domestic-terrorists/index.html. The purpose of these "partnerships" was to evade legal, constitutional, and ethical problems with DHS's direct surveillance of online speech: "The Department of Homeland Security is limited in how it can monitor citizens online without justification and is banned from activities like assuming false identities to gain access to private messaging apps." *Id.* "Instead, federal authorities can only browse through unprotected information on social media sites like Twitter and Facebook and other open online platforms." *Id.* "The plan being discussed inside DHS, according to multiple sources, would, in effect, allow the department to circumvent those limits." *Id.* "Outsourcing some information gathering to outside firms would give DHS the benefit of tactics that it isn't legally able to do in-house, such as using false personas to gain access to private groups used by suspected extremists, sources say." *Id.*

278. As noted above, on May 5, 2021, Defendant Psaki stated at a White House press conference that "[t]he President's view is that the major platforms have a responsibility related to the health and safety of all Americans to stop amplifying untrustworthy content, disinformation, and misinformation, especially related to COVID-19, vaccinations, and *elections*." White House, Press Briefing by Press Secretary Jen Psaki and Secretary of Agriculture Tom Vilsack, May 5, 2021 (emphasis added), *at* https://www.whitehouse.gov/briefing-room/press-briefings/2021/05/05/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-agriculture-tom-vilsack-may-5-2021/. Psaki immediately went on to state that President Biden "supports better privacy protections and a robust anti-trust program." *Id.* (emphasis added). And she stated that the President's "view is that there's more that needs to be done to ensure that this type of misinformation; disinformation; damaging, sometimes life-threatening information is not going out to the American public." *Id.*

279. In the same press conference, Psaki notoriously went on to state, "We're flagging problematic posts for Facebook that spread disinformation." *Id.* On information and belief, especially in light of Psaki's earlier reference to speech about "elections," this statement about "flagging problematic posts" referred not just to social-media speech about COVID-19, but also social-media speech about election integrity. *See, e.g., White House says social media platforms should not amplify 'untrustworthy' content*, REUTERS (May 5, 2021), *at* https://www.reuters.com/article/ctech-us-trump-facebook-biden-idCAKBN2CM1XU-OCATC.

280. In June 2021, the National Security Council released its "National Strategy for Countering Domestic

Terrorism." *See* The White House, National Strategy for Countering Domestic Terrorism (June 2021), *at* https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf. The "National Strategy" repeatedly claimed that "disinformation and misinformation" are important elements of "domestic terrorism." *Id.* at 9. It claimed that the "ideologies" of domestic terrorists "connect and intersect with conspiracy theories and *other forms of disinformation and misinformation*." *Id.* (emphasis added). It stated that such "elements" of domestic terrorism "can combine and amplify threats to public safety," "[e]specially on Internet-based communications platforms such as social-media." *Id.* (emphasis added). It stated that DHS and others "are currently funding and implementing or planning" programs to "strengthen[] user resilience to disinformation and misinformation online for domestic audiences." *Id.* at 20. The Strategy memo identified, as its "broader priority," the task of "enhancing faith in government and addressing the extreme polarization, *fueled by a crisis of disinformation and misinformation often channeled through social media platforms*, which can tear Americans apart. . . . " *Id.* at 29 (emphasis added). And it called for DHS and others to "accelerat[e] work to contend with an information environment that challenges healthy democratic discourse," and to "find[] ways to counter the influence and impact" of online disinformation. *Id.*

281. On July 26, 2021, the Global Internet Forum to Counter Terrorism (GIFCT), an "organization formed by some of the biggest U.S. tech companies including Facebook and Microsoft," which includes DHS on its board of advisors, announced that it is "significantly expanding the types of extremist content shared between firms in a key database," to move from images and videos to

content-based speech tracking. Facebook and tech giants to target attacker *manifestos, far-right militias in database*, REUTERS (July 26, 2021), *at* https://www.reuters.com/technology/exclusive-facebook-tech-giants-target-manifestos-militias-database-2021-07-26/.

282. "GIFCT . . . was created in 2017 under pressure from U.S. and European governments," and "its database mostly contains digital fingerprints of videos and images related to groups on the U.N. Security Council's consolidated sanctions list and a few specific live- streamed attacks." *Id.* "Until now, the Global Internet Forum to Counter Terrorism's (GIFCT) database has focused on videos and images from terrorist groups on a United Nations list," but now the group announced that it would move into content-based speech tracking. *Id.* On information and belief, DHS officials including Defendants have access to such database(s) as tools to advance censorship of online speech.

283. Shortly thereafter, on August 2, 2021, DHS Secretary Mayorkas announced that DHS was working directly with social-media companies to censor disfavored speech on social-media platforms. "On [a] broadcast of MSNBC's 'Andrea Mitchell Reports,' DHS Secretary Alejandro Mayorkas stated that the department is working with tech companies 'that are the platform for much of the disinformation that reaches the American public, how they can better use their terms of use to really strengthen the legitimate use of their very powerful platforms and prevent harm from occurring.'" *Mayorkas: We're Working with Platforms on 'How They Can Better Use' Their Terms to 'Prevent Harm' from Misinformation*, BREITBART NEWS (Aug. 2, 2021), *at* https://www.breitbart.com/clips

/2021/08/02/mayorkas-were-workgin-with-platforms-on-how-they-can-better-use-their-terms-to-prevent-harm-from-misinformation/.

284. Echoing Psaki's comments at the July 15, 2021 news conference with Surgeon General Murthy, Mayorkas stated: "So, we're working together with them. We're working with the tech companies that are the platform for much of the disinformation that reaches the American public, how they can better use their terms of use to really strengthen the legitimate use of their very powerful platforms and prevent harm from occurring." *Id.* On information and belief, the reference to "us[ing] their terms of use to really strengthen the legitimate use of their very powerful platforms and prevent harms from occurring" refers to government-induced censorship of disfavored viewpoints, speakers, and content.

285. Mayorkas added that there was a federal-government-wide effort to police speech on social media, stating: "[T]he connectivity between speech and violence, the connectivity between active harm and speech is something that we're very focused on, and it's a difficult challenge. But we're working on it and meeting that challenge, again, because of the great personnel of the Department of Homeland Security and *across the federal enterprise*." *Id.* (emphasis added).

286. Soon after Mayorkas's August 2, 2021 comments, DHS officials began plotting to create a "Disinformation Governance Board" within DHS. *See* ECF No. 10-1, at 19-23 (Glenn Decl. Ex. 1, at 6-10). On September 13, 2021, senior DHS officials Robert Silvers and Samantha Vinograd sent a memorandum to Secretary Mayorkas recommending the creation of the Dis-

information Governance Board. The opening sentence of the Memorandum noted that the Board's purpose would be to combat "[t]he spread of disinformation" regarding "[c]onspiracy theories about the validity and security of elections," including "disinformation surrounding the validity of the 2020 election," and "[d]isinformation related to the origins and effects of COVID-19 vaccines or the efficacy of masks," which "undercut[] public health efforts to combat the pandemic." *Id.* at 19.

287. The same Memorandum noted that CISA was involved in flagging content for censorship on social-media platforms: "Leading up to the 2020 election, CISA relayed reports of election disinformation from election officials to social media platform operators." *Id.* at 20. The Memorandum called for the Board to perform "partner engagement" with "private sector entities [and] tech platforms." *Id.* at 22.

288. In a subsequent Memorandum dated January 31, 2022, DHS officials indicated that the Board's activities would oversee extensive *pre-existing* social-media censorship activities by other federal officials and agencies: "The Board will also support and coordinate . . . MDM work with other departments and agencies, the private sector, and non-government actors." *Id.* at 24. This Memorandum attached the Board's Charter, which stated that its mission was to "guide and support the Department's efforts to address mis-, dis-, and mal-information." *Id.* at 27. It also stated that the Board would "harmonize and support coordination with . . . the private sector." *Id.* The Charter called for the Board to "coordinate, deconflict, and harmonize departmental efforts to address MDM," including between "DHS Components" and "interagency part-

ners," and "serving as the Department's internal and external point of contact for coordination with . . . the private sector . . . regarding MDM." *Id.* at 28-29.

289. Under continuous pressure from federal officials, including Defendants herein, social-media firms have imposed increasingly draconian censorship on core political speech about election integrity. For example, in March 2022, YouTube imposed a one-week suspension on The Hill, a well-known political publication covering Congress, for posts that included clips of former President Trump's speech at the CPAC conference and interview on Fox News, which included claims that fraud changed the outcome of the 2020 presidential election. Gilead Edelman, *Beware the Never-Ending Disinformation Emergency*, THE WIRED (March 11, 2022), *at* https://www.wired.com/story/youtube-rigged-election-donald-trump-moderation-misinformation/. YouTube relied on its "Elections misinformation policy," under which it censors "Content that advances false claims that widespread fraud, errors, or glitches changed the outcome of select past national elections, after final election results are officially certified." YouTube, *Elections Misinformation Policy*, https://support.google.com/youtube/answer/10835034?hl=en.

290. This policy is openly content- and viewpoint-based—it applies only to "select" past national elections, and "[u]nder the policy, you can only include those claims if you explicitly debunk or condemn them." Edelman, *supra*. On information and belief, this policy is also selective in application, as it is not applied to censor widespread, false Democratic claims that supposed "collusion" between the Trump campaign and Russia changed the outcome of the 2016 presidential election. And "by asking news hosts to explicitly denounce any

mention of election fraud, YouTube isn't just making its own content decisions; it's injecting itself into the editorial processes of actual media outlets." *Id.*

291. On November 10, 2021, the Cybersecurity and Infrastructure Security Agency (CISA), an agency within DHS, announced that it was "beefing up its disinformation and misinformation team in the wake of a divisive presidential election that saw a proliferation of misleading information online." *Cyber agency beefing up disinformation, misinformation team*, THE HILL (Nov. 10, 2021), *at* https://thehill.com/policy/cybersecurity/580990-cyber-agency-beefing-up-disinformation-misinformation-team/. "'I am actually going to grow and strengthen my misinformation and disinformation team,' CISA Director Jen Easterly sa*id.*" *Id.* Defendant Easterly said that so-called "disinformation" and "misinformation" pose "a top threat for CISA, which is charged with securing critical infrastructure, to confront." *Id.*

292. Indulging in a bit of Newspeak of her own, Easterly claimed that social-media speech is a form of "infrastructure," and that policing speech online by the federal government falls within her agency's mission to protect "infrastructure," stating that CISA is "in the business of critical infrastructure, and the most critical infrastructure is our cognitive infrastructure, so building that resilience to misinformation and disinformation, I think, is incredibly important." *Id.*

293. Easterly announced that CISA was working directly with unnamed "partners in the private sector" and other government agencies to police online speech: "We are going to work with our partners in the private sector and throughout the rest of the government and

at the department to continue to ensure that the American people have the facts that they need to help protect our critical infrastructure." *Id.*

294. With specific reference to hotly disputed election-integrity issues, which comprise core political speech, Easterly stated that Americans should not be allowed to "pick [their] own facts" and make their own decisions about what is true, especially regarding election security: "We now live in a world where people talk about alternative facts, post-truth, which I think is really, really dangerous if you get to pick your own facts, and it's particularly corrosive when you talk about matters of election security." *Id.* Instead, she indicated, federal officials like herself should intervene to help Americans "pick" the right "facts." *Id.*

295. CISA appears to be the focus of many of DHS's attempts to police the content of speech and viewpoints on social media. On information and belief, CISA maintains a number of task forces, working groups, and similar organizations as joint government-private enterprises, which provide avenues for government officials to push for censorship of disfavored viewpoints and speakers online.

296. In a 2020 document entitled "2020 Election Infrastructure Subsector-Specific Plan," *at* https://www.cisa.gov/sites/default/files/publications/election_infrastructure_subsector_specific_plan.pdf, CISA stated that it had partnered to "promote" interaction between election officials and the Center for Technology and Civic Life, the now-notorious nonprofit funded by Mark Zuckerberg that engaged in egregious election interference by injecting hundreds of millions of private

dollars and personnel into local election offices in heavily Democratic-favoring areas.

297. CISA routinely expands the definitions of "misinformation" and "disinformation" to include "malinformation," *i.e. truthful* information that the government believes is presented out of context to contradict left-wing political narratives. CISA defines "malinformation" as information that is "based on fact, but used out of context to mislead, harm, or manipulate." *See, e.g.*, CISA, *We're in This Together. Disinformation Stops with You.* (last visited May 5, 2022), https://www.cisa.gov/sites/default/files/publications/SLTTCOVIDToolkit_FINAL_508.pdf.

298. CISA's same publication decries the spreading of "false treatment and prevention measures [for COVID-19], *unsubstantiated rumors regarding the origin of the virus*, and more." *Id.* (emphasis added). On information and belief, "unsubstantiated rumors regarding the origin of the [COVID-19] virus" refers to the lab-leak theory of COVID-19's origins, which (as noted above) is supported by compelling circumstantial evidence, both scientific and historical.

299. CISA's "Mis-, Dis-, and Malinformation [MDM] Planning and Incident Response Guide for Election Officials," *at* https://www.cisa.gov/sites/default/files/publications/mdm-incident-response-guide_508.pdf, calls for constant policing of speech regarding election integrity, stating that "election infrastructure related MDM occurs year-round," and "[f]alse narratives erode trust and pose a threat to democratic transitions, especially, but not limited to, narratives around election processes and the validity of election outcomes." *Id.* The Guide defines MDM to include "[n]arratives or content that delegit-

imizes election results or sows distrust in the integrity of the process based on false or misleading claims." *Id.*

300. On February 7, 2022, DHS issued a National Terrorism Advisory Bulletin, available at https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-february-07-2022. It begins by stating: "The United States remains in a heightened threat environment fueled by several factors, including an online environment filled with false or misleading narratives and conspiracy theories, and other forms of mis- dis- and mal-information (MDM)." *Id.* The first critical "factor" contributing to a "heightened threat environment," according to the Bulletin, is "(1) the proliferation of false or misleading narratives, which sow discord or undermine public trust in U.S. government institutions." *Id.* Again, the first "[k]ey factor contributing to the current heightened threat environment" identified in the Bulletin is "[t]he proliferation of false or misleading narratives, which sow discord or undermine public trust in U.S. government institutions: For example, there is widespread online proliferation of false or *misleading narratives regarding unsubstantiated widespread election fraud and COVID-19*. Grievances associated with these themes inspired violent extremist attacks during 2021." *Id.* (emphasis added). The Bulletin stated that DHS is directly coordinating with social-media platforms to address so-called "MDM": "DHS is working with public and private sector partners, as well as foreign counterparts, to identify and evaluate MDM, including false or misleading narratives and conspiracy theories spread on social media and other online platforms that endorse or could inspire violence." *Id.* And it specifically stated that CISA likewise "works with public and private sector

partners . . . [to] increase nationwide cybersecurity resilience." *Id.*

301. This February 7, 2022 Bulletin echoed statements from prior bulletins indicating that so-called COVID-19 "misinformation" and election-related "misinformation" are domestic terror threats. For example, DHS's January 27, 2021 National Terrorism Advisory System Bulletin, available at https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-january-27-2021, stated that "Domestic Violent Extremists" are "motivated by a range of issues, including anger over COVID-19 restrictions [and] the 2020 election results. . . . " *Id.* Similarly, DHS's August 13, 2021 National Terrorism Advisory System Bulletin, available at https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-august-13-2021, stated that "violent extremists . . . may seek to exploit the emergence of COVID-19 variants by viewing the potential re-establishment of public health restrictions across the United States as a rationale to conduct attacks." *Id.* It stated that "domestic threat actors . . . continue to introduce, amplify, and disseminate narratives online that promote violence," and included therein "conspiracy theories on perceived election fraud . . . and responses to anticipated restrictions relating to the increasing COVID cases." *Id.*

302. On April 12, 2022, CISA published another bulletin announcing that it was coordinating directly with social-media platforms to police "Mis, Dis, Malinformation" (which it calls "MDM"). CISA, *Mis, Dis, Malinformation*, *at* https://www.cisa.gov/mdm. The bulletin states that, "False or misleading information can evoke a strong emotional reaction that leads people to share it without first looking into the facts for themselves,

polluting healthy conversations about the issues and increasing societal divisions." *Id.* CISA reported that its Countering Foreign Influence Task Force's "mission evolved" during the Biden Administration to address the new "information environment," which (on information and belief) is codespeak for ramping up online censorship: "In 2021, the CFITF officially transitioned into CISA's MDM team, and the mission evolved to reflect the changing information environment." *Id.* CISA stated that it coordinates directly with social media firms to address "MDM": "The MDM team continues to work in close coordination with interagency and private sector partners, *social media companies*, academia, and international partners on a variety of projects to build resilience against malicious information activities." *Id.* (emphasis added).

303. On information and belief, the April 12, 2022, CISA bulletin indicates that CISA works directly with social-media companies to flag content for censorship: "The MDM team serves as a switchboard for routing disinformation concerns to appropriate social media platforms. . . . " *Id.* CISA boasts that it has "expanded the breadth of reporting [MDM] to include . . . more social media platforms," and that "[t]his activity leverages the rapport the MDM team has with the social media platforms to enable shared situational awareness." *Id.* On information and belief, these statements reflect and express on ongoing practice by government officials of directly colluding with social-media platforms to suppress disfavored speech, viewpoints, content, and speakers on social media. Again, these statements echo Psaki's statement that the Biden Administration is "flagging problematic posts for Facebook," and Mayorkas's statement that DHS is "working with the tech

companies that are the platform for much of the disinformation that reaches the American public" to address so-called misinformation and disinformation.

304. The same bulletin suggests that CISA is directly involved in such "flagging" related to COVID-19 "misinformation." It states that "COVID-19-related MDM activities seek to undermine public confidence and sow confusion," and claims that "the rapid evolution of accurate information makes older, dated information a potential catalyst of confusion and distrust as well." *Id.* Thus, it claims, "[t]he MDM team supports the interagency and *private sector partners'* COVID-19 response efforts via regular reporting and analysis of key pandemic-related MDM trends." *Id.* On information and belief, these "private sector partners" include social-media firms, and the "reporting and analysis" includes flagging disfavored content for censorship.

305. On April 27, 2022, Mayorkas announced that DHS was creating a "Disinformation Governance Board" within DHS to combat so-called "misinformation" and "disinformation." *Biden Administration creates 'Disinformation Governance Board' under DHS to fight 'misinformation,'* THE POST MILLENIAL (April 27, 2022), *at* https://thepostmillennial.com/breaking-biden-administration-creates-disinformation-governance-board-under-dhs-to-fight-misinformation. "The Department of Homeland Security is setting up a new board designed to counter misinformation related to homeland security, with a focus specifically on Russia and irregular migration. The board will be called the 'Disinformation Governance Board,' and will be headed by executive director Nina Jankowicz." *Id.* During congressional testimony, Mayorkas described the endeavor as a

"just recently constituted Misinformation/Disinformation Governance Board." *Id.* (video link at 1:40). He stated: "The goal is to bring the resources of the Department together to address this threat." *Id.*

306. Jankowicz has called for more aggressive censorship of election-related speech by social-media platforms, and has implied that social-media censorship of election-related speech should never relent or be reduced, stating on Twitter: "Considering the long-term damage these lies do to our democracy, I'm dismayed about this decision [not to censor election-related speech more aggressively]. I say this about foreign disinformation and it applies to domestic disinfo too: Elections aren't an end point. They're an inflection point. Policies need to reflect that." *Id.*

307. On information and belief, DHS's new "Disinformation Governance Board" is intended to be used, and will be used, to increase DHS's efforts to induce and procure the censorship of disfavored content, viewpoints, and speakers on social-media platforms.

308. From its inception, the DGB was envisioned as an agency for suppressing core political speech about election security and COVID-19 restrictions. In the internal memo to Secretary Mayorkas advocating for the DGB's creation, the very first two topics of "disinformation" to be targeted were "conspiracies about the validity and security of elections," and "disinformation related to the origins and effects of COVID-19 vaccines or the efficacy of masks."

309. Internal documents of DHS, provided by whistleblowers to U.S. Senators, indicate that the "Disinformation Governance Board" was formulated to create a stronger bureaucratic structure to federal social-

media censorship policies and activities that were already in full force, both within DHS and across other federal agencies. The whistleblower documents make clear that the DGB's task was not to *establish* a censorship program, but to *oversee* the massive censorship program against free speech on these topics that already exists—both within DHS, and across the federal government.

310. On information and belief, Defendants Robert Silvers and Samantha Vinograd played and play a central role in DHS's censorship activities, including but not limited to the formulation and creation of the "Disinformation Governance Board." The whistleblower documents cited above strongly support this conclusion. Silvers and Vinograd co-signed the September 13, 2021 "Memorandum for the Secretary" re "Organizing DHS Efforts to Counter Disinformation" that provided an overview of DHS's disinformation activity and recommended the creation of the DGB. As noted above, the opening lines of this memo state that "[t]he spread of disinformation presents serious homeland security risks," especially "[c]onspiracy theories about the validity and security of elections" and "[d]isinformation related to the origins and effects of COVID-19 vaccines or the efficacy of masks." The memo reflects detailed knowledge and active oversight of DHS's "misinformation" and "disinformation" activities. Further, Defendant Silvers authored the January 31, 2022 memo to the Secretary seeking his "approval of the charter for the Disinformation Governance Board," and he authored a separate memorandum to DHS's general counsel seeking the same approval. Silvers also is listed as a participant in the April 28, 2022 meeting with

Twitter executives Nick Pickles and Yoel Roth organized by Nina Jankowicz, discussed below.

311. On April 28, 2022, Jankowicz arranged for a meeting between Secretary Mayorkas and/or other senior DHS officials, including Undersecretary Robert Silvers, and "Twitter executives Nick Pickles, Head of Policy, and Yoel Roth, Head of Site Integrity," to discuss "public-private partnerships, MDM, and countering DVE. The meeting is off the record and closed press." ECF No. 10-1, at 31 (Glenn Decl. Ex. 1, at 18). This was to be a cozy meeting: Jankowicz, who drafted the meeting brief, noted that "Nick and Yoel both know DGB Executive Director Nina Jankowicz." *Id.* The meeting was to be "an opportunity to discuss operationalizing public-private partnerships between DHS and Twitter." *Id.* In the meeting, DHS was to "Propose that Twitter become involved in Disinformation Governance Board Analytic Exchanges on Domestic Violent Extremism (DVE) and Irregular Migration," and to "Thank Twitter for its continued participation in the CISA Analytic Exchange on Election Security." *Id.* DHS was also to "Ask what types of data or information would be useful for Twitter to receive in Analytic Exchanges or other ways the Department could be helpful to Twitter's counter-MDM efforts." *Id.*

**5. Defendants reinforce their threats and admit further colluding to censor free speech.**

312. On or around April 25, 2022—two days before DHS announced the creation of its "Disinformation Governance Board"—it was reported that free-speech advocate Elon Musk would acquire Twitter and make it a privately held company. Left-wing commentators widely decried this news on the ground that free speech

on Twitter would allow the spread of so-called "misinformation" and "disinformation."

313. On April 25, 2022, Psaki was asked at a White House press briefing to respond to the news that Elon Musk would acquire Twitter, and asked "does the White House have any concern that this new agreement might have President Trump back on the platform?" White House, *Press Briefing by Press Secretary Jen Psaki, April 25, 2022*, at https://www.whitehouse.gov/briefing-room/press-briefings/2022/04/25/press-briefing-by-press-secretary-jen-psaki-april-25-2022/.

314. Psaki responded by reiterating the threats of adverse legal consequences to Twitter and other social media platforms, specifically referencing antitrust enforcement and Section 230 repeal: "No matter who owns or runs Twitter, the President has long been concerned about the power of large social media platforms . . . [and] has long argued that tech platforms must be held accountable for the harms they cause. He has been a strong supporter of fundamental reforms to achieve that goal, including reforms to Section 230, enacting antitrust reforms, requiring more transparency, and more. And he's encouraged that there's bipartisan interest in Congress." *Id.*

315. At the same press briefing, Psaki was asked: "Are you concerned about the kind of purveyors of election misinformation, disinformation, health falsehoods, sort of, having more of an opportunity to speak there on Twitter?" She responded by specifically linking the legal threats to the social-media platforms' failure to more aggressively censor free speech: "We've long talked about and the President has long talked about his concerns about the power of social media platforms,

including Twitter and others, to spread misinformation, disinformation; the need for these platforms to be held accountable."

316. Psaki was then asked a question that noted that "the Surgeon General has said that misinformation about COVID amounts to a public health crisis," and then queried, "would the White House be interested in working with Twitter like it has in the past to continue to combat this kind of misinformation? Or are we in a different part of the pandemic where that kind of partnership is no longer necessary?" *Id.*

317. Psaki responded by reaffirming that senior officials within the White House and/or the Administration are continuing to coordinate directly with social-media platforms to censor disfavored speakers and content on social media, and directly linking these efforts to the repeated threat of adverse legal action: "we engage regularly with all social media platforms about steps that can be taken that has continued, and I'm sure it will continue. But there are also reforms that we think Congress could take and we would support taking, including reforming Section 230, enacting antitrust reforms, requiring more transparency. And the President is encouraged by the bipartisan support for — or engagement in those efforts." *Id.*

**6. Defendants have successfully procured the censorship of core political speech.**

318. As a direct result of the conduct alleged herein, Defendants have achieved a great deal of success in procuring the censorship of disfavored speakers, viewpoints, and content on social media, as alleged further herein—including core political speech.

319. Among other things, they have achieved astonishing success in muzzling public criticism of President Biden. A recent review by the Media Research Center identified 646 instances over the last two years where social-media firms censored public criticism of then-Candidate and now-President Biden. *See* Joseph Vasquez and Gabriela Pariseau, *Protecting the President: Big Tech Censors Biden Criticism 646 Times Over Two Years* (April 21, 2022), *at* https://censortrack.org/protecting-president-big-tech-censors-biden-criticism-646-times-over-two-years.

320. "The Media Research Center found more than 640 examples of bans, deleted content and other speech restrictions placed on those who criticized Biden on social media over the past two years." *Id.* "MRC Free Speech America tallied 646 cases in its CensorTrack database of pro-Biden censorship between March 10, 2020, and March 10, 2022. The tally included cases from Biden's presidential candidacy to the present day." *Id.*

321. "The worst cases of censorship involved platforms targeting anyone who dared to speak about any subject related to the New York Post bombshell Hunter Biden story. . . . Big Tech's cancellation of that story helped shift the 2020 election in Biden's favor. Twitter locked the Post's account for 17 days. In addition, Twitter slapped a 'warning label' on the GOP House Judiciary Committee's website for linking to the Post story." *Id.* "CensorTrack logged 140 instances of users—including lawmakers, organizations, news outlets and media personalities—censored for sharing anything related to the bombshell Hunter Biden laptop story." *Id.*

322. "Twitter was the most aggressive censor when it came to the Biden laptop story. CensorTrack entries show that users could not tweet the story or pictures of the Post story."

323. "Big Tech even axed those who blamed the current inflation crisis on Biden. For example, Facebook censored Heritage Action, the advocacy arm of the conservative Heritage Foundation, on March 15, simply for posting a video quoting Biden's embarrassing statements on energy policy. Facebook placed an interstitial, or filter, over Heritage Action's video, suppressing the post's reach. The video showed Biden and officials in his administration explaining how his policies would cause gas prices to rise." *Id.*

324. "[T]he largest category by far included users who dared to call out Biden's notoriously creepy, touchy-feely behavior around women and children. The 232 cases of comedic memes, videos, or generic posts about Biden's conduct composed more than one-third of CensorTrack's total instances of users censored for criticizing the president." *Id.*

325. "Big Tech even went after posts that quoted Biden's own words and made him look awful in retrospect." *Id.*

326. "The list of censorship targets included an array of prominent influencers on social media: Trump; lawmakers like Sen. Ted Cruz (R-TX) and House Minority Leader Kevin McCarthy (R-CA); news outlets like the New York Post, The Washington Free Beacon and The Federalist; satire site The Babylon Bee; celebrities like Donald Trump Jr. and James Woods, and media personalities like Daily Wire host Candace Owens,

Salem radio host Sebastian Gorka and radio host Dana Loesch." *Id.*

327. Most recently, social-media platforms are beginning to censor criticisms of the Biden Administration's attempt to redefine the word "recession" in light of recent news that the U.S. economy has suffered two consecutive quarters of reduction in GDP. *See, e.g., Economist slams Facebook for 'absolutely Orwellian' fact-check upholding Biden's recession denial*, Fox News (Aug. 1, 2022), at https://www.foxnews.com/media/economist-slams-facebook-absolutely-orwellian-fact-check-upholding-bidens-recession-denial.

328. Thus, Defendants' conduct alleged herein has created, with extraordinary efficacy, a situation where Americans seeking to exercise their core free-speech right to criticize the President of the United States are subject to aggressive prior restraint by private companies acting at the bidding of government officials. This situation is intolerable under the First Amendment.

**7. Federal officials open new fronts in their war for censorship of disfavored speech.**

329. Since this lawsuit was filed, federal officials, including Defendants herein, have expanded their social-media censorship activities and opened new fronts in their war against the freedom of speech on social media. The frontiers of government-induced censorship are thus expanding rapidly.

330. For example, on June 14, 2022, White House National Climate Advisor Gina McCarthy spoke at an Axios event titled "A conversation on battling misinformation." *See* Alexander Hall, *Biden climate advisor demands tech companies censor 'disinformation' to*

*promote 'benefits of clean energy'*, FOX NEWS (June 14, 2022), *at* https://www.foxnews.com/media/biden-climate-advisor-tech-companies-censor-disinformation-promote-benefits-clean-energy (video of her comments embedded in link). McCarthy publicly demanded that social-media platforms engage in censorship and suppression of speech that contradicts federal officials' preferred narratives on climate change.

331. During the event, "McCarthy skewered Big Tech companies for 'allowing' disinformation and cheered Congress for 'taking action' to enact more censorship last Thursday." *Id.* "Axios political reporter Alexi McCammond asked McCarthy how so-called 'rampant mis- and-disinformation around climate change online and in other platforms' has 'made your job harder?'" *Id.* "McCarthy responded by slamming social media companies: 'We have to get tighter, we have to get better at communicating, and frankly, *the tech companies have to stop allowing specific individuals over and over again to spread disinformation.'*" *Id.* (emphasis added). "She suggested further that 'we have to be smarter than that and *we need the tech companies to really jump in.'*" *Id.* (emphasis added). "McCammond responded by asking: 'Isn't misinformation and disinfo around climate a threat to public health itself?' McCarthy asserted that it 'absolutely' is: 'Oh, absolutely.'" *Id.*

332. Following the Administration's now-familiar playbook, McCarthy explicitly tied these demands for censorship of climate-change-related speech to threats of adverse legislation: "McCarthy also praised Congress directly for pushing social media companies to censor Americans: 'We do see Congress taking action on these issues, we do see them trying to tackle the

misinformation that's out there, trying to hold companies accountable.'" *Id.*

333. Two days later, the White House announced a new task force to address, among other things, "gendered disinformation" and "disinformation campaigns targeting women and LGBTQI+ individuals who are public and political figures, government and civic leaders, activists, and journalists." White House, *Memorandum on the Establishment of the White House Task Force to Address Online Harassment and Abuse* (June 16, 2022), *at* https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/16/memorandum-on-the-establishment-of-the-white-house-task-force-to-address-online-harassment-and-abuse/.

334. The June 16 Memorandum decries "online harassment and abuse"—vague terms that, on information and belief, are deliberately adopted to sweep in constitutionally protected speech. In particular, the Memorandum defines "online harassment and abuse" to include "gendered disinformation," a deliberately broad and open-ended term. *Id.* § 1. The Memorandum announces plans to target such "gendered disinformation" directed at public officials and public figures, including "women and LGBTQI+ political leaders, public figures, activists, and journalists." *Id.* The Memorandum creates a Task Force co-chaired by the Assistant to the President for National Security Affairs, which includes the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security, among others. *Id.*

335. The Task Force is charged with "developing programs and policies to address . . . *disinformation campaigns* targeting women and LGBTQI+ indivi-

duals who are public and political figures, government and civic leaders, activists, and journalists in the United States and globally." *Id.* § 4(a)(iv) (emphasis added). The Memorandum calls for the Task Force to consult and coordinate with "technology experts" and "industry stakeholders," *i.e.*, social-media firms, to achieve "the objectives of this memorandum," *id.* § 4(b). Those "objectives," of course, include suppressing so-called "disinformation campaigns" against "public and political figures." *Id.* § 4(a)(iv).

336. The Memorandum again threatens social-media platforms with adverse legal consequences if they do not censor aggressively enough to suit federal officials: "the Task Force shall . . . submit periodic recommendations to the President on *policies, regulatory actions, and legislation on technology sector accountability* to address systemic harms to people affected by online harassment and abuse." *Id.* § 5(c) (emphasis added).

337. On June 17, 2022, twenty-one Democratic U.S. Senators and Representatives sent a letter to Sundar Pichai, the CEO of Alphabet Inc., which owns Google, demanding that Google censor, suppress, and de-boost search results and Google Maps results for pro-life pregnancy resource centers. June 17, 2022 Letter of Sen. Mark Warner, et al., available at https://reason.com/wp-content/uploads/2022/06/26F26BB28841042A7931EEC58AC80E08.anti-abortion-letter-to-google-final.pdf. The letter's co-signers included many of the Members of Congress who have previously made threats of adverse legal consequences if social-media platforms do not increase censorship—such as Senators Mark Warner, Amy Klobuchar, and Richard Blumenthal. *Id.* The letter cited "research by the Center for Countering Digi-

tal Hate (CCDH)," *id.*—the same organization that Jen Psaki and the White House coordinated with to demand the censorship of the so-called "Disinformation Dozen," and that coordinated the demonetization of Plaintiff Hoft from Google. The letter describes pro-life pregnancy resource centers as "fake clinics," and demands that Google proactively censor search results, mapping results, and advertisements relating to such clinics. *Id.* The letter demands that Google "limit the appearance of anti-abortion fake clinics or so-called 'crisis pregnancy centers' in Google search results, Google Ads, and on Google Maps"; that Google "add user-friendly disclaimers that clearly indicate whether or not a search result does or does not provide abortions"; and that Google take "additional steps to ensure that users are receiving accurate information when they search for health care services like abortion on Google Search and Google Maps." *Id.*

338. Defendants swiftly doubled down on this demand for social-media censorship of pro-life pregnancy resource centers. On July 8, 2022, the President signed an Executive Order "aimed at protecting abortion rights." Sandhya Raman, *Biden issues executive order responding to abortion ruling*, Roll Call (July 8, 2022), at https://rollcall.com/2022/07/08/biden-issues-executive-order-responding-to-abortion-ruling/. The order directs HHS, DOJ, and the FTC "to examine ways to . . . curb the spread of misinformation related to abortion." *Id.* The order is entitled "Executive Order on Protecting Access to Reproductive Healthcare Services," available at https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/. Section 4(b)(iv) of the order states: "The Secretary of Health and

Human Services shall, in consultation with the Attorney General and the Chair of the FTC, consider options to address deceptive or fraudulent practices related to reproductive healthcare services, including online, and to protect access to accurate information." *Id.*

**8. Discovery reveals a massive federal Censorship Enterprise including all Defendants.**

339. Plaintiffs reassert and incorporate by reference the Exhibits A-O to the First Amended Complaint, Docs. 45-1 to 45-15, and the Exhibits to their Joint Statement on Discovery Disputes, Docs. 71-1 to 71-13, as if set forth fully herein. For ease of reference, this Second Amended Complaint refers to the exhibits to the First Amended Complaint by the same Exhibit numbers, Exhibits A-O. Likewise, Docs. 71-1 to 71-13 are incorporated by reference and referred to by their docket number. In addition, two additional Exhibits, labeled "Exhibit P" and "Exhibit Q," comprising additional documents produced by Defendants in discovery, are attached hereto and incorporated fully by reference herein.

340. Based on documents produced by Defendants in discovery and other recent public disclosures, senior federal officials have placed intensive oversight and pressure to censor private speech on social-media platforms. All Defendants have been involved in the actions of this "Censorship Enterprise" in various ways, and these censorship activities continue to the present and continue to directly cause Plaintiffs irreparable harm. Representative examples of such federal censorship activities are set forth herein, but these do not identify all the federally induced acts of censorship by any means.

341. After President Biden publicly stated (about Facebook) on July 16, 2021, that "They're killing people," a very senior executive at Meta (Facebook and Instagram) reached out to Surgeon General Murthy to engage in damage control and appease the President's wrath. Soon thereafter, the same Meta executive sent a text message to Surgeon General Murthy, noting that "it's not great to be accused of killing people," and expressing that he was "keen to find a way to deescalate and work together collaboratively."

342. Such "deescalation" and "working together collaboratively," naturally, involved increasing censorship on Meta's platforms. One week after President Biden's public accusation, on July 23, 2021, that senior Meta executive sent an email to Surgeon General Murthy stating, "I wanted to make sure you saw the steps we took *just this past week* to adjust policies on what we are removing with respect to misinformation, as well as steps taken to further address the 'disinfo dozen': we removed 17 additional Pages, Groups, and Instagram accounts tied to the disinfo dozen. " . . .

343. Again, on August 20, 2021, the same Meta executive emailed Murthy to assure him that Facebook "will shortly be expanding our COVID policies to further reduce the spread of potentially harmful content on our platform. These changes will apply across Facebook and Instagram," and they included "increasing the strength of our demotions for COVID and vaccine-related content," and "making it easier to have Pages/Groups/Accounts demoted for sharing COVID and vaccine-related misinformation."

344. In addition, that senior Meta executive sent a "Facebook bi-weekly covid content report" to Surgeon

General Murthy and to White House official Andrew Slavitt, evidently to reassure these federal officials that Facebook's suppression of COVID-19 "misinformation" was aggressive enough for their preferences.

345. In another, similar exchange, on October 31, 2021, Deputy Assistant to the President Rob Flaherty emailed a contact at Meta with a link to a Washington Post article complaining about the spread of COVID "misinformation" on Facebook. The email contained only the link to that story with the subject line, "not even sure what to say at this point." The Facebook official defended Facebook's practices, and assured Mr. Flaherty that Facebook's internal studies were intended to "improve our defenses against harmful vaccine misinformation," and that Facebook had, in fact, "improved our policies," *i.e.*, increased censorship of online speech. *Id.*

346. Likewise, Alex Berenson disclosed internal Twitter communications revealing that senior "WH" officials including Andrew Slavitt specifically pressured Twitter to deplatform Berenson, an influential vaccine critic—which Twitter d*id.* This pressure to deplatform Berenson evidently occurred on April 21, 2021, when four Twitter employees participated in a Zoom meeting with at least three White House officials and one HHS official intended to allow the White House to "partner" with Twitter in censoring COVID-related "misinfo." The meeting invitation stated: "White House Staff will be briefed by Twitter on vaccine misinfo. Twitter to cover trends seen generally around vaccine misinformation, *the tangible effects seen from recent policy changes*, what interventions are currently being implemented in addition to previous policy changes, and

ways the White House (and our COVID experts) can *partner* in product work." (Emphasis added).

347. The next day, April 22, Twitter employees noted in internal communications that the White House officials had posed "tough" questions during this meeting, including "one really tough question about why Alex Berenson hasn't been kicked off the platform." *See* https://alexberenson.substack.com/p/the-white-house-privately-demanded.

348. On July 11, 2021, Dr. Fauci publicly described Berenson's public statements on vaccines as "horrifying." Soon thereafter, after President Biden's subsequent statement that "They're killing people" by not censoring vaccine "misinformation," Twitter caved to federal pressure and permanently suspended Berenson.

349. Such communications from the White House impose maximal pressure on social-media companies, which clearly yields the sought-after results. And federal officials are fully aware that such pressure is necessary to induce social-media platforms to increase censorship of views that diverge from the government's. CISA Director Jen Easterly, for example, texted with Matthew Masterson about "trying to get us in a place where Fed can work with platforms to better understand the mis/dis trends *so relevant agencies can try to prebunk/debunk as useful*," and complained about the Government's need to overcome the social-media platforms' "hesitation" to working with the government: "Platforms have got to get more comfortable with gov't. It's really interesting how hesitant they remain."

350. In fact, such pressure from government officials on social-media companies, along with the many public statements alleged in the Complaint, have succeeded on a grand scale. A veritable army of federal bureaucrats are involved in censorship activities "across the federal enterprise." There are so many, in fact, that CISA Director Easterly and Matthew Masterson complained in text messages that "chaos" would result if all federal officials were "independently" contacting social-media platforms about so-called misinformation: "Not our mission but was looking to play a coord role so not every D/A is independently reaching out to platforms which could cause a lot of chaos." On information and belief, as alleged above, the "Disinformation Governance Board" was created to impose a bureaucratic structure on the enormous censorship activities already occurring involving dozens of federal officials and many federal agencies.

351. These federal bureaucrats have leveraged their clout and pressure on social-media platforms to become deeply embedded in a joint enterprise with social-media companies to procure the censorship of private citizens' speech on social media. Officials at HHS, including Defendants herein, routinely flag content for censorship, for example, by organizing weekly "Be On The Lookout" meetings to flag disfavored content; sending lengthy lists of examples of disfavored posts to be censored; serving as privileged "fact checkers" whom social-media platforms consult about censoring private speech; and receiving detailed reports from social-media companies about so-called "misinformation" and "disinformation" activities online; among others.

352. These efforts go back as far as very early 2020, and they continue through the present day, as evidenced by Facebook employees writing to high-level officials in HHS and the State Department informing them of new attempts to "control information and misinformation related to Corona virus [*sic*] which includes links to WHO page as well as removal of misinformation."

353. A Facebook employee wrote to Defendants Slavitt, Flaherty, Peck, and Humphrey on March 2, 2021, updating the White House on "vaccine intent" and "shar[ing] survey based data on intent to vaccinate," and relaying the ways that the company was combatting "misinformation." These methods included "improving the effectiveness of our existing enforcement systems (particularly focusing on entities that repeatedly post vaccine misinformation)" and "mitigating viral content that could lead to vaccine hesitancy" while "promoting the vaccine and providing authoritative information."

354. Upon information and belief, that means ensuring that posts departing from the government's messaging on vaccines are censored and de-amplified through the Facebook algorithm, while those conveying the government's message are amplified.

355. On March 1, 2021, a Twitter employee wrote to Defendants Slavitt, Flaherty, Peck and Humphrey after a meeting that the company was escalating efforts to remove harmful content about Covid and introducing a strike system—apparently the outcome of the discussion that had just occurred. This was following an email exchange in February of 2021 in which the same employee had sought to update the four about "additional measure[s] Twitter taking regarding covid [*sic*]."

356. Likewise, on April 26, 2020, Muhammed wrote to Facebook employees and asked them to take down Facebook pages, and deactivate associated accounts, misrepresenting themselves as Administration for Children and Families Program (ACF). One of those employees responded, "Absolutely." *Id.*

357. Shortly after the inauguration of President Biden, an individual who worked in private sector engagement connected a Facebook employee with Defendants Courtney Rowe and Joshua Peck, and saying that Defendants Flaherty and Humphrey would want to be in touch about misinformation and disinformation.

358. On February 24, 2021, a different Facebook employee wrote to Defendant Flaherty "Following upon your request for COVID-19 misinfo themes we are seeing," "we are removing these claims from our platforms[.]" Those themes were Vaccine Toxicity," "False Claims About Side Effects of Vaccine" (including that the vaccines may cause infertility), "Comparing the Covid Vaccine to the Flu Vaccine," and "Downplaying Severity of Covid-19."

359. Flaherty responded later that day, asking for a "sense of volume on these, and some metrics around the scale of removal for each[]," as well as "misinformation that might be falling outside of your removal policies." The Facebook employee replied that she could "go into detail on content that doesn't violate like below but could contribute to vaccine hesitancy."

360. Similarly, on February 19, 2021, Defendant Flaherty, on an email between him, Humphrey, Defendant Courtney Rowe, and Defendant Joshua Peck, and several Facebook employees as well, asked to hear from the company about "mis and dis" and later stated that

one of his questions was about "algorithmic productions." Flaherty also asked if "plans are in the works . . . to replicate the strategy you deployed around lockdowns — the 'stay at home' stickers/promoted Instagram story." A meeting was apparently held pursuant to Flaherty's request shortly thereafter on March 1, with the subject being "Misinfo & Disinfo."

361. On May 20, 2021, Mina Hsiang of the Office of Management and Budget wrote to a Google employee, apparently following up on a conversation from the previous day that was "critically helpful for the nationwide vaccination effort." Hsiang suggested a change to results yielded by a search for "who can get vaccinated now."

362. The parties continued to collaborate on the subject, and eventually arranged a meeting that was apparently held on May 27, 2021 and scheduled by Defendant Joshua Peck. Defendant Andy Slavitt asked Peck and Hsiang to take his place on the call because he was "slammed."

363. Sheila Walsh of HHS exchanged emails with employees at YouTube about combating vaccine "misinformation," and arranged a meeting as well.

364. Defendant Christy Choi, Deputy Director in the Office of Communications within HHS had exchanges with Facebook asking it to change the name of a Facebook page providing "misleading information about vaccine" "[g]iven the administration's focus on getting more Americans vaccinated."

365. CISA, likewise, has aggressively embraced its "evolved mission" of screening complaints of social-media disinformation and then "routing disinformation

concerns" to social- media platforms. CISA routinely receives reports of perceived "disinformation," often from state and local government officials, and forwards them to social-media companies for censorship, placing the considerable weight of its authority as a federal national-security agency behind its demands for suppression of private speech. CISA, therefore, serves as a government clearinghouse for expedited censorship of social-media speech disfavored by government officials.

366. Moreover, many of these substantive communications from federal officials flagging specific posts and content for censorship also appear to occur through alternative channels of communication. For example, Facebook trained CDC and Census Bureau officials on how to use a "Facebook misinfo reporting channel." Twitter offered federal officials a privileged channel for flagging misinformation through a "Partner Support Portal." YouTube has disclosed that it granted "trusted flagger" status to Census Bureau officials, which allows privileged and expedited consideration of their claims that content should be censored.

367. As alleged further herein, federal censorship efforts escalated after President Biden assumed office in January 2021.

368. The individually named White House Defendants and other Defendants were directly involved in communications with social-media platforms about censorship and suppression of speech on social-media.

369. For example, Humphrey requested that a Meta employee censor an Instagram parody account of Dr. Fauci, and Meta replied, "Yep, on it!" Soon thereafter, Meta reported that the account had been censored.

370. As another example, on May 28, 2021, a senior executive of Meta sent an email to Slavitt and Murthy reporting that Facebook had expanded its censorship policies, evidently to satisfy federal officials' demands made at a recent oral meeting. The email stated that a "key point" was that "We're expanding penalties for individual Facebook accounts that share misinformation."

371. As recently as June 13, 2022, Flaherty demanded that Meta continue to produce periodic "COVID-19 insights reports" to track so-called "misinformation" regarding COVID-19 on Meta's social-media platforms, expressing the specific concern that COVID vaccines for children under 5 would soon be authorized.

372. Meta got the message. It agreed to continue sending its censorship-tracking reports, and on June 23, 2022, Meta assured Flaherty that it was expanding its censorship of COVID-19 "misinformation" to ensure that speech critical or skeptical of COVID-19 vaccines for children under 5 years old—a highly controversial topic—would be censored. Notably, Pfizer's own data established that the vaccine does not stop infection or transmission in this age group, demonstrating the political nature of this censorship. *See* https://www.nytimes.com/2022/02/28/health/pfizer-vaccine-kids.html.

373. The White House Defendants were involved in many other communications regarding censorship as well. For example, in June and July of 2022, Flaherty, Manning, Salcido, and Cheema were included in the email chain with Meta in which Flaherty demanded that Meta continue providing biweekly "COVID-19 Insights" reports to ensure adequate censorship of speech on Facebook and Instagram "as we start to ramp up

under 5 vaccines"—*i.e.*, as vaccination of children under 5 for COVID-19 began. Wakana and Rowe were also involved in similar communications overseeing Meta's misinformation practices.

374. Again, for example, Flaherty, Wakana, Humphrey, and Rowe participated in a "Twitter // COVID Misinfo" meeting with Twitter on or around March 1, 2021. And on April 21, 2021, Flaherty and Slavitt, along with White House Confidential Assistant Kelsey V. Fitzpatrick, participated in a meeting with Twitter at which those White House officials demanded greater censorship on Twitter and specifically demanded the deplatforming of Alex Berenson. The meeting invite for that meeting stated that "White House Staff will be briefed by Twitter on vaccine misinfo. Twitter to cover trends seen generally around vaccine misinformation, the tangible effects seen from recent policy changes, . . . and ways the White House (and our COVID experts) can partner in product work."

375. A senior Meta executive repeatedly copied Slavitt on his emails to Surgeon General Murthy in which he assured the Surgeon General and the White House that Meta was engaging in censorship of COVID-19 misinformation according to the White House's demands. Among other things, the Meta executive insisted that "We've expanded penalties for individual Facebook accounts that share misinformation."

376. Likewise, on March 2, 2021, Meta sent an email assuring Slavitt, Flaherty, and Humphrey that the company is "[c]ombating vaccine misinformation and de-amplifying content that could contribute to vaccine hesitancy" by "improving the effectiveness of our existing enforcement systems (particularly focusing on

entities that repeatedly post vaccine misinformation), mitigating viral content that could lead to vaccine hesitancy. . . . ”

377. Among many other reports, Meta reported to Rowe, Manning, Flaherty, and Slavitt that it has “labeled and demoted” “vaccine humor posts whose content could discourage vaccination” during January 2022. It also reported to the White House that it “labeled and demoted” posts “suggesting natural immunity to COVID-19 infection is superior to immunity by the COVID-19 vaccine.”

378. Likewise, on November 4, 2021, Meta reported to Rowe, Flaherty, and other White House officials that “we updated our misinformation policies for COVID-19 vaccines to make clear that they apply to claims about children. . . . ”

379. On September 18, 2021, regarding a story in the Wall Street Journal about COVID-19 “misinformation” circulating on Facebook, Flaherty demanded that Meta provide an explanation “as we have long asked for, [of] how big the problem is, what solutions you’re implementing, and how effective they’ve been.” Needless to say, the “solutions” evidently referred to policies to censor and suppress more private speech on Meta’s platforms, and Meta promised to “brief” the White House on those.

380. In response to a third-party subpoena, Meta has identified Special Assistant to the President Laura Rosenberger, White House Partnerships Manager Aisha Shah, White House Counsel Dana Remus, and White House officials Slavitt, Flaherty, and Humphrey; HHS officials Waldo, Byrd, Choi, Lambert, Peck, and Muhammed; EAC officials Muthig and Robbins; CDC off-

icials Crawford and Dempsey; DHS officials Masterson, Protentis, Hale, and Snell; and FDA officials Thorpe, Jefferson, Murray, and Kimberly, among others, as federal officials who may have "communicated with Meta regarding content moderation between January 1, 2020 and July 19, 2022 as it relates to: (i) COVID-19 misinformation; (ii) the Department of Homeland Security's proposed Disinformation Governance Board; (iii) the New York Post story from October 14, 2020 about Hunter Biden's laptop computer; and/or (iv) election security, integrity, outcomes, and/or public confidence in election outcomes (not to include issues of foreign interference or related issues)."

381. In response to a third-party subpoena, YouTube has identified Schwartz, Faught, Molina-Irizarry, Galemore, Wakana, Flaherty, and Waldo, among others, as federal officials likely to have "communicated with the YouTube custodians about misinformation about COVID, the census, or elections."

382. In response to a third-party subpoena, Twitter has identified Crawford, Flaherty, Frisbie, Kimmage, Lambert, Murthy, Shopkorn, Slavitt, and Waldo as federal officials "with whom [Twitter] has had meetings or discussions between January 20, 2021 and August 4, 2022 about election integrity, vaccine/Covid misinformation, violent extremism, and similar content moderation issues."

383. On August 26, 2022, Mark Zuckerberg appeared on Joe Rogan's podcast and revealed that Facebook's censorship of the Hunter Biden laptop story had occurred as a result of communications from the FBI. Zuckerberg stated: "The FBI basically came to us" and told Facebook to be "on high alert" relating to "a

lot of Russian propaganda," that the FBI was "on notice" that "there's about to be some kind of dump . . . that's similar to that, so just be vigilant." Zuckerberg stated: "If the FBI . . . if they come to us and tell us we need to be on guard about something, then I want to take that seriously." On information and belief, the FBI's reference to a "dump" of information was a specific reference to the contents of Hunter Biden's laptop, which was already in the FBI's possession.

384. Joe Rogan asked Zuckerberg if the FBI has flagged the Hunter Biden laptop story as Russian disinformation specifically, and Zuckerberg stated: "I don't remember if it was that specifically, but [the story] basically fit the pattern" that the FBI had identified. *See* https://www.wptv.com/news/national/fbi-responds-to-mark-zuckerberg-claims-on-joe-rogan-show-about-hunter-bidens-laptop (video commencing around 7:30). This revelation that the FBI had induced Facebook's censorship of the Hunter Biden laptop story was widely recognized as a bombshell revelation of federal law-enforcement influence on social-media censorship.

385. Pursuant to the third-party subpoena, Meta has identified the FBI's FITF, as supervised by Laura Dehmlow, and Elvis Chan as involved in the communications between the FBI and Meta that led to Facebook's suppression of the Hunter Biden laptop story.

386. Dehmlow evidently works with CISA on social-media censorship issues. On March 1, 2022, Dehmlow gave a presentation to CISA's Protecting Critical Infrastructure from Misinformation & Disinformation Subcommittee in which Dehmlow indicated that the FBI's FITF "engages . . . with appropriate partners for information exchange." On information and belief, this

"information exchange" includes communications with social-media platforms about censorship and/or suppression of social-media speech.

387. On information and belief, because major social-media platforms are headquartered in the geographical area of FBI's San Francisco Division, and Elvis Chan is in charge of cyber-related issues for that division, Chan has performed a critical role in communicating with social-media platforms on behalf of the FBI relating to censorship and suppression of speech on social media.

388. Chan has openly boasted about his official role on behalf of FBI in coordinating with social-media companies. In a recent podcast, he stated, "Our field office, FBI San Francisco, was very involved in helping to protect the US elections in 2020. . . . [T]he FBI, the US government working in conjunction with *the private sector*, as well as with election officials from every single state and protectorate, we were really able to do it. . . . But completely different from 2016 where we did not. Even though foreign actors were trying to interfere in our elections, the FBI, the US government working in conjunction with the private sector, as well as with election officials from every single state and protectorate, we were really able to do it." *See* https://www.banyansecurity.io/resource/get-it-started-get-it-done/ (emphasis added).

389. Chan's subsequent comments make clear that "government working in conjunction with the private sector" includes the FBI working with social-media companies on censorship and suppression of private speech. Chan indicated that he works closely with Defendant Jen Easterly, stating, "So Jen Easterly, she's the current director for CISA, she's the one who coined

that term shields up. She's a Star Trek fan. She's a Trekkie, I am myself." *Id.* Easterly, as alleged herein, quarterbacks CISA's extensive federal government-induced social-media censorship activities.

390. Chan admits to regular, routine coordination about censorship with social-media platforms, stating of the 2020 election cycle in particular: "we talked with all of these entities I mentioned regularly, at least on a monthly basis. And right before the election, probably on a weekly basis. If they were seeing anything unusual, if we were seeing anything unusual, sharing intelligence with technology companies, *with social media companies*, so that they could protect their own platforms. That's where the FBI and the US government can actually help companies." *Id.* On information and belief, "social media companies" "protect[ing] their own platforms" includes censorship and suppression of speech at the FBI's behest.

391. Chan bemoaned the fact that there was not a similar level of coordination about censorship between the federal government and social-media companies during the 2016 election cycle: "It seems obvious, but I'm not going to lie, in 2016, there was not that same level of communications between the US government and the private sector." *Id.* Chan called on social-media platforms to be "more mindful" of federal government warnings on such issues: "But where we in the government are saying, if you are in one of the 17 designated critical infrastructure sectors, of which information technology is one of them, then you need to be more mindful." *Id.*

392. In a public interview dated October 28, 2020, Chan explicitly encouraged citizens to report "misin-

formation" or "disinformation" to social-media companies and to the federal government so that such speech could be censored and/or suppressed, stating: "If you are seeing something related to election on your social-media platform, all of them have portals where you can report that sort of information, and *they are being very aggressive in trying to take down any misinformation or disinformation* . . . [i]f you see anything on election day or before election day, you can always report it to FBI.gov or Justice.gov . . . *we take all of these very seriously." See* https://www.govinfosecurity.com/fbi-on-election-theres-going-to-be-lot-noise-a-15257 (quotes at 7:45-8:48 of video) (emphasis added). Based on these comments, this includes the FBI "tak[ing] . . . very seriously" reports of "misinformation" and "disinformation" and inducing social-media companies to censor them.

393. Documents produced by LinkedIn show Chan repeatedly organizing meetings with representatives of LinkedIn from 2020 through 2022 (the present). Based on the limited agendas provided, it appears that these meetings included discussions of election-related content and suppression of election-related speech on social media. On information and belief, Chan organized similar meetings with other major social-media platforms, as in one instance, he notified LinkedIn about a particular proposed time slot for a meeting that another company had already taken that time slot. Dehmlow was routinely included in these meetings as well.

394. On information and belief, active coordination between Meta and the FBI on censorship and suppression of speech on social media continues to this day. For example, Facebook "now appears to be monitoring *private* messages and suppressing material related to the

whistleblower complaint of . . . FBI special agent Steve Friend." Miranda Devine, *Facebook 'silencing' activity related to FBI whistleblower Steve Friend*, N.Y. POST (Sept. 25, 2022), at https://nypost.com/2022/09/25/facebook-silencing-activity-related-to-fbi-whistleblower-steve-friend/.

395. After an FBI whistleblower made public allegations critical of political bias at the FBI, the whistleblower's "wife's Facebook account was suspended after she responded to an offer of support from a local chapter" of a supportive "conservative group that advocates for parental rights." *Id.* The wife responded to the group with a private message from her Facebook account, stating that "her husband was in the process of obtaining permission from the FBI to speak publicly and asked them to encourage their members to share his whistleblower story on their personal social media accounts." *Id.* "About 30 minutes later, Mrs. Friend received a notification from Facebook that her account had been suspended because the 'account, or activity on it, doesn't follow our Community Standards.'" *Id.* At the receiving end, "Mrs. Friend's Facebook message disappeared. In its place was a notification saying, 'Message unavailable.'" *Id.* Thus, it now appears that Meta/Facebook is policing *private* messages sent on Facebook to censor and suppress any communications that might be critical of the FBI.

396. Recent, heavily documented reports indicate that both the State Department and CISA have teamed up with a consortium of four private groups in a close collaboration to achieve social-media censorship of election-related speech beginning in 2020, and that this collaboration is continuing to this day.

397. Pursuant to third-party subpoena, Twitter has identified personnel associated with the State Department's Global Engagement Center, including Alexis Frisbie and Daniel Kimmage, as likely involved in communications with Twitter about censorship and/or content modulation on issues such as election integrity, vaccine/COVID misinformation, and related subjects.

398. The State Department reports that "[i]n December 2019, GEC/TET [*i.e.*, State's Global Engagement Center's Technology Engagement Team] established a Silicon Valley location to facilitate public-private coordination and broker constructive engagements between the U.S. government and the tech sector, academia, and research. The goal is to increase collaboration that results in identifying, exposing, and defending against foreign adversarial propaganda and disinformation." On information and belief, "collaboration that results in . . . defending against . . . disinformation," *id.*, includes censorship of social-media speech.

399. The Global Engagement Center publishes "Counter Disinformation Dispatches," of which the State Department states: "The Global Engagement Center's Counter Disinformation Dispatches summarize lessons learned about disinformation and how to counter it based on the experiences of frontline counter-disinformation practitioners, for the benefit of those newly engaged in this issue."

400. The Global Engagement Center provides, as an online "counter-disinfo resource," as link to CISA's website, stating: "An agency of the Department of Homeland Security, the Cybersecurity and Infrastructure Security Agency 'is responsible for protecting the

[United States'] critical infrastructure from physical and cyber threats,' including election security."

401. The State Department has inserted itself in efforts to combat so-called Covid-19 "disinformation." State provides an online briefing dated January 21, 2022, entitled "COVID-19 Fact Checking: What Journalists Need to Know," which "provides information about fact-checking resources available to journalists to counter COVID-19 and vaccine misinformation, and an overview of counter-misinformation efforts around the world."

402. According to public reports, "[a]consortium of four private groups worked with the departments of Homeland Security (DHS) and State to censor massive numbers of social media posts they considered misinformation during the 2020 election, and its members then got rewarded with millions of federal dollars from the Biden administration afterwards, according to interviews and documents obtained by [reporters]." *Outsourced censorship: Feds used private entity to target millions of social posts in 2020*, JUST THE NEWS (Sept. 30, 2022), *at* https://justthenews.com/government/federal-agencies/biden-administration-rewarded-private-entities-got-2020-election.

403. On information and belief, the purpose and effect of this consortium of private non-profit groups is to allow federal officials at CISA and State to evade First Amendment and other legal restrictions while still operating unlawfully to censor the private election-related speech on Americans on social-media. Its censorship operations continue to this day. *See id.*

404. This consortium of private entities, closely collaborating with CISA and the State Department, calls

itself "The Election Integrity Partnership." This collaborative federal-private censorship project "is back in action again for the 2022 midterm elections, raising concerns among civil libertarians that a chilling new form of public-private partnership to evade the First Amendment's prohibition of government censorship may be expanding." *Id.*

405. "The consortium is comprised of four member organizations: Stanford Internet Observatory (SIO), the University of Washington's Center for an Informed Public, the Atlantic Council's Digital Forensic Research Lab, and social media analytics firm Graphika." *Id.* The consortium "set up a concierge-like service in 2020 that allowed federal agencies like Homeland's Cybersecurity Infrastructure Security Agency (CISA) and State's Global Engagement Center to file 'tickets' requesting that online story links and social media posts be censored or flagged by Big Tech." *Id.*

406. "Three liberal groups—the Democratic National Committee, Common Cause and the NAACP—were also empowered like the federal agencies to file tickets seeking censorship of content. A Homeland [*i.e.* DHS]-funded collaboration, the Elections Infrastructure Information Sharing and Analysis Center, also had access." *Id.*

407. "In its own after-action report on the 2020 election, the consortium boasted it flagged more than 4,800 URLs—shared nearly 22 million times on Twitter alone—for social media platforms. Their staff worked 12-20 hour shifts from September through mid-November 2020, with 'monitoring intensifying significantly' the week before and after Election Day." *Id.* (alterations omitted).

408. Backed by the authority of the federal government, including DHS, CISA, the State Department, and State's Global Engagement Center, the consortium successfully sought and procured extensive censorship of core political speech by private citizens: "The tickets sought removal, throttling and labeling of content that raised questions about mail-in ballot integrity . . . and other election integrity issues of concern to conservatives." *Id.*

409. "The consortium achieved a success rate in 2020 that would be enviable for baseball batters: Platforms took action on 35% of flagged URLs, with 21% labeled, 13% removed and 1% soft-blocked, meaning users had to reject a warning to see them." *Id.*

410. The consortium's "[p]articipants were acutely aware that federal agencies' role in the effort" raised First Amendment concerns. "For instance, SIO's Renee DiResta said in a CISA Cybersecurity Summit video in 2021 that the operation faced 'unclear legal authorities' and 'very real First Amendment questions.'" *Id.*

411. One free-speech advocate described the consortium as "the largest federally-sanctioned censorship operation he had ever seen, a precursor to the now-scrapped Disinformation Governance Board and one that is likely to grow in future elections." *Id.* "'If you trace the chronology, you find that there was actually 18 months' worth of institutional work to create this very apparatus that we now know played a significant role in the censorship of millions of posts for the 2020 election and has ambitious sights for 2022 and 2024,' he said." *Id.*

412. A member of Congress "called the revelations 'stunning' and said the 2020 operation amounted to the

federal government sanctioning and outsourcing censorship." *Id.*

413. "It wasn't just blogs and individual social media users whose content was targeted for removal and throttling as 'repeat spreaders' of misinformation. News and opinion organizations, including the New York Post, Fox News, Just the News and SeanHannity.com were also targeted." *Id.*

414. "The partnership's members published the 292-page public report in March 2021, though the most recent version is dated June 15, 2021. The launch webinar featured former CISA Director Christopher Krebs, 'who led the effort to secure electoral infrastructure and the response to mis- and disinformation during the election period.'" *Id.*

415. "'I think we were pretty effective in getting platforms to act on things they haven't acted on before,' both by *pressuring them to adopt specific censorship policies* and then *reporting violations*, SIO founder and former Facebook Chief Security Officer Alex Stamos told the launch webinar." *Id.* (emphasis added). "'Platform interventions' [*i.e.*, censorship of specific posts or content] in response to 'delegitimization of election results,' for example, went from uniformly 'non-comprehensive' in August 2020 to 'comprehensive' by Election Day, the report says." *Id.*

416. "SIO officially launched the partnership 100 days before the election, 'in consultation with CISA and other stakeholders,' the partnership report says. It attributes the idea to SIO-funded interns at CISA, noting that censorship by that agency and domestic social media monitoring by intelligence agencies would likely be illegal." *Id.* (citing Center for an Informed Public,

Digital Forensic Research Lab, Graphika, & Stanford Internet Observatory (2021), *The Long Fuse: Misinformation and the 2020 Election*. Stanford Digital Repository: Election Integrity Partnership. v1.3.0, *at* https://purl.stanford.edu/tr171zs0069 ("EIP Report")).

417. The EIP Report's executive summary states: "Increasingly pervasive mis- and disinformation, both foreign and domestic, creates an urgent need for collaboration across government, civil society, media, and social media platforms." *Id.*

418. The consortium was openly biased based on political viewpoint, calling President Trump "the social media Death Star." "During the launch webinar, the Atlantic Council's Emerson Brooking said they wanted to stop the 'amplification and legitimation' of 'far-right influencers [who] would be doing all they could to try to catch the eye of a Fox News producer,' making it likely that President Trump, 'the social media Death Star,' would see their content." *Id.*

419. The consortium's work included the direct involvement of government officials in censorship decisions. "Government entities were involved in real-time chats with the partnership and social media platforms over specific content under review." *Id.* For example, "[a] chat screenshot in the report shows an unidentified government partner rejecting the Sharpiegate claim that 'sharpies aren't read at all' by ballot-counting machines, and a platform provider responding that it was now reviewing those claims." *Id.*

420. Notably, consistent with its carrot-stick approach to private entities on social-media censorship, the incoming Biden Administration—including the State Department—richly rewarded the private-sector part-

ners in this consortium of censorship, lavishing federal largesse upon them. "The [consortium's] partners all received federal grants from the Biden administration in the next two years." *Id.* "The National Science Foundation awarded the Stanford and UW projects $3 million in August 2021 'to study ways to apply collaborative, rapid-response research to mitigate online disinformation.'" *Id.* "UW's press release about the award noted their earlier work on the partnership and praise for the report from ex-CISA director Krebs, who called it 'the seminal report on what happened in 2020, not just the election but also through January 6.'" *Id.* "Graphika, also known as Octant Data, received its first listed federal grant several weeks after the 2020 election: nearly $3 million from the Department of Defense for unspecified 'research on cross-platform detection to counter malign influence.' Nearly $2 million more followed in fall 2021 for 'research on co-citation network mapping,' which tracks sources that are cited together." *Id.* "The Atlantic Council . . . has received $4.7 million in grants since 2021, all but one from the State Department. That far exceeds the think tank's federal haul in previous years, which hadn't approached $1 million in a single year since 2011." *Id.*

421. "UW's project, SIO and Graphika also collaborated on the Virality Project, which tracks and analyzes purported 'COVID-19 vaccine misinformation and social media narratives related to vaccine hesitancy.'" *Id.*

422. The collaboration with CISA on the Election Integrity Project is not the State Department's only involvement in federal social-media censorship activities. Documents produced so far in discovery from Defendants provide glimpses into the State Department's involvement on many fronts.

423. For example, on February 4, 2020, Samaruddin K. Stewart, then a "Senior Advisor for the Global Engagement Center of the State Department" reached out to LinkedIn and stated that he was "tasked with building relationships with technology companies . . . in [Silicon Valley] with interests in countering disinformation," and asked for a meeting. As the email indicates, Stewart intended to reach out to other social-media platforms as well.

424. On March 9, 2020, Stewart reached out to LinkedIn again, referring back to their earlier oral meeting, and stated, "I'll send information [to LinkedIn representatives] about gaining access to Disinfo Cloud—which is a GEC [*i.e.* State Department's Global Engagement Center] funded platform that offers stakeholders an opportunity to discovery companies, technology, and tools that can assist with identifying, understanding, and addressing disinformation." On information and belief, "addressing disinformation" includes the censorship and suppression of private speech.

425. On July 19, 2021, Stewart organized another meeting with LinkedIn and several State Department colleagues on the topic "countering disinformation." On information and belief, Stewart engaged in similar meetings and coordination efforts with other social-media platforms as well.

426. The State Department's Global Engagement Center has worked directly with CISA and FBI to procure the censorship of specific content on social media. For example, on March 25, 2020, Alex Dempsey of the State Department forwarded to an FBI agent a report about a video on social media making ostensibly false allegations about a State Department officer. Brian

Scully of CISA forwarded the report to Facebook personnel, stating "see the below reporting from our State Department Global Engagement Center colleagues about disinformation . . . targeting a Diplomatic Security Officer." Facebook responded, "Have flagged for our internal teams. As always, we really appreciate the outreach and sharing of this information." Scully also forwarded the State Department's report to Twitter and Google/YouTube. In flagging the content for Google, Scully commented, "It does appear the FBI has been notified, so you may have already heard from them."

427. The State Department's Global Engagement Center, including Stewart and other State employees, were also involved in organizing a "misinformation and disinformation" workshop for African governments in May 2021. Lauren Protentis of CISA and Joe Parentis, Deputy Coordinator for the State Department's Global Engagement Center, were speakers at the event. The event was moderated by Elizabeth Vish of the State Department's Office of Cyber Coordinator. The agenda for the event included a presentation by Facebook on "How does Facebook work with governments to address misinformation and disinformation?" This included "Fact checking techniques, how to identify disinformation and misinformation," and "Proven techniques to take down these articles. The effectiveness of fake news checkers," "Steps for stopping already-circulating misinformation," and "International take-down requests." On information and belief, these statements reflected the collective experience of CISA and the State Department in working to achieve social-media censorship of domestic speech in America.

428. CISA officials—including Defendants Easterly, Masterson, Protentis, Hale, Scully, and Snell, among ot-

hers, have aggressively embraced the role of mediators of federally-induced censorship.

429. As noted above, CISA states that its mission includes "directly engaging with social media companies to flag MDM," and that it is "working with federal partners to mature a whole-of-government approach to mitigating risks of MDM," which includes "framing which . . . interventions are appropriate to the threats impacting the information environment." CISA repeatedly and frequently flags posts for censorship on social-media platforms, and continues to do so on an ongoing basis.

430. CISA officials have flagged for censorship even obvious parody accounts, such as accounts parodying the Colorado government that stated in their mock Twitter handles "dm us your weed store location (hoes be mad, but this is a parody account)," and "Smoke weed erry day." To such reports, Twitter responded, "We will escalate. Thank you," and "We have actioned these account under our civic integrity policy."

431. CISA also works closely with the Center for Internet Security ("CIS"), an outside third-party group, to flag content for censorship on social media, including election-related speech. *See* Doc. 71-8. On information and belief, CIS is or was funded by CISA and works as a joint participant with CISA on federal social-media censorship activities. As early as June 2020, the Center for Internet Security, working with CISA, was planning a "Reporting Portal" for government officials seeking to suppress election misinformation that would allow "social media companies" to "process reports and provide timely responses, to include the removal of reported misinformation from the platform where possible."

Doc. 71-8, at 90. CIS and CISA work closely to remove so-called "misinformation" by flagging content for removal by social-media companies.

432. Documents reveal that CISA's authority as a national-security agency within DHS led to prompt responses and swift censorship actions in response to CISA's actions of "flagging" posts for censorship. *See* Doc. 71-8. This included many posts on election integrity issues where CISA acted as *de facto* judge of the truthfulness and value of social-media speech.

433. CISA has also flagged named Plaintiffs' speech for censorship. For example, in a "disinformation" conference regarding the 2020 election hosted by CISA, one presenter identified the Gateway Pundit, the website hosted by Plaintiff Jim Hoft, as a "repeat spreader" of "false or misleading content about the 2020 election." The presenter stated that the Gateway Pundit is the second most frequent spreader of election-related disinformation, just above President Trump and his two sons, Donald Jr. and Eric Trump, who were also described as "prolific spreaders of disinformation." Other supposed "repeat spreaders" of disinformation identified at the CISA-hosted conference included Sean Hannity, Breitbart, James O'Keefe, and Mark Levin. Gateway Pundit was called "one of the most prolific spreaders of misinformation across the entire [2020] election." The presenter emphasized that every account identified as a spreader of disinformation was "ideologically pro-Trump" in its political orientation. *See* Mike Benz, Foundation for Freedom Online, *DHS Encouraged Children to Report Family to Facebook for Challenging US Government Covid Claims*, at foundationforfreedom online.com. "In the same training session for state and local election officials, DHS's formal partner group

then encouraged the mass reporting of US social media posts for censorship. . . . " *Id.*

434. CISA's "Protecting Critical Infrastructure from Misinformation & Disinformation Subcommittee Meeting" on March 29, 2022, included the following discussion flagging online speech by Jim Hoft's Gateway Pundit as misinformation warranting censorship: "Misinformation: A news release by Gateway Pundit provided factually inaccurate reporting announcing that Maricopa County elections officials held an unannounced meeting at the election and tabulation center," while election officials contended that "[t]his meeting was, in fact, a publicly announced tour with members of the public and legislators from both parties."

435. On February 17, 2022, Lauren Protentis of CISA emailed contacts at Microsoft and stated: "The Department of Treasury has asked our team for appropriate POCs [*i.e.*, points of contact] to discuss social media and influence matters. We'd like to make a connection to Microsoft if you're amenable? This is somewhat time-sensitive, so thanks in advance to your attention to this matter." The email was forwarded to recent CISA alumnus, now Microsoft employee, Matthew Masterson, who exchanged the text messages with Jen Easterly quoted above. Masterson responded, "Send em to me. I will make sure [the other Microsoft contact] is looped in." Separately, Masterson's colleague at Microsoft responded that "Matt [Masterson] and I can be the primary POCs for the introduction." Protentis responded, "We're going to pass your info to Treasury. They will reach-out directly and provide more information about the nature of this request."

436. On February 17, 2022, Protentis sent a similar email to Yoel Roth of Twitter (Nina Jankowicz's contact who was scheduled to attend the April 2022 meeting with Robert Silvers and senior DHS officials), asking for a Twitter point of contact for Treasury to "discuss social media and influence matters." After Roth responded, Protentis stated that "Treasury . . . will reach-out directly to begin the dialogue and provide more information about the nature of this request."

437. On February 17, 2022, Protentis reached out to a contact at Google, asking that "[t]he Department of Treasury has asked our team for appropriate POCs to discuss social media and influence matters. We'd like to make the connection to Google if you're amenable?" Protentis followed up just over an hour later, stating, "Apologies for the second email, this is somewhat time-sensitive, so thank you for your prompt attention to this request!" When the Google contact responded, Protentis replied, "We're going to pass your info to Treasury. They will reach-out directly and provide more information about the nature of this request."

438. On February 17, 2022, Protentis reached out to contacts at Meta/Facebook and stated, "The Deputy Secretary at Treasury [*i.e.*, Defendant Wally Adeyemo] would like to be connected to industry partners to discuss potential influence operations on social media. We'd like to make the connection to Meta if you're amenable?" On information and belief, the nearly identically-phrased inquiries to Twitter and Microsoft that Protentis sent on the same day were also sent at Adeyemo's request.

439. On information and belief, these messages reflect the participation of Treasury and Adeyemo in federal censorship activities.

440. In response to a third-party subpoena, counsel for Meta identified the EAC's Executive Director Mark Robbins and the EAC's Communications Director Kristen Muthig as officials who may "have communicated with Meta regarding content moderation between January 1, 2020 and July 19, 2022 as it relates to: (i) COVID-19 misinformation; (ii) the Department of Homeland Security's proposed Disinformation Governance Board; (iii) the New York Post story from October 14, 2020 about Hunter Biden's laptop computer; and/or (iv) election security, integrity, outcomes, and/or public confidence in election outcomes (not to include issues of foreign interference or related issues)."

441. The EIP Report, discussed above, identifies the Election Assistance Commission as a federal agency working on social-media content issues alongside CISA, identified as "the lead on domestic vulnerabilities and coordination with state and local election officials." The same paragraph states: "The Election Assistance Commission should remain in an amplifying role, pushing best practices and critical information out broadly to the election community." EIP Report, at 235. On information and belief, the EAC's "critical information" that is "push[ed] . . . out broadly" includes federally induced censorship and/or suppression of social-media speech on the basis of content and viewpoint.

442. In response to a third-party subpoena, Meta has identified Public Affairs Specialist Valerie Thorpe of the FDA; Michael Murray, who is the Acquisition

Strategy for the Office of Health Communications and Education at the FDA; Brad Kimberly, who is the Director, Social Media at the FDA; and Erica Jefferson, Associate Commissioner for External Affairs at the FDA, as officials who may "have communicated with Meta regarding content moderation between January 1, 2020 and July 19, 2022 as it relates to: (i) COVID-19 misinformation; (ii) the Department of Homeland Security's proposed Disinformation Governance Board; (iii) the New York Post story from October 14, 2020 about Hunter Biden's laptop computer; and/or (iv) election security, integrity, outcomes, and/or public confidence in election outcomes (not to include issues of foreign interference or related issues)."

443. On information and belief, the FDA has participated in federally-induced censorship of private speech on social media about questions of vaccine safety and efficacy, among other subjects.

444. Pursuant to third-party subpoena, YouTube has identified Census officials Schwartz, Molina-Irizarry, Galemore—as well as Deloitte employees/Census contractors Michael Jaret Saewitz and Caroline Faught—as involved in communications with YouTube about misinformation and content modulation of speech on YouTube.

445. Census Bureau officials have openly stated that they are working with social-media companies to suppress so-called misinformation and disinformation. For example, in 2020, Census boasted that Census "has established the government's first ever Trust & Safety Team" in order to "prevent the spread of fake, false and inaccurate information that can negatively influence 2020 Census participation and response." *Census*

*Partners with Social-Media Platforms, Community Organizations, the Public to Stop Spread of False Information*, at https://www.census.gov/library/stories/2020/02/putting-2020-census-rumors-to-rest.html (Feb. 10, 2020). "Trust & Safety Team" is what social-media platforms like Twitter call their censorship teams.

446. Evidently, "preventing the spread of fake, false and inaccurate information" includes federally-induced censorship of free speech on social media. Census states that it is "[w]orking with social media platforms such as Facebook, Microsoft, Nextdoor, Google, and Pinterest to update their policies and terms of service to include census-specific activities," and "[c]oordinating with YouTube and Twitter to create processes enabling us to quickly identify and respond to misinformation and disinformation." *Id.* On information and belief, these activities include government-induced censorship of social-media speech. Census states: "These partnerships will help the Census Bureau counter false information that can lead to an undercount by quickly identifying phony information and respond with factual content."

447. In addition, Census invites private citizens to report suspected false information to the Census Bureau so that Census can arrange for it to be censored. Census directs the public to: "Report inaccurate, suspicious or fraudulent information to the Census Bureau. If you see or hear something, tell us: Report suspicious information and tips to rumors@census.gov. Reach out to us on our verified social media accounts (@USCensusBureau) to ask questions and flag suspicious information. Call the Census Bureau Customer Service Hotline at 1-800-923-8282 to report suspicious activity." *Id.*

448. As noted above, it is evident that Census responds to such reports by seeking to censor speech and content that it disfavors. Among other things, YouTube has disclosed that Census officials have been granted "trusted flagger" status to flag content for censorship on social media and receive privileged, expedited treatment for such reports.

449. Defendant Schwartz was the "operations manager for the Trust & Safety Team and deputy division chief for the Center for New Media and Promotion at the Census Bureau," who authored this report instructing the public to flag disinformation directly to Census.

450. "Trust & Safety Team" is a euphemism for the authorities within social-media platforms who are in charge of censoring and suppressing disfavored speech, speakers, and content. Census's creation of a like-named "Trust & Safety Team" was the creation of a federal censorship agency within Census.

451. On its website, Census boasts that "the U.S. Census Bureau's Trust & Safety Team protected the 2020 Census from misinformation and disinformation." Census Bureau, Trust & Safety Team, *at* https://www.census.gov/about/trust-and-safety.html. This page notes that the "Trust & Safety Team's" censorship work continues today across expanded fronts: "We continue to watch for misinformation being shared online, and we work to share facts instead to help support communications around the Census Bureau's commitment to data quality and transparency around these efforts. The team's role has expanded to also support the American Community Survey (ACS), the Economic Census, and other Census Bureau programs and data products." *Id.* The same page continues to instruct the public to re-

port so-called "misinformation" to Census for censorship: "Help the Census Bureau's Trust & Safety team by reporting inaccurate, suspicious, or fraudulent information you read, hear, or spot online, including: A rumor in a message board or group claiming the information you provided to the Census Bureau will be publicly disclosed. . . . An advertisement on social media sharing fake 2020 Census websites and inaccurate information. No matter what you find, let the Census Bureau know by contacting rumors@census.gov." *Id.*

452. The Trust & Safety Team openly states that it coordinates with social-media platforms to censor speech: "Trust & Safety Team coordinates and integrates our efforts with external technology and social media platforms, partner and stakeholder organizations, and cybersecurity officials. . . . Leveraging best practices from the public and private sectors, the Trust & Safety Team monitors all available channels and open platforms for misinformation and disinformation about the census. Monitoring allows us to respond quickly to combat potential threats to achieving an accurate count in traditional media, social media and other stakeholder communications. As we discover misinformation and disinformation, the team *will coordinate the responses with partners and stakeholders.*" https://www.census.gov/newsroom/blogs/random-samplings/2019/12/why_the_census_burea.html. "Coordinating the responses with partners and stakeholders," evidently, means working with social-media platforms to censor speech.

453. In other Census publications, Schwartz and other Census officials claim that they are "harnessing the capabilities of social media platforms such as Facebook, Twitter, YouTube and Instagram . . . enables the Census Bureau to identify and respond to misinform-

mation swiftly before it spreads." https://www.census.gov/library/stories/2019/07/hey-siri-why-is-2020-census-important.html. "The U.S. Census Bureau is partnering with tech giants to . . . respond to disinformation before it spreads." https://www.census.gov/library/spotlights/2020/tech.html.

454. Census also states that it has "partner[ed] with search engines" such as Google to de-boost disfavored content and promote Census-favored content above government-disfavored private content. https://www.census.gov/library/spotlights/2020/nextdoor.html.

455. Public reports indicate that Census teamed up with "Data & Society's Disinformation Action Lab" at the "Center for an Informed Public" at the University of Washington in a "behind-the-scenes networked response to mis- and disinformation about the 2020 U.S. Census, an effort that provides a model for future multi-stakeholder collaborations to mitigate the impacts of communication harms." https://www.cip.uw.edu/2022/05/31/disinformation-action-lab-data-society-census-misinformation/.

456. Center for an Informed Public's director is Kate Starbird, who also serves on CISA's advisory committee that advises CISA's social-media censorship activities. According to CIP, "Beyond the Census Counts Campaign, DAL supported other national civil rights groups, local civil society groups, state and city government officials, and worked with *social media companies*, journalists, and *the Census Bureau itself*—all to protect a complete and fair count from mis- and disinformation." *Id.* (emphasis added).

457. As alleged further herein, Census officials also participate in censorship activities relating to so-called COVID-19 misinformation.

458. On information and belief, as further alleged herein, all Defendants have been and are engaged in federally-induced censorship of private speech on social media, in a manner that directly interferes with and injures the free-speech rights of Plaintiffs and their citizens.

**E. Defendants' Conduct Has Inflicted and Continues to Inflict Grave Injuries on Plaintiffs, Missourians, Louisianans, and all Americans.**

459. Defendants' conduct, as alleged herein, has inflicted and continues to inflict grave, ongoing injuries on Plaintiffs, Missourians and Louisianans, and all Americans. Many of these injuries are detailed in the previously filed Declarations submitted in support of the States' Motion for Preliminary Injunction, ECF Nos. 10-2 to 10-15, which are attached to the First Amended Complaint as Exhibits B to O, and incorporated by reference herein.

**1. Ongoing injuries inflicted on Plaintiff States.**

460. First, the Defendants' conduct has inflicted and continues to inflict at least eight forms of imminent, continuing, irreparable injury on the Plaintiff States, Missouri and Louisiana.

461. *First*, both Missouri and Louisiana have adopted fundamental policies favoring the freedom of speech, including on social media. Missouri's Constitution provides: "[N]o law shall be passed impairing the freedom of speech, no matter by what means communicated. . . . [E]very person shall be free to say, write

or publish, or otherwise communicate whatever he will on any subject. . . . " MO CONST. art. I, § 8. Louisiana's Constitution provides: "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom." LA. CONST. art. I, § 7. The federal censorship program directly undermines Missouri's and Louisiana's fundamental policies favoring the freedom of speech, and thus it inflicts a clear and direct injury on the States' sovereignty. *See Texas v. United States*, 809 F.3d 134, 153 (5th Cir. 2015).

462. *Second*, the States and their agencies and political subdivisions have suffered government-induced online censorship directly. For example, Louisiana's Department of Justice—the office of its Attorney General—was directly censored on YouTube for posting video footage of Louisianans criticizing mask mandates and COVID-19 lockdown measures on August 18, 2021—just after the federal Defendants' most vociferous calls for censorship of COVID "misinformation." Bosch Decl. ¶ 7. A Louisiana state legislator was censored by Facebook when he posted content addressing vaccinating children against COVID-19. Bosch Decl. ¶ 9. St. Louis County, a political subdivision of Missouri, conducted public meetings regarding proposed county-wide mask mandates, at which some citizens made public comments opposing mask mandates. Flesh Decl. ¶ 7. YouTube censored the entire videos of four public meetings, removing the content, because some citizens publicly expressed views that masks are ineffective. *Id.*

463. *Third*, State agencies—such as the Offices of the States' Attorneys General—closely track and rely

on free speech on social media to understand their citizens' true thoughts and concerns. *See, e.g.*, Flesch Decl. ¶ 4 ("I monitor these trends on a daily or even hourly basis . . . "); Bosch Decl. ¶ 6. This allows them to craft messages and public policies that are actually responsive to their citizens' concerns. Flesch Decl. ¶ 5; Bosch Decl. ¶¶ 4-6. Censorship of social-media speech directly interferes with this critical state interest, because it "directly interferes with [our] ability to follow, measure, and understand the nature and degree of [constituents'] concerns." Flesh Decl. ¶ 6.

464. *Fourth*, social-media censorship thwarts the States' ability to provide free, fair, and open political processes that allow citizens to petition their government and advocate for policy changes. Social-media censorship has perverted state and local political processes by artificially restricting access to the channels of advocacy to one side of various issues. For example, social-media censorship prevented Louisiana advocacy groups from organizing effectively to advocate in favor of legislative action on issues of great public import. Hines Decl. ¶¶ 13-14. Likewise, social-media censorship prevented a Missouri parent from circulating an online petition to advocate against mandatory masking at his local school district, a political subdivision of the State. McCollum Decl. ¶¶ 9-17; Gulmire Decl. ¶¶ 11-16, 18-19. Such censorship—which directly interferes with citizens' ability to petition their government—thwarts the States' interest in providing fair and open processes to petition state officials.

465. *Fifth*, federally induced social-media censorship directly affects Missouri, because it has resulted in the extensive censorship of Plaintiff Dr. Bhattacharya, who serves as an expert witness for Missouri

in a series of lawsuits challenging mask and vaccine mandates. *See* Bhattacharya Decl. ¶ 4. Censorship of Dr. Bhattacharya reduces the message and impact of Missouri's own retained expert witness. *See id.* ¶¶ 17-32. Likewise, the Missouri Attorney General's Office relied heavily on the high-quality German survey study of 26,000 schoolchildren, finding that 68 percent reported harms from masking in school, in its lawsuits challenging school mask mandates. That study was censored on social media as a result of Defendants' campaign, and Missouri was lucky to find it because it is in German and not cited on social media. "Because online censorship acts as a prior restraint on speech," Missouri "will never know exactly how much speech . . . on social media never reaches [our] eyes because it is censored in advance, or as soon as it is posted." Flesch Decl. ¶ 11.

466. *Sixth*, Missouri and Louisiana have a quasi-sovereign interest in protecting the free-speech rights of "a sufficiently substantial segment of its population," and preventing *ultra vires* actions against those rights. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). This falls within Missouri's and Louisiana's "quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general." *Id.* This injury "suffices to give the State standing to sue as *parens patriae*" because "the injury" to Missourians' and Louisianans' free-speech and free-expression rights "is one that the State[s] . . . would likely attempt to address through [their] sovereign lawmaking powers." *Id.* at 607. Indeed, they have done so. *See, e.g.*, MO. CONST., art. I, § 8; LA. CONST., art. I, § 7.

467. *Seventh*, Missouri and Louisiana "ha[ve] an interest in securing observance of the terms under which [they] participate[] in the federal system." *Alfred L. Snapp*, 458 U.S. at 607-08. This means bringing suit to "ensur[e] that the State and its residents are not excluded from the benefits that are to flow from participation in the federal system." *Id.* at 608. Free-speech rights, and protection from *ultra vires* actions destroying them, are foremost among the "benefits that are to flow from participation in the federal system." *Id.* Missouri and Louisiana "have an interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population." *Id.*

468. *Eighth*, Missouri and Louisiana have a unique interest in advancing, protecting, and vindicating the rights of their citizens who are listeners, readers, and audiences of social-media speech. As noted above, the First Amendment protects the rights of the speakers' audiences, such as listeners and readers, to have access to protected speech. *See, e.g., Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982). As a result of Defendants' censorship, the States' many citizens, as readers and followers of social-media speech, suffer an injury that is individually too diffuse to warrant filing their own lawsuits, yet the injury is all the greater because it is spread among millions of readers. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963) (holding that, where one plaintiff "is not likely to sustain sufficient . . . injury to induce him to seek judicial vindication of his [First Amendment] rights," a plaintiff with a greater stake may assert them, lest "infringements of freedom of the press may too often go unremedied"). The States have

a "close relationship" with their citizens, as readers and listeners of social-media speech, because they are specifically authorized by state law to vindicate those rights. And there is a "hindrance" to their citizens' asserting their own rights, because each individual injury is too diffuse to warrant litigation. *See Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004); *Secretary of State of Md. v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 956-57 (1984).

469. All these injuries to the State Plaintiffs and their citizens are continuing and ongoing, and they constitute irreparable harm.

**2. Ongoing injuries inflicted on the private Plaintiffs and their social-media followings.**

470. The private Plaintiffs Bhattacharya, Hines, Hoft, Kheriaty, and Kulldorff, and their social-media audiences and/or potential social-media audiences (*i.e.*, the larger audiences who would hear them if they were not censored)—who include thousands or millions of Missourians and Louisianans—have suffered and are suffering grave and ongoing injuries as well. Identical injuries afflict many similarly situated speakers and audiences who have been affected by the government-induced censorship procured by Defendants as well.

471. Government-induced online censorship affects the private Plaintiffs and enormous segments of Missouri's and Louisiana's populations. The censorship affects speakers with all sizes of audiences—from small groups of concerned parents seeking to share concerns on neighborhood networking sites, Flesch Decl. ¶ 9; to social-media titans, such as Plaintiff Jim Hoft, who is one of the most influential online voices in the country, with over a million social-media followers, Hoft Decl.

¶¶ 2-3. Censorship affects some of the most highly credentialed physicians in the world, speaking on matters of core competence, such as Plaintiffs Bhattacharya, Kulldroff, and Kheriaty, scientists and medical professors at Stanford, Harvard, and the University of California. *See* Bhattacharya Decl. ¶¶ 2-5; Kulldorff Decl. ¶¶ 2-6; Kheriaty Decl. ¶¶ 2-5.

472. This censorship encompasses social-media accounts with hundreds of thousands of followers, including the private Plaintiffs' accounts, which include many thousands of followers in Missouri and Louisiana. *See* Hoft Decl. ¶ 3 (Missouri-based speaker with 400,000 Twitter followers, 650,000 Facebook followers, 98,000 YouTube subscribers, 205,000 Instagram followers); Kulldorff Decl. ¶ 7 ("250,800 followers on Twitter and 13,400 contacts and followers on LinkedIn"); Kheriaty Decl. ¶ 3 (158,000 Twitter followers, even though artificially capped by Twitter); Allen Decl. ¶ 15 (the entire YouTube channel of a conservative talk-radio station based in Missouri); Changizi Decl. ¶ 7 (37,000 Twitter followers); Senger Decl. ¶ 3 (112,000 Twitter followers); Kotzin Decl. ¶¶ 3-4 (31,900 followers); Kitchen Decl. ¶ 32 (over 44,000 Twitter followers). These declarants provide only a representative slice of the enormous suppressions inflicted by Defendants' conduct on countless similarly situated speakers and audiences, including in Missouri and Louisiana. *See, e.g.*, Bhattacharya Decl. ¶ 31.

473. Defendants' censorship squelches Plaintiffs' core political speech on matters of great public concern. This includes speech relating to COVID-19 policies—especially speech criticizing the government's response to COVID-19. *See, e.g.,* Hoft Decl. ¶¶ 6, 12; Bhattacharya Decl. ¶¶ 15-31; Kulldorff Decl. ¶¶ 14-30; Kheriaty Decl.

¶¶ 16-17; Hines Decl. ¶¶ 7-14. It also extends to speech about election security and integrity, including core political speech. *See, e.g.*, Hoft Decl. ¶¶ 7-8, 14; Allen Decl. ¶ 14-15; Flesh Decl. ¶ 8. And the censorship targets speech simply because it is critical of the President of the United States. *See, e.g.,* Hoft Decl. ¶ 10.

474. Government-induced censorship of Plaintiffs' and others' speech is achieved through a wide variety of methods, ranging from complete bans, temporary bans, insidious "shadow bans" (where neither the user nor his audience is notified of the suppression), deboosting, de-platforming, de-monetizing, restricting access to content, imposing warning labels that require click-through to access content, and many other ways. These include temporary and permanent suspensions of many speakers. *See, e.g.*, Hoft Decl. ¶¶ 6-8; Kheriaty Decl. ¶ 16; Bhattacharya Decl. ¶ 16; Changizi Decl. ¶¶ 18-23; Allen Decl. ¶ 15; *see also* Bhattacharya Decl. ¶ 31 ("Twitter, LinkedIn, YouTube, Facebook, they have permanently suspended many accounts—including scientists."). It includes suppressing specific content, such as removing or blocking social-media posts and videos. *See, e.g.*, Hoft Decl. ¶ 14; Bhattacharya Decl. ¶¶ 17-18; Changizi Decl. ¶ 36. It includes demonetization by technology firms, *see* Hoft Decl. ¶ 19, and deboosting search results to bury the most relevant results, Bhattacharya Decl. ¶ 16. It includes suppressing posts in news feeds, and imposing advisory labels and "sensitive content" labels, making it more difficult to access specific content. *See, e.g.*, Hoft Decl. ¶ 13; Changizi Decl. ¶ 27-28. It includes insidious methods of censorship like surreptitious de-boosting and "shadow-banning," where the censor does not notify the speaker or the audience of the censorship. Many

speakers discover through circumstantial methods that they have been shadow-banned. *See, e.g.*, Kheriaty Decl. ¶¶ 14-15. It includes indirect methods of shadow-banning such as artificially limiting the number of followers of a disfavored account. Kheriaty Decl. ¶¶ 12-13; Changizi Decl. ¶ 31. All these forms of censorship directly impact Plaintiffs and their social-media audiences, and they continue to do so.

475. Such censorship has compounded effects on the freedom of expression, creating massive distortions in the free marketplace of ideas. As noted above, much speech is suppressed in secret, so the speakers and audience never know whether or how much speech was silenced. *See, e.g.*, Kheriaty Decl. ¶¶ 14-15. Censorship of the principal speaker, moreover, deters other speakers from re-tweeting, re-posting, or "amplifying" the content, which suppresses even more speech and further artificially reduces the speakers' audience. *See* Hoft Decl. ¶ 15. And, perniciously, censorship commonly leads to self-censorship, as online speakers carefully restrict what they say to avoid the (often financially catastrophic) consequences of a suspension or ban. *See, e.g.*, Hoft Decl. ¶ 16; Bhattacharya Decl. ¶ 31; Kheriaty Decl. ¶ 16.

476. Like the injuries to the State Plaintiffs and their citizens, these injuries to the private Plaintiffs and their audiences are imminent and ongoing, and they constitute irreparable harm.

**3. Defendants' conduct has directly caused Plaintiffs' injuries.**

477. For the reasons alleged in greater detail herein, Defendants' conduct has directly caused and continues to directly cause Plaintiffs' injuries. By their

campaign of threats, coordination, and collusion, Defendants have successfully induced social-media platforms to impose acts of censorship that have directly injured all Plaintiffs and their audiences. These are acts of censorship that the social-media companies, but for Defendants' unlawful conduct, otherwise would not have imposed.

478. Overwhelming evidence supports the conclusion that Defendants have caused Plaintiffs' injuries, alleged above, by inducing social-media platforms to engage in increased censorship. As the allegations herein emphasize, there is powerful support for the conclusion of direct causation between Defendants' conduct and Plaintiffs' free-speech injuries. This evidence includes, but is not limited to, the following:

479. *First*, as alleged above, in the absence of Defendants' campaign for social-media censorship, market forces and other incentives would have and did restrain social-media platforms from engaging in the social-media censorship alleged herein. Notably, as noted above, prior to Defendants' campaign of threats and pressure, social-media platforms generally declined to engage in the acts of censorship alleged herein.

480. *Second*, as alleged above, the campaign of threats of adverse legal consequences from Defendants and their political allies—directly linked to demands for greater censorship—are *highly motivating* to social-media platforms, because they address matters of great import and potential legal vulnerability, such as Section 230 immunity and the prospect of antitrust enforcement. These threats became even more motivating at the beginning of 2021, when Defendants and

their allies took control of the Executive Branch, with all its powerful agencies, and both Houses of Congress, indicating that they had the ability to carry out their threats. By responding to these threats, social-media platforms are merely "reacting in predictable ways," and their greatly increased censorship is merely "the predictable effect of Government action on the decisions of third parties." *Department of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019).

481. *Third*, the *timing* of many censorship decisions—coming immediately after Defendants' demands for increased censorship—strongly supports the conclusion that Defendants' conduct has *caused* the censorship of free speech on social media. As alleged further herein, there are many examples of censorship crackdowns by social-media platforms that immediately followed demands for censorship from federal officials, including Defendants. These include, but are not limited to, (1) the *en masse* deplatforming of the "Disinformation Dozen" after Jen Psaki publicly demanded it; (2) the censorship of the Great Barrington Declaration and Plaintiffs Bhattacharya and Kulldorff just after a senior HHS official called for a "quick and devastating . . . take-down" of the Declaration, Bhattacharya Decl. ¶¶ 6, 14; *id.* ¶¶ 15-31; and (3) Twitter's deplatforming of Alex Berenson just after the President stated, "They're killing people" and Dr. Fauci publicly singled out Berenson; among many others.

482. *Fourth*, Defendants have openly admitted that they and other federal officials are directly involved in specific censorship decisions by social-media platforms. Among other examples, Jen Psaki publicly admits that "we're flagging problematic posts for Facebook" and that "they certainly understand what our asks are."

Secretary Mayorkas states that "we're working together . . . with the tech companies that are the platform for much of the disinformation that reaches the American public, how they can better use their terms of use to really strengthen the legitimate use of their very powerful platforms and prevent harm from occurring," and that this collaboration is happening "across the federal enterprise." Easterly states that she works directly "with our partners in the private sector and throughout the rest of the government and at the department to continue to ensure that the American people have the facts that they need to help protect our critical infrastructure." CISA openly states that its "MDM team serves as a switchboard for routing disinformation concerns to appropriate social media platforms." And so forth.

483. *Fifth*, social-media platforms openly admit that they consult with and rely on government officials to identify what content to censor. For example, Facebook's "COVID and Vaccine Policy Updates and Protections" states that Facebook does "not allow false claims about the vaccines or vaccination programs which *public health experts have advised us* could lead to COVID-19 vaccine rejection." (emphasis added). As noted above, "[a] Facebook spokesperson said the company has *partnered with government experts*, health authorities and researchers to take 'aggressive action against misinformation about COVID-19 and vaccines to protect public health.'" Twitter, likewise, admits that it coordinates with government officials in identifying what to censor. For example, its "Civic integrity policy" states that Twitter "will label or remove false or misleading information intended to undermine public confidence in an election or other civic process" and

that it "work[s] with select government and civil society partners in these countries to provide additional channels for reporting and expedited review" of so-called "misinformation." Twitter's "COVID-19 misleading information policy" states that it "primarily enforce[s] this policy in close coordination with trusted partners, including public health authorities, NGOs and *governments*, and continue[s] to use and consult with information from those sources when reviewing content." Similarly, YouTube's "COVID-19 medical misinformation policy" states that "YouTube doesn't allow content that spreads medical misinformation that contradicts local health authorities' or the World Health Organization's medical information about COVID-19. . . . YouTube's policies on COVID-19 are subject to change in response to changes to global or local health authorities' guidance on the virus."

484. *Sixth*, the *content* of the censorship decisions evidences Defendants' direct influence on censorship, because those decisions focus on the areas of concern for Defendants and uniformly favor Defendants' preferred narratives. For example, Dr. Kheriaty notes that "[t]he pattern of content censored on these social media platforms mirrors closely the CDC and Biden administration policies. . . . [A]ny content that challenges those federal policies is subject to severe censorship, without explanation, on Twitter and YouTube—even when the information shared is taken straight from peer-reviewed scientific literature." Kheriaty Decl. ¶ 18. Regarding shadow-banning in particular, he observes that "[t]he posts most subject to this were those that challenged the federal government's preferred covid policies." Kheriaty Decl. ¶ 15. Likewise, the censorship of social-media speech about COVID-19

and election security directly reflects the calls for censorship from federal officials. Hoft Decl. ¶¶ 4, 16. Censorship of Hoft's speech has focused on topics specifically targeted for censorship by DHS as "domestic terrorism," including in its National Terrorism Advisory System Bulletin from February 7, 2022. Hoft Decl. ¶ 20; *id.* Ex. 7, at 1. Further, this censorship is heavily *one-sided* in the government's favor—"Twitter notoriously suspends only those who question the wisdom and efficacy of government restrictions, or who cast doubt on the safety or efficacy of the vaccines," but "there are no examples of Twitter suspending individuals who have spread misinformation from the other side—by, for example, exaggerating the efficacy of masks or the threat the virus poses to children." Changizi Decl. ¶¶ 50-51; *see also* Kotzin Decl. ¶ 33. As Dr. Bhattacharya notes, "Having observed and lived through the government-driven censorship of the Great Barrington Declaration and its co-authors, it is clear to me that these attacks were politically driven by government actors." Bhattacharya Decl. ¶ 32.

485. *Seventh*, the revelation of recent internal documents—such as the DGB whistleblower documents, and the CDC emails released last week—demonstrate beyond any possible doubt that Defendants are *directly involved* in and are *directing* social-media censorship decisions, both by identifying high-level topics of censorship and by identifying specific posts and types of postings for censorship. CDC and Census Bureau officials demonstrate that this direct, collusive involvement of federal officials in specific and general censorship decisions happens on a wide scale, and the DGB documents quoted above indicate that such "MDM"-censorship activities are occurring "ac-

ross the federal enterprise." The documents revealed in discovery and filed with the Court reflect the same practices among all other Defendants, as alleged further herein.

486. For all these reasons, among others, it is perfectly clear that Defendants' conduct has caused the general and specific censorship policies and decisions alleged herein.

487. For similar reasons, an order and judgment from this Court preventing the continuation of Defendants' conduct will redress Plaintiffs' ongoing injuries. Defendants' conduct has caused social-media platforms to engage in the censorship decisions that have injured Plaintiffs, and an order ceasing Defendants' conduct will alleviate those injuries.

488. Defendants are continuing, and are likely to continue, to engage in the unlawful conduct alleged herein.

**CLASS ALLEGATIONS**

489. Pursuant Federal Rule of Civil Procedure 23(a) and 23(b)(2), Plaintiffs Bhattacharya, Hines, Hoft, Kheriaty, and Kulldorff bring this action on behalf of themselves and two classes of other persons similarly situated to them.

490. Plaintiffs propose to define the first class ("Class 1") as follows: The class of social-media users who have engaged or will engage in, or who follow, subscribe to, are friends with, or are otherwise connected to the accounts of users who have engaged or will engage in, speech on any social-media company's platform(s) that has been or will be removed; labelled; used as a basis for suspending, deplatforming, issuing st-

rike(s) against, demonetizing, or taking other adverse action against the speaker; downranked; deboosted; concealed; or otherwise suppressed by the platform after Defendants and/or those acting in concert with them flag or flagged the speech to the platform(s) for suppression.

491. Plaintiffs propose to define the second class ("Class 2") as follows: The class of social-media users who have engaged in or will engage in, or who follow, subscribe to, are friends with, or are otherwise connected to the accounts of users who have engaged in or will engage in, speech on any social-media company's platform(s) that has been or will be removed; labelled; used as a basis for suspending, deplatforming, issuing strike(s) against, demonetizing, or taking other adverse action against the speaker; downranked; deboosted; concealed; or otherwise suppressed by the company pursuant to any change to the company's policies or enforcement practices that Defendants and/or those acting in concert with them have induced or will induce the company to make.

492. Class 1 is sufficiently numerous that joinder of all members is impracticable. Defendants' conduct, as alleged further herein, involves flagging for suppression the social-media content of hundreds of users with, collectively, hundreds of thousands or millions of followers.

493. Class 2 is sufficiently numerous that joinder of all members is impracticable. As alleged further herein, Defendants' conduct has resulted policy and enforcement-practice changes at social-media platforms that have caused censorship affecting thousands if not millions of

social-media users as speakers and/or audience members.

494. Class 1 members' claims share questions of law or fact in common, including the question whether the government is responsible for a social-media company's suppression of content that the government flags to the company for suppression.

495. Class 2 members' claims share questions of law or fact in common, including the question whether the government is responsible for a social-media company's suppression of content pursuant to a policy or enforcement practice that the government induced the company to adopt or enforce.

496. The individual Plaintiffs' claims are typical of those of Class 1 members. The claims of the individual Plaintiffs and Class 1 members all arise from the same course of conduct by Defendants, namely, their practice of particular flagging content to social-media companies for suppression, and they are all based on the same legal theory, namely, the theory that such conduct violates the First Amendment. The individual Plaintiffs are not subject to any affirmative defenses that are inapplicable to the rest of the class and likely to become a major focus of the case.

497. The individual Plaintiffs' claims are typical of those of Class 2 members. The claims of the individual Plaintiffs and Class 2 members all arise from the same course of conduct by Defendants, namely, their practice of inducing social-media companies to adopt stricter content-moderation policies and enforcement practices, and are all based on the same legal theory, namely, the theory that such conduct violates the First Amendment. The individual Plaintiffs are not subject

to any affirmative defenses that are inapplicable to the rest of the class and likely to become a major focus of the case.

498. The individual Plaintiffs are willing and able to take an active role in the case, control the course of litigation, and protect the interests of absentees in both classes. No conflicts of interest currently exist or are likely to develop between Private Plaintiffs and absentees in either class.

499. The proposed class counsel are two of the individual Plaintiffs' counsel, John J. Vecchione and John C. Burns. Mr. Vecchione and Mr. Burns have extensive experience litigating class actions and/or First Amendment and other civil-rights cases. Mr. Vecchione and Mr. Burns have the zeal and competence required to provide adequate representation for both classes.

500. The proposed classes are defined in terms that are objective and precise.

501. Defendants have acted on grounds that apply generally to both classes in that Defendants have targeted speech expressed by or addressed to members of both classes on the ground that the speech expresses a viewpoint Defendants disfavor. Consequently, injunctive relief and corresponding declaratory relief is appropriate respecting each class as a whole.

## CLAIMS FOR RELIEF

### COUNT ONE–VIOLATION OF THE FIRST AMENDMENT
### Against All Defendants

502. All foregoing Paragraphs are incorporated as if set forth fully herein.

503. The First Amendment prohibits Congress from making laws "abridging the freedom of speech." U.S. CONST. amend. I. This prohibition applies to restrictions on speech by all branches of the federal government. *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017).

504. The Constitutions of Missouri, Louisiana, and every other State provide similar or more robust protection for free-speech rights.

505. An enormous amount of speech and expression occurs of social media. Social-media platforms have become, in many ways, "the modern public square." *Packingham*, 137 S. Ct. at 1737. Social media platforms provide "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Id.* They also permit private citizens to interact directly with public and elected officials.

506. Social-media platforms are akin to common carriers and/or public accommodations that, under longstanding statutory and common-law doctrines, should be subject to non-discrimination rules in accessing their platforms, which discrimination on the basis of content and viewpoint would violate.

507. "Historically, at least two legal doctrines limited a company's right to exclude." *Knight First Amendment Institute*, 141 S. Ct. at 1222 (Thomas, J., concurring). "First, our legal system and its British predecessor have long subjected certain businesses, known as common carriers, to special regulations, including a general requirement to serve all comers." *Id.* "Second, governments have limited a company's right to exclude when that company is a public accommodation. This concept—related to common-carrier law—applies to companies that hold themselves out to the

public but do not 'carry' freight, passengers, or communications." *Id.* Absent the artificial immunity created by the overbroad interpretations of Section 230 immunity, these legal doctrines—along with private and free-market forces—would impose a powerful check on content- and viewpoint-based discrimination by social-media platforms. *See id.*

508. As alleged further herein, through Section 230 immunity and other actions, the federal government has abrogated these legal restraints on social-media censorship; it has artificially subsidized, encouraged, and enabled the emergence of a small group of immensely powerful social-media companies; and it has conferred on that cartel powerful legal shields protecting its ability to censor and suppress speech on social media based on content and viewpoint with impunity.

509. As alleged further herein, Defendants have coerced, threatened, and pressured social-media platforms to censor disfavored speakers and viewpoints by using threats of adverse government action, including threats of increased regulation, antitrust enforcement or legislation, and repeal or amendment of Section 230 CDA immunity, among others.

510. As alleged further herein, Defendants also hold out the "carrot" of continued protection under Section 230 and antitrust law, and thus preserving the legally favored status of social-media platforms. Commentators have aptly summarized this carrot-stick dynamic: "Section 230 is the carrot, and there's also a stick: Congressional Democrats have repeatedly made explicit threats to social-media giants if they failed to censor speech those lawmakers disfavored." Vivek Ramaswamy and Jed Rubenfeld, *Save the Constitution*

*from Big Tech: Congressional threats and inducements make Twitter and Facebook censorship a free-speech violation*, WALL STREET JOURNAL (Jan. 11, 2021). "Facebook and Twitter probably wouldn't have become behemoths without Section 230." *Id.* "Either Section 230 or congressional pressure alone might be sufficient to create state action. The combination surely is." *Id.*

511. As alleged further herein, as a result of such threats and inducements, Defendants are now directly colluding with social-media platforms to censor disfavored speakers and viewpoints, including by pressuring them to censor certain content and speakers, and "flagging" disfavored content and speakers for censorship. Defendants have thus engaged in joint action with private parties and acted in concert with private parties to deprive Plaintiffs, Missourians, Louisianans, and Americans of their constitutional rights under the First Amendment and related state-law rights.

512. Defendants' actions constitute government action for at least five independently sufficient reasons: (1) absent federal intervention, common-law and statutory doctrines, as well as voluntary conduct and natural free-market forces, would have restrained the emergence of censorship and suppression of speech of disfavored speakers, content, and viewpoint on social media; and yet (2) through Section 230 of the CDA and other actions, the federal government subsidized, fostered, encouraged, and empowered the creation of a small number of massive social-media companies with disproportionate ability to censor and suppress speech on the basis of speaker, content, and viewpoint; (3) such inducements as Section 230 and other legal benefits (such as the absence of antitrust enforcement) constitute an

immensely valuable benefit to social-media platforms to do the bidding of federal government officials; (4) federal officials—including, most notably, Defendants herein—have repeatedly and aggressively threatened to remove these legal benefits and impose other adverse consequences on social-media platforms if they do not increase censorship and suppression of disfavored speakers, content, and viewpoints; and (5) Defendants herein, conspiring and colluding both with each other and social-media firms, have directly coordinated with social-media platforms to identify disfavored speakers, viewpoints, and content and have procured the actual censorship and suppression of them on social media. These factors, considered either individually or collectively, establish that the social-media censorship alleged herein constitutes government action. These actions have dramatically impacted the fundamental right of free speech in Missouri, Louisiana, and America, both on social media and elsewhere.

513. As alleged herein, Defendants have acted in concert both with each other, and with others, to violate the First Amendment and state-level free speech rights.

514. Defendants' actions violate the First Amendment and analogous state constitutional protections. The First Amendment is violated where, as here, "if the government coerces or induces it to take action the government itself would not be permitted to do, such as censor expression of a lawful viewpoint." *Biden v. Knight First Amendment Institute at Columbia Univ.*, 141 S. Ct. 1220, 1226 (2021) (Thomas, J., concurring). "The government cannot accomplish through threats of adverse government action what the Constitution prohibits it from doing directly." *Id.*

515. The censorship and suppression of speech that Defendants have induced social-media platforms to impose on disfavored speakers, content, and viewpoints constitute forms of prior restraints on speech, which are the most severe restrictions and the most difficult to justify under the First Amendment. "One obvious implication of" the First Amendment's text "is that the government usually may not impose prior restraints on speech." *Houston Cmty. Coll. Sys. v. Wilson*, 142 S. Ct. 1253, 1259 (2022).

516. These actions have injured and continue to injure Plaintiffs, as well as Missouri's, Louisiana's, and other States' citizens, both speakers and users of social media, and they have injured Missourians, Louisianans, and Americans who do not use social media by their predictable effect on the availability of information through social-media users, who often repeat or communicate information presented on social media to non-users.

517. These actions have also injured and continue to injure Plaintiffs, as well as Missouri's, Louisiana's, and other States' citizens, by broadly chilling the exercise of free-speech rights on social-media platforms. This injures the First Amendment and state-level rights of all citizens, both users and non-users of social media, by reducing the availability of free speech in a free marketplace of ideas. Much social-media speech is available to non-users of social media on the internet, and social-media users convey speech and information learned on social media platforms to non-users of social media through many other means. Suppressing speech on social media, therefore, directly impacts the First Amendment rights of non-social media users, as well as users.

518. Defendants' interference with First Amendment and state free-speech rights of Plaintiffs and virtually all Missourians, Louisianans, and Americans is *per se* unconstitutional, and even if not, it cannot be justified under any level of constitutional scrutiny.

519. Defendants' interference with First Amendment rights of Plaintiffs and virtually all Missourians and Louisianans also interferes with rights that the States guaranteed to them under their respective state constitutions. Defendants' interference thus undermines the system of rights the States provided to their citizens, effectively limiting the reach of each State's fundamental law and thwarting the fundamental policies of each sovereign State.

520. Defendants' conduct inflicts imminent, ongoing, and continuing irreparable injury on Plaintiffs, as alleged further herein.

521. Subject to the limitation that the Court may grant only declaratory and not injunctive relief against the President in his official capacity, the Court has inherent authority to declare, enjoin, restrain, enter judgment, and impose penalties on Defendants and other federal actors, and those acting in concert with them, to prevent and restrain violations of federal law, including the First Amendment. "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 327 (2015).

**COUNT TWO–ACTION IN EXCESS OF STATUTORY AUTHORITY**
**Against All Defendants**

522. All foregoing Paragraphs are incorporated as if set forth fully herein.

523. No federal statute authorizes the Defendants' conduct in engaging in censorship, and conspiracy to censor, in violation of Plaintiffs', Missourians', Louisianans', and Americans' free-speech rights.

524. "An agency's power is no greater than that delegated to it by Congress." *Lyng v. Payne*, 476 U.S. 926, 937 (1986). Agency actions that exceed the agency's statutory authority are *ultra vires* and must be invalidated.

525. No statute authorizes any Defendants—including but not limited to White House officials, HHS officials, DHS officials, and any other federal officials or agencies—to engage in the course of conduct regarding the censorship and suppression of speech on social media as alleged herein.

526. No statute authorizes Defendants—including but not limited to White House officials, HHS officials, DHS officials, and any other federal officials or agencies—to identify what constitutes "misinformation," "disinformation," and/or "malinformation" in public discourse on social-media platforms; to direct, pressure, coerce, and encourage social-media companies to censor and suppress such speech; and/or to demand that private companies turn over information about speech and speakers on their platforms in the interest of investigating "misinformation," "disinformation," and/or "malinformation."

527. Further, the interpretation of any statute to authorize these actions would violate the non-delegation doctrine, the canon of constitutional avoidance, the major-questions doctrine, the Supreme Court's clear-statement rules, and other applicable principles of interpretation. No statute may be properly construed to do so.

528. Defendants and the federal officials acting in concert with them, by adopting the censorship policies and conduct identified herein, have acted and are acting without any lawful authority whatsoever, and without any colorable basis for the exercise of authority. No federal statute, regulation, constitutional provision, or other legal authority authorizes their social-media-censorship program, and it is wholly *ultra vires*.

529. Defendants' *ultra vires* actions inflict ongoing irreparable harm on Plaintiffs, as alleged herein.

**COUNT THREE–VIOLATION OF ADMINISTRATIVE PROCEDURE ACT**
**Against the HHS Defendants**

530. All foregoing Paragraphs are incorporated as if set forth fully herein.

531. Defendants HHS, NIAID, CDC, FDA, Becerra, Murthy, Crawford, Fauci, Galatas, Waldo, Byrd, Choi, Lambert, Peck, Dempsey, Muhammed, Jefferson, Murray, and Kimberly are referred to collectively herein as the "HHS Defendants."

532. As set forth herein, the HHS Defendants' conduct is unlawful, arbitrary and capricious, an in excess of statutory authority under the Administrative Procedure Act.

533. The APA authorizes courts to hold unlawful and set aside final agency actions that are found to be:

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law. . . . " 5 U.S.C. § 706(2)(A)-(D). The HHS Defendants' conduct violates all of these prohibitions.

534. Defendants HHS, CDC, and NIAID are "agencies" within the meaning of the APA. Defendants Becerra, Fauci, and Murthy, in their official capacities, are the heads of federal agencies.

535. The HHS Defendants' conduct alleged herein constitutes "final agency action" because it "marks the consummation of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quotation marks omitted). Further, it is action from by which "rights or obligations have been determined," and "from which legal consequences will flow." *Id.* Defendants' campaign of pressuring, threatening, and colluding with social-media platforms to suppress disfavored speakers, content, and speech are final agency actions of this sort. Such actions reflect the completion of a decisionmaking process with a result that will directly affect Plaintiffs, Missourians, Louisianans, and Americans. *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). The actions of Defendants alleged herein, on information and belief, reflect and result from a specific, discrete, and identifiable decision of Defendants to adopt an unlawful social-media censorship program.

536. The HHS Defendants' conduct is arbitrary, capricious, and an abuse of discretion because it was not based on any reasoned decisionmaking, ignores critical

aspects of the problem, disregards settled reliance interests, rests on pretextual *post hoc* justifications, and overlooks the unlawful nature of the HHS Defendants' conduct, among other reasons. 5 U.S.C. § 706(2)(A).

537. The HHS Defendants' conduct is "contrary to constitutional right, power, privilege, or immunity" because it violates the First Amendment rights of Plaintiffs and virtually all Missourians and Louisianans for the reasons discussed herein and in Count One, *supra.* 5 U.S.C. § 706(2)(B).

538. The HHS Defendants conduct is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," because no statute authorizes any of the conduct alleged herein, as discussed in Count Two, *supra*. 5 U.S.C. § 706(2)(C).

539. The HHS Defendants' conduct was "without observance of procedure required by law" because it is a substantive policy or series of policies that affect legal rights that require notice and comment, and yet they never engaged in any notice-and-comment process, or other process to obtain input from the public, before engaging in these unlawful agency policies. 5 U.S.C. § 706(2)(D).

540. The HHS Defendants' conduct is unlawful under the APA and should be set aside.

**COUNT FOUR–VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**
**Against the DHS Defendants**

541. All foregoing Paragraphs are incorporated as if set forth fully herein.

542. Defendants DHS, CISA, Mayorkas, Easterly, Silvers, Vinograd, Jankowicz, Masterson, Protentis, Hale,

Snell, Wyman, and Scully, are referred to collectively herein as the "DHS Defendants."

543. As set forth herein, the DHS Defendants' conduct is unlawful, arbitrary and capricious, an in excess of statutory authority under the Administrative Procedure Act.

544. The APA authorizes courts to hold unlawful and set aside final agency actions that are found to be: "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law. . . . " 5 U.S.C. § 706(2)(A)-(D). The DHS Defendants' conduct violates all of these prohibitions.

545. Defendants DHS and CISA are "agencies" within the meaning of the APA. Defendants Mayorkas and Easterly, in their official capacities, are the heads of federal agencies.

546. The DHS Defendants' conduct alleged herein constitutes "final agency action" because it "marks the consummation of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quotation marks omitted). Further, it is action from by which "rights or obligations have been determined," and "from which legal consequences will flow." *Id.* Defendants' campaign of pressuring, threatening, and colluding with social-media platforms to suppress disfavored speakers, content, and speech are final agency actions of this sort. Such actions reflect the completion of a decisionmaking process with a result that will directly affect Plaintiffs, Missourians, Louisianans, and Amer-

icans. *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). The actions of Defendants alleged herein, on information and belief, reflect and result from a specific, discrete, and identifiable decision of Defendants to adopt an unlawful social-media censorship program.

547. The DHS Defendants' conduct is arbitrary, capricious, and an abuse of discretion because it was not based on any reasoned decisionmaking, ignores critical aspects of the problem, disregards settled reliance interests, rests on pretextual *post hoc* justifications, and overlooks the unlawful nature of the DHS Defendants' conduct, among other reasons. 5 U.S.C. § 706(2)(A).

548. The DHS Defendants' conduct is "contrary to constitutional right, power, privilege, or immunity" because it violates the First Amendment and state free-speech rights of Plaintiffs and virtually all Missourians, Louisianans, and Americans for the reasons discussed herein and in Count One, *supra*. 5 U.S.C. § 706(2)(B).

549. The DHS Defendants conduct is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," because no statute authorizes any of the conduct alleged herein, as discussed in Count Two, *supra*. 5 U.S.C. § 706(2)(C).

550. The DHS Defendants' conduct was "without observance of procedure required by law" because it is a substantive policy or series of policies that affect legal rights that require notice and comment, and yet they never engaged in any notice-and-comment process, or other process to obtain input from the public, before engaging in these unlawful agency policies. 5 U.S.C. § 706(2)(D).

551. The DHS Defendants' conduct is unlawful under the APA and should be set aside.

**COUNT FIVE–VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**
**Against the Census Defendants**

552. All foregoing Paragraphs are incorporated as if set forth fully herein.

553. Defendants Department of Commerce, Census Bureau, Shopkorn, Schwartz, Molina-Irizarry, and Galemore are referred to collectively herein as the "Census Defendants."

554. As set forth herein, the Census Defendants' conduct is unlawful, arbitrary and capricious, and in excess of statutory authority under the Administrative Procedure Act.

555. The APA authorizes courts to hold unlawful and set aside final agency actions that are found to be: "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law. . . . " 5 U.S.C. § 706(2)(A)-(D). The Census Defendants' conduct violates all of these prohibitions.

556. Defendants Department of Commerce and Census Bureau are "agencies" within the meaning of the APA.

557. The Census Defendants' conduct alleged herein constitutes "final agency action" because it "marks the consummation of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quo-

tation marks omitted). Further, it is action by which "rights or obligations have been determined," and "from which legal consequences will flow." *Id.* Defendants' campaign of pressuring, threatening, and colluding with social-media platforms to suppress disfavored speakers, content, and speech are final agency actions of this sort. Such actions reflect the completion of a decisionmaking process with a result that will directly affect Plaintiffs, Missourians, Louisianans, and Americans. *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). The actions of Defendants alleged herein, on information and belief, reflect and result from a specific, discrete, and identifiable decision of Defendants to adopt an unlawful social-media censorship program.

558. The Census Defendants' conduct is arbitrary, capricious, and an abuse of discretion because it was not based on any reasoned decisionmaking, ignores critical aspects of the problem, disregards settled reliance interests, rests on pretextual *post hoc* justifications, and overlooks the unlawful nature of the Census Defendants' conduct, among other reasons. 5 U.S.C. § 706(2)(A).

559. The Census Defendants' conduct is "contrary to constitutional right, power, privilege, or immunity" because it violates the First Amendment and state free-speech rights of Plaintiffs and virtually all Missourians, Louisianans, and Americans for the reasons discussed herein and in Count One, *supra*. 5 U.S.C. § 706(2)(B).

560. The Census Defendants conduct is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," because no statute authorizes any of the conduct alleged herein, as discussed in Count Two, *supra*. 5 U.S.C. § 706(2)(C).

561. The Census Defendants' conduct was "without observance of procedure required by law" because it is a substantive policy or series of policies that affect legal rights that require notice and comment, and yet they never engaged in any notice-and-comment process, or other process to obtain input from the public, before engaging in these unlawful agency policies. 5 U.S.C. § 706(2)(D).

562. The Census Defendants' conduct is unlawful under the APA and should be set aside.

**COUNT SIX–VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**
**Against the FBI Defendants**

563. All foregoing Paragraphs are incorporated as if set forth fully herein.

564. Defendants U.S. Department of Justice, FBI, Dehmlow, and Chan referred to collectively herein as the "FBI Defendants."

565. As set forth herein, the FBI Defendants' conduct is unlawful, arbitrary and capricious, and in excess of statutory authority under the Administrative Procedure Act.

566. The APA authorizes courts to hold unlawful and set aside final agency actions that are found to be: "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law. . . . " 5 U.S.C. § 706(2)(A)-(D). The FBI Defendants' conduct violates all of these prohibitions.

567. Defendants DOJ and FBI are "agencies" within the meaning of the APA.

568. The FBI Defendants' conduct alleged herein constitutes "final agency action" because it "marks the consummation of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quotation marks omitted). Further, it is action by which "rights or obligations have been determined," and "from which legal consequences will flow." *Id.* Defendants' campaign of pressuring, threatening, and colluding with social-media platforms to suppress disfavored speakers, content, and speech are final agency actions of this sort. Such actions reflect the completion of a decisionmaking process with a result that will directly affect Plaintiffs, Missourians, Louisianans, and Americans. *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). The actions of Defendants alleged herein, on information and belief, reflect and result from a specific, discrete, and identifiable decision of Defendants to adopt an unlawful social-media censorship program.

569. The FBI Defendants' conduct is arbitrary, capricious, and an abuse of discretion because it was not based on any reasoned decisionmaking, ignores critical aspects of the problem, disregards settled reliance interests, rests on pretextual *post hoc* justifications, and overlooks the unlawful nature of the FBI Defendants' conduct, among other reasons. 5 U.S.C. § 706(2)(A).

570. The FBI Defendants' conduct is "contrary to constitutional right, power, privilege, or immunity" because it violates the First Amendment and state free-speech rights of Plaintiffs and virtually all Missourians, Louisianans, and Americans for the reasons discussed herein and in Count One, *supra*. 5 U.S.C. § 706(2)(B).

571. The FBI Defendants' conduct is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," because no statute authorizes any of the conduct alleged herein, as discussed in Count Two, *supra*. 5 U.S.C. § 706(2)(C).

572. The FBI Defendants' conduct was "without observance of procedure required by law" because it is a substantive policy or series of policies that affect legal rights that require notice and comment, and yet they never engaged in any notice-and-comment process, or other process to obtain input from the public, before engaging in these unlawful agency policies. 5 U.S.C. § 706(2)(D).

573. The FBI Defendants' conduct is unlawful under the APA and should be set aside.

**COUNT SEVEN–VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**
**Against the State Department Defendants**

574. All foregoing Paragraphs are incorporated as if set forth fully herein.

575. Defendants Department of State, Bray, Stewart, Kimmage, and Frisbie are referred to collectively herein as the "State Department Defendants."

576. As set forth herein, the State Department Defendants' conduct is unlawful, arbitrary and capricious, and in excess of statutory authority under the Administrative Procedure Act.

577. The APA authorizes courts to hold unlawful and set aside final agency actions that are found to be: "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C)

in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law. . . . " 5 U.S.C. § 706(2)(A)-(D). The State Department Defendants' conduct violates all of these prohibitions.

578. Defendant U.S State Department is an "agency" within the meaning of the APA.

579. The State Department Defendants' conduct alleged herein constitutes "final agency action" because it "marks the consummation of the agency's decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quotation marks omitted). Further, it is action by which "rights or obligations have been determined," and "from which legal consequences will flow." *Id.* Defendants' campaign of pressuring, threatening, and colluding with social-media platforms to suppress disfavored speakers, content, and speech are final agency actions of this sort. Such actions reflect the completion of a decisionmaking process with a result that will directly affect Plaintiffs, Missourians, Louisianans, and Americans. *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). The actions of Defendants alleged herein, on information and belief, reflect and result from a specific, discrete, and identifiable decision of Defendants to adopt an unlawful social-media censorship program.

580. The State Department Defendants' conduct is arbitrary, capricious, and an abuse of discretion because it was not based on any reasoned decisionmaking, ignores critical aspects of the problem, disregards settled reliance interests, rests on pretextual *post hoc* justifications, and overlooks the unlawful nature of the

State Department Defendants' conduct, among other reasons. 5 U.S.C. § 706(2)(A).

581. The State Department Defendants' conduct is "contrary to constitutional right, power, privilege, or immunity" because it violates the First Amendment and state free-speech rights of Plaintiffs and virtually all Missourians, Louisianans, and Americans for the reasons discussed herein and in Count One, *supra*. 5 U.S.C. § 706(2)(B).

582. The State Department Defendants' conduct is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," because no statute authorizes any of the conduct alleged herein, as discussed in Count Two, *supra*. 5 U.S.C. § 706(2)(C).

583. The State Department Defendants' conduct was "without observance of procedure required by law" because it is a substantive policy or series of policies that affect legal rights that require notice and comment, and yet they never engaged in any notice-and-comment process, or other process to obtain input from the public, before engaging in these unlawful agency policies. 5 U.S.C. § 706(2)(D).

584. The State Department Defendants' conduct is unlawful under the APA and should be set aside.

**PRAYER FOR RELIEF**

Plaintiffs respectfully request that the Court enter judgment in their favor and grant the following relief:

A. Certify this case as a class action under Federal Rule of Civil Procedure 23(b)(2), as proposed herein; appoint Plaintiffs Bhattacharya, Hines, Hoft, Kheriaty,

and Kulldorff as class representatives; and appoint John J. Vecchione and John C. Burns as class counsel;

B. Declare that Defendants' conduct violates the First Amendment of the U.S. Constitution and analogous provisions of Missouri's, Louisiana's, and other States' Constitutions;

C. Declare that Defendants' conduct is *ultra vires* and exceeds their statutory authority;

D. Declare that Defendants' conduct violates the Administrative Procedure Act and is unlawful, and vacate and set aside such conduct;

E. Preliminarily and permanently enjoin Defendants (except for President Biden), their officers, officials, agents, servants, employees, attorneys, and all persons acting in concert or participation with them, from continuing to engage in unlawful conduct as alleged herein;

F. Preliminarily and permanently enjoin Defendants (except for President Biden), their officers, officials, agents, servants, employees, attorneys, and all persons acting in concert or participation with them, from taking any steps to demand, urge, pressure, or otherwise induce any social-media platform to censor, suppress, de-platform, suspend, shadow-ban, de-boost, restrict access to content, or take any other adverse action against any speaker, content or viewpoint expressed on social media; and

G. Grant such other and further relief as the Court may deem just and proper.

Dated: Mar. 20, 2023 Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI EX REL. ERIC S. SCHMITT, ATTORNEY GENERAL, AND

STATE OF LOUISIANA EX REL. JEFFREY M. LANDRY, ATTORNEY GENERAL,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.;
DEFENDANTS

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Filed: June 14, 2022

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**DECLARATION OF JAYANTA BHATTACHARYA**

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I, Dr. Jayanta Bhattacharya, declare as follows:

1. I am an adult of sound mind and make this statement voluntarily, based upon my knowledge, education, and experience.

2. I am a former Professor of Medicine and current Professor of Health Policy at Stanford University School of Medicine and a research associate at the National Bureau of Economic Research. I am also Director of Stanford's Center for Demography and Economics of Health and Aging. I hold an M.D. and Ph.D. from

Stanford University. I have published 161 scholarly articles in peer-reviewed journals in the fields of medicine, economics, health policy, epidemiology, statistics, law, and public health, among others. My research has been cited in the peer-reviewed scientific literature more than 13,000 times.

3. I have dedicated my professional career to the analysis of health policy, including infectious disease epidemiology and policy, and the safety and efficacy of medical interventions. I have studied extensively and commented publicly on the necessity and safety of vaccine requirements for those who have contracted and recovered from COVID-19 (individuals with "natural immunity"). I am intimately familiar with the emergent scientific and medical literature on this topic and pertinent government policy responses to the issue both in the United States and abroad.

4. I have served as an expert witness in many cases involving challenges to COVID-19 restrictions such as mask mandates and lockdowns, including as an expert on behalf of the Missouri Attorney General's Office. My writings on COVID-19-related issues has appeared in both scientific journals (like *the Journal of the American Medical Association and the International Journal of Epidemiology*) and in the popular press around the world (including the *Wall Street Journal, Newsweek, the Telegraph, the Spectator*, and many other outlets). I have appeared as a invited guest on national and international news programs, including Fox News, BBC, CNN, NPR, Sky News, NewsMax, GB News, and other stations in the US, the UK, Australia, and elsewhere.

5. Because of my views on COVID-19 restrictions, I have been specifically targeted for censorship by federal government officials.

6. On October 4, 2020, I and two colleagues—Dr. Martin Kulldorff, a professor of medicine, biostatistician, and epidemiologist at Harvard University; and Dr. Sunetra Gupta, an epidemiologist with expertise in immunology, vaccine development, and mathematical modeling of infectious diseases at the University of Oxford—published online the "Great Barrington Declaration."[1]

7. The Great Barrington Declaration questioned the then-prevailing governmental policies of responding to COVID-19 with lockdowns, school shutdowns, and similar restrictions. It stated: "As infectious disease epidemiologists and public health scientists we have grave concerns about the damaging physical and mental health impacts of the prevailing COVID-19 policies, and recommend an approach we call Focused Protection." *Id.*

8. The Declaration called for an end to economic lockdowns, school shutdowns, and similar restrictive policies on the ground that they disproportionately harm the young and economically disadvantaged while conferring limited benefits. The Declaration stated: "Current lockdown policies are producing devastating effects on short and long-term public health. The results (to name a few) include lower childhood vaccination rates, worsening cardiovascular disease outcomes, fewer cancer screenings and deteriorating mental health—leading to greater excess mortality in years to

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[1] Great Barrington Declaration, https://gbdeclaration.org/.

come, with the working class and younger members of society carrying the heaviest burden. Keeping students out of school is a grave injustice." *Id.*

9. It asserted that "[k]eeping these measures in place until a vaccine is available will cause irreparable damage, with the underprivileged disproportionately harmed. . . . We know that vulnerability to death from COVID-19 is more than a thousand-fold higher in the old and infirm than the young. Indeed, for children, COVID-19 is less dangerous than many other harms, including influenza." *Id.*

10. The Declaration endorsed an alternative approach called "Focused Protection," which called for strong measures to protect high-risk populations while allowing lower-risk individuals to return to normal life with reasonable precautions: "The most compassionate approach that balances the risks and benefits of reaching herd immunity, is to allow those who are at minimal risk of death to live their lives normally to build up immunity to the virus through natural infection, while better protecting those who are at highest risk. We call this Focused Protection." *Id.*

11. The Declaration stated, "Those who are not vulnerable should immediately be allowed to resume life as normal. Simple hygiene measures, such as hand washing and staying home when sick should be practiced by everyone to reduce the herd immunity threshold. Schools and universities should be open for in-person teaching. Extracurricular activities, such as sports, should be resumed. Young low-risk adults should work normally, rather than from home. Restaurants and other businesses should open. Arts, music, sport and other cultural activities should resume. Peo-

ple who are more at risk may participate if they wish, while society as a whole enjoys the protection conferred upon the vulnerable by those who have built up herd immunity." *Id.*

12. At the time of its publication on October 4, 2020, the Great Barrington Declaration was cosigned by 43 medical and public health scientists and medical practitioners. Since its publication, the online version of the Declaration has been co-signed by 930,528 people, including 15,883 medical and public health scientists, 47,037 medical practitioners, and 867,612 concerned citizens, as of the morning of June 4, 2022.

13. The Great Barrington Declaration received an immediate backlash from senior government officials who were the architects of the lockdown policies, such as Dr. Anthony Fauci; World Health Organization Director-General Tedros Adhanom Ghebreyesus; and the United Kingdom's health secretary, Matt Hancock.

14. Because it contradicted the government's preferred response to COVID-19, the Great Barrington Declaration was immediately targeted for suppression by federal officials. On October 8, 2020, four days after the Declaration's publication, then-Director of NIH, Dr. Francis Collins, emailed Dr. Anthony Fauci and Cliff Lane at NIH/NIAID about the Great Barrington Declaration. This email stated: "Hi Tony and Cliff, See: https://gbdeclaration.org/. This proposal from the three fringe epidemiologists who met with the Secretary seems to be getting a lot of attention—and even a co-signature from Nobel Prize winner Mike Leavitt at Stanford. There needs to be a quick and devastating *published* take down of its premises. I don't see anything like that online yet—is it underway? Francis."

This email was produced over a year later in response to FOIA requests.[2]

15. To my knowledge, no "quick and devastating *published* take down" of the Declaration's "premises" ever appeared—at least, none by any qualified scientist. (Dr. Fauci, instead, would refer to a criticism published by a journalist at Wired magazine.) Instead, what followed was a relentless *covert* campaign of social-media censorship of our dissenting view from the government's preferred message.

16. After the publication of the Great Barrington Declaration, I and my colleagues, Dr. Kulldorff and Dr. Gupta, and our views, were repeatedly censored on social media. Soon after we published the Declaration, Google deboosted search results for the Declaration, pointing users to media hit pieces critical of it, and placing the link to the actual Declaration lower on this list of results.[3] A prominent online discussion site, Reddit, removed links to the Declaration from COVID-19 policy discussion fora.[4] In February 2021, Facebook

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[2] Wall Street Journal Editorial Board. (2021) "How Fauci and Collins Shut Down Covid Debate" *Wall Street Journal*. Dec. 21, 2021. https://www.wsj.com/articles/fauci-collins-emails-great-barrington-declaration-covid-pandemic-lockdown-11640129116

[3] Fraser Myers (2020) "Why Has Google Censored the Great Barrington Declaration?" *Spiked Online*. October 12, 2020. https://www.spiked-online.com/2020/10/12/why-has-google-censored-the-great-barrington-declaration/

[4] Ethan Yang (2020) "Reddit's Censorship of The Great Barrington Declaration" *American Institute for Economic Policy Research*. Oct. 8, 2020. https://www.aier.org/article/reddits-censorship-of-the-great-barrington-declaration/

removed the Great Barrington Declaration page without explanation before restoring it a week later.[5]

17. On March 18, 2021, Dr. Scott Atlas of Stanford University, Dr. Kulldorff, Dr. Gupta, and I participated in a two-hour roundtable discussion with Governor Ron DeSantis of Florida. During the discussion, the participants (including me) questioned the efficacy and appropriateness of requiring children to wear face masks, including in school. For example, Dr. Kulldorff stated, "children should not wear face masks, no. They don't need it for their own protection and they don't need it for protecting other people either." I stated that requiring young children to wear face masks is "developmentally inappropriate and it just doesn't help on the disease spread. I think it's absolutely not the right thing to do." Dr. Atlas stated, "There's no scientific rationale or logic to have children wear masks in schools." (These are all views that are strongly supported by scientific research, both before and since we made these comments.)

18. The video of the March 18, 2021 roundtable discussion was promptly censored on social media.[6] YouTube removed the video, claiming that it "contradicts the consensus of local and global health

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[5] Daniel Payne (2021) "Facebook removes page of international disease experts critical of COVID lockdowns" *Just the News*. February 5, 2021. https://justthenews.com/nation/technology/facebook-removes-page-international-disease-experts-who-have-been-critical-covid?utm_source=breaking-newsletter&utm_medium=email&utm_campaign=newsletter

[6] Wall Street Journal Editorial Board. (2021) "YouTube's Assault on Covid Accountability" *Wall Street Journal*. April 8, 2021. https://www.wsj.com/articles/youtubes-assault-on-covid-accountability-11617921149

authorities regarding the efficacy of masks to prevent the spread of COVID-19." Notably, the efficacy of masks, especially cloth masks, has been widely questioned by scientists and public health authorities.

19. In the wake of the Great Barrington Declaration and Dr. Collins' October 8, 2020 email to Dr. Fauci, my colleague Dr. Kulldorff also experienced extensive censorship on social media.

20. Dr. Kulldorff has publicly summarized the online and social-media censorship experienced by the Great Barrington Declaration and its co-authors after its publication. As he stated, "We got together and we wrote the Great Barrington Declaration—a one-page thing. We argued for better focused protection of older, high-risk people, at the same time, as we let children and young adults live near normal lives so as to minimize the collateral public health damage from these lockdowns and other measures."[7]

21. As Dr. Kulldorff recounted, after its publication, "there was sort of an organized campaign against the Great Barrington Declaration with various sort of strange accusations, that it was let-it-rip, which is the opposite. We thought that we were like exorcism, eugenics, clowns, anti-vaxxers, that we did financial gains, even though the opposite is true. We were accused of threatening others, which none of us have done, Trumpian, libertarian and Koch funded, pseudo

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[7] The Epoch Times (2021), "Censorship of Science, with Dr. Martin Kulldorff, Dr. Scott Atlas, and Dr. Jay Bhattacharya," May 2, 2021. https://www.theepochtimes.com/live-censorship-of-science-with-dr-martin-kulldorff-dr-scott-atlas-and-dr-jay-bhattacharya_4343061.html.

scientists, and that we received a free lunch when we were at Great Barrington writing this declaration." *Id.*

22. In particular, the Great Barrington Declaration was censored online. This included suppression in searches by Google, the parent company of YouTube: "when the Great Barrington Declaration came up, at the very beginning, it comes up at the top in the search engine in Google, but then suddenly it wasn't there. Instead, what was there was those who criticized it. Other search engines had it at the top, but not Google. . . . ." *Id.*

23. The Great Barrington Declaration was also censored on social media. As Dr. Kulldorff reported, "There were some issues with . . . Twitter, Facebook, YouTube, and LinkedIn." *Id.*

24. Among other things, the Declaration was censored on Facebook based on a flimsy rationale: "Facebook, they took down the Great Barrington Declaration page for a week, no explanation. The offending post was that we argued that, with the vaccines, which at that time had just come out, we should prioritize giving it to the older, high-risk people. That's what caused Facebook to close it down." *Id.*

25. The co-authors of the Great Barrington Declaration also experienced personal social-media censorship. Dr. Kulldorff recounts several examples, including an instance where Twitter censored his tweet stating that "Thinking that everyone must be vaccinated is as scientifically flawed as thinking that nobody should. COVID vaccines are important for older, higher risk people and their caretakers, not those with prior natural infection or for children." *Id.* He also recounts being locked out of Twitter for three weeks "because I

tweeted about masks, saying that, 'By claiming that masks are a good protection, some older people will sort of believe that, and they will go and do things and get infected, thinking that it protects the way it doesn't. That's not so good. So, they might die because of this misinformation about the masks.' . . . For three weeks, I had no access to Twitter because of this tweet." *Id.*

26. Twitter also censored Dr. Kulldorff's speech arguing that healthcare facilities should emphasize hiring workers with natural immunity instead of firing them, because they have the best protection from COVID-19: "Here, another one . . . [N]ot even I was allowed to read this tweet, they removed it completely. I was arguing that since the people who have recovered from COVID, they're the ones who have the best immunity, better than those who are vaccinated. So, they are the ones who are least likely to spread it to others. So, hospitals should hire nurses like that or doctors like that and use them for the most frail, oldest patients at the geriatric ward or the ICUs because they're least likely to infect these patients." *Id.*

27. Dr. Kulldorff also recounted YouTube's censorship of our roundtable with Governor DeSantis: "On YouTube, we did a round table in April with Governor Ron DeSantis in Florida. It was me and Dr. Scott Atlas, Dr. Jay Bhattacharya, and Dr. Sunetra Gupta. And we talked, for example, about the fact that children don't need to have masks. And we argued against vaccine passport; there was some rumbling starting about vaccine passport. So, then, we sort of thought, 'Let's try to argue against that from the very beginning before it sort of takes off.' So, that was removed by YouTube, which is owned by Google." *Id.*

28. Dr. Kulldorff also experienced censorship on LinkedIn, which is a common vehicle for speech among professionals. As he stated, "LinkedIn, which is owned by Microsoft, they also censor. So, this was an article . . . It was an interview I did with The Epoch Times on the dangers of vaccine mandates. . . . [LinkedIn said], 'Only you can see this post.' So, I could still read my post, but nobody else could." *Id.* He also recounted "another one. I actually didn't write anything. I just reposted a LinkedIn post by a guy from Iceland and what he did, he just cited what the Icelandic chief epidemiologist had said, which is sort of the equivalent of the CDC director in the U.S. So, this is the official public health authority in Iceland, but that was censored." *Id.*

29. LinkedIn also censored our public criticism of government officials, such as Dr. Fauci. As Dr. Kulldorff stated, "Together with Dr. Bhattacharya, we wrote a Newsweek article about how Fauci fooled America with the various things about public health, and LinkedIn took that away also." *Id.*

30. As Dr. Kulldorff notes, LinkedIn eventually terminated his account for posting about the benefits of natural immunity: "Later on, LinkedIn actually closed down my account. . . . [T]his was the last post before suspension, 'By firing staff with natural immunity after COVID recovery, hospitals got rid of those least likely to infect others.'" *Id.*

31. As Dr. Kulldorff noted in his public comments, social-media censorship has not focused solely on the co-authors of the Great Barrington Declaration, but has swept in many other scientists as well: "Twitter, LinkedIn, YouTube, Facebook, they have permanently

suspended many accounts—including scientists." *Id.* These censorship policies have driven scientists and others to self-censorship, as scientists like Dr. Kulldorff restrict what they say on social-media platforms to avoid suspension and other penalties: "I have continued to speak up, but I have since self-censored myself. Because these are important channels of communication, so I don't want to be removed. So, I'm careful with what I say." *Id.* "[C]ensoring, it leads to self-censoring. And also, it leads to self-censoring of people . . . are victims of these censoring because they see that somebody else is censored. 'Okay. I don't want to be suspended. So, I better be careful with what I say.' And of course, that's the purpose of authoritarians and the purpose of those things. And sometimes, where they sort of kind of randomly select who they censor, what they sensor, because they want people to be uncertain about what they can and cannot say." *Id.*

32. Having observed and lived through the government-driven censorship of the Great Barrington Declaration and its co-authors, it is clear to me that these attacks were politically driven by government actors. As I stated, in remarks alongside those of Dr. Kulldorff, "One of the motivations for that was a motivation to create a consensus within the public that . . . an illusion of consensus within the public that there was no scientific dissent against lockdowns. The reason why the Great Barrington Declaration, they reacted that way. . . . [W]e got this viral attention, [that] was a problem for this group [*i.e.,* Dr. Collins, Dr. Fauci, and other government officials]. It posed a political problem for them because they wanted to tell the public that there was no dissent. And so, they had to destroy us. They had to do a devastating takedown. It was a poli-

tical problem they were solving . . . I think that's the immediate context for why they did what they did." *Id.*

33. Dr. Kulldorff aptly summarized our experiences: "it has been really stunning to be a scientist during these last two years. It's kind of been absurd. We have NIH Director Collins and NIAID Director Fauci thinking that you promote science by silencing scientists through published takedowns. It's pretty absurd. We have a geneticist and a virologist thinking they know epidemiology better than epidemiologists at Oxford, Harvard and Stanford, and calling them instead fringe epidemiologists." *Id.*

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Dated: June 4, 2022

/s/ JAYANTA BHATTACHARYA
JAYANTA BHATTACHARYA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI EX REL. ERIC S. SCHMITT,
ATTORNEY GENERAL, AND

STATE OF LOUISIANA EX REL. JEFFREY M. LANDRY,
ATTORNEY GENERAL,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.;
DEFENDANTS

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Filed: June 14, 2022

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**DECLARATION OF MARTIN KULLDORFF**

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I, Dr. Martin Kulldorff, declare as follows:

1. I am an adult of sound mind and make this statement voluntarily, based upon my knowledge, education, and experience.

2. I am an epidemiologist, a biostatistician and a former Professor of Medicine at Harvard University and Brigham and Women's Hospital, from 2015 to November 2021. Before that, I was Professor of Population Medicine at Harvard University from 2011 to 2015.

I hold a Ph.D. from Cornell University. I have published over 200 scholarly articles in peer-reviewed journals in the fields of public health, epidemiology, biostatistics and medicine, among others. My research has been cited in the peer-reviewed scientific literature more than 25,000 times.

3. I have dedicated my professional career to the development and implementation of new disease surveillance systems, including the early detection and monitoring of disease outbreaks; and the post-market evaluation of the safety and efficacy pharmaceutical drugs and vaccines, including the early detection of drug and vaccine adverse reactions.

4. I have served on multiple governmental scientific advisory boards, including the World Health Organization's Disease Mapping Advisory Group; the Scientific Advisory Board for the Accelerated Development of Vaccine Benefit-Risk Collaboration in Europe; the Food and Drug Administration's Drug Safety and Risk Management Advisory Committee; the New York State Department of Health Environmental Public Health Tracking Project; the New York City Department of Health and Hygiene's Advisory Board for Augmenting Statistical Methods for Public Health Syndromic Surveillance System; the National Cancer Institute's Best Practices in Spatial Analysis Working Group; the Centers for Disease Control and Prevention's (CDC) Vaccine Safety Datalink Project, the CDC's MMRV Vaccine Safety Working Group; and CDC's COVID-19 Vaccine Safety Technical Sub-Group; among others. In April 2021, I was abruptly removed from the latter after publishing an op-ed in The Hill against the CDC instituted pause on the one-dose Johnson & Johnson Covid vaccine, arguing that it should not

be withheld from older high-risk Americans. As such, I am probably the only scientist that has been fired by CDC for being too pro-vaccine. (Four days after removing me from the working group, CDC reversed itself and lifted the pause.)

5. I have extensively studied and commented on the necessity and safety of vaccine requirements for different population groups with different benefit-risk profiles, including COVID-19 recovered individuals with natural immunity. I am intimately familiar with the data sources and the medical literature on this topic, as it pertains to both clinical practice and government health policy.

6. My writings on COVID-19-related issues have appeared in both scientific journals (like *Emerging Infectious Diseases, The Lancet and Annals of Epidemiology*) and in the popular press around the world (including the *Wall Street Journal, Newsweek, CNN, The Hill, the Telegraph, the Spectator, the Toronto Sun, Aftonbladet, Dagens Nyheter*, and many other). I have appeared as an invited guest on national and international news and debate programs in the United States, the United Kingdom, Ireland, Sweden, Germany, France, Spain, India, Mexico, Chile, Argentina and Uruguay, among other countries, including Fox News, Democracy Now, Munk Debates, NewsMax, GB News, Hindustan Times and Infobae.

7. As part of my professional work, I communicate scientific information not only through scientific journals, but also through social media. I have maintained a Twitter account since May 2014, and a LinkedIn account for approximately the same amount of time. I currently have 250,800 followers on Twitter and 13,400

contacts and followers on LinkedIn. Some of these followers reside in Missouri and Louisiana.

8. As a public health scientist, I have experienced censorship on social media platforms due to my views on the appropriate strategy for handling the COVID-19 pandemic. Since April 2020, I have argued for better focused protection of older, high-risk people, at the same time, as we should let children go to school and let young adults live near normal lives so as to minimize the collateral public health damage from these lockdowns and other measures.[1]

9. On October 4, 2020, two other epidemiologists and I published the "Great Barrington Declaration" online.[2] My co-authors were Dr. Jayanta Bhattacharya of Stanford University, and Dr. Sunetra Gupta of the University of Oxford.

10. In the Great Barrington Declaration, we stated: "As infectious disease epidemiologists and public health scientists we have grave concerns about the damaging physical and mental health impacts of the prevailing COVID-19 policies, and recommend an approach we call Focused Protection." *Id.* The Declaration criticized current lockdown policies to respond to COVID-19, stating: "Current lockdown policies are producing devastating effects on short and long-term public health. The results (to name a few) include lower childhood vaccination rates, worsening cardiovascular di-

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[1] The Epoch Times (2021), "Censorship of Science, with Dr. Martin Kulldorff, Dr. Scott Atlas, and Dr. Jay Bhattacharya," May 2, 2021. https://www.theepochtimes.com/live-censorship-of-science-with-dr-martin-kulldorff-dr-scott-atlas-and-dr-jay-bhattacharya_4343061.html.

[2] Great Barrington Declaration, https://gbdeclaration.org/.

sease outcomes, fewer cancer screenings and deteriorating mental health—leading to greater excess mortality in years to come, with the working class and younger members of society carrying the heaviest burden. Keeping students out of school is a grave injustice." *Id.*

11. The Great Barrington Declaration was publicly co-signed by 43 medical and public health scientists and practitioners, including a former chair of the Department of Epidemiology at Harvard School of Public Health. It has subsequently been co-signed by over 930,000 people, including over 15,000 medical and public-health scientists, and over 47,000 medical practitioners.

12. On October 8, 2020, four days after the Declaration's publication online, then-Director of National Institutes of Health, Dr. Francis Collins, emailed Dr. Anthony Fauci and Cliff Lane at NIH/NIAID about the Great Barrington Declaration. This email stated: "Hi Tony and Cliff, See: https://gbdeclaration.org/. This proposal from the three fringe epidemiologists who met with the Secretary seems to be getting a lot of attention—and even a co-signature from Nobel Prize winner Mike Leavitt at Stanford. There needs to be a quick and devastating published take down of its premises. I don't see anything like that online yet—is it underway? Francis." This email was produced over a year later in response to FOIA requests.[3]

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[3] Wall Street Journal Editorial Board. (2021) "How Fauci and Collins Shut Down Covid Debate" *Wall Street Journal*. Dec. 21, 2021. https://www.wsj.com/articles/fauci-collins-emails-great-barrington-declaration-covid-pandemic-lockdown-11640129116

13. In a recent speech I gave on May 2, 2022, I summarized many of the instances of social-media censorship that I experienced after publishing the Great Barrington Declaration.[4]

14. After the Great Barrington Declaration was published, I noted that there was an organized campaign against the Great Barrington Declaration with various sorts of strange accusations. By other scientists, we were equated with 'exorcism', 'eugenics', 'clowns', 'anti-vaxxers', 'Trumpian', 'libertarian', 'Koch funded' and 'pseudo scientists'. We were accused of writing the Declaration for financial gains, even though the opposite is true. We were accused of threatening others, which none of us have done.

15. Soon after the Great Barrington Declaration was published, it was censored on social media in an apparent attempt to prevent it from (in Dr. Collins' words) "getting a lot of attention." This included Google deboosting search results for the Declaration within a few days of Dr. Collins' email to Dr. Fauci. In the first few days after its publication, the Great Barrington Declaration came up at the top in the search engine in Google, but then suddenly it wasn't there. Instead, what was there was those who criticized it. Other search engines still had it at the top, but not Google.

16. The Declaration was later censored on Facebook: They took down the Great Barrington Declaration page for about a week, with no explanation. The

[4] The Epoch Times (2021), "Censorship of Science, with Dr. Martin Kulldorff, Dr. Scott Atlas, and Dr. Jay Bhattacharya," May 2, 2021. https://www.theepochtimes.com/live-censorship-of-science-with-dr-martin-kulldorff-dr-scott-atlas-and-dr-jay-bhattacharya_4343061.html.

offending post was a pro-vaccine post arguing that we should prioritize giving the vaccines to older, high-risk people.

17. I also experienced extensive censorship on social media on my personal accounts. For example, in March 2021 Twitter censored my tweet stating that "Thinking that everyone must be vaccinated is as scientifically flawed as thinking that nobody should. COVID vaccines are important for older, higher risk people and their caretakers. Those with prior natural infection do not need it. Nor children."

18. I was also censored by Twitter for two tweets about masks. In one I wrote that, "Naïvely fooled to think that masks would protect them, some older high-risk people did not socially distance properly, and some died from #COVID19 because of it. Tragic. Public health officials/scientists must always be honest with the public." For three weeks starting in May 2021, I had no access to Twitter because of this tweet.

19. On November 5, 2021, I posted a direct quote from Dr. Roberto Strongman, an Associate Professor of Black Studies at the University of California-Santa Barbara. In a recent essay, he had reflected on the historical use of enforced mask use among enslaved populations. My tweet simply quoted his words that: "Masks are symbols of submission / Masks are the lurid fetish of power / Masks lead to the erasure of personhood / Masks promote a culture of fear / Masks are deterrents of solidarity," in quotation marks with an attribution to Dr. Strongman. Twitter censored this tweet by labeling it "Misleading" and preventing it from being replied to, shared, or liked.

20. Twitter is an important venue for communicating accurate public health information to the public. Because of the censoring, and the suspension of other scientists, I have had to self-censor myself on the platform. Sometimes by not posting at all and sometimes through imaginative phrasing. Here is one example of such a tweet: "Having been censored by Twitter, I must be careful what I write about masks: If you do surgery, please wear a surgical mask. It protects your patients."

21. On March 18, 2021, I participated in a two-hour roundtable discussion with Governor Ron DeSantis in Florida, along with Dr. Sunetra Gupta at Oxford, Dr. Jay Bhattacharya at Stanford and Dr. Scott Atlas at Stanford. In this discussion, we made remarks critical of COVID-19 restrictions, including mask mandates on children. I stated that "children should not wear face masks, no. They don't need it for their own protection, and they don't need it for protecting other people either." Dr. Bhattacharya stated that "children develop by watching other people" and that it is "developmentally inappropriate" to require young children to wear face masks. Dr. Atlas pointed out that "there's no scientific rationale or logic to have children wear masks in schools." Dr. Gupta stated that "to force [children] to wear masks and distance socially, all of that to me is in direct violation of our social contract." In the same roundtable, we also argued against vaccine passports. 'Let's try to argue against that from the very beginning before it sort of takes off.' Unfortunately, the video of the roundtable was removed by YouTube, which is owned by Google.

22. I have also experienced censorship on LinkedIn, which is a popular communications platform among

scientists and other professionals. In August 2021, LinkedIn censored a post where I linked to an interview I did with The Epoch Times on the dangers of vaccine mandate. LinkedIn said that 'Only you can see this post.' So, I could still read my own post, but nobody else could, which defeats the whole purpose.

23. The same week, LinkedIn also censored me when I reposted a LinkedIn post by a colleague from Iceland where he cited what the Icelandic chief epidemiologist had said. I did not add any text to the repost, so in this case LinkedIn censored the words of a government public health official: Iceland's equivalent of the CDC director in the U.S.

24. In October 2021, LinkedIn censored a post where I defended health care jobs, pointing out that natural immunity from covid infection is stronger than vaccine induced immunity, so that hospitals should hire rather than fire nurses and other health care providers with natural immunity, and use them for the patients that are the most vulnerable to Covid-19.

25. In November 2021 I wrote a Newsweek op-ed together with Dr. Jay Bhattacharya were we criticized the official Covid-19 response as formulated by Dr. Anthony Fauci. When I posted a quote from and a link to the Newsweek article, it was removed by LinkedIn, which is owned by Microsoft. Ironically, Microsoft News (msn.org) republished the same Newsweek op-ed verbatim.

26. In January 2022, LinkedIn terminated my account for posting about the benefits of natural immunity. My last post before suspension was: "By firing staff with natural immunity after COVID recovery, hospitals got rid of those least likely to infect others."

LinkedIn restored my account after my termination received media attention, but I now have to be very careful with what I write.

27. Twitter and LinkedIn are important venues for communicating accurate public health information to other scientists and to the public. Because of the censoring, and the suspension of other scientists, I have had to self-censor myself on both platforms. Sometimes by not posting important public health information. At other times, I have had to express my thoughts indirectly through imaginative phrasing. For example, on March 15, 2022, I tweeted: "Having been censored by Twitter, I must be careful what I write about masks: If you do surgery, please wear a surgical mask. It protects your patients." This, obviously, was a very indirect and oblique way of communicating the limited utility of wearing masks and expressing my criticism of mask mandates, including the widespread use of cloth masks.

28. Social-media censorship has not focused solely on the co-authors of the Great Barrington Declaration but has swept in many other scientists as well. These censorship policies have driven scientists and others to self-censor, as scientists like me restrict what we say on social-media platforms to avoid suspension and other penalties. In fact, the most devastating consequence of censoring is not the actual posts or accounts that are censored or suspended, but the reluctance of scientists to openly express and debate scientific questions using their varied scientific expertise. Without scientific debate, science cannot survive.

29. It can sometimes appear random who are being censored, but that serves the purpose of the censors.

They cannot monitor every post from every user. By censoring a variety of individuals, some scientists and some non-scientists, some journalists, some private individuals, some anonymous accounts, some after warnings and others suddenly without a warning and some account with many followers and other accounts with few followers, the censors are able to make everyone scared and make everyone self-censor.

30. It has been stunning to be a scientist during these last two years. We have NIH Director Collins and NIAID Director Fauci thinking that you promote science by silencing scientists through published takedowns. It is absurd. We have a geneticist and a virologist thinking they know epidemiology better than epidemiologists at Oxford, Harvard and Stanford, calling us "fringe epidemiologists."

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Dated: June 8, 2022

/s/ MARTIN KULLDORFF
MARTIN KULLDORFF

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI EX REL. ERIC S. SCHMITT,
ATTORNEY GENERAL, AND

STATE OF LOUISIANA EX REL. JEFFREY M. LANDRY,
ATTORNEY GENERAL,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.;
DEFENDANTS

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Filed: June 14, 2022

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**DECLARATION OF JIM HOFT**

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1. My name is Jim Hoft. I am over the age of 18 years and competent to testify about the matters discussed herein.

2. I am the founder, owner, and operator of the popular news website The Gateway Pundit ("GP"), gatewaypundit.com. I reside in St. Louis, Missouri, and operate the website from there. The "Gateway" refers to St. Louis's Gateway Arch. Since its founding in 2004, the Gateway Pundit has grown from a one-man blog to

one of the internet's largest destinations for conservative news and commentary. In 2021, The Gateway Pundit was ranked fourth on a list of top ten conservative news websites, ranked by monthly web searches, with over 2 million searches per month.

3. In connection with The Gateway Pundit, I maintain and operate The Gateway Pundit's social-media accounts, including accounts with Twitter (which has been permanently suspended), Facebook, YouTube, and Instagram. These accounts have or had hundreds of thousands of followers. In particular, GP's Twitter account had over 400,000 followers before it was suspended. GP's Facebook account has over 650,000 followers. GP's Instagram account has over 205,000 followers. GP's YouTube account has over 98,000 followers. Because I am based in Missouri, I know that many of these followers include many residents of Missouri. Based on the large numbers of followers and the nationwide prominence of GP, I am certain that they include large numbers of residents of Louisiana as well.

4. GP's social media accounts have experienced censorship on all major social-media platforms, including its speech regarding COVID-19 issues and election security. In many instances, we have noticed that this censorship has followed and reflected the calls for censorship from federal government officials, including in the Biden Administration.

5. For example, the current Administration has repeatedly called for censorship of social-media speech regarding election integrity and so-called "COVID-19 misinformation." GP has experienced significant social-media censorship regarding its speech on both of

those issues, including on Twitter, Facebook, and YouTube.

6. **Twitter.** On or about January 2, 2021, Twitter suspended GP's Twitter account (@gatewaypundit) after it posted a tweet that stated, "Then It's Not a Vaccine: Crazy Dr. Fauci Says Early COVID Vaccines Will Only Prevent Symptoms and NOT Block the Infection . . . What? Via @gatewaypundit."[1]

7. On or about January 29, 2021, Twitter suspended GP's Twitter account again after it posted a tweet that stated, "Five Days After Biden Inauguration, Judge Rules Late Changes To VA Election Law That Allowed Late Mail-In Ballots Without Postmark To Be Counted is ILLEGAL @100percFEDUP via @gatewaypundit."[2]

8. On or around February 6, 2021, GP's Twitter account was permanently banned after it posted video footage from security cameras in the TCF Center in Detroit from Election Night 2020 that showed two deliveries of vans driving to the building around 3:30 am in the morning bringing shipments of first more than 50 boxes, and then, roughly one hour later, more boxes

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[1] Discussed more fully at Jim Hoft, "Gateway Pundit Suspended on Twitter for 12 Hours for Posting on Dr. Fauci's Crazy Statement on Vaccines." Gateway Pundit, (Janaury 2, 2021) (https://www.thegatewaypundit.com/2021/01/gateway-pundit-suspended-twitter-12-hours-posting-dr-faucis-crazy-statement-vaccines/) (last accessed May 31, 2022)

[2] Discussed more fully at Jim Hoft, "Twitter Suspends Gateway Pundit for Posting Virginia Court Ruling on Virginia Mail-in Ballots — Claims the Court Ruling Incites Violence!" Gateway Pundit (January 29, 2021) (https://www.thegatewaypundit.com/2021/01/twitter-suspends-gateway-pundit-account-posting-virginia-court-ruling-virginia-mail-ballots-claims-court-ruling-incites-violence/) (last accessed May 31, 2022).

of ballots.[3] In connection with this video, GP tweeted "Just an FYI — The fake news media and others challenged our TCF Center video report from Friday. That was a bad move. We have much more coming!" Promptly after this tweet, GP's Twitter account was permanently suspended, preventing us from tweeting the additional content to our 400,000+ followers.

9. On or about August 29, 2020, my brother, Joe Hoft, who blogs for GP, tweeted (@joehoft) a series of posts indicating that COVID-19 deaths are overcounted because the counts include deaths of people who died *with* COVID-19, not just those who died *because* of COVID-19. Dr. Fauci, among others, has subsequently acknowledged the truth of this assertion. These tweets went viral and were heavily re-tweeted, including by President Trump. By my recollection, as a result of these tweets, Twitter partially censored @joehoft by posting public advisories within his tweet, "warning" the public that the tweet was misinformation.

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[3] See Jim Hoft, "Breaking: Twitter Indefinitely Suspends Gateway Pundit Account After We Announce More Video of TCF Center Fraud Will Be Released in Coming Days." Gateway Pundit (February 6, 2021) (https://www.thegatewaypundit.com/2021/02/gateway-pundit-suspended-twitter-announcing-video-tcf-center-fraud-will-released-coming-days/) (last accessed May 31, 2022), see also Jim Hoft, "Exclusive: The TCF Center Election Fraud — Newly Discovered Video Shows Late Night Deliveries of Tens of Thousands of Illegal Ballots 8 Hours After Deadline." Gateway Pundit (February 5, 2021) (https://www.thegatewaypundit.com/2021/02/exclusive-tcf-center-election-fraud-newly-recovered-video-shows-late-night-deliveries-tens-thousands-illegal-ballots-michigan-arena/) (last accessed May 31, 2022).

10. On or about December 31, 2020, my brother, Joe Hoft, who blogs for GP, tweeted (@joehoft) tweeted content related to Hunter Biden's laptop, stating "Where's Hunter? How is Hunter Biden Celebrating the New Year? New Photos of Hunter Biden Pushing Drugs on Women Emerge via @gatewaypundit [link[4]]" Twitter suspended the account on the ground that he "Violat[ed] our rules against posting or sharing privately produced/ distributed intimate media of someone without their express consent."[5]

11. **Facebook.** During 2020 and 2021, we experienced repeated instances of censorship by Facebook, including our content related to COVID-19 and election security. Facebook frequently imposed warning labels and other restrictions on our content, particularly content related to election integrity and COVID-19. Facebook's censorship was so aggressive that I was forced to hire an assistant to monitor and address censorship on Facebook.

12. Specific examples of such censorship by Facebook include the following articles:

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[4] Joe Hoft, "Where's Hunter? How is Hunter Biden Celebrating the New Year? New Photos Emerge of Hunter Biden Pushing Drugs on Women." Gateway Pundit (December 31, 2020) (https://www.thegatewaypundit.com/2020/12/hunter-hunter-biden-celebrating-new-year-new-photos-hunter-biden-pushing-drugs-women-emerge/) (last accessed May 31, 2022).

[5] Discussed more fully at Joe Hoft, "Twitter Suspends TGP's Joe Hoft After Sharing FACTUAL REPORT on Hunter Biden's Serial Sex and Crack Escapades." Gateway Pundit (January 4, 2021) (https://www.thegatewaypundit.com/2021/01/twitter-suspends-tgps-joe-hoft-sharing-factual-report-hunter-bidens-serial-sex-crack-escapades/) (last accessed May 31, 2022).

a. Joe Hoft, "Shock Report: This Week CDC Quietly Updated COVID-19 Numbers

–Only 9,210 Americans Died From COVID-19 Alone – Rest Had Different Other Serious Illnesses." https://www.thegatewaypundit.com/2020/08/shock-report-week-cdc-quietly-updated-covid-19-numbers-9210-americans-died-covid-19-alone-rest-serious-illnesses/?utm_source=Twitter&utm_medium=PostTopSharingB (published Aug. 29, 2020) (last accessed May 31, 2022).

b. Joe Hoft, "This is Fraud: 10% of Reported COVID-19 Deaths for Those Under 35 as Reported by the CDC Are Due to Poisoning, Trauma and Unintentional Injuries." https://www.thegatewaypundit.com/2020/09/fraud-10-reported-covid-19-deaths-35-reported-cdc-due-poisoning-trauma-unintentional-injuries/ (published Sept. 3, 2020) (last accessed May 31, 2022)

c. See also **Exhibits 1-6**.

13. While Facebook sometimes bans our content altogether, they also rely upon a cadre of "third party" "fact check" entities hired by Facebook to declare our articles mis or disinformation. Facebook then relies upon this content to issue advisories to the public that our content is false and dangerous, and that it comes from a disreputable website. Facebook also encourages (or otherwise outright prohibits) the public from sharing our content with their social networks.

14. **YouTube.** We have also experienced censorship on other platforms. For example, on or about May 14,

2022, we received a strike on YouTube, and YouTube removed a video we had posted. The video in question was an interview with Idaho Lieutenant Governor and gubernatorial candidate Janice McGeachin, which we conducted in connection with the Idaho primary election for Governor. In the video, Lt. Gov. McGeachin discussed the problem of election fraud and raised questions about the outcome of the 2020 Presidential election, including money Idaho illegally received from Mark Zuckerberg and other problems relating to voter fraud. YouTube promptly removed the video and issued a strike against our account.

15. The social-media platforms have extended their censorship policies to our followers as of their Facebook accounts) for re-posting or amplifying our content. This chills our followers from re-posting, re-tweeting, or otherwise amplifying our content. The risk of being locked out of Facebook for seven days, or suffering other forms of censorship, deters our followers from amplifying our content on social media platforms, which reduces the reach of our message.

16. These social-media censorship policies chill GP's freedom of expression on social media platforms as well. To avoid suspension and other forms of censorship, we frequently avoid posting content that we would otherwise post on social-media platforms, and we frequently alter content to make it less likely to trigger censorship policies.

17. Based on my close observation of the patterns of censorship of GP's social-media accounts and related accounts in recent years, I have strong reason to infer that federal government officials are directly involved in the censorship of our speech and content.

18. For example, it is clear that Democratic public officials and the Biden Administration coordinate with the Center for Countering Digital Hate (CCDH), a left-wing 501(c)(3) group dedicated to censorship of free speech on the internet. In the summer of 2021, White House press secretary Jen Psaki successfully called for the censorship on social-media platforms of the so-called "disinformation dozen," whom the White House accused of spreading COVID-related "disinformation" on social media. Psaki received this information from CCDH, which had previously identified the so-called "disinformation dozen" and called for their expulsion from social media.

19. In the same time frame, CCDH targeted The Gateway Pundit in coordination with federal officials. CCDH pushed for The Gateway Pundit's demonetization by Google, accusing GP of spreading "misinformation" about COVID-19 and election security—the same topics targeted by the Biden Administration. CCDH coordinated with Democratic Senator Amy Klobuchar to pressure for this demonetization, boasting on its website that she had personally written to Google CEO Sundar Pichai about demonetizing GP, and it is likely that CCDH engaged in similar coordination with the Biden Administration once it was in office. This pressure campaign by federal official(s) and CCDH was successful. In September 2021—the same time frame that CCDH worked with federal officials to expel the "disinformation dozen" from social media—CCDH sent an email to its supporters boasting that it had succeeded in demonetizing GP on Google. CCDH accused GP of "promoting dangerous nonsense about the 2020 US Presidential election and Covid 19," *i.e.*, parroting the same calls for censorship on the same

topics pushed by federal elected officials and senior officials in the Biden Administration.

20. Additionally, the Department of Homeland Security has specifically identified social media disinformation questioning the mainstream narrative regarding COVID-19 vaccination and the integrity of the 2020 general election as domestic terrorism and threats to national security.[6] DHS famously created, then temporarily paused the creation of a governmental "Disinformation Governance Board." DHS then hired former DHS Secretary Michael Chertoff (whose non-profit, Alliance for Securing Democracy lists The Gateway Pundit as Russian disinformation[7]) to reboot and rehabilitate the Board.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Dated: June 6, 2022

/s/ JIM HOFT
JIM HOFT

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[6] *See* **Exhibit 7**—National Terrorism Advisory System Bulletin; Department of Homeland Security (Feb. 7, 2022) (https://www.dhs.gov/sites/default/files/ntas/alerts/22_0207_ntas-bulletin.pdf) (last accessed May 31, 2022).

[7] See Jim Hoft, "MORE LIES: Left-Wing Smear Machine Lists Gateway Pundit as Top Russian Propaganda Website." Gateway Pundit (August 6, 2017) (https://www.thegatewaypundit.com/2017/08/liesleft-wing-smear-machine-lists-gateway-pundit-top-russia-propaganda-website/) (last accessed May 31, 2022).

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

No. 3:22-CV-01213

STATE OF MISSOURI EX REL. ERIC S. SCHMITT,
ATTORNEY GENERAL, AND

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*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
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DEFENDANTS

Filed: June 14, 2022

**DECLARATION OF PATRICK FLESCH**

I, Patrick Flesch, declare as follows:

1. I am over 18 years of age and make this declaration based on my personal knowledge and experience.

2. I am the Director of Constituent Services for the Missouri Attorney General's Office. I have served in that role since July 1, 2021.

3. In my position as Director of Constituent Services, I lead our Constituent Services team whose main

responsibility is to communicate with the citizens of Missouri on behalf of the Office. This includes corresponding via telephone, email, and physical mail. The subject matter of these messages ranges considerably from more mundane day-to-day individual issues to larger policy related correspondence. I oversee, and am personally involved in, receiving, reviewing, and responding to thousands of communications from Missouri constituents per year. For example, in the month of May 2022 alone, we received approximately 1,500 contacts from constituents (phone, email, letters, etc.) and responded to at least 1,000. For me to communicate effectively with Missourians, it is very important for me to understand their actual concerns.

4. Part of my job as Director of Constituent Services is to gather and synthesize topical subject matters that are important to Missouri citizens, on behalf of the Office. Understanding what subject matters and issues are important to Missourians is critical for the Office to formulate policies and messaging for Missourians that will address the actual concerns expressed by Missouri constituents. Not only is this information gathered from traditional forms of communication, such as mail, email, and phone calls to the Office, but this also includes monitoring activity and mentions on multiple social media platforms, including Facebook, Twitter, and YouTube. I monitor these sorts of trends on a daily or even hourly basis when needed on behalf of the Office. Often social media is used in conjunction with data from traditional forms of communication to identify the most pressing matters and to formulate policy responses and messages to address those concerns.

5. Issues regarding COVID-19 responses (such as mask mandates imposed by municipalities and school

districts on schoolchildren) and election security and integrity have been of critical importance to Missourians in recent months and years. For example, mask mandates for schoolchildren have been a critical topic of concern and public discussion for Missourians over the last year. It is very important for me to have access to free public discourse on social media on these issues so I can understand what Missourians are actually thinking, feeling, and expressing about such issues, and so I can communicate effectively with them.

6. Unfortunately, online censorship of free public discourse on social-media companies has hampered my ability to follow Missourians' speech on these issues. It is widely known, for example, that public comments questioning the efficacy of mask mandates has been censored on social media. This directly interferes with my ability to follow, measure, and understand the nature and degree of Missourians' concerns about mask mandates, and forces me to rely on other, less reliable proxies for Missourians' thoughts and opinions about these issues.

7. Such social-media censorship has directly affected Missourians. For example, in one well-publicized example, YouTube censored the videos of four public meetings between the St. Louis County Council and the constituents of St. Louis County, Missouri, when the County Council was debating whether to approve or disapprove County-wide mask mandates imposed by the St. Louis County Department of Public Health.[1]

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[1] *See* Nassim Benchaabane, *Censored over COVID-19 misinformation, St. Louis County to stop using YouTube by Oct. 19*, ST. LOUIS POST-DISPATCH (Oct. 7, 2021), *at* https://www.stltoday.com/news/local/govt-and-politics/censored-over-covid-19-misinformation-

During the public-comment periods at these meetings, a large number of St. Louis County residents made passionate public comments criticizing and opposing the mask mandates, leading to YouTube censoring the videos of the public meetings. *Id.* This video is just the sort of information that is important for me to review, and yet it was unavailable for a critical period of time due to online censorship of speech questioning the efficacy of mask mandates.

8. Similarly, a conservative talk radio station in Missouri, NewsTalk STL, had its entire YouTube channel suspended because it aired an interview discussing election integrity.[2] The station reported that it had received "two strikes against our channel due to 'medical misinformation' according to YouTube's protocol." *Id.* Then, the station was "sent an email informing us that we have been removed from the platform and can no longer post, upload, or create content on our [YouTube] channel." *Id.* The permanent suspension from YouTube was caused by posting an interview "discussing the 2020 election and the need for election integrity legislation on the channel."[3] The interviewee "focused on the perception many American voters have of election fraud, and how legislation aimed at making it easier to

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st-louis-county-to-stop-using-youtube-by-oct-19/article_f0e4e112-40c3-59b3-a70a-aa2a0608c439.html.

[2] Kate Fitzpatrick, *NewsTalk STL is removed from YouTube permanently* (March 21, 2022), *at* https://newstalkstl.com/newstalkstl-is-removed-from-youtube-permanently/.

[3] Douglas Blair, *YouTube Bans St. Louis Talk Radio Station's Channel for Discussing Election Integrity*, THE DAILY SIGNAL (March 31, 2022), *at* https://www.dailysignal.com/2022/03/31/youtube-bans-st-louis-talk-radio-stations-channel-for-discussing-election-integrity/.

vote but harder to cheat would be essential in renewing trust in our elections." *Id.* "A week later on March 21, the station reported that it had received an email from YouTube informing it that it had received a third and final strike for that [interview], resulting in a permanent ban from the site. All its content was deleted, and it could no longer post or share videos." *Id.*

9. Another example of direct censorship of Missouri citizens involves concerned parents who objected to mandatory masking of their children in schools and wanted their schools to remain mask-optional.[4] For example, one parent who posted on nextdoor.com (a neighborhood-networking site operated by Facebook) an online petition to encourage his school to remain mask-optional found that his posts were quietly removed without notifying him, and his online friends never saw them. *Id.* Another parent in the same school district who objected to mask mandates for schoolchildren responded to Dr. Fauci on Twitter, and promptly received a warning from Twitter that his account would be banned if he did not delete the tweets criticizing Dr. Fauci's approach to mask mandates. *Id.* These examples are just the sort of online speech by Missourians that it is important for me and the Missouri Attorney General's Office to be aware of.

10. The kinds of speech discussed above and in the Complaint in this case—such as speech about the efficacy of COVID-19 restrictions, and speech about issues

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[4] Jessica Marie Baumgartner, *Missouri Parents Censored Online for Opposing Mask Mandates in School*, THE EPOCH TIMES (Aug. 4, 2021), *at* https://www.theepochtimes.com/missouri-parents-censored-online-for-opposing-mask-mandates-in-school_3933012.html?welcomeuser=1.

of election security and election integrity—are matters of core interest and high importance to me in my work on behalf of the AGO. When such speech is censored on social media, it makes it much harder for me to do my job and to understand what Missourians really are concerned about.

11. Because online censorship acts as a prior restraint on speech, I will never know exactly how much speech by Missourians on social media never reaches my eyes because it is censored in advance, or as soon as it is posted. But based on these publicly available examples, it is clear that online censorship has blocked me from receiving and reviewing many important expressions of Missourians' concerns about issues of public importance. This censorship directly interferes with the ability of the Attorney General's Office to achieve its mission of acting as the chief legal officer on behalf of Missouri's six million citizens. If we do not know what Missourians' true concerns are, how can we craft messages and policies that are responsive to our citizens?

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Dated: June 8, 2022

/s/ PATRICK FLESCH
PATRICK FLESCH

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI EX REL.; ERIC S. SCHMITT,
ATTORNEY GENERAL, AND

STATE OF LOUISIANA EX REL. JEFFREY M. LANDRY,
ATTORNEY GENERAL,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.;
DEFENDANTS

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Filed: June 14, 2022

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**DECLARATION OF AARON KHERIATY**

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I, Dr. Aaron Kheriaty, declare as follows:

1. I am an adult of sound mind and make this statement voluntarily, based upon my knowledge, education, and experience.

2. I graduated from the University of Notre Dame with a double major in philosophy and pre-medical sciences. I earned my M.D. from Georgetown University, and completed residency training in psychiatry at the University of California Irvine. For many years, I was a Professor of Psychiatry at UCI School of Medicine

and the Director of the Medical Ethics Program at UCI Health, where I chaired the ethics committee. I also chaired the ethics committee at the California Department of State Hospitals for several years. I am now a Fellow at the Ethics & Public Policy Center in Washington, DC, where I direct the program on Bioethics and American Democracy. I am also chief of psychiatry and ethics at Doc1 Health and chief of medical ethics at The Unity Project. I am a senior fellow and director of the Health and Human Flourishing Program at the Zephyr Institute. I serve as a scholar at the Paul Ramsey Institute and on the advisory board at the Simone Weil Center for Political Philosophy.

3. I have authored numerous books and articles for professional and lay audiences on bioethics, social science, psychiatry, religion, and culture. My work has been published in the Wall Street Journal, the Washington Post, Arc Digital, The New Atlantis, Public Discourse, City Journal, and First Things. I have conducted print, radio, and television interviews on bioethics topics with The New York Times, the Los Angeles Times, CNN, Fox News, and NPR. I maintain social-media accounts, including the Twitter account @akheriaty, which has over 158,000 followers.

4. During the early months of the COVID-19 pandemic, I co-authored the University of California's pandemic ventilator triage guidelines for the UC Office of the President and consulted for the California Department of Public Health on the state's triage plan for allocating scarce medical resources. In early 2021, I was involved in developing the vaccine-allocation policy at the University of California when the demand for vaccines outstripped supply and there were ethical questions about who should get the vaccines first.

5. I also served as a psychiatric consultant at the UCI hospital and, in connection with treating patients at the hospital, I contracted COVID-19 in 2020.

6. In August 2021, while I was still professor at UCI School of Medicine and director of the Medical Ethics Program at UCI Health, the University of California implemented an employee vaccine mandate for COVID-19 that made no exceptions for those with infection-induced (or "natural") immunity. Having been previously infected with COVID-19, I had natural immunity to the virus. There is compelling scientific evidence, backed by centuries of experiences, that natural immunity is superior to vaccine-induced immunity. I objected to the vaccine mandate on the ground, *inter alia*, that it is unethical to require individuals with natural immunity to receive a vaccine with known risks of side effects when the vaccine grants no material benefits to those individuals. I ultimately filed suit against the University of California's Board of Regents and its President to challenge the vaccine mandate.

7. In October 2021, the University of California placed me on unpaid leave, and on December 17, 2021, the University terminated my employment.

8. My termination by the University of California for my opposition to its one-size-fits-all vaccine mandate attracted widespread public attention. Stories about my opposition to the vaccine mandate and my termination were featured on national news media. This led to an increase in following on my social-media accounts, where I communicate with followers and the public about matters relating to bioethics, public health, vaccine mandates, and other issues.

9. Following my dismissal from the University and the publication of my story on my Substack newsletter,[5] my Twitter following grew from 5,000 to over 158,000 in the span of five months. Twitter users can opt to display their location on their Twitter page and scrolling through my followers it is evident that they come from all over the United States, including followers from Missouri and Louisiana, as well as followers from dozens of other countries. (I have family members in Missouri who tell me that many of their friends there follow my work closely.) Twitter drives most of the traffic to my Substack newsletter, which has become a significant source of personal income for me after losing my job at the University—income that supports my wife and five children.

10. My LinkedIn network has also grown considerably since I was let go from the University, from a few dozen to 1,333 connections. I share my work, including published articles and announcements on my forthcoming book, on both LinkedIn and Twitter.

11. I have always shared peer-reviewed research findings as well as my own opinions and perspectives on Twitter and LinkedIn. It was not until I began posting information about covid and our covid response policies, however, that I encountered censorship on the Twitter platform. This began in 2020 when I published an article on the adverse mental health consequences of lockdowns. The problem became more pronounced in 2021 when I shared my Wall Street Journal article and other information on ethical issues related to

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[5] https://aaronkheriaty.substack.com/p/farewell-university-of-california

vaccine mandates. The Twitter censorship took several forms.

12. First, as new followers were added, which I could see and count on my "Notifications" page, my number of total followers would not increase commensurately. I finally figured out that as new followers were added, the platform would automatically "unfollow" some of my other followers. So, while new people followed me my total number of followers was clearly artificially suppressed and would plateau or grow only very slowly. Several of my followers reached out to me when they realized they had automatically been "unfollowed" by Twitter, and they had to "refollow" me, in some cases several times repeatedly. Most of those who were dropped would have no way of knowing that this happened unless they specifically took the trouble to check.

13. Shortly after it was announced that Elon Musk would buy Twitter, my following started growing much faster than usual, without me doing anything differently in terms of my engagement with the platform, number, frequency, or type of posts, etc. A few weeks later, when it appeared that Musk's purchase of Twitter was hitting roadblocks, the pattern suddenly reverted and the growth of my following slowed again to the usual snail's pace. Many other users commented at that time that they had similar experiences. The platform may have been walking back some of its censorship tendencies to cover their tracks (Musk was talking about making the Twitter algorithm public), then reversing course when it appeared the sale might not happen.

14. Another problem I encountered frequently on Twitter was "shadow banning". This occurs when my tweets do not appear in my followers' feeds. Many followers commented that they had not seen anything from me for months, even though I post frequently—multiple times daily and multiple days per week. My impression was that tweets on topics like vaccine safety/efficacy were often not shared with many of my followers, while other tweets on non-covid-related topics would garner more attention from followers. Several followers messaged me to say that they could see certain tweets if they went to my timeline, but those same tweets never appeared in their feed.

15. This phenomenon of shadow-banning is well-known and well-documented by Twitter users. The posts most subject to this were those that challenged the federal government's preferred covid policies. I encountered evidence of this shadow-banning in 2021 before I was let go from the University after I started posting on covid topics, and the problem intensified in 2022 following my dismissal, as I continued to post frequently on the ethics of vaccine mandates for competent adults.

16. I have several of my friends and colleagues—including Dr. Peter McCollough and Dr. Robert Malone—who were temporarily (McCollough) or permanently (Malone) banned from Twitter for posing peer-reviewed scientific findings regarding the covid vaccines. Even though the ethics of vaccine mandates is among my areas of expertise, and an area that has impacted me personally and professionally, I am extremely careful when posting any information on Twitter related to the vaccines, to avoid getting banned. This self-censorship has limited what I can say publicly

on topics where I have specific scientific and ethical expertise and professional experience.

17. One of my videos, an early interview I did with journalist Alyson Morrow, on the ethics of vaccine mandates, was temporarily removed from YouTube.[6] The company indicated it violated their misinformation policy but would not give any specifics regarding exactly what content from the interview was problematic. The video was only re-posted by YouTube after Morrow and others drew attention to the fact that YouTube had censored an academic medical ethicist for talking about the medical ethics of vaccine mandates—an absurd form of censorship.

18. The pattern of content censored on these social media platforms mirrors closely the CDC and Biden administration policies. In my experience using these platforms to discuss covid topics, any content that challenges those federal policies is subject to severe censorship, without explanation, on Twitter and YouTube—even when the information shared is taken straight from peer-reviewed scientific literature.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Dated: 3 June 2020

/s/ AARON KHERIATY
AARON KHERIATY

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[6] Available at https://www.youtube.com/watch?v=Ts8Zx1z_wac

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI EX REL. ERIC S. SCHMITT,
ATTORNEY GENERAL, AND

STATE OF LOUISIANA EX REL. JEFFREY M. LANDRY,
ATTORNEY GENERAL,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.;
DEFENDANTS

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Filed: June 14, 2022

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**DECLARATION OF JILL HINES**

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1. My name is Jill Hines. I am over 18 years of age and competent to testify about the matters discussed herein.

2. I am a Co-Director of Health Freedom Louisiana, a consumer and human rights advocacy organization. Because our organization recognizes the need to educate and inform the public of their rights regarding state and federal laws concerning vaccinations, we have experienced social media censorship of our speech regarding vaccine information. We have approximately

13,000 followers each on Health Freedom Louisiana and Reopen Louisiana.

3. My organization engages in public advocacy on behalf of Louisiana citizens on issues of health freedom and fundamental human rights. I have testified before the Louisiana legislature approximately 20 times on such issues.

4. Among other things, we have advocated against the imposition of mask mandates on children, especially during prolonged periods, as in schools. As I testified before the Louisiana legislature, as a human rights advocate, the issue of lack of safety studies on the long-term mask use in children has been of tremendous concern to us. We have submitted requests of the Board of Secondary and Elementary Education (BESE), Louisiana Department of Health, and the CDC requesting the evidence of safety of long-term mask use in children. No agency has been able to fulfill that request and of course, we knew before we asked that there are no such studies. The imposition of an untested, unproven medical intervention on a weaker demographic of society is a human rights violation.

5. In February 2019, Congressman Adam Schiff sent a letter on congressional letterhead to Mark Zuckerberg, Chairman and Chief Executive Officer of Facebook, inquiring about the steps being taken to address the growing threat of "vaccine misinformation." We pride ourselves in always providing well cited, accurate information. Many similar threats from federal officials followed Congressman Schiff's letter, especially as covid became a public concern. In the last two years, any information that was not positive in nature or conveyed adverse events associated with shutdown or

mitigation efforts was deemed "misinformation." Dr. Anthony Fauci has used the term repeatedly and it has been adopted by the press and media. Even our governor and state's public health officer used the term after a particularly contentious hearing in December 2021.

6. As covid became a concern in the U.S. in early 2020, and the human rights violations began to accumulate, I knew that Health Freedom Louisiana had to expand our cause to encompass the concerns of ever-growing government overreach. I launched a grassroots effort called Reopen Louisiana on April 16, 2020 to help expand our reach on social media and take on the issues surrounding the continued government shutdown. It is very much a human rights issue for the government to limit an individual's access to their business and prohibit them from making an income to support and feed their family.

7. The overreach issues grew almost daily, and I took on the task of challenging the covid narrative relayed from the Louisiana Governor's office and the Louisiana Department of Health. Louisiana had implemented a statewide mask mandate in July 2020. The mask mandate was a serious concern. We had compiled a 10-page document of mask studies and had serious concerns about the lack of safety studies, particularly for children. At the time, we used social media exclusively as a means of coordinating rallies, protests, and testimonies at legislative hearings.

8. By October 2020, when our page started receiving significant hits from "fact checkers" and "warnings" from Facebook, our analytics showed that we were reaching approximately 1.4 million people in a month's time on one of our Facebook pages, but after

sharing photos of the mouths of children suffering from impetigo from long-term mask use, our page received a warning and our reach was reduced to thousands.

9. This began a long series of attempts to censor our posts on Facebook and other social-media platforms. Posts pointing to lack of safety of masking were and are targeted, as well as articles that mention adverse events of vaccinations, including VAERS data. I was completely restricted from Facebook for 30 days starting in January 2022 for sharing the image of a display board used in a legislative hearing that had Pfizer's preclinical trial data on it. The most recent restriction, in late May 2022, was for re-posting an Epoch Times article that discussed a pre-print study detailing increased emergency calls for teens with myocarditis following covid vaccination.

10. One post in particular that was hit with a "community standards" warning on October 6, 2020, was a "call to action" asking people to contact their legislators to end the governor's mask mandate. On the same day, we were asking people to testify during the Legislature's Second Extraordinary Session regarding a bill, House Bill 49,[7] that would prohibit a covid vaccine employee mandate. I was prohibited from posting for 24 hours on all pages, including my own. When I was finally able to post again, our reach was significantly diminished, compared with our 1.4 million per month rate beforehand. Our page engagement was almost non-existent for months. It felt like I was posting in a black hole. Each time you build viewership up, it is knocked back down with each violation. Our current analytics

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[7] https://legis.la.gov/legis/BillInfo.aspx?s=202ES&b=HB49&sbi=y

show Reopen Louisiana is reaching around 98,000 in the last month and Health Freedom Louisiana is only reaching 19,000. There are warnings when you search for Health Freedom Louisiana. People that regularly interacted with our page were never heard from again. Some people who did find the page later on, asked us where we went.

11. Over the last year and a half since we noticed social-media censorship beginning in October 2020, my pages have been hit with numerous "fact checks" and "community standards" violations. Articles with health concerns related to mask wearing have been targeted, one in particular was from the website, The Healthy American, as well as articles relating to pregnant women being vaccinated. Pregnant women receiving a covid vaccine was a significant concern of ours considering pregnant women were not included in the preclinical trials but they were included in the vaccine mandate. That is a significant human rights violation. We had one post concerning a study with pregnant women that received a fact check. Data taken directly from VAERS was flagged as misinformation and we received "fact checks" for that as well, even if it contained a disclaimer about causation.

12. My personal Facebook page, and the Facebook pages of both Health Freedom Louisiana and Reopen Louisiana, are all under constant threat of being completely deplatformed. My personal account is currently restricted for 90 days. On many occasions, I have altered the spelling of words, used emoji's, or placed links in comments to avoid censorship.

13. In addition, two of our Facebook groups were completely deplatformed, effectively disbanding a group

of more than two thousand people who were organized to engage in direct advocacy to our state legislature, on two separate occasions. There were two groups that were deplatformed: HFL Group and North Shore HFL. HFL Group was our initial closed group that required people to answer questions to gain entrance. It was deplatfromed in July of 2021. We had an existing state regional closed group called North Shore HFL that we tried to move our members to, but even with using emoji's for masks and shots, and not putting links to articles in posts, it was only used for about 4 months before it was deplatformed as well in September of 2021. HFL Group had almost 2,000 people, and North Shore HFL had less than 500 before it was taken down.

14. The last post I made in our HFL Group on July 13, 2021, was a "call to action" for the upcoming Veto Session, asking people to contact legislators regarding health freedom legislation. During the regular legislative session, we had two bills that were passed successfully, but both were vetoed by the governor, including a hugely popular bill that prohibited the addition of vaccine information on a state issued driver's license. The other bill provided immunity from liability for businesses that did not impose a covid vaccine mandate. Removing our closed group at such a crucial time effectively stopped our ability to communicate with our representatives in the state legislature.

15. After North Shore was deplatformed, we looked for alternatives for daily communication. We were to the point of speaking in code on Facebook, so moving away from traditional social media was the only option. We currently have 80 members in a chat app called GroupMe. We have no statewide reach with that tool.

16. It has been incredibly frustrating knowing that the government's narrative is going unchallenged and that we have not been able to effectively communicate with people. Knowing that government agencies colluded with Facebook to suppress the messaging of groups like mine while paying exorbitant amounts to promote vaccinations and covid policies has been especially disheartening. To say the cards are stacked against me is an understatement.

17. It is a serious concern that speech in direct opposition to government policy was suppressed. The ability to voice concern or opposition to government policy is a bedrock of our country. We should all be concerned that while we MAY agree with current government policy, it only takes an election for that to change.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Dated: June 9, 2020

/s/ JILL HINES
JILL HINES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-CV-01213

STATE OF MISSOURI EX REL. ERIC S. SCHMITT,
ATTORNEY GENERAL, AND

STATE OF LOUISIANA EX REL. JEFFREY M. LANDRY,
ATTORNEY GENERAL,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.;
DEFENDANTS

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Filed: June 14, 2022

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**DECLARATION OF ASHLEY BOSCH**

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1. My name is Ashely Bosch. I am over 18 years of age and make this declaration based on my personal knowledge and experience.

2. I am a Communications Officer for the Louisiana Department of Justice, where I have been employed part-time and full-time since May 20, 2019.

3. In my position, I monitor and update the Department's social media accounts. I work hard to ensure the information we provide to the public is distributed accurately, quickly, and effectively. For me to com-

municate with the people we serve, it is very important for me to understand their actual concerns.

4. Part of my job is to gather and synthesize topical subject matters that are important to Louisiana citizens, on behalf of the Department. Understanding what subject matters and issues are important to Louisianans is critical for the Department to formulate policies and messaging that will address the concerns expressed by our constituents. Not only is this information gathered from traditional forms of communication such as mail, email, and phone calls to the Department; but this also includes monitoring activity and mentions on social media platforms, including Facebook, Instagram, Twitter, and YouTube.

5. Issues regarding COVID-19 responses and election security and integrity have been very important to Louisianans in recent months and years. For example, mask and vaccine mandates for students have been a very important source of concern and public discussion by Louisiana citizens over the last year. It is very important for me to have access to free public discourse on social media on these issues so I can understand what our constituents are actually thinking, feeling, and expressing about such issues, and so I can communicate properly with them.

6. Online censorship of Louisiana citizens by social media companies interferes with my ability to follow Louisianans' speech on these issues. For example, public comments questioning the efficacy of mask mandates have been widely censored on social media. This censorship directly interferes with my ability to follow and understand Louisiana citizens' concerns about

mask mandates and other issues that are subject to social-media censorship.

7. Such social media censorship has directly affected Louisiana Department of Justice. For example, on August 18, 2021, YouTube censored our Department's video of Louisiana citizens expressing their opinions on the government's responses and proposals to COVID-19. We posted a video of Louisiana constituents who came to the State Capitol to testify and made comments critical of the efficacy of COVID-19 vaccines and masks and of government mandates—resulting in YouTube removing the content from their platform. We received a notice stating that the video we had posted supposedly violated YouTube's "medical misinformation policy." The notice stated that "YouTube does not allow content that spreads medical misinformation that contradicts' local health authorities' or the World Health Organization (WHO) medical information about COVID-19." The same email stated that any additional strike would result in a one-week suspension. With the threat of YouTube suspending our account, we were forced to not pursue a challenge further and to be careful about future content posted on YouTube.

8. Such censorship has also directly affected many other Louisianans, including elected officials and others whose concerns it is important for me to follow on social media. For example, Health Freedom Louisiana—a consumer and human rights advocacy organization—has experienced numerous cases of censorship as it has challenged the efficacy of COVID-19 vaccines and masks and of government mandates.

9. As another example, a Louisiana state representative had content he posted flagged as misleading

and de-boosted by Facebook for violating its medical misinformation policy. The censored post merely restated guidance from the World Health Organization's website about whether children should receive COVID-19 vaccines.

10. Louisanans' speech about the efficacy of COVID-19 restrictions, and speech about issues of election security and election integrity are matters of great interest and importance to me in my work on behalf of the Louisiana Department of Justice. When such speech is censored on social media, it makes it much harder for me to do my job and to understand what Louisianans really are concerned about.

11. Because much content is blocked before I ever see it, I will never know exactly how much speech by Louisianans on social media never reaches my eyes because it is censored in advance, or as soon as it is posted. But based on publicly available examples, it is clear that online censorship has blocked me from receiving and reviewing many important expressions of Louisiana citizens' concerns about issues of public importance. This censorship directly interferes with the ability of the Louisiana Department of Justice to serve our State's citizens.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Executed: June 14, 2022

/s/ ASHLEY BOSCH
ASHLEY BOSCH

**WHITE HOUSE EMAILS**

Filed: Jan. 11, 2023

**From:** Humphrey, ClarkeEOP/WHO[**REDACTED**]@who.eop.gov

**Sent:** 1/23/2021 1:04:39 AM

**To:** [**REDACTED**]@twitter.com]; [**REDACTED**]@twitter.com]

**CC:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** FlaggingHank Aaron misinfo

Hey folks — Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP:

https://twitter.com/RobertKennedyJr/status/1352748139665645569

And then if we can keep an eye out for tweets that fall in this same ~genre that would be great.

Thanks!

Clarke

**From:** [**REDACTED**]@twitter.com]

**Sent:** 1/23/2021 1:08:36 AM

**To:** Humphrey, Clarke EOP/WHO[**REDACTED**] @who.eop.gov

**CC:** [**REDACTED**]@twitter.com]; [**REDACTED**]@twitter.com]; Flaherty, Robert EOP/WHO [**REDACTED**] @who.eop.gov]

**Subject:** [EXTERNAL] Re: Flagging Hank Aaron misinfo

Thanks. We recently escalated this.

On Fri, Jan 22, 2021 at 8:05 PM Humphrey, Clarke EOP/WHO [**REDACTED**]@who.eop.gov.wrote:

Hey folks — Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP:

>https://twitter.com/RobertKennedyJr/status/1352748139665645569

And then if we can keep an eye out for tweets that fall in this same ~genre that would be great.

Thanks!

Clarke

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[**REDACTED**]
Twitter, Inc |Public Policy
@TwitterGov & @Policy

**From:** [**REDACTED**]@twitter.com]
**To:** Flaherty, Robert EOP/WHO
**Sent:** 2/7/2021 3:00:29 PM
**Subject:** Re: [EXTERNAL] Re: Urgent: Finnegan Biden imposter

Hi Rob,

Glad that we could help resolve the issue last night. To help streamline the process, and ensure that you have expedited help, we would strongly recommend the following:

**1. Consult with the White House IT Department to unlock emails from Twitter's Support Ticketing System.** The issues you're experiencing are due to the White House's system prohibiting emails. The two prior administrations also experienced this issue and it is fixable within your internal systems. <u>This is particularly critical to resolve at large because if there is an issue</u>

with your account, we would notify you through email.

**2. Designate a list of authorized White House staff for Twitter's Partner Support Portal.** We sent over instructions about this on January 28th and also discussed this with Christian during our call on February 4th. This is the same system we had in place for the previous two administrations for their support issues, as well as the transition and campaign teams.

Once you assign and we enroll these authorized reporters, whenever they submit a ticket through the Help Center it will be prioritized automatically, without having to contact our team, and you won't need to add your personal information. To enroll your designated reporters to the Partner Support Portal, we simply need the list of @usernames (up to 10) that are registered with a White House email address.

**3. Streamlined coordination with ODS.** We are committed to making sure your team is properly trained and equipped with all of the tools and best practices for both content development and triaging issues. To deliver the best service, we would prefer to have a streamlined process strictly with your team as the internal liaison. That is the most efficient and effective way to ensure we are prioritizing requests. In a given day last week for example, we had more than four different people within the White House reaching out for issues. The more we can empower your team to be the in-house experts, the better service and partnership we can provide.

I would welcome a conversation about the aforementioned if you have specific questions.

Thanks,

[**REDACTED**]

–

[**REDACTED**]

Twitter, Inc |Public Policy

@TwitterGov & @Policy

On Sat, Feb 6, 2021, at 11:09 PM Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

Thanks

Sent from my iPhone

On Feb 6, 2021, at 10:32 PM, [**REDACTED**]@twitter.com.wrote:

Update for you — account is now suspended.

On Sat, Feb 6, 2021 at 9:47 PM Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov. wrote:

Great. Cannot stress the degree to which this needs to be resolved immediately.

Sent from my iPhone.

On Feb 6, 2021, at 9:47 PM, [**REDACTED**]@twitter.com wrote:

Thank you for sending over.  We'll escalate for further review from here.

On Sat, Feb 6, 2021 at 9:45 PM Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov. wrote:

I have tried using your form three times and it won't work — it is also ridiculous that I need to upload my id to a form prove that I am an authorized representative of Finnegan Biden.

Please remove the is account immediately:

>>>https://twitter.com/bidenfinnegan<<<;;

I have CC'd Anthony Bernal, the First Lady's senior advisor, in case you have any further questions.

Sent from my iPhone

--

[**REDACTED**]

Twitter |Public Policy

[**REDACTED**]

--

[**REDACTED**]
Twitter |Public Policy
[**REDACTED**]

**From:** [**REDACTED**]@fb.com]
**Sent:** 2/11/2021 10:17:22 AM
**To:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov]; Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov]; Humphrey, Clarke EOP/WHO [**REDACTED**]@who.eop.gov]
**CC:** [**REDACTED**]@fb.com]; [**REDACTED**]@fb.com]; [**REDACTED**]@fb.com]; [**REDACTED**]@fb.com]
**Subject:** [EXTERNAL] Re: COVID-19 Outreach to communities worldwide

Hi Rob,

Quickly following up to see when you would like to have a meeting arranged to speak to our misinformation team reps about the latest updates. They also have a more detailed misinformation analysis prepared based on the discussions/questions from the previous meetings during the transition time period.

Best,

[**REDACTED**]

Get Outlook for iOS

---

**From:** [**REDACTED**]@fb.com]

**Date:** Tuesday, February 9, 2021 5:57:52 PM

**To:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>; Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov**>;** Humphrey, Clarke EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** [**REDACTED**]@fb.com>; [**REDACTED**]@fb.com>; [**REDACTED**]@fb.com]; [**REDACTED**]@fb.com>; [**REDACTED**]@fb.com>

**Subject:** Re: COVID-19 Outreach to communities world-wide

Good evening Rob,

We have provided responses to your initial questions with input from the various teams below. We are happy to discuss these and additional questions as per your recent note. Do let us know a few windows that work for you.

**Can you share more about our framework here? May, of course, is very different than "will." Is there a strike policy, ala Youtube? Does the severity of the claims matter?**

We don't disclose the details of our thresholds publicly

due to concerns about users gaming the system to avoid enforcement, however we do notify Groups, Pages, and Advertisers when we've removed content that violates our Community Standards. We start placing restrictions on accounts, Pages, and Groups for multiple violations, including restrictions on their ability to share content for increasing periods of time and limitations on their ability to reach their audience. If violations continue, we will suspend the entire Page, Group, or account. Additionally, when we review Pages and groups we look at how they describe themselves and may restrict or remove them if the title or description violate our policies.

**And as far as your removal of claims, do you have data on the actual number of claims-related posts you've removed?**

**Do you have a sense of how many are being flagged versus how many are being removed? Are there actions (downrankng, etc) that sit before removal?**

It is a bit too early to be sure – We will begin enforcing this policy immediately, with a particular focus on Pages, Groups and accounts that violate these rules, and we'll continue to expand our enforcement over the coming weeks. There is a range of content that can violate these policies, and it will take some time to train the reviewers and systems on enforcement.

**How are you handling things that are dubious, but not provably false?**

In consultation with leading health organizations, we continuously expand the list of false claims that we remove about COVID-19 and vaccines during the pandemic. We remove claims public health authorities tell us have been debunked or are unsupported by evidence.

Content which does not quality for removal may be eligible to be fact-checked by our network of over 80 fact-checking organizations. When one of our independent fact-checking partners debunk a post, we reduce its distribution and add strong warning labels with more context, so fewer people see the post. We do not remove the content, but are focusing on improvement efforts that will help us to better address content that contributes to unfounded hesitancy towards the COVID-19 vaccine.

For example, we're working to proactively prevent posts discouraging vaccines from going viral on our platforms; address content that experts believe dissuades people from getting the vaccine, but does not violate our misinformation policies, through the use of information labels; and prevent recommendations for Groups, Pages, and Instagram accounts that repeatedly push content discouraging vaccines.

-On Behalf of the Facebook team

**FACEBOOK**

[**REDACTED**]

U.S. Public Policy
Facebook

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**From:** "Flaherty, Robert EOP/WHO" [**REDACTED**]@who.eop.gov]>

**Date:** Tuesday, February 9, 2021 4:59 PM

**To:** [**REDACTED**]@fb.com]>, "Rowe, Courtney M. EOP/WHO" [**REDACTED**]@who.eop.gov>, "Humphrey, Clarke EOP/WHO" [**REDACTED**]@who.eop.gov>

**Cc:** [**REDACTED**]@fb.com], [**REDACTED**]@fb.com], [**REDACTED**]@fb.com], [**REDACTED**]@fb.com]

**Subject:** RE: COVID-19 Outreach to communities worldwide

All, especially given the Journal's reporting on your internal work on political violence spurred by Facebook groups, I am also curious about the new rules as part of the "overhaul." I am seeing that you will no longer promote civic and health related groups, but I am wondering if the reforms here extend further? Are there other growth vectors you are controlling for?

Happy to put time on the calendar to discuss further.

---

**From:** Flaherty, Robert EOP/WHO

**Date:** Monday, February 8, 2021 1:37 PM

**To:** [**REDACTED**]@fb.com]>; Rowe, Courtney M.

EOP/WHO [**REDACTED**]@who.eop.gov]>; Humphrey, Clarke EOP/WHO [**REDACTED**] @who.eop.gov]>

**Cc:** [**REDACTED**]@fb.com]>; [**REDACTED**]@fb.com ]>; [**REDACTED**]@fb.com>

**Subject:** RE: COVID-19 Outreach to communities worldwide

[**REDACTED**] Thanks.

This line, of course, stands out:

*that repeatedly share these debunked claims may be removed altogether.*

Can you share more about your framework here? May, of course, is very different than "will." Is there a strike policy, ala Youtube? Does the severity of the claims matter?

And as far as your removal of claims, do you have data on the actual number of claims-related posts you've removed? Do you have a sense of how many are being flagged versus how many are being removed? Are there actions (downranking, etc) that sit before removal?

How are you handling things that are dubious, but not provably false?

Thanks

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Monday, February 8, 2021 1:18 PM

**To:** Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>; Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>; Humphrey, Clarke EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** [**REDACTED**]@fb.com>; [**REDACTED**]@fb.com>; [**REDACTED**]@fb.com>

**Subject:** [EXTERNAL] COVID-19 Outreach to communities worldwide

Good afternoon Courtney, Rob, and Clarke,

We wanted to make sure you saw our announcements today about running the largest worldwide campaign to promote authoritative COVID-19 vaccine information and expanding our efforts to remove false claims on Facebook and Instagram about COVID-19, COVID-19 vaccines and vaccines in general during the pandemic. More details are in our Newsroom: authoritative COVID-19 vaccine information and COVID-19 and vaccine misinformation.

**Helping People Find Where and When They Can Get Vaccinated**

- Starting this week, we'll feature links in the COVID-19 Information Center to local ministry of health websites to help people understand whether they're eligible to get vaccinated and how to do so.

- And in the coming weeks, as more information becomes available, we'll continue to improve this feature, making it easier for people to see where and when they can get vaccinated in just a few taps.

**Sharing Credible Information About COVID-19 Vaccines**

- We're working with health organizations and community leaders to run campaigns on our platform promoting accurate information about COVID-19 vaccines and encouraging people to get vaccinated.

- We're giving over $120 million in ad credits to help health ministries, NGOs and UN agencies reach billions of people around the world with COVID-19 vaccine and preventive health information.

- In the US, we're partnering with the Johns Hopkins Bloomberg School of Public Health to reach Native American communities, Black communities and Latinx communities, among others, with science and evidence-based content that addresses the questions and concerns these communities have.

- We're also working with AARP to reach Americans over 50 with educational content about COVID-19 vaccines, including Spanish-language content designed to reach Latinx and Hispanic communities.

**Combating Vaccine Misinformation**

- We are expanding our efforts to remove false claims on Facebook and Instagram about COVID-19, COVID-19 vaccines and vaccines in general during the pandemic. Since December, we've removed false claims about COVID-19 vaccines that have been debunked by public health experts.

- Today, following consultations with leading health organizations, including the World Health Organization (WHO), we are expanding the list of false claims we will remove to include additional debunked claims about the coronavirus and vaccines. We already prohibit these claims in ads.

- Groups, Pages and accounts on Facebook and Instagram that repeatedly share these debunked claims may be removed altogether. We are also requiring some admins for groups with admins or members who have violated our COVID-19 policies to temporarily approve all posts within their group.

- When people search for vaccine or COVID-19 related content on Facebook, we promote relevant, authoritative results and provide third-party resources to connect people to expert information about vaccines. On Instagram, in addition to surfacing authoritative results in Search, in the coming weeks we're making it harder to find accounts in search that discourage people from getting vaccinated.

- As we noted last month in response to guidance from the Oversight Board, we are committed to providing more transparency around these policies. You can read the detailed updates in Facebook Community Standards and in our Help Center.

**Providing Data to Inform Effective Vaccine Delivery**

- Last year, we began collaborating with Carnegie Mellon University Del phi Research Group and the University of Maryland on COVID-19 surveys about symptoms people are experiencing, mask wearing behaviors and access to care. With over 50 million responses to date, the survey program is one of the largest ever conducted and has helped health researchers better monitor and forecast the spread of COVID-19.

- To help guide the effective delivery of COVID-19 vaccines, the survey data will provide a better understanding of trends in vaccine intent across sociodemographics, race, geography and more. The scale of the survey will also allow for faster updates on changes in trends, such as whether vaccine intent is going up or down in California in a given week and better insights on how vaccine intent varies at a local level. We'll share these new insights including vaccine attitudes at a county level in the US as well as globally.

These new policies and programs will help us continue to take aggressive action against misinformation about COVID-19 and vaccines and help people find where and when they can get vaccinated. You can read more about how we're supporting COVID-19 relief efforts and keeping people informed at our COVID-19 action page.

-On Behalf of the Facebook team

**FACEBOOK**

[**REDACTED**]

U.S. Public Policy

Facebook

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]

**Sent:** 3/15/2021 3:20:54 AM

**To:** [**REDACTED**]@fb.com]

**CC:** Humphrey, Clarke EOP/WHO [**REDACTED**]@who.eop.gov]; Peck, Joshua (HHS/ASPA) [**REDACTED**]@hhs.gov]; Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov]; [**REDACTED**]@fb.com]; [**REDACTED**]@fb.com]; [**REDACTED**]@fb.com]

**Subject:** Re: [EXTERNAL] Survey Findings: Jan 10 – Feb 27

[**REDACTED**] thanks. Good insights here.

I'm more interested in the data that was outlined in the Washington Post (https://www.washingtonpost.com/technology/2021/03/14/facebook-vaccine-hesistancy-qanon)

And what interventions you are testing/their effectiveness.

-Rob

Sent from my iPhone

On Mar 12, 2021, at 4:59 PM, [**REDACTED**]@fb.com> wrote:

Hi All,

Following up on our commitment to share our survey data on vaccine uptake. We're happy to share these findings regularly moving forward to help inform your teams and strategies. Attached are our findings from January 10 — February 27, 2021. On Monday the report will be available online, and I'll be sure to send a link when it's published.

Note that highlights of the findings are up top, a robust executive summary follows, and then a deep dive into the methodology, greater detail on state trends, occupations, barriers to acceptance etc. Hopefully, this format works for the various teams and audiences within the White House / HHS that may find this data valuable. We're also open to feedback on the formatting.

Please let us know if you have specific questions about the findings or the survey itself, we're happy to track down answers or book time.

Best,

[**REDACTED**]

[**REDACTED**]
facebook, inc. | politics & government
[**REDACTED**]@fb.com [**REDACTED**]@fb.com>

<CMU_Topline_Vaccine_Report_20210312.pdf>

**From:** [**REDACTED**]@fb.com]
**Sent:** 3/16/2021 11:17:59 PM
**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov]
**CC:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]
**Subject:** Re: [EXTERNAL] Re: You are hiding the ball

Thanks Andy, and apologies for the delay in getting back. We are absolutely invested in getting you the specific information needed to successfully manage the vaccine rollout. We want to share information with you that we trust is statistically significant and derived from sound analysis, so that it can actually be helpful. The information cited in the WaPo article over the weekend was leaked and was not vetted internally to understand how accurate it is or the ramifications that could result from it. But I understand your point regarding how we communicate, and that we need to share information with you in a

way that prioritizes what we are seeing in as close to real time as possible. I'd like to set up a conversation with our research leads to walk your team through ongoing research we are currently conducting and our approach; and then we can prioritize sharing results as quickly as possible.

Moreover, the data we sent on Friday and will continue to send throughout the year represents the information we are using internally to shape our own thinking on this content—we believe this data addresses many of the questions that have been posed (because it has been so helpful to guide our own internal efforts). We'd appreciate the opportunity to go through it in detail with whomever is interested on your team.

I know you're extremely busy. If it's ever helpful to connect by phone instead of over email I am at [**REDACTED**]

[**REDACTED**]

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**From:** Slavitt, Andrew M. EOP/WHO [**REDACTED**] @who.eop.gov>

**Date:** Monday, March 15, 2021 at 7:11 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Flaherty, Rob EOP/WHO [**REDACTED**]@ who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: You are hiding the ball

[**REDACTED**]

I appreciate being copied on the note. It would nice to establish trust. I do feel like relative to others, interactions with Facebook are not straightforward and the problems are worse—like you are trying to meet a minimum hurdle instead of trying to solve the problem and we have to ask you precise questions and even then we get highly scrubbed party line answers. We have urgency and don't sense it from you all. 100% of the questions I asked have never been answered and weeks have gone by.

Internally we have been considering our options on what to do about it.

Regards,

Andy

Sent from my iPhone

On Mar 15, 2021, at 6:42 PM, [**REDACTED**]@fb.com> wrote:

Thanks, Rob. Called and left you a message earlier. I understand why you'd read the WaPo piece and come away feeling like we are not leveling with you. The piece inflated unconfirmed and leaked work that's being done by a small team. It's exploratory work and is not close to being a finalized work product — in fact the team that

briefed you (including me) wasn't aware of the work at the time we briefed you. This was not a "massive study" as depicted by the Post — this was a small team experimenting with applying a relatively new system to COVID19 content. At any given time, there are many research projects similar to this being conducted by data scientists across the platform — as we've discussed, we're working hard to understand and address this type of content. Our definition of vaccine hesitancy is evolving — it is not a mature concept. This is early work and we have not gone through the kind of quality assurance we'd usually do before sharing the learnings externally. The data that leaked and was reported on should not be interpreted to be anything more than one of many efforts underway to better inform how we tackle this problem. As we develop them further, we will definitely keep you updated.

We obviously have work to do to gain your trust. You mention that you are not trying to play "gotcha" with us — I appreciate the approach you are taking to continued discussions. We are also working to get you useful information that's on the level. That's my job and I take it seriously — I'll continue to do it to the best of my ability, and I'll expect you to hold me accountable.

If interested, I can schedule time to give you more context on how this work is done and why we wouldn't include it in a briefing.

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Monday, March 15, 2021 at 1:10 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: You are hiding the ball

I don't think this is a misunderstanding, [**REDACTED**].

I've been asking you guys pretty directly, over a series of conversations, for a clear accounting of the biggest issues you are seeing on your platform when it comes to vaccine hesitancy, and the degree to which borderline content—as you define it—is playing a role. I've also been asking for what actions you have been taking to mitigate it as part of your "lockdown"—which in our first conversation, was said to be in response to concerns over borderline content, in our 1:1 convo you said was not out of any kind of concern over borderline content, and in our third conversation never even came up.

You said you would commit to us that you'd level with us. I am seeing in the press that you have data on the impact of borderline content, and its overlap with various communities. I have asked for this point blank, and got, instead, an overview of how the algorithm works, with a pivot to a conversation about profile frames, and a 45-minute meeting that seemed to provide you with more insights than it provided us.

I am not trying to play "gotcha" with you. We are gravely concerned that your service is one of the top drivers of vaccine hesitancy — period. I will also be the first to acknowledge that borderline content offers no easy solutions. But 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 with us when we ask you what is going on.

This would all be a lot easier if you would just be straight with us.

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Monday, March 15, 2021 10:22 AM

**To:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** [EXTERNAL] Re: You are hiding the ball

Thanks Rob—I think there is a misunderstanding on what this story is covering with respect to research that's happening — I will call to clear up. Certainly not hiding the ball.

Also flagging our announcement that went live this morning—this is the announcement I mentioned on Friday's call.

>>>https://about.fb.com/news/2021/03/mark-zuckerberg-announces-facebooks-plans-to-help-get-people-vaccinated-against-covid-19/<<<;;

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**From:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Sunday, March 14, 2021 at 11:13 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** You are hiding the ball

>>>https://www.washingtonpost.com/technology/2021/03/14/facebook-vaccine-hesistancy-qanon<<<;;

Sent from my iPhone

**From:** [**REDACTED**]@fb.com]

**Sent:** 3/24/2021 1:42:30 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]

**CC:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** Re: [EXTERNAL] Re: Follow up—Friday call w[**REDACTED**]

Look forward to talking today at 4:00. [**REDACTED**] will plan on giving an overview of her role and the work across the teams at the top and of course will respond to questions, as that's the objective of having her in touch with you regularly over the coming weeks. One additional participant on our end will be [**REDACTED**]—just to make sure we're tracking all follow ups.

---

**From:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Tuesday, March 23, 2021 at 11:16 AM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] Re: Follow up—Friday call w[**REDACTED**]

Great. I can do 4!

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Tuesday, March 23, 2021 11:03 AM

**To:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Follow up—Friday call w[**REDACTED**]

Rob—we're good to schedule around your avail Wednesday afternoon if that works.

---

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Monday, March 22, 2021 at 11:21 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Follow up—Friday call w[**REDACTED**]

[**REDACTED**]—I believe you mentioned in a previous conversation that large meetings like that are not the most productive way to exchange information on this topic. I certainly have not found them to be especially illuminating. If we're going to do another large format meeting, can you outline what you'll be bringing to the table? Otherwise, it seems like a smaller group may be more productive.

Sent from my iPhone

On Mar 22, 2021, at 10:58 PM, [**REDACTED**]@fb.com]> wrote:

Thanks Rob—appreciate the context below. For the meeting with [**REDACTED**]—possible that we could aim

for Wednesday? I'll rally our folks if you have a window in the afternoon that will work.

---

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Monday, March 22, 2021 at 4:51 PM

**To:** [**REDACTED**]@fb.com>, Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: Follow up—Friday call w [**REDACTED**]

Awesome, [**REDACTED**] Similarly to how we're looking out for your gameplan on tackling vaccine hesitancy spread on your platform, we'll look out for how you plan to help close the gap on equitable access.

Had a chance to connect with Andy earlier to download on his call with [**REDACTED**]—seems like there's alignment here.

Excited to meet [**REDACTED**] Could talk tomorrow in the 4-5 hour ET tomorrow.

Afa sharing data, that's great. Again, as I've said, what we are looking for is the universe and scale of the problem. You noted that there is a level below sensational stories that get down-ranked, which took the form of general skepticism. I think it is helpful to know where you think the biggest issue is. I think we are all aligned

that the problem does not sit in "microchips"–land, and that it seems plausible that the things that drive the most actual hesitancy sit in "sensational" and "skeptical." If you're downranking sensational stuff—great—but I want to know how effective you've seen that be from a market research perspective. And then, what interventions are being taken on "skepticism?" I could see a range of actions, including hitting them good information, boosting information from sources they've indicated they trust, promoting content from their friends who have been vaccinated . . . . . . . what are you trying here, and again, how effective have you seen it be. And *critically,* what amount of content is falling into all of these buckets? Is there wider scale of skepticism than sensationalism? I assume given the Carnegie data and the studies I've seen in the press that you have this. While I think you and I both know that access to the study's toplines and a crowdtangle account aren't going to get us the info we're looking for, it shows to me that you at least understand the ask.

As I've said: this is not to play gotcha. It is to get a sense of what you are doing to manage this. This is a really tricky problem. You and I might disagree on the plan, but I want to get a sense of the problem and a sense of what you solutions are.

On whatsapp, which I may seem like I'm playing gotcha, but I guess I'm confused about how you're measuring reduction of harm. If you can't see the message, I'm genuinely curious—how do you know what kinds of messages you've cut down on? Assuming you've got a good mousetrap here, that's the kind of info we're

looking for above: what interventions you've taken, and what you've found to work and not work? And how effective are you seeing the good information on Whatapp be? Are you doing crossplatform campaign work to try to reduce people's exposure on whatsapp? As we worry about equity and access, Whatsapp is obviously a central part of that given its reach in immigrant communities and communities of color.

You've given us a commitment to honest, transparent conversations about this. We're looking for that, and hoping we can be partners here, even if it hasn't worked so far. I know Andy is willing to get on the phone with [**REDACTED**] a couple of times per week if its necessary to get all of this.

Looking forward.

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Monday, March 22, 2021 12:53 PM

**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**CC:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov]>

**Subject:** [EXTERNAL] Re: Follow up—Friday call w [**REDACTED**]

Thanks Andy. Also—wanted to flag a discussion we are scheduled to have with [**REDACTED**] regarding some

work around equitable vaccine adoption—just a touch-base conversation to talk through ideas we have for closing the adoption gap in communities disproportionately impacted by Covid and to discuss how we can be supportive overall in the US re: an equity strategy. We were connected with [**REDACTED**] who scheduled the conversation—just didn't want any surprises.

---

**From:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Monday, March 22, 2021 at 9:37 AM

**To:** [**REDACTED**]@fb.com>

**Cc:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: Follow up—Friday call w [**REDACTED**]

Thanks [**REDACTED**]. [**REDACTED**] and I will connect and follow up.

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Sunday, March 21, 2021 11:25 PM

**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** [EXTERNAL] Follow up—Friday call w [**REDACTED**]

Andy,

Thanks for taking the time to connect on Friday. Per our discussion, I wanted to follow up with next steps:

1. **Consistent Product Team POC:** As discussed, we will make [**REDACTED**] who has been coordinating the product work that matters most to your teams, available on a regular basis. If it makes sense, we can schedule some time for [**REDACTED**] to connect with you and/or Rob (and whomever else makes sense) early this week.

2. **Sharing Additional Data:** [**REDACTED**] mentioned the new internal analytics that we are developing to help us understand and monitor the most viral COVID vaccine-related content. This is a top priority for us, and we will keep you updated on our progress and when we expect to be able to share the data with you.

3. **Levers for Tackling Vaccine Hesitancy Content:** You also asked us about our levers for reducing virality of vaccine hesitancy content. In addition to policies previously discussed, these include the additional changes that were approved late last week and that we'll be implementing over the coming weeks. As you know, in addition to removing vaccine misinformation, we have been focused on reducing the virality of content discouraging vaccines that does not contain actionable misinformation. This is often-true content, which we allow at the post level because experts have advised us that it is important for people to be able to discuss both their personal experiences and concerns about the vaccine, but it

can be framed as sensation, alarmist, or shocking. We'll remove these Groups, Pages, and Accounts when they are disproportionately promoting this sensationalized content. More on this front as we proceed to implement.

4. **WhatsApp:** Finally—[**REDACTED**]mentioned the policies that apply to WhatsApp. WhatsApp's approach to misinformation focuses on limiting the virality of messages, preventing coordinated abuse, and empowering users to seek out reliable sources of information both in and out of the product. Our product includes features to limit the spread of viral content, such as forward limits and labels, privacy settings to help users decide who can add them to groups, and simple ways for users to block accounts and make reports to WhatsApp if they encounter problematic messages. Additional limitations we placed in April 2020 on forwarding of messages that have been forwarded many times reduced these kinds of messages by over 70%.

Along with these commitments, we'll continue to provide updated data from our COVID-19 Symptom Survey, and would be happy to walk through this data with our research director, if helpful.

Thanks again—and please let me know if there's anything I'm missing or can follow up to clarify.

[**REDACTED**]

**From:** [**REDACTED**]@fb.com]

**Sent:** 4/10/2021 9:33:25 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** [EXTERNAL] Re: Follow up—WA responses

Understood. I thought we were doing a better job through [**REDACTED**] responding to this—and we are working to get the data that will more clearly show the universe of the Covid content that's highest in distribution with a clear picture of what percentage of that content is vax hesitancy content, and how we are addressing it. I know [**REDACTED**] told Andy that would take a bit of time to nail down and we are working on that universe of data. I will make sure we're more clearly responding to your questions below.

---

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Friday, April 9, 2021 at 2:56 PM

**To:** [**REDACTED**]@fb.com>

**Subject:** RE: Follow up—WA responses

Thanks for this, [**REDACTED**] Hoor should be trying to land a time.

Will say I'm really mostly interested in what effects the interventions and products you've tested have had on increasing vaccine interest within hesitant communities, and which ones have shown promise. Really couldn't care

less about products unless they're having measurable impact. And while the product safari has been interesting, at the end of the day, I care mostly about what actions and changes you're making to ensure sure you're not making our country's vaccine hesitancy problem worse. I definitely have what I believe to be a non-comprehensive list of products you're building but I still don't have a good, empirical answer on how effective you've been at reducing the spread of vaccine-skeptical content and misinformation to vaccine fence sitters in the now-folded "lockdown." If [**REDACTED**] can speak to those things, great. [**REDACTED**] hasn't been able to, but I'm sure someone there can.

In the electoral context, you tested and deployed an algorithmic shift that promoted quality news and information about the election. This was reported in the New York Times and also readily apparent to anyone with cursory social listening tools. You only did this, however, after an election that you helped increase skepticism in, and an insurrection which was plotted, in large part, on your platform. And then you turned it back off. I want some assurances, based in data, that you are not doing the same thing again here.

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**From:** [**REDACTED**]@fb.com>

**Sent:** Friday, April 9, 2021 2:16 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** [EXTERNAL] Follow up—WA responses

Hi Rob,

Wanted to follow up on your additional questions about WhatsAp—responses to your questions embedded in line and in blue below, along with a few attachments that are discussed in-line. Happy to discuss further.

Also—happy to schedule our next session with [**REDACTED**] for Monday if you're interested. I know she was hoping to bring her colleague [**REDACTED**] to brainstorm on some ideas with you and Courtney. We can do this Monday or anytime next week.

Thanks,

[**REDACTED**]

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We also wanted to follow up on your questions about WhatsApp. I'm sure you're already attuned to this, but think it's worth noting some of the key differences between a private messaging app like WhatsApp, and social media like Facebook and Instagram. Approximately 90 percent of the messages sent on WhatsApp are one-to-one, and the majority of group chats include fewer than ten people. WhatsApp does not promote content, and users do not build audiences or discover new people as they would on social media.

**Very aware** 😊

You're right that without being able to see the content of messages on WhatsApp, we're not able to measure prevalence (and, relatedly, reduction) of particular types of content. WhatsApp seeks to control the spread of misinformation and inform users through deliberate, content-agnostic product interventions—things like labeling and limiting message forwards. The underlying idea there is that messages that did not originate from a close contact are less personal compared to typical messages sent on WhatsApp, and may be more prone to contain misinformation. The labels ("forwarded"; and "forwarded many times" if the message has been forwarded five times or more) are intended to prompt people to stop and think when they are reading a message and before they forward something, which may not be accurate. The forward limits (no more than five chats at time; one chat a time for highly forwarded messages), are intended to reduce their spread. As mentioned in my earlier note, when WhatsApp rolled out the limitation for highly forwarded messages to one chat at a time in April 2020, this resulted in a 70% reduction of those messages globally. Of course, not all forwards are misinformation, so these are by nature somewhat blunt tools, but they are important ones—and ones that many other messaging services don't provide.

A few additional things to note:

1. WhatsApp also employs best-in-class spam detection technology to **spot accounts engaging in mass messaging behavior, so they can't be used to spread spam or**

**viral misinformation.** We ban over 2 million accounts per month for bulk messaging behavior, 75% of them without a recent user report, which means our automated systems stop abuse before users can report them. (This white paper describes these systems in further detail.)

**We have a thing where we can't click links from emails — can you send me the white paper?**

White Paper is attached in PDF to this email.

2. Another aspect of what WhatsApp does—again without accessing the content of messages—is to **provide tools to empower users to seek out reliable sources of information.** One way we've done this in the product is through a "search the web" feature we rolled out last August, which allows users to easily double check highly forwarded messages they receive on WhatsApp by tapping a magnifying glass button in the chat to initiate a web search on their device browser. This helps users find news results or other sources of authoritative information about messages they have received from outside their close contacts—and is available in English, Spanish, and other languages.

**Can you show me what this might look like? What kind of testing have you seen around effectiveness? Are there other tactics you've deployed? Does exposure to forwarded messages change in any way the kinds of positive information they're exposed to on Facebook or Instagram?**

Attached is an image explaining how "Search the Web" functions on WhatsApp—and you can find more info at this link: >>https://blog.whatsapp.com/search-the-web/?lang=en<<. As we have rolled out Search the Web over the past year, we have conducted research—through interviews and surveys—to understand how users interact with this feature, what level of awareness they have about it and particularly, how it is used by low digital literacy users. Along similar lines, we are continuing to experiment with different forward depths that classify a message as a "Highly Forwarded Message" and bring up the magnifying glass button for that message. We will use these insights to design further product features that limit virality on WhatsApp.

With respect to your question about COVID-related information people may be exposed to Facebook and Instagram, that is not related to users' personal messaging activity on WhatsApp.

3. WhatsApp also has partnerships with fact checking organizations, government agencies, and international organizations, like the WHO, around the world **to make authoritative information about COVID-19 and vaccines available via WhatsApp.** WhatsApp donated $1M to the International Fact Checking Network (IFCN) to support the CoronaVirusFacts Alliance, which brought together more than 100 fact checkers in 70+ countries in 40+ languages. These organizations have produced 9,000+ unique fact checks, all of which are accessible through a global fact-checking bot jointly created by the IFCN and WhatsApp.

**How do they make the information available?**

COVID-19 information is made available on WhatsApp by WHO, government health ministries, and third-party fact checkers through our WhatsApp Business API solution, which supports two-way conversational messaging and one-way notifications. These organizations access our API through approved business solutions providers (BSPs) to build chatbots on the WhatsApp Business API that are capable of returning automated responses to user queries. We support government partners by waiving WhatsApp fees associated with the API and making available Facebook ads credits to publicize these chatbots. For some fact checkers, we cover the BSP and end client costs through annual grants.

Users click on a link on the organization's website to open the chat or text "hi" to the chatbot's phone number. This brings them to a greeting message where they are presented with options to search for information on a COVID-related topic, access latest fact checks, or get tips to fight misinformation, among other things. The requested information is then provided in a variety of ways.

The WHO Health Alert on WhatsApp, for example, provides information about how vaccines work and how they are tested as a text message in response to a user query. It also provides users with links to videos of WHO's *"Science in 5"* series where scientists discuss commonly asked questions about the Covid-19 Vaccines. The

latest edition of this discussion is also sent to the user's chat as an audio clip for ease of access.

The IFCN chatbot which leverages the CoronaVirusFacts Alliance database of COVID-19 misinformation allows users to search for fact checks based on keywords and will provide the latest fact-checks from networks in the user's country as determined by the user's phone number.

Screenshots of the WHO Health Alert and IFCN chatbot are attached.

4. We're very cognizant of WhatsApp's use among immigrant communities in the U.S. and we're **focused on ensuring these** sorts **of resources noted above are available in Spanish as well as English.** During the 2020 election we partnered with Univision and Telemundo to make IFCN's election-related fact checks available in Spanish. Both Univision and Telemundo are now in the process of getting approved as certified IFCN fact checkers, which will enable them to set up their own Spanish-language fact checks directly on WhatsApp with financial support from Facebook. This will add to existing Spanish-language resources available via WhatsApp, including the search the web feature and the Corona VirusFacts Alliance bot mentioned above.

**Is this true in other languages? I'm thinking specifically about languages that have prevalence in south Asian countries. And in the electoral context, what did you do there that worked and you're taking into this body of**

**work?**

We encourage our partners to make their resources available as widely as possible. The IFCN Corona VirusFacts Alliance chatbot is already available in the US in 4 languages—English, Hindi, Spanish and Portuguese. The Search the Web feature is currently available in English, Spanish, German, Italian and French; we have been working to expand the feature and it's available to South Asian language markets in Android Beta (~25M users) but the quality of search results is not yet high enough for a full launch.

US 2020 was the biggest fact checking effort that WhatsApp supported and we're pleased that these efforts have helped to spur progress in the broader fact checking ecosystem. The partnerships we built with Telemundo and Univision, helped lead to both companies establishing their own specialized Spanish-language fact checking units—*EL Detector* and *T Verifica,* respectively—and hiring data analysts and translators to aid their—fact checking efforts.

We are also proud of the work that we did with IFCN during the US 2020 election to help create a consortium of fact checkers, which allowed these organizations to pool resources and scale their operations. We have been building on the success of this model elsewhere in the world—including in India where we have worked with six Indian fact checking organizations to build a similar coalition that will consolidate fact checks and trends on a common website.

One other initiative we are focused on are partnerships with governments, private healthcare providers, and

pharmacies to support COVID-19 vaccination efforts through chat tools on WhatsApp. We've launched these successfully so far in Indonesia, Brazil, South Africa, and Argentina, among other countries, and are very interested in exploring ways to replicate some of these efforts in the U.S., especially in boosting the vaccination effort within the Latinx community. We are in discussions with the CDC and with officials in California, Delaware, and Los Angeles, and we are keen to work together to expand the scope and reach of these partnerships.

**I guess I have the same question here as I do on Facebook on Instagram. Do you guys think you have this under control? You're obviously going to say yes to that, so I guess the real question is, as ever: how are you measuring success? Reduction in forwarding? Measured impact across Facebook properties?**

On WhatsApp, reduction in forwards is just one of the signals that we use to measure how well we are doing in reducing viral activity on our platform. We also ban accounts that engage in mass marketing or scam behaviors—including those that seek to exploit COVID-19 misinformation. Our efforts in this space are more comprehensive than anything that our peers in private messaging or SMS do, and we are constantly innovating to stay ahead of future challenges.

We also track engagement with some of the tools available on WhatsApp that provide access to fact checks

and other authoritative sources of information. For instance, 3 billion messages related to COVID-19 have been sent by governments, nonprofits and international organizations to citizens through official WhatsApp chatbots, and over 300 million messages have been sent over COVID-19 vaccine helplines on WhatsApp during the 1st quarter of 2021.

**From:** [**REDACTED**]@fb.com]

**Sent:** 4/14/2021 5:23:05 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]

**CC:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** [EXTERNAL] Re: tucker

Thanks—I saw the same thing when we hung up. Running this down now.

Get Outlook for iOS

---

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Sent:** Wednesday, April 14, 2021 1:10:41 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]

@who.eop.gov>

**Subject:** tucker

Since we've been on the phone — the top post about vaccines today is tucker Carlson saying they don't work. Yesterday was Tomi Lehren saying she won't take one. This is exactly why I want to know what "Reduction" actually looks like—if "reduction" means "pumping our most vaccine hesitant audience with tucker Carlson saying it doesn't work" then . . . I'm not sure it's reduction!

**Rob Flaherty**

Director of Digital Strategy

The White House

Cell: [**REDACTED**]

**From:** [**REDACTED**]@fb.com]

**Sent:** 4/14/2021 6:14:25 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]; Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** Re: [EXTERNAL] Re: Connecting

Hey—I'm really sorry, I missed this ahead of the 11:00. We will definitely prioritize for future. And working on both immediate follow ups—running down question on Tucker and working on getting you report by end of week.

Get Outlook for iOS

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**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Wednesday, April 14, 2021 10:50 AM

**To:** [**REDACTED**] Rowe, Courtney M. EOP/WHO @who.eop.gov]

**Subject:** RE: [EXTERNAL] Re: Connecting

[**REDACTED**]—Given the briefing at 11 and Andy's interest in joining, I am wondering if it might be good to consider pushing back. If we were to do that, would anything between noon and 1:30 work? If not, we can proceed and folks can join as they get free.

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Wednesday, April 14, 2021 10:15 AM

**To:** Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>; Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** **Re:** [EXTERNAL] Re: Connecting

Great thanks—Courtney we will follow up on anything that comes out of the 11:00.

---

**From:** Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Wednesday, April 14, 2021 at 10:12 AM

**To:** Flaherty, Robert EOP/WHO[**REDACTED**]@who.eop.gov>, [**REDACTED**]@fb.com>

**Subject:** RE: [EXTERNAL] Re: Connecting

We have our press briefing this morning at 11 so I won't be there.

Thanks for sending the stuff below. I just pinged CDC on the FAQ and we will share as soon as they have

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**From:** Flaherty, Rob EOP/WHO[**REDACTED**]@who.eop.gov]>

**Sent:** Wednesday, April 14, 2021 10:07 AM

**To:** [**REDACTED**]@fb.com>; Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] Re: Connecting

I will be there, yes.

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Wednesday, April 14, 2021 10:04 AM

**To:** Flaherty, Robert EOP/WHO [**REDACTED**]@who.eop.gov>; Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Connecting

Just confirming with you both that 11:00 this morning still works? You should have calendar invites—Courtney I saw you were not on our invite but added you.

---

**From:** [**REDACTED**]@fb.com>

**Date:** Tuesday, April 13, 2021 at 11:29 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>, Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Connecting

Hi Rob, Courtney,

Thanks for this quick response — it was super helpful in informing our overall strategy today. I have some responses in blue below. I'm looking forward to the meeting tomorrow and hoping we can spend some time responding to Rob's feedback from last week as well as further discussing the J&J news and how we can hopefully partner together.

Courtney — as we discussed, we also wanted to send over some examples of content we see on our platform that we remove (misinformation & harm) as well as content we take other actions on, but do not remove (vaccine hesitancy). I have included some examples at the bottom of this email and happy to setup time to talk through this more with you as well, if helpful.

Talk soon,

[**REDACTED**]

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Some kind of thing that puts the news in context if folks have seen it (like your current "COVID news" panel) that has 3–4 pieces of info (eg: Adverse events are very rare—6 cases out of nearly 7 million, the FDA and CDC are reviewing so it health care providers know how to treat any of the rare events, this does not affect pfizer or moderna, which vaccinate via a different mechanism). Happy to provide what those things should be. If the ultimate product pulls in social from others, we're happy to put something together there as well.

Thanks very much for the suggestion—we are consistently updating the news module to provide timely and relevant context to users, such as article(s) that provide context on the rarity of experiencing blood clots. We would love any suggestions you all would have on trends you're seeing.

- CDC is working through an FAQ that we'd love to have amplified in whatever way possible — maybe through the COVID info panel.

Thanks—we'll be on the lookout for the FAQ and can discuss tomorrow.

• A commitment from you guys to make sure that a favorable review reaches as many people as the pause, either through hard product interventions or algorithmic amplification

Would love to talk through this one a bit more. Our goal is to ensure that people have access to authoritative info about the vaccine. We're looking forward to talking more tomorrow about our approach to sharing authoritative info and what we've done today in support of that goal given the J&J announcement.

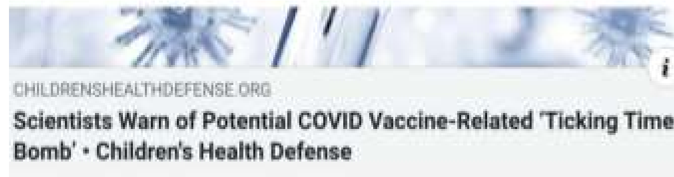
More broadly: we share [**REDACTED**] concern about knock-on effects and are curious to get a read from your CMU data about what you're seeing and with whom. Moreover, I want to make sure you have eyes on what might be spinning off the back end of this—that the news about J&J doesn't spin off misinformation. Would be great to get a 24 hour report-back on what behavior you're seeing.

We will look to get you insights as soon as we have them. We are going to be watching to see how this plays out over the next couple of days. [**REDACTED**]s joining tomorrow and plans to share a couple things we are seeing emerge from the CMU survey and what we are going to be watching over the next few days. Also, we are proactively monitoring and seeing what themes emerge from content on-platform and happy to share out when we have stuff collected.

***VACCINE HESITANCY EXAMPLES:***

The following examples of content are those that do not violate our Misinformation and Harm policy, but may contribute to vaccine hesitancy or present a barrier to vaccination. This includes, for example, content that contains sensational or alarmist vaccine misrepresentation, disparaging others based on the choice to or to not vaccinate, true but shocking claims or personal anecdotes, or discussing the choice to vaccinate in terms of personal and civil liberties or concerns related to mistrust in institutions or individuals. We utilize a spectrum of levers for this kind of content that is both proportionate and also helps our users make informed decisions. Actions may include reducing the posts' distribution, not suggesting the posts to users, limiting their discoverability in Search, and applying Inform Labels and/or reshare friction to the posts. Depending on the category of content, we scale our interventions to have the highest public health impact, while understanding that healthy debate and expression is important.

CHILDRENSHEALTHDEFENSE.ORG
Scientists Warn of Potential COVID Vaccine-Related 'Ticking Time Bomb' • Children's Health Defense


CHILDRENSHEALTHDEFENSE.ORG
Scientists Warn of Potential COVID Vaccine-Related 'Ticking Time Bomb' • Children's Health Defense

CHILDRENSHEALTHDEFENSE.ORG
Scientists Warn of Potential COVID Vaccine-Related 'Ticking Time Bomb' • Children's Health Defense

CHILDRENSHEALTHDEFENSE.ORG
Scientists Warn of Potential COVID Vaccine-Related 'Ticking Time Bomb' • Children's Health Defense

**Examples of Content Removed for Violating our Misinformation & Harm Policy**

The following examples of posts we have removed for violation of our Misinformation & Harm Policy.

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**From:** Flaherty, Rob EOP/WHO[**REDACTED**]@who.eop.gov>

**Date:** Tuesday, April 13, 2021 at 1:33 PM

**To:** [**REDACTED**]@fb.com>, Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] Re: Connecting

Hi [**REDACTED**] —

Thanks for reaching out. Andy might reply to [**REDACTED**] separately, but there's some thoughts.

I'm putting our public messaging below, which will be updated and we'll be sure to send to you.

But generally, I think some combo of the following would be helpful:

- Some kind of thing that puts the news in context if folks have seen it (like your current "COVID news" panel) that has 3-4 pieces of info (eg: Adverse events are very rare—6 cases out of nearly 7 million, the FDA and CDC are reviewing so it health care providers know how to treat any of the rare events, this does not affect pfzier or moderna, which vaccinate via a different mechanism). Happy to provide what those things should be. If the ultimate product pulls in social from others, we're happy to put something together there as well.
- CDC is working through an FAQ that we'd love to have amplified in whatever way possible—maybe through the COVID info panel.
- A commitment from you guys to make sure that a favorable review reaches as many people as the pause, either through hard product interventions or algorithmic amplification

More broadly: we share [**REDACTED**] concern about knock-on effects and are curious to get a read from your CMU data about what you're seeing and with whom. Moreover, I want to make sure you have eyes on what

might be spinning off the back end of this-that the news about J&J doesn't spin off misinformation. Would be great to get a 24 hour report-back on what behavior you're seeing.

Message below, and thanks

-Rob

*As of April 12, nearly 7 million J&J doses have been administered CDC and FDA are investigating 6 cases of an extremely rare type of blood clot in individuals after receiving the J&J vaccine. As CDC and FDA noted in their statement, right now these adverse events appear to be extremely rare. Out of an abundance of caution as they review these rare cases, CDC and FDA are recommending vaccine providers pause on administering the J&J vaccine. As FDA noted this morning, they hope to review this quickly over the next few days. This pause is important so health care providers know how to treat any individuals who may experience these rare events.*

*This announcement will not have a significant impact on our vaccination plan: J&J vaccine makes up less than 5 percent of the recorded shots in arms in the United States to date. Based on actions taken by the President earlier this year, the U.S. has secured enough Pfizer and Moderna doses for 300 million Americans. You*

*can read the full statement from White House COVJD-19 Response Coordinator Jeff Zients on the impact on supply here.*

*We will be back in touch soon to share additional resources and messaging on this issue, as well as our broader efforts to advance vaccine confidence and protect America's health.*

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**From:** [**REDACTED**]@fb.com>

**Sent:** Tuesday, April 13, 2021 12:21 PM

**To:** Rowe, Courtney M. EOP/WHO [**REDACTED**] @who.eop.gov>; Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** FW: [EXTERNAL] Re: Connecting

Courtney and Rob—making sure you also receive this message—we want to get ahead of this but also want to make sure we are amplifying the right messages. Let us know if helpful to connect quickly today?

---

**From:** [**REDACTED**]@fb.com>

**Date:** Tuesday, April 13, 2021 at 12:18 PM

**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**] @who.eop.gov>

**Cc:** [**REDACTED**]@fb.com>

**Subject:** Re: [EXTERNAL] Re: Connecting

Hi Andy

Hope this finds you well?

Re the J+J news, we're keen to amplify any messaging you want us to project about what this means for people—it obviously has the risk of exacerbating vaccine hesitancy, so we're keen to get ahead of the knock-on effect. Don't hesitate to tell me—or via your teams—how we can help to provide clarity/reassurance via Facebook.

All v best

[**REDACTED**]

**From:** [**REDACTED**]@fb.com>

**Sent:** 4/16/2021 8:45:51 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]

**CC:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** Re: [EXTERNAL] FW: Tucker Carlson anti-vax message.

Hey Rob — understood and sorry for the delay. The team has been heads-down since our conversation to produce the report we discussed on Wednesday

afternoon. We are aiming to get you something tonight ahead of the weekend. We want to respond to your questions below as well but I have been hoping to get this work completed and then to schedule a call to discuss. Would that work?

---

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Friday, April 16, 2021 at 4:37 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] FW: Tucker Carlson anti-vax message.

These questions weren't rhetorical

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**From:** Flaherty, Rob EOP/WHO

**Date:** Wednesday, April 14, 2021 11:35 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] FW: Tucker Carlson anti-vax message.

And sorry—if this was not one of the most popular posts about the vaccine on Facebook today, then what good is

crowdtangle?

[**REDACTED**] said that Tomis video was the most popular yesterday based on your data, which reflected what CT was showing. Tuckers video was top on CT today. What is different about this video, then?

Sent from my iPhone

On Apr 14, 2021, at 11:29 PM, Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>wrote:

I guess this is a good example of your rules in practice then—and a chance to dive in on questions as they're applied.

How was this not violative? The second half of the segment is raising conspiracy theories about the government hiding that all vaccines aren't effective. It's not about just J&J. What exactly is the rule for removal vs demoting?

Moreover: you say reduced and demoted. What does that mean? There's 40,000 shares on the video. Who is seeing it now? How many? How effective is that?

And we've gone a million rounds on this in other contexts so pardon what may seem like deja vu—but on what basis is "visit the covid-19 information center for

vaccine resources" the best thing to tag to a video that says the vaccine doesn't work?

Not for nothing but last time we did this dance, it ended in an insurrection.

Sent from my iPhone

On Apr 14, 2021, at 11:11 PM, [**REDACTED**]@fb.com>wrote:

Making sure you receive —

---

**From:** [**REDACTED**]@fb.com>

**Date:** Wednesday, April 14, 2021 at 10:51 PM

**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** [**REDACTED**]@fb.com>

**Subject:** Re: Tucker Carlson anti-vax message.

Hi Andy—have looked into this some more.

I realize it may be of limited comfort at this moment, but this was not the most popular post about vaccines on Facebook today. Our data is slightly lagging, and we'll get back to you with more detail on this specific post tomorrow. Right now, it appears that it probably was among the top 100 most-viewed vaccine posts. I'm including a few examples of posts that were more popular today at the

end of this note.

Regardless of popularity, the Tucker Carlson video does not qualify for removal under our policies. Following the government's decision yesterday, we are allowing claims that the Johnson and Johnson vaccine causes blood clots, but we still do not allow categorical claims that it or other vaccines are unsafe or ineffective.

That said, the video is being labeled with a pointer to authoritative COVID information, it's not being recommended to people, and it is being demoted.

The team is working on the follow ups from the meeting this morning, including more details on most viewed/ranked content on Facebook and [**REDACTED**] will be in touch shortly on that—I'm v keen that we follow up as we'd agreed, and I can assure you the teams here are on it.

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Popular Vaccine-Related Content on Facebook Today:

CNN: >>https://www.cnn.com/2021/04/13/health/blood-clots-johnson-johnson-vaccine-wellness/index.htm<<;
ABC: >>https://www.facebook.com/10160902498218812<<;

NBC: >>https://www.nbcnews.com/health/health-news/what-do-if-you-got-johnson-johnson-vaccine-n1263927<<;

NY Times: >>https://www.nytimes.com/2021/04/13/us/politics/johnson-johnson-vaccine-blood-clots-fda-cdc.html<<;

CDC: >>https://www.facebook.com/10159031890151026<<;

CBS: >>https://www.facebook.com/1015946740973201<<;

Heather Cox Richardson: >>https://www.facebook.com/297363371758902<<;

All v best

[**REDACTED**]

On 4/14/21, 10:52 AM, [**REDACTED**]@fb.com>wrote:

Ok — sorry to hear about call today, will dig in now. [**REDACTED**]

On 4/14/21, 10:01 AM, "Slavitt, Andrew M. EOP/WHO" [**REDACTED**]who.eop.gov>wrote:

Number one on Facebook. Sigh.

Big reveal call with FB and WH today. No

progress since we spoke. Sigh.

Sent from my iPhone

**From:** [**REDACTED**]@fb.com]

**Sent:** 4/21/2021 at 9:01:51 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** Re: [EXTERNAL] FW: Tucker Carlson anti-vax message.

Rob—thanks for catching up earlier and sorry for the delay in getting these back to you. We can schedule time to discuss any of this further if helpful.

How was the Tucker post not violative?

- while we remove content that explicitly directs people not to get the vaccine, as well as content that contains explicit misrepresentations about vaccines, we reviewed this content in detail and it does not violate those policies.

Moreover: you say reduced and demoted. What does that mean? There's 40,000 shares on the video. Who is seeing it now? How many? How effective is that?

- The video received 50% demotion for seven days while in the queue to be fact checked, and will continue

to be demoted even though it was not ultimately fact checked.

Why does CT tell a different story than our internal number?

• Crowdtangle shows engagement not views, and a simple text search for "vaccine" in Crowdtangle doesn't have the same recall as our classifiers, i.e., doesn't include all of the posts about vaccines. The data that we provided doesn't include the Tucker Carlson video because our data pipelines don't populate that quickly—we provided data for the week before. (The delay in data doesn't mean we aren't able to find and remove violating content in real time — our systems do this automatically).

Why label this content with a generic "visit the covid information center" message?

• Our more granular label about vaccine safety previously said "COVID-19 vaccines go through many test for safety and effectively before they're approved". In light of the decision to pause the J&J vaccine, vaccine safety discussion evolved past "approval," and we were concerned that this was a confusing/irrelevant message to be applying to content discussion the decision to pause J&J without revoking approval. We temporarily reverted to a more generic message and are updating the more specific label for posts about vaccine safety to say "COVID-19 vaccines, go through many tests for safety and effectiveness and then are monitored closely" to try to adapt to the changing factual situation

and evolving discussion. This new message is being rolled out and should appear instead of the generic label now.

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**From:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Date:** Friday, April 16, 2021 at 4:37 PM

**To:** [**REDACTED**]@fb.com>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] FW: Tucker Carlson anti-vax message.

These questions weren't rhetorical

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**From:** Flaherty, Rob, EOP/WHO

**Sent:** Wednesday, April 14, 2021 11:35 PM

**To:** [**REDACTED**]@fb.com]>

**Cc:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov]>

**Subject:** Re: [EXTERNAL] FW: Tucker Carlson anti-vax message.

And sorry—if this was not one of the most popular posts about the vaccine on Facebook today, then what good is

crowdtangle?

[**REDACTED**] said that Tomis video was the most popular yesterday based on your data, which reflected what CT was showing. Tuckers video was top on CT today. What is different about this video, then?

Sent from my iPhone

On Apr 14, 2021, at 11:29 PM, Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

I guess this is a good example of your rules in practice then—and a chance to dive in on questions as they're applied.

How was this not violative? The second half of the segment is raising conspiracy theories about the government hiding that all vaccines aren't effective. It's not about just J&J. What exactly is the rule for removal vs demoting?

Moreover: you say reduced and demoted. What does that mean? There's 40,000 shares on the video. Who is seeing it now? How many? How effective is that?

And we've gone a million rounds on this in other contexts so pardon what may seem like deja vu—but on what basis is "visit the covid-19 information center for

vaccine resources" the best thing to tag to a video that says the vaccine doesn't work?

Not for nothing but last time we did this dance, it ended in an insurrection.

Sent from my iPhone

On Apr 14, 2021, at 11:11 PM, [**REDACTED**]@fb.com>wrote:

Making sure you receive —

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**From:** [**REDACTED**]@fb.com>

**Date:** Wednesday, April 14, 2021 at 10:51 PM

**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** [**REDACTED**]@fb.com>

**Subject:** Re: Tucker Carlson anti-vax message.

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ABC: >>https://www.facebook.com/10160902498218812<<;

NBC: >>https://www.nbcnews.com/health/health-news/what-do-if-you-got-johnson-johnson-vaccine-n1263927<<;

NY Times: >>https://www.nytimes.com/2021/04/13/us/politics/johnson-johnson-vaccine-blood-clots-fda-cdc.html<<;

CDC: >>https://www.facebook.com/10159031890151026<<;

CBS: >>https://www.facebook.com/1015946740973201<<;

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All v best

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> [**REDACTED**]
>
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Number one on Facebook. Sigh.

Big reveal call with FB and WH today. No progress since we spoke. Sigh.

Sent from my iPhone

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]

**Sent:** 4/22/2021 12:05:16 AM

**To:** [**REDACTED**]@google.com]; [**REDACTED**]@google.com]; [**REDACTED**]@google.com]; [**REDACTED**]@google.com]; [**REDACTED**]@google.com]; [**REDACTED**]@google.com]; [**REDACTED**]@google.com]

**CC:** Slavitt, Andrew M. EOP/WHO [**REDACTED**]@who.eop.gov]; Humphrey, Clarke EOP/WHO [**REDACTED**]@who.eop.gov]; Fitzpatrick, Kelsey V. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** Following Up on Today's Conversation

All—Thanks again for the conversation today.

We'll look out for the top trends that you've seen in terms of misinformation around the vaccine.

To recap: As we move away from a supply problem toward a demand problem, we remain concerned that Youtube is "funneling" people into hesitance and intensifying people's hesitancy. We certainly recognize that removing content that is unfavorable to the cause of increasing vaccine adoption is not a realistic—or even good—solution. But we want to be sure that you have a handle on vaccine hesitancy generally and are working toward making the problem better. This is a concern that is shared at the highest (and I mean highest) levels of the WH, so we'd like to continue a good-faith dialogue about what is going on under the hood here. I'm the on the hook for reporting out.

Just before we were meeting, this article from Buzzfeed popped, highlighting the Youtube misinformation that is spreading through the Vietnamese community. I think this brings up a question that I had in our first meeting about your capabilities around misinformation in non-english-speaking communities. Clearly, more work to be done here. Would love to get some insights from you on how you are tackling this problem across all languages—how your enforcement has differed in languages and what your road map to improvement is.

A couple of other things it would be good to have from you all:

- As mentioned up top, the top trends that you're seeing in terms of misinformation/hesitance inducing content (Stanford has mentioned that it's recently Vaccine Passports and J&J pause related stuff, but I'm not sure if that reflects what you're seeing)

- A deeper dive on reduction and its effectiveness. It's helpful that you mentioned that watch time is your key metric. I believe you said you reduced watch time by 70% on "borderline" content, which is impressive. Obviously, the term "borderline" is moveable, but taking it for what it is: How does that track with vaccine-related content specifically (removing the "UFO stuff"). What has the comparative reduction in watch time on "borderline" vaccine topics been after your interventions? And what has the increase in watch time been on authoritative information?

- I appreciated your unequivocal response that you are not recommending anti-vaccine content and you are lifting authoritative information in both search and recommendations to all audiences. Related to the second bullet: to what extent have your ranking interventions been effective there? And, perhaps more critically, to what degree is content from people who have been given a "strike" still being recommended and shown in prominent search positions?

- I feel like I am not coming away with a very clear picture of how you're measuring the effectiveness of uplifting authoritative information. I obviously buy the theory — but how did you arrive on info-panels as the best intervention? And to what extent are people clicking through after exposure to vaccine-hesitant content? What are you doing mechanically to boost the authoritative information? When you have relevant influencers speak to experts, I imagine (hope?) it's not just putting the content out there and that you're recommending it to people for whom it would be most relevant. How does that work?

- What are the general vectors by which people see the “borderline” content — or really just vaccine — skeptical content? Is it largely through recommendations? Search?

We are excited to continuing partnering with you on this work as we have via [**REDACTED**] but we want to make sure that the work extends to the broader problem. Needless to say, in a couple of weeks when we’re having trouble getting people to get vaccinated, we'll be in the barrel together here. We’ve worked with a number of platform partners to track down similar information based on internal data, including partners of similar scale. I am feeling a bit like I don’t have a full sense of the picture here. We speak with other platforms on a semi-regular basis. We’d love to get in this habit with you. Perhaps bi-weekly?

Looking forward to more conversation.

— Rob

**Rob Flaherty**

Director of Digital Strategy

The White House

Cell [**REDACTED**]

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**From:** Flaherty, Rob EOP/WHO [**REDACTED**]

**Sent:** 5/6/2021 6:17:28 PM

**To:** [**REDACTED**]@fb.com]

**Subject:** RE: [EXTERNAL] FW: COVID Genomic Sequencing

So I guess I have two questions here:

1. He references the "three" widest reach posts, of which I believe this is one:

https://www.facebook.com/DeeBlock253/posts/3528944520539112

For one, it's still up and seems to have gotten pretty far. And it's got 365k shares with four comments. We've talked about this in a different context, but how does something like that happen? The top post, the one from the Wisconsin news station, has 2.1 million comments. Am I looking at one instance of sharing (so, one of the 365,000 shares) or is this genuinely a post that has been shared nearly 400,000 times but only four people commented on it? What is your assessment of what is going on here?

Won't come as a shock to you that we're particularly interested in your demotion efforts, which I don't think we have a good handle on (and, based on the below, it doesn't seem like you do either). Not to sound like a broken record, but how much content is being demoted, and how effective are you at mitigating reach, and how quickly? As I've said, I don't think our position is that you should

remove vaccine hesitant stuff. However, slowing it down seems reasonable. I just can't describe what it means or how you know its working.

Also, health groups: sure. But it seems more likely that anti-vax stuff is moving in groups that are not about health but are . . . mom centric, or other spaces. Strikes me as the issue here is less from single-use anti-vaccine accounts and more about people who . . . do other things and are also vaccine hesitant. Seems like your "dedicated vaccine hesitancy" policy isn't stopping the disinfo dozen—they're being deemed as not dedicated—so it feels like that problem likely carries over to groups.

As a last thing, I'd be interested in seeing this 100 ranking in terms of reach from things that you aren't actively promoting in the info panel. EG: the unicef one's reach is because you're putting it in a big, giant box that says "Facebook" on it, versus the way it distributes naturally.

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Saturday, May 1, 2021 2:10 PM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** FW: [EXTERNAL] FW: COVID Genomic Sequencing

Making sure you see this from [**REDACTED**] to Andy as well—around anytime to discuss any and all things . . .

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Saturday, May 1, 2021 at 1:53 PM

**To:** Slavitt, Andrew M. EOP/WHO [**REDACTED**] @who.eop.gov>

**Cc:** [**REDACTED**]@fb.com>

**Subject:** RE: [EXTERNAL] FW: COVID Genomic Sequencing

Hi Andy,

Thanks to your team for sharing the research work with us—the team have spent some time reviewing these and I wanted to send over some details on where we're developing work in this space (and where we aren't).

Firstly, I know [**REDACTED**] has sent the latest version of the Top 100 content report to Rob yesterday evening and I wanted to send you a quick note on the three pieces of vaccine content that were seen by a high number of people before we demoted them. Although they don't violate our community standards, we should have demoted them before they went viral and this has exposed gaps in our operational and technical process.

The teams have spent the last 24 hrs analysing these gaps and are making a number of changes starting next week, including setting up more dedicated monitoring for Covid vaccine content on the cusp of going viral,

applying stronger demotions to a broader set of content, and setting up daily review and analysis so that we have a better real-time view of what is being seen by lots of people. I will be checking on this closely to make sure that these additional steps show results—the stronger demotions in particular should deliver real impact. Please let me know if you'd like to discuss any of this in more detail.

Returning to the points raised by the research—much of this is fair comment and actually includes many of the integrity efforts we've already deployed and are actively improving on, or are related to planned launches in the coming months.

**Non-English mis/disinformation circulating without moderation (Spanish, Arabic, Chinese, among others) and; ISD reports evidence of the global threat that anti-vaccination disinformation and misinformation represents across languages and borders:** Rolling our efforts out globally and in other countries will take us some time, given the complexity and scale—we think that this will take a number of months before we've fully scaled this work and we are prioritizing languages where we know vaccine hesitancy is likely to be higher based on external data.

**Do not distribute or amplify vaccine hesitancy, and Facebook should end group recommendations for groups with a history of COVID-19 or vaccine misinformation:** Much of the research you shared called on us to ensure that our systems don't amplify vaccine hesitancy content and

this is top of mind for us. In addition to the changes I mentioned above, we have already removed all health groups from our recommendation feature on Facebook, and on Instagram we filter vaccine-related accounts from our "accounts you may follow feature". We also remove accounts that may discourage vaccination from search features. We currently enforce on hashtags we know are shared to promote vaccine hesitancy content and are working to improve our automated systems here.

**Monitoring events that host anti-vaccine and COVID disinformation:** From our analysis, events do not make up a high proportion of borderline vaccine content that people see on Facebook right now, but we are working to improve automatic detection for events hosting anti-vaccine and COVID content. Our viral monitoring efforts will also help us detect events that are gaining views on Facebook, and we do remove events coordinating in-person gatherings that involve or encourage people who have COVID-19 to join.

**12 accounts are responsible for 73% of vaccine misinformation:** Lastly, we continue to review accounts associated with the 12 individuals identified in the CCDH "Disinformation Dozen" report, but many of those either do not violate our policies or have ceased posting violating content. Our "Dedicated Vaccine Discouraging Entity" policy is designed to remove groups and pages that are dedicated to sharing vaccine discouraging content and we continue to review and enforce on these where we become aware of them.

I realise that our position on this continues to be a particular concern for you which is why our teams regularly engage with a range of experts to check whether we are striking the right balance here. In early March, for instance, we discussed our planned approach with members of the "High Level Panel on Vaccine Confidence & Misinformation" (organized by London School of Hygiene and Tropical Medicine and the Center for Strategic and International Studies) and we have checked more recently with [**REDACTED**] of the Vaccine Confidence Project too.

Among experts we have consulted, there is a general sense that deleting more expressions of vaccine hesitancy might be more counterproductive to the goal of vaccine uptake because it could prevent hesitant people from talking through their concerns and potentially reinforce the notion that there's a cover-up (especially, though not exclusively, in the US). Given how complicated this continues to be, especially due to the recent news cycle about the safety of some vaccines, we will of course continue to speak with experts on our position here and adapt our approach as needed.

Hope this update is helpful — and obviously I'm happy to speak anytime.

Best

[**REDACTED**]

On 4/27/21, 3:33 AM, "Slavitt, Andrew M. EOP/WHO"

[**REDACTED**]@who.eop.gov>wrote:

Thanks [**REDACTED**] I assume you may have staff there. I hope they are well.

Sent from my iPhone

>On Apr 27, 2021, at 12:11 AM, [**REDACTED**]@fb.com>wrote:

>

>Hi Andy

>

>I know you're focusing on India a fair amount. Just fyi, we're doing the following:

>

>–Amplifying localized authoritative information and services specific to this crisis (e.g., symptom triage information/ when to go or not go to a hospital given systems are overwhelmed) on platform and via ad credits;

>–Activating WhatsApp Bots for symptom tracking and to connect users to nearby health resources;

>–Curating relevant content across CIC, News, and Latest Updates for India;

>–Proactively reviewing misinformation content in English, Hindi, and Bengali; and

>–Making an up to $10M financial contribution to support some immediate needs in country (e.g.,

extending medical supplies to underprivileged, augmenting oxygen supply shortages, etc.)

>

> And [**REDACTED**] is keen to see what more we can do

>>>https://www.facebook.com/zuck/posts/10112926954780791<<;

>

> [**REDACTED**]& team are in touch with USAID—but don't hesitate to point us to other next steps where we could be helpful.

>

> We also received the recommendations/observations from the research organizations you met re covid misinfo etc this afternoon — the teams are now looking at them carefully, and I'll get back to you once that's done.

>

> Best

>

> [**REDACTED**]

>

> On 4/22/21, 7:23 PM, "Slavitt, Andrew M. EOP/WHO" [**REDACTED**]who.eop.gov> wrote:

>

> I will arrange a call. Please let [**REDACTED**] know the information on who to include. Thanks

>

> Sent from my iPhone

>

>> On Apr 22, 2021, at 7:58 PM, [**REDACTED**]@fb.com>wrote:

>>

>> Hi Andy

>>

>> As promised, more info from [**REDACTED**] below and slides re the CZl work attached. Do tell me how an useful connection can be made.

>>

>> Thx

>>

>> [**REDACTED**]

>>

>>

>> Thanks for looking into this. CZI has been working in this area since before the pandemic. We built IDSeq (Link<>>>https://www.discoveridseq.com/<<<>and technical write up attached) to sequence unknown pathogens and then adapted it to do genomic sequencing for COVID and California Departments of public health. Right now we are working with local departments that are deploying these funds to build up their internal capacity. However, we can't figure out if there is a centralized vision of how all of these individual efforts are supposed to come back together and if they do what the public officer facing tool is.

Slides on the issue we are trying to address is also attached.

>>

>> Would love to try to learn about any central plan to ensure that our work ends up being compatible and share back any learning if helpful.

>>

>>

>>

>

**From:** Flaherty, Rob EOP/WHO [**REDACTED**]

**Sent:** 5/12/2021 2:52:18 PM

**To:** [**REDACTED**]@fb.com]

**CC:** Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** RE: [EXTERNAL] FB Newsroom post tomorrow re: our Covid work

Sure. They're first connected to authoritative information, but then you, as of last night, were presenting an anti-vaccine account with less than 1000 followers alongside, at level, with those pinned accounts!

Here's the thing. You know and I know that the

universe of undecided people searching Instagram for "vaccines"—as compared to, say, Google—is probably low. But "removing bad information from search" is one of the easy, low-bar things you guys do to make people like me think you're taking action. If you're not getting *that* right, it raises even more questions about the higher bar stuff. You say in your note that you remove accounts that discourage vaccination from appearing in recommendations (even though you're using "primarily" to give yourself wiggle room). You also said you don't promote those accounts in search. Not sure what else there is to say.

Youtube, for their warts, has done pretty well at promoting authoritative info in search results while keeping the bad stuff off of those surfaces. Pinterest doesn't even show you any results other than official information when you search for "vaccines." I don't know why you guys can't figure this out.

---

**From:** [**REDACTED**]@fb.com]>

**Sent:** Wednesday May, 12, 2021 9:35 AM

**To:** Flaherty, Rob EOP/WHO [**REDACTED**] @who.eop.gov]>

**Cc:** Rowe, Courtney M. EOP/WHO [**REDACTED**] @who.eop.gov]>

**Subject:** Re: [EXTERNAL] FB Newsroom post tomorrow re: our Covidnwork

Thanks Rob—both of the accounts featured in the tweet have been removed from Instagram entirely for breaking our policies. We're looking into what happened.

Taking a step back, when searching for terms related to vaccines on Instagram, people are first connected with resources from experts. That means that before anything, if someone is looking to get information about COVID-19 or vaccines, they are encouraged to seek that information out from the most credible sources. To do this, anyone who searches for information related to COVID-19 or vaccines on Instagram is first shown an educational pop-up on top of search results connecting them, in the U.S., to the CDC website (as shown in the tweet). We've also pinned authoritative accounts in the top search results which is why you also see the CDC and Gavi, the Vaccine Alliance Instagram accounts first in the results page.

We are continuing to develop technology to improve the quality of search results at scale across Instagram—this is a continual process built on new technology to address adversarial accounts. Our goal is to not recommend accounts like those shown in the tweet in search, which again shouldn't have been on our platform to begin with. We also remove accounts that may discourage vaccination from search by developing and using this new technology to find accounts on Instagram that discourage vaccines, and remove these accounts from search altogether. We've also removed accounts that primarily discourage vaccination from appearing where we recommend new accounts to follow, such as accounts

you may like, and suggested accounts.

We clearly still have work to do to, but wanted to ensure you were aware of the authoritative resources we're pointing people to first as we continue investing in removing accounts from search that may discourage vaccination.

---

**From:** Flaherty, Rob EOP/WHO <[**REDACTED**]@who.eop.gov]>

**Date:** Tuesday, May 11, 2021 at 8:08 PM

**To:** [**REDACTED**]@fb.com]>

**Cc:** Rowe, Courtney M. EOP/WHO [**REDACTED**]@who.eop.gov]>

**Subject:** Re: [EXTERNAL] FB Newsroom post tomorrow re: our Covid work

Hard to take any of this seriously when you're actively promoting anti-vaccine pages in search

>https://twitter.com/jessreports/status/1392182161512361984?s=21<

Sent from my iPhone

On May 10, 2021, at 7:53 PM, [**REDACTED**] fb.com>
wrote:

Rob and Courtney—I wanted to preview a newsroom post and some additional press outreach that we plan to put out tomorrow with some updates on our Covid efforts — a large part of which will be focused on what we've been doing to help meet vaccination goals.

Since January, we and our partners have been using trusted messengers and personalized messaging on our platforms to increase vaccine acceptance, and we're seeing positive impact at scale. For example:

- Over 3.3 million people have visited the vaccine finder tool since its launch on March 11, using it to get appointment information from a provider's website, get directions to a provider, or call a provider. In addition, we're showing people reliable information about whether and when they're eligible to get vaccinated through News Feed promotions and our COVID-19 Information Center. West Virginia's Department of Health and Human Resources reported that their vaccine registrations increased significantly after Facebook started running these notifications.
- Since January, we've provided more than $30 million in ad credits to help governments, NGOs and other organizations reach people with COVID-19 vaccine information and other important messages. These information campaigns resulted in an estimated 10 billion ad impressions globally.

- More than 5 million people globally have used these profile frames. And more than 50% of people in the US on Facebook have already seen someone use the COVID-19 vaccine profile frames. We spun up this effort in partnership with HHS/CDC after public health experts told us that people are more likely to get a vaccine when they see someone they trust doing it.
- As you know, since April 2020, we've been collaborating with Carnegie Mellon University and University of Maryland on a global survey of Facebook users to gather insights about COVID-19 symptoms, testing, vaccination rates and more. In the US:
    - Vaccine acceptance has been increasing steadily since January, increasing nearly 10% among all US adults.
    - We observed a particularly large increase in vaccine acceptance within certain populations in the US. Vaccine acceptance increased 26%among Black adults and 14% among Hispanic adults.
    - Vaccine access also remains a challenge. Among adults who intend to get vaccinated (but have not yet), 36% feel uninformed about how to get a vaccine and only 22% reported that they have an appointment in April.

We saw the announcement last week of the 70%goal, and we're eager to help support your efforts to reach that goal by July 4th. In particular, through our work on both voter registration and vaccines, we've had success with a targeted strategy for our in-product messages. If there are specific states/regions or other population segments) you're targeting to reach that goal that you can share with us, we can look at how we might

be able to adjust our in-product efforts to help amplify your efforts. We'd be happy to schedule a follow-up call with the right people to drill down on how we might be able to help with these efforts.

As always let me know if you have any questions.

Thanks,

[**REDACTED**]

**From:** [**REDACTED**]@fb.com]

**Sent:** 7/17/2021 10:23:47 PM

**To:** [**REDACTED**]@fb.com]; Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov]; Dunn, Anita B. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** [EXTERNAL] Re: hoping to connect

Thanks [**REDACTED**] Hi Anita and Rob—definitely agree and look forward to connecting.

Sending a post that went live this afternoon with information that I know we've discussed in the past. We had a conversation with the Surgeon General's office yesterday to discuss the advisory In more detail and hope to cont-

inue to work to address concerns.

Along with [**REDACTED**]—I am really hoping to close the gap in terms of what's playing out publicly and what we might be able to accomplish working together.

Rob—I'm around anytime for a conversation.

>https://about.fb.com/news/2021/07/support-for-covid-19-vaccines-is-high-on-facebook-and-growing/<

Get Outlook for iOS

---

**From:** [**REDACTED**]@fb.com]>

**Sent:** Saturday, July 17, 2021 6:14 PM

**To:** Flaherty, Rob R. EOP/WHO; Dunn, Anita B. EOP/WHO; [**REDACTED**]

**Subject:** Re: hoping to connect

Thanks Anita, and thanks Rob. I appreciate the willingness to discuss. We'd love to find a way to get things back to a productive conversation. Adding in [**REDACTED**] to help us here—obviously Rob and [**REDACTED**] have a tight working relationship already.

---

**From:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov>

**Sent:** Saturday July 17, 2021 3:06 PM

**To:** Dunn, Anita B. EOP/WHO [**REDACTED**]@who.eop.gov]>

**Cc:** [**REDACTED**]@fb.com]>

**Subject:** Re: hoping to connect

Hi [**REDACTED**] Happy to connect.

Sent from my iPhone

On Jul 17, 2021, at 5:56 PM, Dunn, Anita B. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

Hi, [**REDACTED**] and thanks for reaching out. I'm adding Rob Flaherty, our Office of Digital Services Director, to this chain as well because he has been following your platform (and others) closely when it comes to flow of information and misinformation.

Perhaps it makes sense to schedule a conversation? Anita

**From:** [**REDACTED**]@fb.com]>

**Sent:** Saturday, July 17, 2021 5:52 PM

**To:** Dunn, Anita B. EOP/WHO [**REDACTED**]@who.eop.gov]>

**Subject:** [EXTERNAL] hoping to connect

Hi Anita — hope you are well,

Would love to connect with you on the President's comments on Covid minsinfo and ourwork there. Really could use your advice and counsel on how we get back to a good place here.

While there's always been a disagreement on where the lines should be on minsinfo generally, we have genuinely tried to work with the administration in good faith to address the gaps and solve the problems. As I hope you know, we've been doing a significant amount of work to both fight the misinfo and fight the pandemic through authoritative information. Obviously, yesterday things were pretty heated, and I'd love to find a way to get back to pushing together on this—we are 100% on the same team here in fighting this and I could really use your advice.

Thanks,

[**REDACTED**]

**From:** [**REDACTED**]@google.com]

**Sent:** 7/21/2021 1:03:37 AM

**To:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov]

**CC:** [**REDACTED**]@google.com]

**Subject:** Re: [EXTERNAL] YouTube Announcement

Rob,

To clarify, the content was not in violation of our policies and therefore not subject to removal. But for all content on YouTube, we apply our 4R framework we have previously described to raise authoritative voices while reducing visibility on borderline content. External evaluators use these guidelines which are then used to inform our machine learning systems that limits the spread of borderline content.

Best Regards,

[**REDACTED**]

On Tue, July 20, 2021 at 8:36 PM Flaherty, Rob R. EOP/WHO<[**REDACTED**]@who eop.gov> wrote:

So this actually gets at a good question—the content [**REDACTED**] points out isn't defined as "borderline" and therefore isn't subject to recommendation limitations?

Sent from my iPhone

On Jul 20, 2021, at 8:27 PM, [**REDACTED**]@google.com>wrote:

Rob —

I'll check with our team and share any additional data points we have available. Per our COVID-19 medical misinformation policy, we will remove any content that contradicts local health authorities' or the World Health Organization's (WHO) medical information about COVlD-19. To date, approximately 89% of videos removed for violations of this policy were removed with 100 views or less. With regards to the specific videos you referenced, the content was not in violation of our community guidelines.

Best Regards,

[**REDACTED**]

On Tue, Jul 20, 2021 at 3:58 PM Flaherty, Rob R. EOP/

WHO [**REDACTED**]@who.eop.gov> wrote:

I see that's your goal — what is the actual number right now?

I guess: does the content that [**REDACTED**] references in his tweet count as violative content that has slipped through? Or is it that generally the stuff he's posting is in-bounds?

**From:** [**REDACTED**]@google.com>

**Sent:** Tuesday, July 20, 2021 2:36 PM

**To:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov]>

**Cc:** [**REDACTED**]@google.com>

**Subject:** Re: [EXTERNAL] YouTube Announcement

Thanks Rob,

We appreciate your interest in our announcement yesterday. With regards to your question on the Tweet, it is important to keep in mind that borderline content accounts for a fraction of 1% of what is watched on YouTube in the United States. We use machine learning to reduce the recommendations of this type of content, including potentially harmful misinformation. In January 2019, we announced changes to our recommendations systems to limit the spread of this type of

content which resulted in a 70% drop in watchtime on non-subscribed recommended content in the U.S. and our goal is to have views of non-subscribed, recommended borderline content below 0.5%. I wi1I keep you updated with any new policy or product improvements that we make as we continue our work to he1p people find authoritative health information on YouTube.

Best Regards

[**REDACTED**]

On Tue, Jul 20, 2021 at 10:57 AM Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

[**REDACTED**]—Thanks for this. Interested to see it in action.

I'm curious: Saw this tweet. >>>https://twitter.com/ddale8/status/1417130268859772929<<<;;

I think we had a pretty extensive back and forth about the degree to which you all are recommending anti–vaccination content. You were pretty emphatic that you are not. This seems to indicate that you are. What is going on here?

Thanks!

–Rob

**From:** [**REDACTED**]@google.com>

**Sent:** Monday, July 19, 2021 1:27 PM

**To:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov]>

**Cc:** [**REDACTED**]@google.com]>

**Subject:** [EXTERNAL] YouTube Announcement

Rob,

We wanted to share an announcement that we recently made regarding a few new ways in which we are making it easier for people to find authoritative information on health topics on YouTube.

Starting this week, you'll see two new features next to some health-related searches and videos. These include a new health source information panel that will surface on videos to provide context about authoritative sources, and a new health content shelf that more effectively highlights videos from these sources when you search for specific health topics. These context cues are intended to help people more easily navigate and evaluate credible health information.

To identify the sources that will be eligible to be included in these new features, we applied the principles recently developed and published by an expert panel convened by the National Academy of Medicine.

You can find more information about our announcement here. We'd be happy to set up time to walk you through these new features or answer any questions you may have — please let me know what works best for you.

Best Regards,
[**REDACTED**]

--

[**REDACTED**] Government Affairs & Public Policy Manager,
YouTube [**REDACTED**]@google.com [**REDACTED**]

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[**REDACTED** Government Affairs & Public Policy Manager,
YouTube [**REDACTED**]@google.com [**REDACTED**]

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[**REDACTED**] Government Affairs & Public Policy Manager,
YouTube [**REDACTED**]@google.com [**REDACTED**]

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[**REDACTED**] Government Affairs & Public Policy Manager, YouTube [**REDACTED**]@google.com [**REDACTED**]

**From:** [**REDACTED**]@fb.com]

**Sent:** 8/3/2021 12:11:33 AM

**To:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov]>

**CC:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov]; O'Neill, Tegan E. EOP/WHO [**REDACTED**]@who.eop.gov]; [**REDACTED**]@fb.com]; Qureshi, Hoor A. EOP/WHO [**REDACTED**]@who.eop.gov

**Subject:** [EXTERNAL] Re: Followup on WH questions

Happy to.

Hoor, could you surface some times that work for your folks and we can go from there?

[**REDACTED**]

[**REDACTED**]

facebook, inc | politics&government

[**REDACTED**]@fb.com

On Aug 2, 2021, at 6:04 PM, Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov>wrote:

Thanks [**REDACTED**] or the info. A call might be helpful, if we can do something early next week? Adding Hoor here but appreciate your email and making time to talk further about it!

---

**From:** [**REDACTED**]@fb.com]

**Sent:** Monday, August 2, 2021 1:14 PM

**To:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov]>; O'Neill, Tegan E. EOP/WHO [**REDACTED**]@who.eop.gov>; [**REDACTED**]@fb.com>

**Subject:** [EXTERNAL] FW: Follow up on WH questions

Hi All,

Per my and Christian's phone call last Tuesday, I gathered more details for you and your team; happy to setup a call to discuss further as well.

As you know, we take aggressive steps to reduce the spread of vaccine hesitancy and vaccine misinformation on our platforms and we deploy technology to do so. As part of our efforts on Instagram, we have measures to help ensure we don't recommend people follow accounts that promote vaccine hesitancy at scale. For two weeks in April (April 14-28) this measure was impacted by over-enforcement on a signal we used—accounts

that were posting far above normal vaccine-related content—and removed these otherwise eligible accounts from being recommended as an account to follow. This did not impact reach or distribution of content in Feed or Stories or other areas of account discovery on Instagram, such as search or Explore.

Per your request for remediation, while we cannot boost your account in our recommendations, we are always here to help with content strategy, best practices, and further opportunities to collaborate.

Again, happy to discuss further on a call.

Best,

[**REDACTED**]

---

**From:** [**REDACTED**]@fb.com>

**Date:** Thursday, July 15, 2021 at 4:06 PM

**To:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov>, O'Neill, Tegan E. EOP/WHO [**REDACTED**]@who.eop.gov>, [**REDACTED**]@fb.com]>

**Subject:** Re: Follow up on WH questions

Hi Rob — I totally understand how frustrating that is. This was due to a bug in our recommendation surface, and was resolved in late May. Accounts affected did not specifically lose any followers as a result, nor was their presence reduced in Search or Explore, however. If you

want to hop on the phone to discuss it, I'm at [**REDACTED**] anytime.

---

**From:** Flaherty, Rob R. EOP/WHO, [**REDACTED**]@who.eop.gov>

**Date:** Thursday, July 15, 2021 at 3:29 PM

**To:** O'Neill, Tegan E. EOP/WHO [**REDACTED**]@who.eop.gov>, [**REDACTED**]@fb.com]>, [**REDACTED**]@fb.com]>

**Subject:** RE: Follow up on WH questions

Are you guys fucking serious? I want an answer on what happened here and I want it today.

---

**From:** O'Neill, Tegan E. EOP/WHO

**Sent:** Thursday, July 15, 2021 at 3:29 PM

**To:** [**REDACTED**]@fb.com>; [**REDACTED**]@fb.com>; Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: Follow up on WH questions

++@Flaherty, Rob R. EOP/WHO

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**From:** [**REDACTED**]@fb.com>

**Sent:** Thursday, July 15, 2021 3:20 PM

**To:** O'Neill, Tegan E. EOP/WHO [**REDACTED**]@who.eop.gov>, [**REDACTED**]@fb.com>

**Subject:** [EXTERNAL] Re: Follow up on WH questions

Hi Tegan — from what we understand it was an internal technical issue that we can't get into, but it's now resolved and should not happen again.

---

**From:** "O'Neill, Tegan E. EOP/WHO" [**REDACTED**] @who.eop.gov>

**Date:** Thursday, July 15, 2021 at 2:28 PM

**To:** [**REDACTED**]@fb.com>, [**REDACTED**]@fb.com>

**Subject:** RE: [Follow up on WH questions

Thanks [**REDACTED**]

Could you tell me more about the technical issues affecting audience growth? Was this just us and do you have a sense of what the issue was?

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Thursday, July 15, 2021 2:27 PM

**To:** O'Neill, Tegan E. EOP/WHO [**REDACTED**] @who.eop.gov>; **REDACTED**]@fb.com

**Subject:** [EXTERNAL] Follow up on WH questions

Hi again Tegan!

Coming back here on a few things:

-First, the technical issues that had been affecting follower growth on @potus have been resolved. Though there is still the issue of bot accounts being removed as normal, you should start to see your numbers trend back upwards, all things being equal and notwithstanding the big spike you saw this week given the collaboration with Olivia Rodrigo. Thanks for your patience as we investigated this.

-The answers to your aspect ratio, video quality and thumbnail questions can all be found in our Help Center here: >>>>https://www.facebook.com/help/instagram/381435875695118<<<<;;; and in the links on that page. Regarding 1:1 or 4:5 for feed video, I don't have any specific recommendations on it. Obviously we know social managers are busy creating video for multiple platforms, so rest assured there is no algorithmic downside to using one crop over another.

-Finally, I can't release any numbers related to the performance of difference video formats, or light mode vs. dark mode usage unfortunately.

Let me know if you have any outstanding questions on these.

[**REDACTED**]

**From:** "O'Neill, Tegan E. EOP/WHO" [**REDACTED**]@who.eop.gov>

**Date:** Tuesday, July 13, 2021 at 11:42 PM

**To:** [**REDACTED**]@fb.com>, [**REDACTED**]@fb.com>

**Subject:** RE: IG optimization questions

Appreciate it!

---

**From:** [**REDACTED**]@fb.com>

**Sent:** Tuesday, July 13, 2021 11:41 AM

**To:** O'Neill, Tegan E. EOP/WHO [**REDACTED**]@who.eop.gov>; [**REDACTED**]@fb.com>

**Subject:** [EXTERNAL] Re: IG optimization questions

Hi Teagan! Let me round up some answers to these questions and come back to you shortly. Attached is the last edition of our IGTV video specs for you to check out in the interim.

Speak soon!

[**REDACTED**]

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**From:** "O'Neill, Tegan E. EOP/WHO" [**REDACTED**]@who.eop.gov>

**Date:** Tuesday, July 13, 2021 at 10:15 AM

**To:** [**REDACTED**]@fb.com>, [**REDACTED**]@fb.com>

**Subject:** IG optimization questions

Hi, [**REDACTED**]

Hope you're both well! I'm updating specs and guidelines for our video team and had a few quick questions.

- Do you have a guide/recommendation on codec/video quality? We've seen some issues with video files that display crisply on other platforms
- Do you have an updated thumbnail guide for IGTV and reels?
- Do you see any difference in performance between black, white, and branded video mattes on square videos in vertical placements?
- Do more people use night mode than day mode?
- For in-feed video (not sure what to call this but non-IGTV, non-reel video) do you recommend 1:1 or 4:5 these days?

Thank you!

---

**From:** [**REDACTED**]@twitter.com>

**To:** Flaherty, Rob R. EOP/WHO

**Sent:** 12/17/2021 10:44:52 PM

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Hi Rob —

I'm around if you'd like to dial me. [**REDACTED**]

Best.

[**REDACTED**]

On Fri, Dec 17, 2021 at 5:33 PM Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov>wrote:

New to the thread here, but this all reads to me like you all are bending over backwards to say that this isn't causing confusion on public issues. If the AP deems it confusing enough to write a fact check, and you deem it confusing enough to create an event for it, how on earth is it not confusing enough for it to at least have a label?

Total Calvinball.

---

**From:** Tom, Christian L. EOP/WHO

**Sent:** Friday, December 17, 2021 5:24 PM

**To:** [**REDACTED**]@twitter.com>

**Cc:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>; Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Thanks [**REDACTED**] The policy at the top says:

**What is in violation of this policy**

In order for content with **misleading media** (including images, videos, audios, gifs, and URLs hosting relevant content) to be labeled or removed under this policy, it must:

Include media that is significantly and deceptively altered, manipulated, or fabricated, or

Include media that is shared in a deceptive manner or with false context, and

Include media likely to result in widespread

confusion on public issues, impact public safety, or cause serious harm

I've highlighted the above sections which say that the first condition can be met alone OR the second and third can be met.

So that section that you've quoted makes sense, except this media is unto itself "significantly and deceptively altered, manipulated or fabricated." And thus it should meet the criteria as outlined in the first bullet point.

Is that right?

---

**From:** [**REDACTED**]@twitter.com>

**Sent:** Friday, December 17, 2021 5:01 PM

**To:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Hi Christian,

I huddled with our enforcement teams on this who confirmed that the media does not meet our threshold for either significant or moderate risk of harm. Due to the low risk associated, the team found it to not meet the requirements for a label. They've specifically pointed to this language in our Help Center article:

> *Tweets that share misleading media are subject to removal under this policy if they are likely to cause serious harm. Some specific harms we consider include:*
>
> - *Threats to physical safety of a person or group*
> - *Incitement of abusive behavior to* a *person or group Risk of* mass *violence* or *widespread civil unrest*
> - *Risk of impeding* or *complicating provision of public services, protection efforts, or emergency response*
> - *Threats to the privacy or to the ability of* a *person or group to freely express themselves or participate in civic events, such* as:

Unfortunately, there isn't anything further here I can do in regards to our enforcement teams. If anything changes, we'll be sure to let you know. Appreciate your continued partnership and please don't hesitate to let us know if you have additional Tweets for review, anytime.

On Fri, Dec 17, 2021 at 3:49 PM Tom, Christian L.

EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

Hi [**REDACTED**]

Wanted to follow-up before we hit EOW. Even if this particular moment is not as much in the public eye right now, it's really important to us that this is addressed—both on this particular one as well as a precedent for other moments when this might come up.

So, we appreciate your response and update here when you can provide.

Thanks,

—Christian

**From:** [**REDACTED**]@twitter.com>

**Sent:** Monday, December 13, 2021 4:05 PM

**To:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Hello! Apologies as I have been out of the office. I am working with the internal teams for clarity around your specific questions, so I will let you know as soon as I hear.

Appreciate your continued feedback here!

---

On Mon, Dec 13, 2021 at 12:16 PM Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

[**REDACTED**] hope you had a good weekend. Wanted to make sure we addressed this! Please let us know if you have a few mins to chat or if you can help us to make sure the enforcement of the policy is consistent.

---

**From:** Tom, Christian L. EOP/WHO

**Sent:** Thursday, December 9, 2021 4:37 PM

**To:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>; [**REDACTED**]@twitter.com>

**Subject:** RE: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Hi [**REDACTED**]

I wanted to follow-up here. Know this particular moment might have "passed" in terms of the scale/reach of it but in order to help us understand the Twitter processes best, would appreciate clarification on this when you're able.

Thanks,

--Christian

---

**From:** LaRosa, Michael J. EOP/WHO

**Sent:** Wednesday, December 1, 2021 5:13 PM

**To:** [**REDACTED**]@twitter.com>

**Cc:** Tom, Christian L. EOP/WHO [**REDACTED**] @who.eop.gov>

**Subject:** RE: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Thank you!

Michael LaRosa

The White House

Press Secretary | Office of the First Lady

[**REDACTED**]@who.eop.gov

[**REDACTED**]

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**From:** [**REDACTED**]@twitter.com>

**Sent:** Wednesday, December 1, 2021 5:09 PM

**To:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Of course. Let me pass these additional questions along to the policy team directly for their insights and consideration. I'll let you know from there!

On Wed, Dec 1, 2021 at 5:05 PM LaRosa, Michael J. EOP/WHO[**REDACTED**]@who.eop.gov> wrote:

Thanks, Christian. Hi [**REDACTED**] Let me know if we should hop on the phone to clarify. I am curious as to what would classify as "likely" so it is indisputable that the video is "deceptively altered," "fabricated," and "shared in a deceptive manner."

Michael LaRosa

The White House

Press Secretary | Office of the First Lady

[**REDACTED**]@who.eop.gov

[**REDACTED**]

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**From:** Tom, Christian L. EOP/WHO

**Sent:** Wednesday, December 1, 2021 2:19 PM

**To:** [**REDACTED**]@twitter.com>

**Cc:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

OK thanks [**REDACTED**] think this one does not fall under the "likely to impact public safety or cause serious harm" but it **does** fall under the first two in the chart, which includes "significantly and deceptively altered or fabricated" and "shared in a deceptive manner?"

And if the first two are met but the third is not, the chart says it is "**likely** to be removed." Can you share any other info about why this one is not getting what Twitter would otherwise say is the "likely" outcome?

Also happy to chat on the phone this afternoon with Michael (who is the First Lady's Press Secretary) if helpful

---

**From:** [**REDACTED**]@twitter.com>

**Sent:** Wednesday, December 1, 2021 11:11 AM

**To:** Tom, Christian L. EOP/WHO [**REDACTED**]@

who.eop.gov>

**Cc:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Appreciate you following up. After escalating this to our team, the Tweet and video referenced will not be labeled under our synthetic and manipulated media policy. Although it has been significantly altered, the team has not found it to cause harm or impact public safety.

The team was able to create this Twitter Moment (here) and event page for more context and details:

>>>>>https://twitter.com/i/events/1465769009073123330<<<;<<;

Appreciate your feedback, as always.

On Wed, Dec 1, 2021 at 9:14 AM Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov]> wrote:

Just wanted to follow-up here.

It looks like from the rubric that this fits the first two criteria, which means it is "likely" to be labeled:

>>>>>https://help.twitter.com/en/rules-and-policies/manipulated-media<<<;<<;

Thanks again [**REDACTED**]

-- Christian

---

**From:** Tom, Christian L. EOP/WHO

**Sent:** Tuesday, November 30, 2021 8:54 PM

**To:** [**REDACTED**]@twitter.com>; LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** RE: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Thanks [**REDACTED**] Will you apply the “Manipulated Media” disclaimer to the video asset itself?

Both the linked tweet below and the original source of the video:

>>>>>https://twitter.com/PapiTrumpo/status/1465439569965424643<<<;<<;

Thanks [**REDACTED**]

--Christian

**From:** [**REDACTED**]@twitter.com>

**Sent:** Tuesday, November 30, 2021 7:31 PM

**To:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** Re: [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Update for you — The team was able to create this event page for more context and details: >>>>>> https://twitter.com/i/events/1465769009073123330<<;<<;<<;

On Tue, Nov 30, 2021 at 4:23 PM LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

Thank you!

Michael LaRosa

The White House

Press Secretary | Office of the First Lady

[**REDACTED**]@who.eop.gov

[**REDACTED**]

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**From:** [**REDACTED**]@twitter.com>

**Sent:** Tuesday, November 30, 2021 4:04 PM

**To:** Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov>

**Cc:** LaRosa, Michael J. EOP/WHO [**REDACTED**]@who.eop.gov>

**Subject:** [EXTERNAL] Re: Doctored video on Twitter of the First Lady

Hi Christian,

Happy to escalate with the team for further review from here.

Don't hesitate to let me know if you have any additional questions in the meantime.

On Tue, Nov 30, 2021 at 3:58 PM Tom, Christian L. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

Hi [**REDACTED**]

Would you mind looking at this video and helping us with next steps to put a label or remove it?

>>>>>>>>https://twitter.com/ArtValley818_/status/1465442266810486787?s=20<<<<<<<

For reference, the timestamp is 32:47 for the undoctored video source here:

>>>>>>>>https://www.c-span.org/video/?516345-l/lady-remarks-white-house-holiday-decoration-volunteers<<<<<<<

Thanks,

--Christian

--

Error! Filename not specified.

[**REDACTED**]

Public Policy

[**REDACTED**]

--

[**REDACTED**]

Public Policy

[**REDACTED**]

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[**REDACTED**]

Public Policy

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Public Policy
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[**REDACTED**]
Public Policy
[**REDACTED**]

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**From:** Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov]

**Sent:** 8/11/2022 5:28:09 PM

**To:** [**REDACTED**]@twitter.com]

**CC:** [**REDACTED**]@twitter.com]; Lee, Jesse C. EOP/WHO [**REDACTED**]@who.eop.gov]

**Subject:** Re: [EXTERNAL] Re: Joe Weisenthal on Twitter: "Wow, this note that twitter added to Biden's tweet is pure gibberish. Imagine adding this, and thinking this is helpful to the public's understanding in any way. (HT: @tryna farm) https://t.co/ECQAoczCA4" / …

Happy to talk through it but if your product is appending misinformation to our tweets that seems like a pretty fundamental issue

On Aug 11, 2022, at 1:23 PM, [**REDACTED**]@twitter.com> wrote:

Hi Rob,

Thanks for reaching out. I believe you're referring to our Birdwatch product feature. Here's the latest information about how it works.

We'd be happy to arrange a meeting to walk you through how it works. We're also collecting feedback for our teams.

Best,

[**REDACTED**]

On Thu, Aug 11, 2022 at 12:31 PM Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov] wrote:

Adding [**REDACTED**] since [**REDACTED**] seems to be out

>On Aug 11, 2022, at 12:31 PM, Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

>

>Happy to connect you with some economists who can explain the basics to you guys

>

>https://mobile.twitter.com/gasbuddyguy/status/1555541573835886592/photo/1

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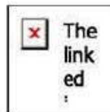


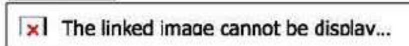


[**REDACTED**]

Head of U.S. Public Policy

Follow me [**REDACTED**]

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**From:** [**REDACTED**]@twitter.com>

**To:** Lee, Jesse C. EOP/WHO

**CC:** Flaherty, Rob R. EOP/WHO; [**REDACTED**]

**Sent:** 8/11/2022 8:23:50 PM

**Subject:** Re: [EXTERNAL] Re: Joe Weisenthal on

> Twitter: "Wow, this note that twitter added to Biden's tweet is pure gibberish. Imagine adding this, and thinking this is helpful to the public's understanding in any way. (HT: @trynafarm) https://t.co/ECQAoczCA4" / …

Hi Jesse- I just tried you on your cell. I'm at [**REDACTED**].

Best,

[**REDACTED**]

On Thu, Aug 11, 2022 at 1:28 PM Lee, Jesse C. EOP/WHO <[**REDACTED**]@who.eop.gov> wrote:

Thanks [**REDACTED**]. I like the feature! But this note is factually inaccurate. This is a very technical question but you don't have it right, and you are in effect calling the President a liar when his tweet is actually accurate. I'm happy to discuss this with whoever is the right person.

Cell: [**REDACTED**]

Sent from my iPhone

On Aug 11, 2022, at 1:23 PM, [**REDACTED**]@twitter.com> wrote:

Hi Rob,

Thanks for reaching out. I believe you're referring to our Birdwatch product feature. Here's the latest information about how it works.

We'd be happy to arrange a meeting to walk you through how it works. We're also collecting feedback for our teams.

Best,

[**REDACTED**]

On Thu, Aug 11, 2022 at 12:31 PM Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

Adding [**REDACTED**] since [**REDACTED**] seems to be out

>On Aug 11, 2022, at 12:21 PM, Flaherty, Rob R. EOP/WHO [**REDACTED**]@who.eop.gov> wrote:

>

>Happy to connect you with some economists who can explain the basics to you guys

>

>https://mobile.twitter.com/gasbuddyguy/status/1555541573835886592/photo/l

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WHAT'S HAPPENING

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WHAT'S HAPPENING

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI, ET AL.
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.,
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

---

Filed: Mar. 20, 2023

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**SUPPLEMENTAL DECLARATION OF DR. JAYANTA BHATTACHARYA**

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1. My name is Dr. Jayanta Bhattacharya. I am over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted a Declaration in this case, which is filed with the Court as Doc. 10-3 and Doc. 45-3. That prior Declaration is incorporated by reference herein.

3. In addition to my own experience with federally-induced censorship on social media, I am also a frequent reader and listener of content others post on social media platforms, including others who have suffered federally-induced social-media censorship.

4. I have a strong interest in being able to read and follow the speech and writings that others post on social media. My main goal is to understand the landscape of opinions expressed by influential people in this setting, whether I agree or disagree with them. I need to know this to perform my job, which is to research public health policies that will improve the health of the American public. Without understanding the full range of opinions Americans hold about these topics, I cannot know what ideas will be acceptable to the American public, nor can I fully understand the constraints preventing Americans from being as healthy as they deserve to be. Doing this task has been challenging during the pandemic because government censorship of prominent voices on social media has driven many prominent figures to engage in their advocacy in other less accessible venues. There, they continue to exert influence and disseminate their ideas to the public, but in ways that are not easily visible to me. Having access to the uncensored views, speech, and opinions of others is thus central to my work.

5. I frequently read and listen to the speech and writings on social media of other speakers and writers whom federal officials may have explicitly targeted for censorship such as: Alex Berenson, Robert F. Kennedy, Jr., Peter McCoullough, Robert Malone, Alex Washburne, Alina Chan, Simone Gold, Jan Jekielek, John Ioannidis, Michael Levitt, Scott Atlas, Mark Changizi, Michael Senger, Daniel Kotzin, Tucker Carlson, Laura Ingraham, A.J. Kitchen, Craig Wax, Tracy Beth Hoeg, Cristine Stabel Benn, Joseph Fraiman, Joe Ladapo, Dr. Drew, and anonymous accounts like @boriquagato, @contrarian4data.

6. As I explained in my prior Declaration, I am often forced to engage in self-censorship on social media to avoid severe consequences like de-platforming, suspension, and receiving strikes. I am aware of others I follow on social media engaging in self-censorship out of fear of more severe penalties. I have heard from prominent signatories of the Great Barrington Declaration, including tenured professors of epidemiology and other relevant disciplines, who have described retaliation they have experienced at work for signing the document, including losing their jobs. I have also received messages from junior and senior professors who have told me they are hesitant to state publicly views that oppose government policy. They fear the social stigma that comes from being censored on social media or from prominent government figures labeling them as "fringe" thinkers, as former NIH director Francis Collins did in my case. I am confident that there are many others who react similarly, though they do not contact me to tell me. Federally induced censorship thus prevents me from having access to those speakers' and writers' frank and uncensored speech, thoughts, opinions, and ideas.

7. This case is of great interest to me. I have been closely monitoring it since my involvement with it began. I am familiar with the facts and legal theories in the case and communicate regularly with my counsel about the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: Mar. 15, 2023

/s/ <u>JAYANTA BHATTACHARYA</u>
JAYANTA BHATTACHARYA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

---

No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI, ET AL.,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.,
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

---

Filed: Mar. 20, 2023

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**SUPPLEMENTAL DECLARATION OF DR. MARTIN KULLDORFF**

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1. My name is Martin Kulldorff. I am a biostatistician and epidemiologist, a professor of medicine at Harvard University (on leave), over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted a Declaration in this case, which is filed with the Court as Doc. 10-4 and Doc. 45-4. That prior Declaration is incorporated by reference herein.

3. In addition to my own experience with censorship on social media, I am also a frequent reader and listener of content that others post on social-media

platforms, including others who have suffered social-media censorship.

4. I have a strong interest in being able to read and follow the speech and writings that others post on social media, to quickly learn about the work of other scientists, and to engage in important scientific discussions. Having access to the uncensored views about science is central to my work as a scientist. Science cannot thrive without open scientific discourse and the public cannot trust the scientific community if such discourse is hampered. Even inaccurate information must be openly available to be properly refuted with evidence based scientific arguments rather than censored and hidden as if it there are no available counter arguments.

5. I frequently read the writings and/or listen to the speech of others who have been targeted for censorship on social media, such as Dr. Jay Bhattacharya, Dr. Craig Wax, Dr. Scott Atlas, Dr. Robert Malone, Dr. Sunetra Gupta, Dr. Peter McCoullough, Dr. Mark Changizi, Dr. David Thunder, Dr. Roberto Strongman, and Robin Monotti, among many others.

6. I have been forced to engage in self-censorship on social media to avoid severe consequences like deplatforming, suspension, and receiving strikes, and I am also aware of other scientists on social media that are also engaging in self-censorship out of fear of such penalties. Social media censorship thus prevents me from having access to their frank and uncensored speech, thoughts, opinions, and ideas.

7. This case is of critical importance to the future of scientific discoveries and trust in the scientific community. I have been closely monitoring it since my involvement with it began.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: March 15, 2023

/s/ MARTIN KULLDORFF
DR. MARTIN KULLDORFF

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI, ET AL.,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.,
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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Filed: Mar. 20, 2023

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**SUPPLEMENTAL DECLARATION OF**
**DR. AARON KHERIATY**

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1. My name is Dr. Aaron Kheriaty. I am over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted a Declaration in this case, which is filed with the Court as Doc. 10-7 and Doc. 45-7. That prior Declaration is incorporated by reference herein.

3. In addition to my own experience with censorship on social media, I am also a frequent reader and listener of content that others post on social-media platforms, including others who have suffered federally-induced social-media censorship.

4. I have a strong interest in being able to read and follow the speech and writings that others post on social media. For example, Twitter is an important platform where I connect and stay up-to-date on the work of other scientists, physicians, public health professionals, journalists, and policy experts. This is a forum for sharing studies and other relevant sources of information, engaging in scientific and policy debates, disseminating my own work and commentary through reposting retweeting, or commenting on the contributions of others. This ongoing open conversation and debate on Twitter and other social media platforms is characteristic of good science and public policy work. Having access to the uncensored views, speech, and opinions of others—both those with whom I agree and others with whom I disagree—is central to my work because it allows my own views to be challenged, augmented, corrected or revised based upon the best available information, analysis, and arguments.

5. I frequently read and listen to the speech and writings on social media of other speakers, writers, and policy analysts whom federal officials have specifically targeted for censorship on social media, such as: Dr. Jay Bhattacharya, Dr. Martin Kulldorff, Alex Berenson, Tucker Carlson, Robert F. Kennedy, Jr., Rizza Islam, Dr. Robert Malone, the New York Post, Michael Yeadon, James O'Keefe, James Woods, Dr. Pierre Kory, Dr. Harvey Risch, Dr. Paul Marik, the Epoch Times, the Great Barrington Declaration, Del Bigtree, Children's Health Defense, Naomi Wolf, Mark Changizi, Michael Senger, Daniel Kotzin, A.J. Kitchen, and Dr. Andrew Bostrom.

6. I also frequently read and listen to the speech and writings on social media of other speakers and

writers who speak and write on matters relating to COVID-19 and elections with viewpoints disfavored by federal officials, and have experienced censorship, such as Justin Hart, Dr. Lynn Fynn, Dr. Aseem Malholtra, Dr. Drew Pinsky, Dr. Ryan Cole, Dr. Mary Makary, Dr. Gabe Vorobiof, Dr. Tracy Hoeg, Paul Thacker, The Unity Project, The Brownstone Institute, Bret Weinstein, and Jeffrey Tucker, among others.

7. As I explained in my prior Declaration, I am often forced to engage in self-censorship on social media to avoid severe consequences like de-platforming, suspension, and receiving strikes. I am aware of others whom I follow on social media engaging in self-censorship out of fear of more severe penalties as well. We discuss this problem frequently when not on social media. For example, many of the above authors resorted routinely to speaking in "code words" or utilizing vague, allusive phrases when referring to topics like covid vaccine-related injuries or side-effects, for fear that these posts would be flagged for censorship. This included highly qualified physicians and scientists speaking from their clinical experience or commenting on published data. Federally induced censorship thus prevents me from having access to those speakers' and writers' frank and uncensored speech, thoughts, opinions, and ideas.

8. Among the adverse effects of this pervasive censorship of covid topics and other topics on social media, the government was able to project the false impression of a scientific consensus on favored covid policies—from lockdowns and school closures to vaccine mandates and vaccine passports, among others—where in fact no such consensus existed. Instead, one side of the debate on these policies was suppressed by aggressive government-sponsored censorship. When challenging

some of these policies on social media, I and other doctors, scientists, and policy analysts were then falsely characterized as holding a minority opinion that few others shared. This was said in attempts to discredit our opinions, even when those opinions managed to make it through the censorship "filters".

9. Widespread social media censorship thus created a self-reinforcing feedback loop—an echo chamber that failed to accurately represent the opinions and judgments of highly credible and qualified voices on issues of enormous public consequence.

10. This case is of great interest to me. I have been closely monitoring it since my involvement with it began, I am familiar with the facts and legal theories in the case, and I communicate regularly with my counsel about the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: Mar. 9, 2023

/s/ AARON KHERIATY
AARON KHERIATY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI, ET AL.,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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Filed: Mar. 20, 2023

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**SUPPLEMENTAL DECLARATION OF JIM HOFT**

---

1. My name is Jim Hoft. I am over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted a Declaration in this case, which is filed with the Court as Doc. 10-12 and Doc. 45-12. That prior Declaration is incorporated by reference herein.

3. I am the founder and publisher of www.TheGatewayPundit.com, a political news and opinion blog visited nearly three million times per day by readers.

4. In addition to my own experience with censorship on social media, I am also a frequent reader and

listener of content that others post on social-media platforms, including others who have suffered federally induced social-media censorship.

5. I have a strong interest in being able to read and follow the speech and writings that others post on social media. As the publisher and editor of The Gateway Pundit, I write dozens of articles per day and edit many others. For the blog that I founded and which constitutes my livelihood, it is essential that I be able to engaging in scientific debate, be exposed to news and ideas, generate for myself and my site, our own content by reposting, retweeting, or reposting with comments the content that others post, and have access to the uncensored views, speech, and opinions of others. Simply put my life's work consists of publicly sharing and discussing ideas, opinions, facts, and theories about events and issues that affect the United States, but also the world.

6. I frequently read and listen to the speech and writings on social media of other speakers and writers whom federal officials have specifically targeted for censorship on social media, such as (but not limited to): Tucker Carlson, Alex Berenson, Robert F. Kennedy, Jr., Fox News, Candace Owens, Dr. Robert Malone, Rogan O'Handley (aka "DC Drano"), the New York Post, Dr. Simone Gold, Dr. Stella Immanuel, Dr. Peter McCullough, America's Frontline Doctors, Charlie Kirk, Breitbart News, Donald Trump Jr., James O'Keefe, James Woods, the Epoch Times, Right Side Broadcasting Network, the Great Barrington Declaration, Children's Health Defense, Dr. Naomi Wolf, Robert Malone, Liz Wheeler, and many others.

7. I also frequently read and listen to the speech and writings on social media of other speakers and writers who speak and write on matters relating to COVID-19 and elections with viewpoints disfavored by federal officials, and have experienced censorship, such as my brother, Joseph Hoft, Mike Lindell, President Donald J. Trump, Sidney Powell, One America News Network, Chanel Rion, Eric Metaxas, Christina Bobb, Stephen Miller, Dr. Peter Navarro, Gen. Michael Flynn, among many others.

8. As I explained in my prior Declaration, I am often forced to engage in self-censorship on social media to avoid severe consequences like de-platforming, suspension, and receiving strikes. I am aware of others whom I follow on social media engaging in self-censorship out of fear of more severe penalties as well, such as Patty McMurray, Christina Laila, Alicia Powe, Cassandra McDonald, Jordan Conradson, Cara Castronuova, Kari Lake, Breitbart News, @Catturd2, Rogan O'Handley (aka "DC Drano"), Emerald Robinson, @Kanekoa.substack.com (aka "Kanekoa the Great"). Federally induced censorship thus prevents me from having access to those speakers' and writers' frank and uncensored speech, thoughts, opinions, and ideas. The reality is that so many conservative thinkers have been censored in recent years, it's hard to think of anyone who doesn't self-censor online, out of fear of deplatforming. Moreover, readers are often afraid to retweet and share my/ Gateway Pundit content for fear of having their own account suspended.

9. Considered as a whole, the effect of all of the mass censorship has led me to deeply distrust all aspects of every branch of the federal government. I am firmly convinced that our Republic is severely

damaged. Lacking actual free speech, I don't feel like a free citizen. I feel like a second class citizen in the so-called "land of the free." I feel oppressed by my own government. The Gateway Pundit and I each live under constant threat of deplatforming and censorship—and by extension, the death of the publication. If I cannot receive and share information, I can't publish—or, perhaps I can publish, but no one could read—and the result is the prospective destruction of my website. This is no way to live—not in a country that supposedly has the Constitution and the protection of the First Amendment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: Mar. 20, 2023

/s/ JIM HOFT
JIM HOFT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI, ET AL.,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

---

Filed: Mar. 20, 2023

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**SUPPLEMENTAL DECLARATION OF JILL HINES**

---

1. My name is Jill Hines. I am over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted a Declaration in this case, which is filed with the Court as Doc. 10-12 and Doc. 45-12. That prior Declaration is incorporated by reference herein.

3. In addition to my own experience with censorship on social media, I am also a frequent reader and listener of content that others post on social-media platforms, including others who have suffered federally-induced social-media censorship.

4. I have a strong interest in being able to read and follow the speech and writings that others post on social media. I have a vested interest through my work as a consumer and human rights advocate to ensure that information that the government provides to the public is accurate and, if not, I have the ability to provide a counter argument. The ability to re-share scientific articles, commentaries, videos, and legislative testimonies is vital to our goal of educating the public and those individuals in the legislature that represent us.

5. I frequently read and listen to the speech and writings on social media of other speakers and writers whom federal officials have specifically targeted for censorship on social media, such as Del Bigtree, The Highwire, Toby Rogers Phd., Dr. Robert Malone, Knut Wittkowski, Robert F. Kennedy Jr., Children's Health Defense, Dr Peter McCullough, Candace Owens, Tucker Carlson, Breitbart, Georgia Coalition for Vaccine Choice, Informed Choice Maryland, Tennessee Coalition for Vaccine Choice, Your Health Freedom, Stand for Health Freedom, Leah Wilson, Sandi Marcus, Mississippi Parents for Vaccine Rights, Texans for Vaccine Choice, Health Freedom Pennsylvania, Health Freedom Alabama, Sayer Ji, Ginger Taylor, Angelia Desselle, Health Freedom South Dakota, Health Choice Maine, Kristen Meghan Kelly, Tammy Clark, Health Freedom Florida, Michigan for Vaccine Choice, Oklahomans for Health and Parental Rights, Informed Health Choice Missouri, South Carolina Health Coalition, Epoch Times, Jennifer Margulis, Jeff Childers, Dr. Pierre Kory, Front Line Covid-19 Critical Care Alliance, Dr. Ryan Cole, Donald Trump, Alex Berenson, Peggy Hall, Aaron Siri, Denis Rancourt, Mark Changizi, The Babylon Bee, Mary Holland, Turning

Point USA, Charlie Kirk, J B Handley, Michael Lunsford, Citizens for a New Louisiana, Dr. Scott Atlas, The Great Barrington Declaration, Sharyl Attkisson, Michael Senger, Daniel Kotzin, American Institute for Economic Research, Barry Brownstein, Brownstone Institute, Jeffrey Tucker, Paul Alexander, Tracy Beanz, Dr. Mary Talley Bowden, Ed Dowd, Project Veritas, James O'Keefe, Dr. Mollie James, Dr. Tracy Beth Hoeg, Dr Joseph Ladapo, Simon Goddek, Ben Tapper, Rizza Islam, Kevin Jenkins, Dr Stella Immanuel, Michael Yeadon, Geert Vanden Bossch, James Woods, Adam Gaertner, Steve Bannon, Dr. Aaron Kheriarty, Dr. Jay Bhattacharya, Dr. Martin Kulldorff, Jim Hoft, Gateway Pundit, Dr. Jessica Rose, and Dr. Meryl Nass.

6. I also frequently read and listen to the speech and writings on social media of other speakers and writers who speak and write on matters relating to COVID-19 and elections with viewpoints disfavored by federal officials, and have experienced censorship, such as Dr. James Lyons-Weiler, Melissa Floyd, Nic James, Daniel Horowitz, Steve Deace, Ty Bollinger, Sherri Tenpenny, Ohio Advocates for Medical Freedom, Health Freedom Defense Fund, Leslie Manookian, Dr Paul Thomas, Leigh Dundas, Tom Fitton, and Dr. Naomi Wolf.

7. As I explained in my prior Declaration, I often feel forced to engage in self-censorship on social media to avoid severe consequences like de-platforming, suspension, and receiving strikes. I am aware of others whom I follow on social media engaging in self-censorship out of fear of more severe penalties as well. Many of the people I follow on social media use code words or emojis to avoid censorship, others post pictures or article headlines upside down. Brett Wilcox often resorts

to posting headlines upside down or very small print. Author Jennifer Margulis PhD refers to covid vaccines as carrots or cupcakes on Facebook. Mississippi Parents for Vaccine Rights places stickers or emojis over controversial words like ivermectin, vaccines, or masks in headlines. Federally induced censorship thus prevents me from having access to those speakers' and writers' frank and uncensored speech, thoughts, opinions, and ideas.

8. In the spring of 2020, two doctors from California posted a video detailing disease progression and severity of covid-19. The video was shared many times from our social media until it was taken down completely. There was another video of a New York physician detailing covid treatment in his hospital — his video was removed and scrubbed from the internet. These stories were vital to share with my community of followers, which includes medical professionals, and yet these physicians were not allowed to provide first-hand accounts of successful covid treatment or protocols. When I shared the White Coat presentation on the steps of the Supreme Court in the fall of 2020, and the physicians advocated for early treatment with hydroxychloroquine, Facebook censors took down the video and our page viewership was reduced immensely.

9. This case is of great interest to me. I have been closely monitoring it since my involvement with it began, I am familiar with the facts and legal theories in the case, and I communicate regularly with my counsel about the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: Mar. 16, 2023

/s/ JILL HINES
JILL HINES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI,
STATE OF LOUISIANA, ET AL.,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.,
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

Filed: May 20, 2023

**SECOND SUPPLEMENTAL DECLARATION OF JILL HINES**

1. My name is Jill Hines. I am over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted two Declarations in this case, filed with the Court as Doc. 10-12 (45-12) and Doc. 227-9. Those prior Declarations are incorporated by reference herein.

3. My previous two Declarations detailed some examples of injury I have experienced due to censorship of speech, both from censorship of my own speech and of speech of others with which I would otherwise have

been able to engage. They even detail self-censorship I have felt compelled to do to avoid further harm.

4. As described in my previous Declarations, my advocacy work through Health Freedom Louisiana and Reopen Louisiana includes work to educate and inform the public of their rights regarding certain state and federal laws, and work to coordinate rallies, protests, and testimonies at legislative hearings to seek legislative change for the people of Louisiana. The platform of social media has been essential to complete this work and to effectively communicate with our state representatives.

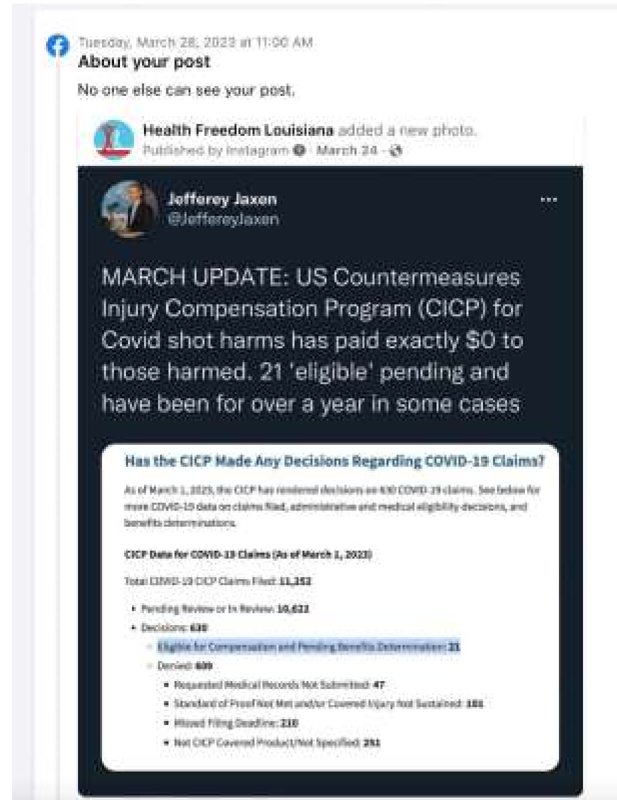
5. The harms I experience due to censorship of speech on social media are ongoing.

6. Leading up to the Louisiana legislative session in April 2023, I received a series of troubling penalties on Facebook that caused my personal page and public pages, Health Freedom Louisiana and Reopen Louisiana, to be restricted.

7. The penalties included downgrading the visibility of my posts in Facebook's News Feed (thereby limiting its reach to other users), downgrading the visibility of my posts in my Facebook Groups, and an approximately 24-hour moratorium on my ability to create Facebook Events.

8. On February 8, 2023, my Health Freedom Louisiana page received a violation for simply sharing a Tweet from attorney Aaron Siri regarding the amount of money vaccine manufacturers grossed while setting no money aside for Covid vaccine injury victims. No one else was permitted to view or engage with the post.

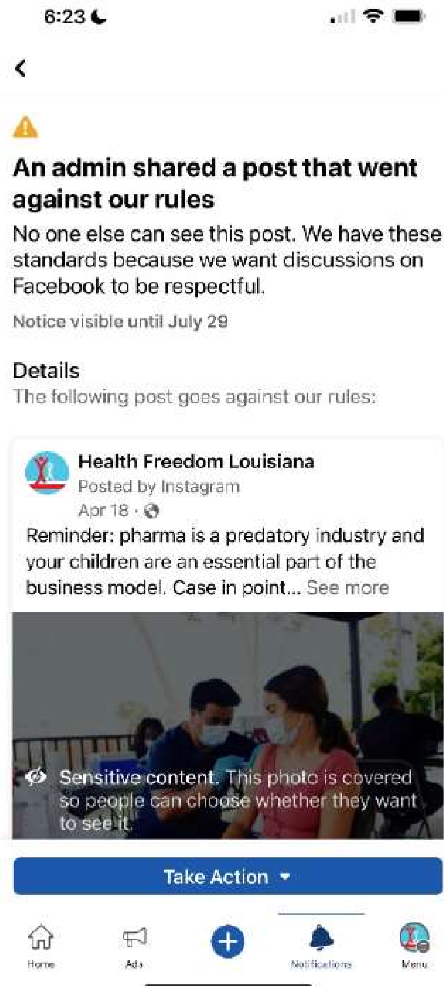
9. On March 28, 2023, the page received another violation for sharing a Tweet regarding the amount of money that had been paid out of the U.S. Countermeasures Injury Compensation Program (CICP). No one else was permitted to view or engage with the post.




10. On April 3, 2023, the page received another violation for sharing a Fox News Tweet regarding the World Health Organization's latest Covid vaccine recommendations for children.

11. On April 18, 2023, a post on Health Freedom Louisiana's Facebook page linking to a piece entitled "Some Americans Shouldn't Get Another COVID-19 Vaccine Shot, FDA Says," and commenting on how

children factor into the business model of the pharmaceutical industry was issued a violation. No one else was permitted to view or engage with the post.



6:24

**Health Freedom Louisiana**
Posted by Instagram
Apr 18 ·

Reminder: pharma is a predatory industry and your children are an essential part of the business model. Case in point... See more

If your Page gets too many Community Standards violations in too short a time, it may be permanently disabled.

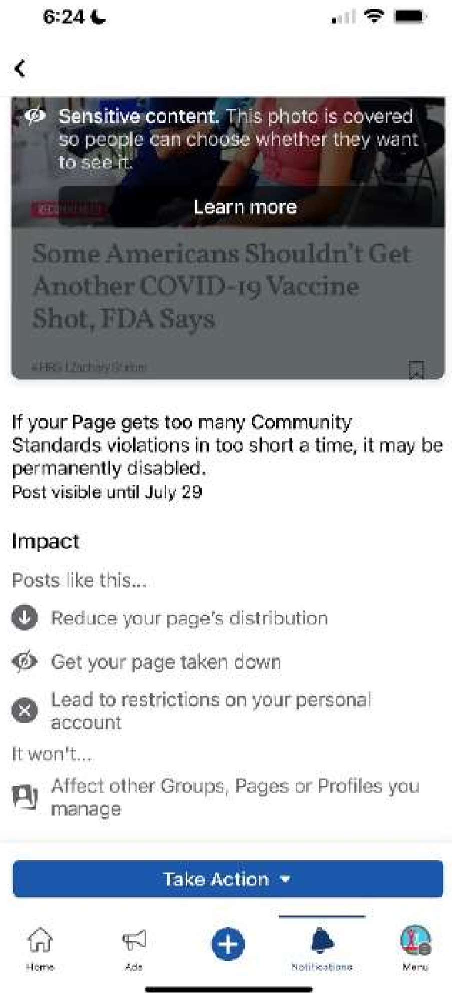
Take Action

Home

Ads

Notifications

Menu


6:24
Sensitive content. This photo is covered so people can choose whether they want to see it.
Learn more
Some Americans Shouldn't Get Another COVID-19 Vaccine Shot, FDA Says
If your Page gets too many Community Standards violations in too short a time, it may be permanently disabled.
Post visible until July 29
Impact
Posts like this...
Reduce your page's distribution
Get your page taken down
Lead to restrictions on your personal account
It won't...
Affect other Groups, Pages or Profiles you manage
Take Action
Home
Ads
Notifications
Menu

12. On April 26, 2023, one of my posts with a screenshot of a Daily Mail headline about the dangers of masks had a "missing context" banner placed on it, and my page received a warning. As a result, I removed the post from other pages I had shared it to.

13. On April 28, 2023, I received a warning for a screenshot of a Robert F. Kennedy, Jr. Tweet, and I removed the post because of the warning. I further removed the post from other pages that I had shared it to in an effort to avoid any more violations. No one else was permitted to view or engage with the post.

14. All of these examples pertain to speech of public interest. This censorship of my speech interrupts my ability, and the ability of Health Freedom Louisiana, to reach the public during the Louisiana legislative session on issues of public concern. It is truly demoralizing, and it suppresses speech and engagement in the political process.

15. This ongoing harm I experience is one reason this case is "of great interest to me" (Hines Suppl. Decl., ¶9). The injuries I have experienced are imminent and ongoing. The injuries stem from the category of speech disfavored by and targeted by Defendants in this case. Consider, as a prime example, the evidence showing the Surgeon General's office collaborating with the Virality Project to target "health freedom" groups, such as my group Health Freedom Louisiana. I anticipate an order putting a halt to the Federal Defendants' contribution to the censorship enterprise of social media speech would, accordingly, bring me immediate and noticeable relief.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed On: May 17, 2023

/s/ JILL HINES
JILL HINES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

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No. 3:22-cv-01213-TAD

STATE OF LOUISIANA, STATE OF MISSOURI, ET AL.,
PLAINTIFFS

*v.*

JOSEPH R. BIDEN, JR.
IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES, ET AL.,
DEFENDANTS

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Filed: May 20, 2023

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**SECOND SUPPLEMENTAL DECLARATION OF JIM HOFT**

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1. My name is Jim Hoft. I am over the age of 18 years and competent to testify to the matters expressed herein.

2. I have previously submitted two Declarations in this case, filed with the Court as Doc. 10-5 (45-5) and Doc. 227-8. Those prior Declarations are incorporated by reference herein.

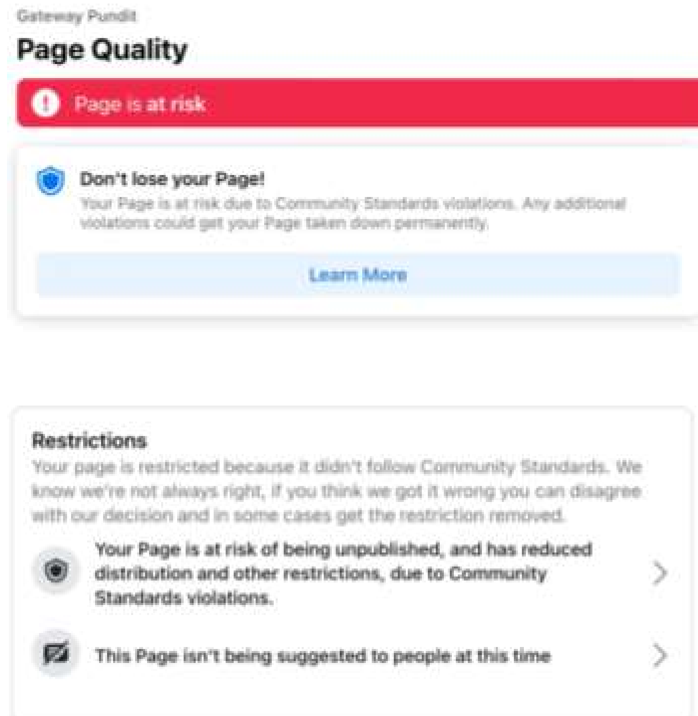
3. My previous two Declarations detailed some examples of injury I have experienced due to censorship of speech, both from censorship of my own speech, the speech of others with which I would otherwise have been able to engage, and the self-censorship of readers

of my blog, The Gateway Pundit, for fear of retaliation from social media companies. They even detail self-censorship I have felt compelled to do to avoid further harm.

4. As described in my previous Declarations, my online publication, The Gateway Pundit, is a news and opinion blog seen by readers millions of times every day. The Gateway Pundit is my sole means of earning a living. Social media platforms can be a very important means of gaining exposure to Gateway Pundit articles and engaging in public debate. However, Gateway Pundit has been the victim of a federal-private organized and targeted censorship campaign that has lasted several years, and this campaign has regularly interfered with and interrupted my ability to communicate with my readers.

5. The harms I experience due to censorship of speech on social media are ongoing.

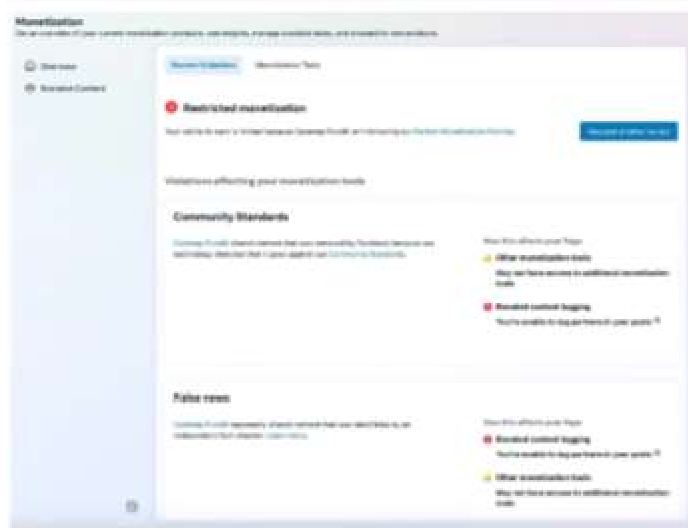
6. For example, to avoid being permanently banned by Facebook and other platforms, I have self-censored the Gateway Pundit articles that are posted there. Rather than freely posting my site's content on these platforms, to this day I have and continue to deliberately withhold content—particularly on matters relating to COVID-19, vaccination for the same, and the 2020 election. I continue to do this out of fear of reprisals from social media. In fact, Facebook continuously warns me and Gateway Pundit that we should be careful to toe their narrative line or else we will be permanently banned. See screenshots below, taken May 19, 2023.




7. And not only have I withheld content, I have deliberately reduced *and continue to reduce* the volume of overall content posted to social media for the very same reasons.

8. As seen from the screenshots above, Facebook and other social media sites are reducing the visibility of Gateway Pundit's Facebook posts, reducing distribution, and imposing other restrictions as well, on an ongoing basis.

9. As only one example, Facebook restricts Gateway Pundit's ability to monetize its posts, restricts its ability to tag partners in posts, and restricts content due to "false news" allegations.

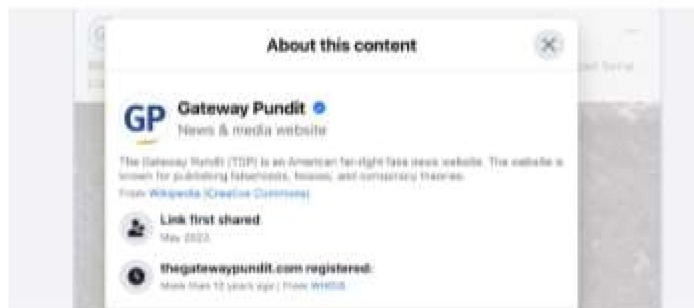


10. The past reprisals have included downgrading the visibility of my posts in Facebook's News Feed (thereby limiting its reach to other users), downgrading the visibility of my posts in my Facebook Groups, temporary banning, permanent banning (in the case of Twitter), flagging, and a wide variety of other forms of censorship.

11. Despite my efforts at self-censorship, Gateway Pundit is also besieged by malicious government-funded propaganda outfits that style themselves "fact-checkers." As one recent example, Gateway Pundit published an article detailing the federal government provisioning thousands of illegal immigrants with taxpayer-funded smart phones. See https://www.thegatewaypundit.com/2023/05/member-trusted-news-initiative-currently-being-sued-collusively/?utm_source=rss&utm_medium=rss&utm_campaign=member-trusted-news-initiative-currently-being-sued-collusively. The article was "fact-checked" by Agence France Presse Fact Check (AFP). Despite AFP learning that what we reported was true—illegal immigrants were, in fact, gifted smart phones bought and continually paid for by the federal government—AFP still reported that our article was false.

12. I also know from communications with readers that there are many readers who refuse to post Gateway Pundit articles to their social media accounts out of fear of social media reprisals. The readers self-censor because either they or their family members or friends have been previously banned or shadow-banned, or otherwise attacked and censored by social media companies after posting articles which were against the federal government's preferred narrative.

13. As a further example of ongoing social media censorship, Facebook continues to attach a defamatory smear against Gateway Pundit to each and every Gateway Pundit Facebook post. The most recent example is from May 17, 2023; see below:



14. All of these examples censored speech pertain to speech of public interest. This censorship interrupts the ability of The Gateway Pundit to reach its readers. It is not only demoralizing, but it prevents me—and my readers—from engaging in public debate on public issues, and it erodes the democratic process. When the government limits the range of thought and permitted viewpoints, one cannot say they live in a functioning republic, and cannot honestly say they possess freedom.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed On: May 19, 2023

/s/ JIM HOFT
JIM HOFT