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In NCLA Victory, Fifth Circuit Upholds Key Part of Government Social Media Censorship Injunction

State of Missouri, et al., v. Joseph R. Biden, Jr., et al.

Washington, DC (September 8, 2023)—The U.S. Court of Appeals for the Fifth Circuit has agreed with NCLA that officials from the White House, CDC, FBI and the U.S. Surgeon General’s office violated the First Amendment by coercing or significantly encouraging social media platforms to censor our clients. The panel [upheld](#) the most important portion of U.S. District Judge Terry Doughty’s preliminary injunction order in *Missouri, et al. v. Biden, et al.*, prohibiting those officials from pressuring social media companies to suppress constitutionally protected speech. The panel decision modified the injunction against federal officials to now read:

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.

The New Civil Liberties Alliance celebrates this landmark victory for our clients, Drs. Jayanta Bhattacharya, Martin Kulldorff and Aaron Kheriaty, and Ms. Jill Hines. At the government’s request, the Fifth Circuit stayed the order for 10 days to give the government time to petition for a *writ of certiorari* from the U.S. Supreme Court.

As today’s decision said, “[The platforms] gave the officials access to an expedited reporting system, downgraded or removed flagged posts, and deplatformed users.” The panel continued, “the platforms also changed their internal policies to capture more flagged content and sent steady reports on their moderation activities to the officials ... through the COVID-19 pandemic, the 2022 congressional election, and [that] continues to this day.”

The Biden Administration’s years-long censorship campaign has suppressed perspectives contradicting government-approved views on hotly disputed topics like whether natural immunity to Covid-19 exists, Covid-19 vaccine concerns, the virus’s origins, and mask mandate efficacy. The vast, coordinated censorship campaign has silenced public voices including influential doctors and scientists. Drs. Bhattacharya, Kulldorff and Kheriaty, and Ms. Hines have all been blacklisted, shadow-banned, de-boosted, throttled, and censored on social media.

Importantly, the Court recognized that the Plaintiffs did “not challenge the social-media platforms’ content-moderation policies.” Rather, Plaintiffs challenged the *government’s* unlawful efforts to influence “enforcement of those policies.” The government gravely harmed the ability of NCLA’s clients to convey their views to the public, and it deprived Americans of their right to hear opinions that differ from the government’s. Judge Doughty strikingly described the Administration’s conduct as “arguably the most massive attack against free speech in United States history” and “akin to an Orwellian Ministry of Truth.” Today’s order should stop that conduct.

NCLA released the following statements:

“In an unprecedented, historic decision, the Fifth Circuit has recognized that the conduct of the White House, CDC, Surgeon General, and FBI violated Americans’ First Amendment rights. The government cannot coerce or encourage social media companies to censor views it dislikes. This decision vindicates the Plaintiffs’ rights and protects the free speech of all Americans.”

— **Jenin Younes, Litigation Counsel, NCLA**

“The Biden Administration’s coordinated censorship campaign against the American people ends today. The Fifth Circuit’s decision details blatantly unlawful conduct by multiple agencies, and its order forbids the government’s widespread contempt for the First Amendment from continuing in no uncertain terms.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page [here](#) or watch the case video [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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