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NCLA Takes on U.S. Surgeon General’s Censoring of Alleged Covid-19 “Misinformation” on Twitter

Mark Changizi, et al. v. Department of Health and Human Services, et al.

Washington, DC (March 25, 2022) – Mark Changizi, Daniel Kotzin, and Michael Senger each had or have Twitter accounts with tens of thousands of followers or more. Their Twitter platforms provided them with a social network, and an outlet to express their views, to hear the views of others, and to engage with detractors and fans alike. Outrageously, the U.S. Surgeon General and the Department of Health and Human Services (HHS) have directed social media platforms including Twitter to censor alleged “misinformation” about Covid-19. The speech ban has included information the Government later conceded was true but that conflicted with the Government’s messaging on Covid-19 at the time. On March 3, the Surgeon General demanded that the tech companies turn over information about individuals who spread such “misinformation,” a clear intimidation tactic that HHS has labeled a “[Request for Information](#)” (RFI). In response to Government pressure, Twitter has permanently banned Mr. Senger, and temporarily suspended Mr. Changizi and Mr. Kotzin.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [Complaint](#) in the lawsuit, *Changizi, et al. v. HHS, et al.*, in the U.S. District Court for the Southern District of Ohio. The lawsuit alleges that Surgeon General Vivek Murthy and HHS Secretary Xavier Becerra, whom NCLA has sued in their official capacities, do not have the statutory authority to issue this RFI.

In May 2021, the White House began a coordinated and escalating public campaign to stop the flow of purported “health misinformation” related to Covid-19. In a May 5, 2021 [press briefing](#), White House Press Secretary Jen Psaki stated that the President believed social media platforms have a responsibility to censor health “misinformation” related to Covid-19 vaccinations, that by not doing so they were responsible for American deaths, and that the President believed “anti-trust” programs were in order to effectuate this end. In other words, if tech companies refused to censor, they would face antitrust investigations—or worse. By July, the Surgeon General and HHS ratcheted up the pressure by issuing an [advisory](#) on the subject, commanding technology platforms to collect data on the “spread and impact of misinformation” and “prioritize early detection of misinformation ‘super-spreaders’ and repeat offenders” by “impos[ing] clear consequences for accounts that repeatedly violate platform policies.”

Following this initiative, Twitter began to suspend more and more accounts, some permanently. Between May and December 2021, all three Plaintiffs were suspended from Twitter due to their tweets about Covid-19. This sort of censorship strikes at the heart of what the First Amendment to the U.S. Constitution was designed to protect—free speech, especially political speech, much of which has later been vindicated as accurate. Adding insult to injury, on March 3, the Surgeon General issued his RFI, demanding that technology platforms turn over “information about sources of Covid-19 misinformation” to the Government by May 2, 2022.

The Surgeon General does not have the authority to issue this demand. The statute only gives him the authority to implement measures to stem spread of communicable disease. The statute cannot reasonably be interpreted to allow him to order tech companies to censor individuals with whom he disagrees on Covid policy, or to demand

that Twitter hand over information about such account holders without a warrant based on probable cause. Demanding social media platforms, including Twitter, to turn over information about users that the Government deems problematic constitutes a warrantless search in violation of the Fourth Amendment to the U.S. Constitution.

NCLA does not condone every position taken on Covid-19 by those whose Twitter accounts have been suspended or banned. But by instrumentalizing tech companies, including Twitter—through pressure, coercion, and threats—to censor viewpoints that the federal executive has deemed “misinformation,” the Surgeon General has turned Twitter’s censorship into state action. The Government’s policy of pressuring Twitter and other tech companies to censor the Plaintiffs should be halted immediately, and this RFI must be set aside.

NCLA released the following statements:

“It’s difficult to overstate the federal government’s cynicism in pretending to respect the First Amendment rights of American citizens while explicitly working with a company whose CEO says it ‘is not to be bound by the First Amendment’ in silencing American citizens on the most widely-used platform for political discourse.”
— **Michael P. Senger, Plaintiff, *Changizi, et al. v. HHS, et al.***

“The Surgeon General apparently believes he can do whatever he wishes, even going so far as to commandeer technology companies to stifle the perspectives of those who differ from the government on Covid policies. But Congress has not given him the authority to coerce social media platforms into censoring the voices of those with whom he disagrees, and in fact it could not have given him this power. The Surgeon General’s demand has turned Twitter’s censorship into government action. Thus, this viewpoint-based suppression of speech violates our clients’ First Amendment rights to free speech.”
— **Jenin Younes, Litigation Counsel, NCLA**

“Surgeon General Murthy’s RFI is really a Request for *Intimidation*. HHS is a serial violator when it comes to abusing its statutory power. Incredibly, HHS is relying on the exact same statute to issue the RFI here that it relied on the past two years to justify its unlawful nationwide eviction moratorium. The Supreme Court finally shot down the illegal moratorium. NCLA hopes lower courts are quicker to act on this latest unconstitutional outrage.”
— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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