No. 22-3573

In the United States Court of Appeals for the Sixth Circuit

MARK CHANGIZI; MICHAEL P. SENGER; DANIEL KOTZIN
Plaintiffs – Appellants

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES; SURGEON GENERAL VIVEK MURTHY; SECRETARY XAVIER BECERRA
Defendants – Appellees

On Appeal from the United States District Court for the Southern District of Ohio, Eastern Division
Case No. 2:22-cv-1776
Honorable Edmund A. Sargus, Jr.,
United States District Court Judge

BRIEF OF *AMICUS CURIAE* THOMAS MORE SOCIETY IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

Thomas Brejcha
Thomas More Society
309 W. Washington St.
Suite 1250
Chicago, IL 60606
Telephone: (312) 782-1680
Facsimile: (312) 782-1887
tbrejcha@thomasmoresociety.org

B. Tyler Brooks
Law Office of
B. Tyler Brooks, PLLC
100 E. Lake Dr., Suite 6
Greensboro, NC 27403
Telephone: (336) 707-8855
Facsimile: (336) 900-6535
btb@btylerbrookslawyer.com

Counsel for Amicus Curiae Thomas More Society

December 5, 2022

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 22-3573 Case Name: Changizi et al. v. DHHS et al.

Name of counsel: Thomas Brejcha; B. Tyler Brooks

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CERTIFICATE OF SERVICE

I certify that on December 5, 2022 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ B. Tyler Brooks
B. Tyler Brooks
Law Office of B. Tyler Brooks, PLLC

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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INTEREST OF THE *AMICUS CURIAE*[1]

Amicus Curiae Thomas More Society is a non-profit, national public-interest law firm dedicated to restoring respect in law for life, family, and religious liberty. The Thomas More Society provides legal services to clients free of charge and often represents individuals who cannot afford a legal defense with their own resources. Throughout its history, the Thomas More Society has advocated for the protection of First Amendment rights.

SUMMARY OF ARGUMENT

The federal government exercises great power in ensuring that the First Amendment constitutional rights of free speech are protected. However, in this case, the federal government has violated plaintiffs' First Amendment rights by pressuring social media companies and other private platforms to censor users it deems to have spread "misinformation" about COVID-19. Such pressure from the federal

[1] The parties have consent to the filing of this brief. *Amicus* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

government is an unconstitutional content and viewpoint-based restraint on the plaintiffs' speech in violation of the First Amendment.

The plaintiffs—Mark Changizi, Michael Senger, and Daniel Kotzin—became active Twitter users in March of 2020. With their accounts, they focused on critiquing government restrictions imposed in response to COVID-19. Plaintiffs gained many thousands of followers and many of their contentions (*i.e.*, that lockdowns and mask and vaccine mandates are ineffective at curbing viral spread and have negative societal effects) have proven true. Plaintiffs' claims remained substantially the same beginning March of 2020 when they started their accounts. In the spring of 2022, however, when members of the federal government began making public statements threatening tech companies with regulatory or other legal action if they failed to do more to censor disseminators of "misinformation," plaintiffs began experiencing censorship by the technology companies. Such censorship included temporary suspensions, shadow bans, and permanent suspensions. The Surgeon General also issued a "Request for Information" ("RFI") which demanded that technology companies turn

over identifies of "misinformers" on a wide variety of platforms, including social media companies, e-commerce sites, and search engines.

It is clear that this censorship occurred in large part due to the pressure the DHS and federal government was putting on social media companies and other platforms. The federal government violated plaintiffs' First Amendment rights by coercing the social media companies to censor plaintiffs. Further, the federal government's actions had a chilling effect on the First Amendment rights of citizens to speak freely. The collaboration and collusion between the government and a private company for the purpose of constructing a censorship apparatus to suppress the protected speech of Americans violates the First Amendment.

New evidence has come to light since the District Court dismissed this case on May 5, 2022, to corroborate the theory that the federal government was the driving force of the censorship of plaintiffs. Among other things, this new evidence includes: (1) a whistleblower exposing government emails showing a federal campaign to pressure social media companies to censor sources of "misinformation" and (2) a FOIA request that showed CDC emails showing the same tactics being used by the

CDC. Thus, plaintiffs can now fully demonstrate that their accounts had been censored because of the government. The censorship escalated around the time the federal government began to pressure social media and other platforms.

The threats from DHS to private companies warrant the conclusion that the censorship of plaintiffs was state action done at the behest of the state. By instrumentalizing private companies, including Twitter, through pressure, coercion, and threats to threaten viewpoints it does not agree with, the DHS has turned Twitter's censorship in this case into "state action." Twitter has silenced plaintiffs and others who do not agree with the DHS's viewpoint. This state action is a direct violation of the First Amendment.

Our system of government depends on free speech, including the right of the public to receive information and the government's actions have a profound chilling effect on speech. While at odds with America's traditional First Amendment principles, the federal government's secretive pressure to private parties to censor information it does not agree with is perfectly consistent with the unfortunate tendency of

government bureaucracies to use secrecy to increase their own power at the public's expense.

Moreover, it is inappropriate to dismiss the plaintiffs' type of case before permitting the discovery that might allow further substantiation of their contentions. The underlying facts and significance of plaintiffs' new information, including direct evidence of the government's collusion with private actors to combat "misinformation" illustrates the need for further discovery in this case and the need for the lower court ruling to be reversed.

ARGUMENT

Americans like receiving news and information from robust sources with a diversity of viewpoints. The federal government in this case, however, prefers to ensure that only one side of the story ever gets told—its own. Here, the federal government believes it has the right to commandeer, coerce, and even threaten private parties to suppress speech the government does not like. The First Amendment demands more to protect the rights not only of plaintiffs, but also of the public generally, which has a strong interest in being able to evaluate information. Accordingly, the lower court ruling should be reversed to

protect plaintiffs' First Amendment rights and the public's interest in being able to evaluate robust sources of information.

I. THE GOVERNMENT VIOLATES THE FIRST AMENDMENT WHEN IT PRESSURES SOCIAL MEDIA COMPANIES AND OTHER PRIVATE PLATFORMS TO CENSOR USERS IT DEEMS TO HAVE SPREAD "MISINFORMATION."

A. The Collaboration and Collusion between DHS and a Private Company Violates the First Amendment.

The First Amendment to the United States Constitution prohibits the federal government from making laws "abridging the freedom of speech." U.S. Const. amend. I. The First Amendment also protects the right to receive information. *See Martin v. U.S. Environmental Prot. Agency*, 271 F. Supp. 2d 38 (D.D.C. 2002) (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756 (1976) ("[W]here a speaker exists . . . the protection afforded is to the communication, to its source and to its recipients both."). The Supreme Court has recognized that "[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*, 127 S. Ct. 1730, 1735 (2017).

In the present case, new information was discovered that shows ample evidence of DHS's coercive actions, undue influence on private third parties, and myriad efforts taken to secretly coordinate the censorship of constitutionally protected speech through private entities. Such evidence plainly substantiates the allegations from plaintiffs' Complaint regarding the Surgeon General's tweets, public comments and RFI and show that federal government has violated plaintiffs' First Amendment rights by influencing private parties to censor plaintiff's speech.

The evidence extensively details DHS's frequent communications, meetings, and collusion with Twitter to coordinate the censorship of views that the government has deemed dangerous. This demonstrates that Twitter's mounting censorship of protected speech-speech was not the product of independent, discretionary judgments, but rather done in substantial part because of government collusion. Further, plaintiffs' new evidence includes documentation and details regarding the formation of the "Disinformation Governance Board" ("DGB") within DHS, how DHS created the DGB and tasked it with stopping the spread of misinformation. DHS commandeered censorship through partnership

with private companies, including social media platforms, and held meetings in secret with Twitter executives to discuss the operationalizing of public-private partnerships between DHS and Twitter, including using Twitter specifically to combat misinformation.

The extraordinary level of collaboration and collusion between DHS and a private company for the purpose of constructing a censorship apparatus to suppress the protected speech of Americans is more than sufficient to show that the federal government is substantially responsible for Twitter's past and ongoing censorship of its users in this case. This is in direct violation of plaintiffs' First Amendment rights. 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). This is exactly what the federal government appears to have done to plaintiffs in this case.

B. The Threats from DHS to Private Companies Warrant the Conclusion that the Censorship of Plaintiffs was State Action Done at the Behest of the State and that the Plaintiffs have Standing.

Private Actors are considered governmental when jointly engaged with state actors to deprive an individual of his constitutional rights or

where the state compels the act or controls the private actor. *Dennis v. Sparks*, 449 U.S. 24 (1980). DHS's collusion with Twitter and other private actors led to the censorship of plaintiffs and has increased the censorship of other users. This censorship is entirely viewpoint based and one-sided—only individuals who disagree with the federal government have their speech suppressed.

By instrumentalizing private companies, including Twitter, through pressure, coercion, and threats, DHS has turned Twitter's censorship in this case into "state action." This state action is a direct violation of the First Amendment. *See, e.g., Hammerhead Enterprises v. Brezenoff*, 707 F.2d 33, 39 (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 . . . Similarly, claimants who can demonstrate the distribution of items containing protected speech has been deterred by official pronouncements might raise cognizable First Amendment issues."); *Bantam Books v. Sullivan*, 372 U.S. 58, 62 (1963) (finding First Amendment violation where a

private bookseller stopped selling works that state officials deemed "objectionable" after they sent him a veiled threat of prosecution).

State action is present when the government secretly coerces social media platforms to be the couriers of its preferred viewpoint. As the Supreme Court has made clear, "if the government coerces or induces [a private actor] to take action the government itself would not be permitted to do, such as censorship expression of a lawful viewpoint," the First Amendment is implicated. *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1226 (2021). This is exactly what has happened in the current case and therefore the federal government should be considered state actors who have violated plaintiffs' First Amendment rights.

Moreover, private parties that are "jointly engaged with state officials in [a] prohibited action are acting 'under color' of law . . . It is enough that [the private party] is a willful participant in joint activity with the State or its agents [to implicate the First Amendment]." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941-42 (1982). In this case, the DHS has claimed that the new evidence reveals a willingness on the part of technology companies to work with the government and accomplish its

aims and is thereby lawful. The inherent power imbalance between the federal government and private actors renders this argument extremely unpersuasive. The government can penalize uncooperative companies that do not do what it says (and has explicitly stated an intent to do so). Plaintiffs' newly discovered information, which provides extensive evidence of DHS's and Twitter's collusive activities in furtherance of speech suppression, directly contradicts the government's claims that plaintiffs failed to establish a causal link between the federal government's campaign and their censorship on social media.

Importantly, in the recent case of *Missouri v. Biden*, the district court concluded that the traceability component of the standing inquiry had been "easily met" where the federal government had coerced and colluded with private third parties to censor "disfavored speakers, viewpoints, and content." *Missouri v. Biden*, No. 3:22-CV-01213, 2022 WL 2825846 at 5-6 (W.D. La. July 12, 2022) (plaintiffs had standing because "the alleged injuries are 'imminent' and allegedly 'on-going,' due to allegations of social media suspensions, removals of disfavored viewpoints, and censorship."). The *Missouri* court also noted that the plaintiffs met the redressability element of standing because putting an

end to the "alleged suppression of supposed disfavored speakers, viewpoints, and content would address plaintiff states' alleged injuries." *Id.* This case, being virtually identical in relevant respects, should compel the same conclusion that the plaintiffs have standing, and the lower court decision should be reversed.

C. Our System of Government Depends on Free Speech, Including the Right of the Public to Receive Information, and the DHS's Actions have a Profound Chilling Effect on Speech.

Contrary to the actions of the DHS in this case, "it is our law and our tradition that more speech, not less, is the governing rule." *Citizens United v. FEC*, 558 U.S. 310, 361 (2009). The constitutional protection of free speech is not merely intended to encourage self-expression. "[F]ree speech is 'essential to our democratic form of government.' Without genuine freedom of speech, the search for truth is stymied, and the ideas and debates necessary for the continuous improvement of our republic cannot flourish." *Meriwether v. Hartop*, 992 F.3d 492, 503 (6th Cir. 2021) (Thapar, J.) (quoting and citing *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018)).

The First Amendment creates a marketplace of ideas because our Founders were confident in their belief "that freedom to think as you will

and to speak as you think are means indispensable to the discovery and spread of political truth[.]" *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). The Constitution accordingly seeks to "maintain a free marketplace of ideas, a marketplace that provides access to 'social, political, esthetic, moral, and other ideas and experiences.'" *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 583 (2011) (quoting *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390, (1969) and citing *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)).

For the existence of a marketplace of ideas sufficient to sustain a healthy civic society, the rights of both speakers and listeners must be respected. Thus, the Constitution generally prevents the government from interfering with "the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *see, e.g., Martin v. Struthers*, 319 U.S. 141, 143 (1943). "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 buyer." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (citations omitted).

The federal government's coercion of social media companies and other platforms to censor plaintiffs' speech in this case harms the marketplace of ideas by preventing willing listeners from receiving information. Such interference in the free exchange of information is harmful as a general matter, and it is especially egregious and damaging to civic health for information about the way a government agency is discharging its duties to be suppressed. Moreover, the federal government's actions here have a profound chilling effect on speech by putting private parties on notice that speech the government does not agree with will be censored and lead to adverse consequences for those who would speak out against government policy. Government action that chills speech—especially political speech—for fear of adverse consequences violates the First Amendment. *See, e.g., Lamont v. Postmaster General*, 381 U.S. 301 (1965) (finding that the Court should strike down a postal regulation requiring individuals who wished to receive communist literature to sign up at the post office. Although the program included no sanctions against recipients, the Court said it would chill individuals who wanted the material but were afraid to make their wishes known to the government).

D. The Federal Government's Actions to Suppress Speech it Does Dislikes Empowers Bureaucracy at the Public's Expense.

Even though, "[a]s a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear," *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002), the federal government appears to have engaged in precisely that kind of censorship in this case. "The right of free public discussion of the stewardship of public officials . . . [is] a fundamental principle of the American form of government." *New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964); *see also Schacht v. United States*, 398 U.S. 58, 63 (1970) (commenting that all persons "in our country, enjoy[] a constitutional right to freedom of speech, including the right openly to criticize the Government").

While at odds with America's traditional First Amendment principles, the federal government's secretive pressure to private parties to censor information it does not agree with is perfectly consistent with the unfortunate tendency of government bureaucracies to use secrecy to increase their own power at the public's expense. Writing over twenty years ago, the bipartisan Commission on Protecting and Reducing Government Secrecy chaired by then-U.S. Senator Daniel Patrick

Moynihan condemned the federal government's covetous treatment of public information, which resulted in an excessive amount of government secrecy. Daniel Patrick Moynihan *et al.*, *Report of the Commission on Protecting and Reducing Government Secrecy*, S. Doc. No. 105-2, app. A at Ch. 3 ("Secrecy: A Brief Account of the American Experience") (1997), *available at* https://sgp.fas.org/library/moynihan/appa3.html (last visited Oct. 1, 2022) [hereinafter, "Moynihan"]. This tendency is nothing new to government and nothing unique to the U.S. government, the Commission explained.

Instead, the Commission attributed it to the natural inclination of bureaucracies as described by the German sociologist Max Weber:

> Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of "secret sessions" [and] in so far as it can, it hides its knowledge and action from criticism . . . The concept of the "official secret" is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude[.]

Id. The secrecy and insulation from criticism a bureaucracy like the DHS naturally seeks cannot be squared with what the First Amendment demands. Therefore, the Court should reverse the lower court ruling in

this case to rein in the federal government from further depriving citizens of their First Amendment rights.

E. Excessive Government Secrecy, like that Embodied in the Federal Government's Actions toward Plaintiffs, is Injurious to the Public Interest.

"Information is power, and it is no mystery to government officials that power can be increased through controls on the flow of information." Moynihan at Ch. I ("Overview: Protecting Secrets and Reducing Secrecy"), *available at* https://sgp.fas.org/library/moynihan/chap1.html (last visited Oct. 1, 2022). By pressuring private platforms to censor information it does not like, the federal government effectively monopolizes the public so that it will not receive information the federal government does not agree with. Yet, the free exchange of conflicting information and views is the cornerstone of discovering truth. Even a speaker whose criticisms are misguided or inaccurate is nonetheless protected by the First Amendment because it has long been recognized that "[e]ven a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.'" *New York Times*, 376 U.S. at 279 n.19 (1964) (quoting John Stuart Mill,

On Liberty (Oxford: Blackwell 1947), at 15, and citing John Milton, *Areopagitica*, in Prose Works (Yale 1959), Vol. II, at 561).

The public likewise has an interest in knowing how its officials are discharging their duties. "'[I]t is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.'" *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1069 (3d Cir. 1984) (quoting *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884)). Contrary to this precedent, the federal government in this case interferes with the ability of the public to be informed in the most extreme of ways—a secretive, coercive campaign against any criticism of its COVID-19 policies. The result is less public information and a greater danger for public mistrust and cynicism.

II. IT IS INAPPROPRIATE TO DISMISS THE PLAINTIFFS' CASE BEFORE THE DISCOVERY THAT MIGHT ALLOW FURTHER SUBSTANTIATION OF THEIR CONTENTIONS.

A. The Underlying Facts and Significance of Plaintiffs' New Information, Including Direct Evidence of the Government's Collusion with Private Actors to Combat "Misinformation," Illustrates the Need for Further Discovery.

In this case, plaintiffs' newly discovered evidence is highly significant, including direct evidence of the government's "mission" and extensive efforts to direct private technology companies, including Twitter and other social media platforms, to combat and suppress "misinformation." This is precisely the sort of information that the District Court found lacking in the original complaint—and which remained wholly unavailable to plaintiffs until June 7, 2022, when a whistleblower's disclosure revealed it. Significantly, another district court recently granted a motion for expedited discovery based on the same newly discovered evidence as plaintiffs. *Missouri v. Biden*, 2022 WL 2825846 (granting discovery request for preliminary injunction motion).

The *Missouri* motion for expedited discovery was filed on June 14, 2022, and contained the new information put forth by plaintiffs, which

was unavailable to them prior to entry of the District Court's May 5, 2022 order dismissing and closing the case. The Court noted that the present case had been dismissed because it had been "filed long before most of the States' evidence of a massive federal censorship program became publicly available, and thus were based on much less extensive allegations of federal censorship activity and joint action, collusion, and coercion." *Id.* at 5. Now that this evidence is available, this Court should allow plaintiffs' case to go forward and permit further discovery.

In the present case, the newly discovered declassified memoranda specifically discuss attempts to stifle "misinformation" about COVID-19. Indeed, even if plaintiffs' suspensions on Twitter and censorship on other social media platforms could not be tied to state action before, given this new knowledge that the government is directly involved in such censorship now, they certainly have standing to bring this suit at the present time. At the very least, this previously undisclosed information warrants permitting plaintiffs to move forward with the lawsuit and obtain discovery. *See, e.g., Consumers Petroleum Co. v. Texaco, Inc.*, 804 F.2d 907 (6th Cir. 1986) ("We cannot conclude from reviewing the record that [Plaintiff] could not have developed facts to support its assertion[.]").

At this point, plaintiffs only need to provide sufficient facts which, viewed in the light most favorable to them, could support a plausible claim that would entitle them to relief. *DirecTV, Inc. v. Treesh*, 487 F.3d 471,476 (6th Cir. 2007). Additional, crucial facts came to light in August of 2022. Former New York Times reporter Alex Berenson, who had acquired a very large following on Twitter where he critiqued government COVID-19 restrictions, was permanently suspended from the platform in July 2021, presumably for tweeting that the available vaccines do not stop infection or transmission of the virus. This suspension occurred just days after Dr. Anthony Fauci publicly called Berenson a threat to public health, and hours after President Biden publicly blamed social media companies for "killing people" by not censoring those who expressed doubts about the safety and efficacy of the vaccines. Through the discovery process in his lawsuit against Twitter, Berenson obtained, among other things, Slack messages exchanged between Twitter employees, which described the White House's "really tough" and "pointed" questions about "why Alex Berenson hasn't been kicked off the platform" during a meeting. *Berenson v. Twitter, Inc.*, No. 3:21-cv-09818 (N.D. Cal. Apr. 29, 2022). The treatment of Berenson's Twitter account

indicates a broader pattern of government-induced censorship, which makes plaintiffs' allegations in this cause even more plausible. Berenson would never have obtained conclusive proof that the Government perpetuated censorship of his account had the judge thrown his case out prior to comprehensive discovery, as the court did here.

Accordingly, the underlying facts and significance of plaintiffs' new information, including direct evidence of the government's collusion with private actors to combat "misinformation," as well as recent case law illustrate the need for further discovery and for the plaintiffs to be able to litigate their claims.

B. The Plaintiffs' New Information Illustrates the Need for the Lower Court Ruling to be Reversed.

The DGBs existence was unknown to the American public until its creation was announced by the Biden Administration on April 27, 2022. Likewise, DHS involvement in driving social media censorship came to light at that time. This establishes direct evidence that President Biden's executive agencies had been meeting with social media companies and using them to further their aim of silencing those spreading "misinformation" (although plaintiffs maintain that they presented enough circumstantial evidence to survive a motion to dismiss by the

district court). These documents establish that DHS officials met in secret with Twitter executives to coordinate online censorship of perspectives such as those offered by plaintiffs. The declassified documents showed that DHS considered "disinformation relating to the origins and effects of Covid-19 vaccines or the efficacy of masks" a "serious homeland security risk." This was not information that plaintiffs knew or could have known until the DGB's existence was announced by the Biden administration.

At the same time, this evidence goes to the heart of plaintiffs' contentions that government involvement in social media censorship violated their First Amendment rights to free speech and expression. This new information constitutes direct evidence of the government's involvement in social media censorship that the court found lacking in the original complaint. It demonstrates that the government considered "misinformation" on social media a national security threat, that it met with Twitter executives to address that threat, and that it intended to use social media companies to accomplish its aim of silencing non-government approved views on the subject of COVID-19. *See Ward v. NPAS, Inc.*, No. 3:19-cv-00484, 2021 WL 5041281 (M.D. Tenn. Oct. 29,

2021) (granting motion to amend complaint, after dismissal of lawsuit, because newly discovered facts amplified factual allegations that sufficed to establish standing); *Shumway v. Mira & Jenshu LLC*, No. 121CV01063-STA-JAY, 2021 WL 3354845 (W.D. Tenn. Aug. 2, 2021) (granting plaintiffs motion to amend complaint to cure standing issue); *Marchese v. Milestone Systems Inc.*, No. 12- 12276, 2013 WL 12182680 (E.D. Mich. June 21, 2013) (granting leave to amend to provide additional factual allegations that buttressed standing).

This Court has repeatedly recognized that "[t]he right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United*, 558 U.S. at 339; *see also Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 754 (2011) ("'[T]here is practically universal agreement that a major purpose of the First Amendment 'was to protect the free discussion of governmental affairs[.]'") (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)). The federal government's actions toward plaintiffs runs directly contrary to these rights and interests of the public.

CONCLUSION

For the above-stated reasons, the ruling of the District Court should be reversed and remanded to allow plaintiffs to proceed with litigation of their claims.

/s/Thomas Brejcha
Thomas Brejcha
Thomas More Society
309 W. Washington St.
Suite 1250
Chicago, IL 60606
Telephone: (312) 782-1680
Facsimile: (312) 782-1887
tbrejcha@thomasmoresociety.org

/s/B. Tyler Brooks
B. Tyler Brooks
Law Office of
B. Tyler Brooks, PLLC
100 E. Lake Dr., Suite 6
Greensboro, NC 27403
Telephone: (336) 707-8855
Facsimile: (336) 900-6535
btb@btylerbrookslawyer.com

Counsel for Amicus Curiae Thomas More Society

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,725 words, excluding the parts of this brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

DATED: December 5, 2022

/s/B. Tyler Brooks
B. Tyler Brooks
Counsel for Amicus Curiae
Thomas More Society

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on December 5, 2022. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: December 5, 2022

/s/B. Tyler Brooks
B. Tyler Brooks
Counsel for Amicus Curiae
Thomas More Society